

# MINNESOTA RULES 2011

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## CHAPTER 1587

### AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

#### FINANCIAL ASSISTANCE

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#### GENERAL

##### 1587.0100 SCOPE.

Parts 1587.0100 to 1587.1200 are general rules that apply to all applications for financial assistance made available by the board under the act and under Minnesota Statutes, chapter 469.

**Statutory Authority:** *MS s 41A.04*

**History:** *10 SR 475; L 1987 c 386 art 5 s 5*

##### 1587.0200 DEFINITIONS.

Subpart 1. **Statutory definitions.** The terms defined in Minnesota Statutes 1986, section 116M.03, Minnesota Statutes, section 469.110, and this part apply to this chapter.

Subp. 2. **Act.** "Act" means Laws of Minnesota 1980, chapter 547.

Subp. 3. **Applicant.** "Applicant" means a person, partnership, firm, corporation, or association that applies to the board for financial assistance.

Subp. 4. **Board.** "Board" means the Minnesota Agricultural and Economic Development Board.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of employment and economic development or the commissioner's designee.

Subp. 6. **Financial assistance.** "Financial assistance" means loans, loan guarantees or insurance, and any other use of funds permitted by the act.

Subp. 7. **Members.** "Members" means the commissioner and those persons appointed to the board under Minnesota Statutes, section 41A.02, subdivision 3.

Subp. 8. **Project.** "Project" means that which is funded or secured, or is proposed to be funded or secured, by financial assistance.

**Statutory Authority:** *MS s 41A.04*

**History:** *9 SR 111; 10 SR 475; L 1987 c 312 art 1, c 386 art 5 s 5; 17 SR 1279; L 2003 1Sp4 s 1*

##### 1587.0300 REGULAR MEETINGS.

Regular meetings of the board shall be held on the fourth Wednesday of each month at 3:00 p.m. at the offices of the board in Saint Paul, Minnesota, unless another place of meeting is designated by resolution. If this date falls on a legal holiday, the regular meeting shall be held on the next succeeding business day.

**Statutory Authority:** *MS s 41A.04*

**History:** *9 SR 111; L 1987 c 386 art 5 s 5*

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## 1587.0400 SPECIAL MEETINGS.

Special meetings of the board may be called upon reasonable notice to all members by the chairperson or by a majority of the existing members of the board, for the purpose of transacting any business designated in the notice, and shall be held at the business offices of the board in Saint Paul, Minnesota, unless another place of meeting is designated by resolution. At a special meeting, no business may be considered other than as designated in the notice unless all of the members of the board are present at the special meeting.

**Statutory Authority:** *MS s 41A.04*

**History:** *9 SR 111; L 1987 c 386 art 5 s 5*

## 1587.0500 PUBLIC APPEARANCES AT MEETINGS OF MEMBERS.

The following procedures shall govern public appearances at meetings of the members:

A. With respect to regular meetings, the commissioner shall complete the agenda for meetings of the members not less than five nor more than seven days prior to the date of the meeting.

B. With respect to regular meetings, any person who desires to appear and address the members shall make a written request to the commissioner, at least ten days prior to the date of the meeting, setting forth the nature of the matter about which the person wishes to appear.

C. With respect to regular or special meetings, any person who desires to appear and address the members with respect to any matter enumerated on the agenda shall make a written request to the commissioner, at least 24 hours before the meeting.

D. Any member may at any time request that a person be permitted to appear and address the members at any regular or special meeting. All requests must be placed on the agenda for review by the members at the meeting. A majority vote of the members present is required to grant a request to address the members.

**Statutory Authority:** *MS s 41A.04*

**History:** *9 SR 111; L 1987 c 386 art 5 s 5*

## 1587.0600 MISREPRESENTATION OF APPLICATION INFORMATION.

Subpart 1. **Affirmative duty.** An applicant or financial institution has an affirmative duty and obligation to update and correct all information provided to the board.

Subp. 2. **Board's action.** If information provided to the board by either the applicant or the financial institution contains a material misrepresentation or omission, the board may:

- A. reject an application whether or not previously approved;
- B. refuse to provide financial assistance;
- C. make financial assistance provided by it immediately due and payable; or
- D. revoke any preliminary or final resolution prior to the provision of financial assistance or prior to the sale of the bonds approved by it.

**Statutory Authority:** *MS s 41A.04*

**History:** *9 SR 111; L 1987 c 386 art 5 s 5*

## FINANCIAL ASSISTANCE APPLICATIONS

## 1587.1000 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. **In general.** To apply for assistance from the board, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 1587.1200.

Subp. 2. **Contents.** An application must contain at a minimum the following information:

- A. A written history of the business.
- B. The source and use of funds to finance the project.
- C. Financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:
  - (1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be signed by an authorized financial officer of the business making application.
  - (2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.
  - (3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.
  - (4) A proforma balance sheet and income statement for the 24 months following the financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.
- D. A marketing plan that describes:
  - (1) the industry the applicant is in;
  - (2) the economic outlook of that industry for the next three to five years;
  - (3) the major characteristics of the industry, names, locations, products, or services provided;
  - (4) the duration and conditions of the applicant's contracts currently in place;
 and
  - (5) the percentage of annual sales volume for each major customer over the previous three years.
- E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.
- F. A resolution of support or other comparable preliminary approval from the local government unit with respect to the project to be financed or secured with financial assistance.
- G. A statement of informed consent by the applicant regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the applicant is a corporation, then an authorized representative of the applicant shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).
- H. Certification that the employer does not discriminate in employment in a manner contrary to applicable federal or state laws and rules.
- I. Certification of business compliance with all federal, state, or local laws or rules that affect the conduct of business in the state.

Subp. 3. **Business plan.** As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

- A. a management summary of the plan including:
  - (1) name of the business;
  - (2) business location and plan description;
  - (3) discussion of the product, market, and competition;

- (4) expertise of the management team;
  - (5) summary of financial projections;
  - (6) amount of financial assistance requested;
  - (7) form of and purpose for the financial assistance;
  - (8) purpose for undertaking the project; and
  - (9) business goals;
- B. a description of the company including the following:
- (1) date and state of incorporation, date and state of formation of partnership, or date and state of formation of sole proprietorship;
  - (2) history of the company; and
  - (3) principals and the roles they played in the evolution of the company;
- C. a market analysis including:
- (1) description of the current industry status and industry trends;
  - (2) effects of major social, economic, technological, or regulatory trends on the industry;
  - (3) description of the total market, principal market participants, and their performance; and
  - (4) discussion of the target market and competition;
- D. a description of the product or product line including:
- (1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;
  - (2) discussion of technical and legal considerations;
  - (3) comparisons to competitors' products or product lines; and
  - (4) description of research and development and future plans for research and development;
- E. a description of the marketing strategy including:
- (1) overall strategy;
  - (2) pricing policy;
  - (3) sales channels and terms;
  - (4) method of selling, distributing, and servicing product;
  - (5) estimated sales and market share; and
  - (6) advertising, public relations, and promotion;
- F. the management plan including:
- (1) form of business organization;
  - (2) board of directors composition, if applicable;
  - (3) officers organization chart and responsibilities; and
  - (4) resumes of key personnel;
- G. an operating plan including:
- (1) schedule of upcoming work for the next one to two years;
  - (2) facilities plan or planned capital improvements for the next three years;
  - (3) manufacturing processes; and
  - (4) staffing plan (number of employees);
- H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

(1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;

(2) financial statements for the past three years, if applicable;

(3) current financial statements;

(4) monthly cash flow financial projections including the proposed financing for two years; and

(5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

**Statutory Authority:** *MS s 41A.04*

**History:** *10 SR 475; L 1987 c 386 art 2 s 22,23*

#### **1587.1100 COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.**

Subpart 1. **Collateral requirements.** The board shall require collateral as it considers necessary in accordance with generally accepted commercial lending practices to protect the interests of the board in the financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its financial assistance with assets being financed by the financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees or other assurances of repayment of affiliates of the applicant or other interested parties with respect thereto;

F. guarantees or other assurances of repayment of shareholders or partners who have 20 percent or more ownership in the applicant;

G. bond insurance or other credit enhancements; and

H. assignments of leases or rents on property or equipment.

Subp. 2. **Additional information or certifications.** The following additional information, as applicable, is required by the board prior to disbursing financial assistance, as well as any other information that the board in its sole discretion considers advisable for prudent financial management of board financial assistance:

A. a lease agreement on property or equipment;

B. a listing of property, including serial numbers for machinery and equipment, that will serve as collateral to the financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance;

E. an appraisal of collateral offered to the board for the financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

**Statutory Authority:** *MS s 41A.04*

**History:** *10 SR 475; L 1987 c 386 art 2 s 22,23*

**1587.1200 PROCEDURES FOR APPLICATION PROCESSING.**

Subpart 1. **Deadline for submission.** The applicant shall submit a complete application to the commissioner by the first business day of any month in order for the board to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the board agenda deadline, the board may consider the application at the meeting in that month.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all required documentation and exhibits.

Subp. 3. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. **Review of eligibility of project and applicant.** The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 1587.1000 to 1587.1300 and any parts relating to the financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. **Ineligible project or applicant.** The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project or applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. **Economic feasibility review.** The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, Pennsylvania.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the financial assistance. The submission of the application by the commissioner to the board at a board meeting shall be deemed conclusive evidence that the commissioner has made the determinations required pursuant to this subpart.

Subp. 7. **Rejection of application based on economic feasibility.** The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the board for review at the next regularly scheduled meeting of the board for which the agenda has not been established.

If so submitted, the board must evaluate the application at its board meeting, in accordance with subpart 9.

Subp. 8. **Certification of public purpose for small business and business loans.** In addition to the economic feasibility review in subpart 6, the applicant must certify that the project assists in fulfilling the purposes of the act as expressed in Minnesota Statutes 1986, section 116M.09, or assists in fulfilling one or more of the following criteria:

A. The applicant is located in an area of the state that is experiencing one of the most severe unemployment rates in the state.

B. The applicant is located in a border community that experiences a competitive disadvantage due to location and with this financial assistance the applicant would be induced to stay in Minnesota rather than to move to another state.

C. The applicant is likely to expand within the state and to create additional taxable property to local units of government.

D. The financial assistance applied for will help induce the applicant to locate in an area of economic distress or will help to provide jobs that would not otherwise be available to that area without the inducement of this financial assistance.

E. The financial assistance applied for will create or maintain sufficient numbers and types of jobs to justify participation in the financial assistance programs.

F. Energy sources and public facilities will be sufficient to support the successful operation of the project.

G. If the financial assistance will have the effect of a transfer of employment from one area of the state to another, that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state.

Subp. 9. **Board evaluation procedure.** Applications approved for processing by the commissioner must be presented to the board for approval or disapproval. The board shall review and consider approval of an application on the basis of effectuating the purposes of the act as expressed in Minnesota Statutes 1986, section 116M.09 or assist in fulfilling one or more of the criteria listed in subpart 8. If the board disapproves the application, the commissioner shall so notify the applicant. If the board approves the financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the project owner; a brief description of the project; the maximum amount of bonds to be issued, or the maximum amount of the loan to be made, or the maximum amount of the loan to be guaranteed or insured, whichever is applicable; and other provisions as the board in its sole discretion deems advisable for prudent financial management of board financial assistance. The commissioner shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed. If the financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 10 are required before financial assistance is approved. Throughout this process if the board does not extend financial assistance, the board has no liability to the applicant.

Subp. 10. **Funding of financial assistance by bonds.** If the board intends to fund the financial assistance by issuing bonds, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the board to issue bonds or to fund financial assistance, but must only constitute an expression of current intention of the board to issue bonds or to fund the financial assistance. If the board subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other conditions that the board deems necessary and the board decides in accordance with generally accepted commercial lending practices to make financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds,

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may be revoked or amended by the board at any time prior to the final resolution of the board without liability to the board, and may impose any conditions or requirements that the board deems desirable. The commissioner shall notify the applicant of the board's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the board does not extend financial assistance, the board has no liability to the applicant.

Subp. 11. **Preparation of documents.** The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the board.

**Statutory Authority:** *MS s 41A.04*

**History:** *10 SR 475; L 1987 c 386 art 2 s 22,23*