

## CHAPTER 1580

### AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD AGRICULTURAL AND ECONOMIC DEVELOPMENT PROGRAM

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#### **1580.0100 PURPOSE AND AUTHORITY.**

Parts 1580.0100 to 1580.0900 are authorized by Minnesota Statutes, section 41A.04, subdivision 4, to carry out the purposes of Minnesota Statutes, chapter 41A, and to establish a process for application and approval of eligible financial assistance for agricultural resource projects.

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

**History:** *11 SR 713*

**Published Electronically:** *September 10, 2007*

#### **1580.0200 DEFINITIONS.**

Subpart 1. **Scope.** For purposes of parts 1580.0100 to 1580.0900, the terms defined in this part and in Minnesota Statutes, section 41A.02, have the meanings given to them.

Subp. 2. **Chair.** "Chair" means the commissioner of management and budget acting as chair of the Minnesota Agricultural and Economic Development Board.

Subp. 3. **Administrator.** "Administrator" means the commissioner of employment and economic development acting as the chief administrative officer of the Minnesota Agricultural and Economic Development Board, or a designee.

Subp. 4. **County authority.** "County authority" means a rural development finance authority, or any county exercising the power of a rural development finance authority, pursuant to Minnesota Statutes, chapter 362A.

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

**History:** *11 SR 713; L 1987 c 312 art 1, c 386 art 9 s 20; L 2003 1Sp4 s 1; L 2009 c 101 art 2 s 109*

**Published Electronically:** *September 18, 2009*

**1580.0300 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.**

Subpart 1. **Purpose.** Loan guarantees or loans from bond proceeds are available from the board to further the development of the state's agricultural resources and to improve the market for its agricultural products.

Subp. 2. **Amount of loan guarantee or bond issue; criteria.** The total principal amount of any guaranteed loan or bond issue may not exceed 80 percent of the total eligible costs of the related project as estimated by the board at the time the commitment to guarantee a loan or issue bonds is made, or in the case of a refunding or refinancing loan, 80 percent of the aggregate amount of principal and interest refunded or refinanced.

In determining the percentage of a loan guarantee or the amount of a bond issue for the project, the board will consider the following factors:

- A. the amount of state financial assistance necessary to assure the feasibility of the project;
- B. the amount of state financial assistance necessary to assure the lender's financial participation in the project;
- C. the impact the project will have on the state and its agricultural resources; and
- D. the availability of funds for state financial assistance.

Subp. 3. **Eligible project costs.** Project costs eligible for a guaranteed loan or bond issue are defined in Minnesota Statutes, section 41A.02, subdivision 10, and include the following:

- A. land and building acquisition costs;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. equipment and machinery;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. permit and application fees, guarantee fees, insurance, letters of credit, and surety bonds;
- I. fees of the board for application and guarantee;
- J. certain contingency costs;
- K. interest costs during construction;
- L. legal fees;
- M. costs of environmental review; or
- N. any other expenses incurred by the borrower that are reasonably required for the construction and completion of the project.

Working capital is not considered a cost of construction and completion of the project and is not an eligible project cost for a guaranteed loan or bond issue.

Subp. 4. **Security for guaranteed loan or bond issue.** The guaranteed loan or bond issue must be secured by the best available collateral, which must include at a minimum, a mortgage on and security interest in all real and personal property comprising the project.

Subp. 5. **Increase in project costs.** If the actual cost of a project exceeds the cost estimate, the board may consent to an increase in the amount of the guaranteed loan or bond issue pursuant to Minnesota Statutes, sections 41A.03, subdivision 2, and 474.17 to 474.25, if it determines that the increased costs will not jeopardize the board's interest and are necessary for the successful completion or operation of the project. The increase in the principal amount of the guaranteed loan or bond issue must not exceed 80 percent of the increased costs. The board may guarantee up to 90 percent of the increase in the principal amount of the guaranteed loan and interest on that amount.

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

**History:** *11 SR 713*

**Published Electronically:** *September 10, 2007*

#### **1580.0400 CONTENTS OF APPLICATION.**

Subpart 1. **Application forms.** The administrator shall prepare application forms for use by applicants. The application must provide the following information, unless waived by the board pursuant to subpart 2:

A. a description of the scope, nature, extent, and location of the project, including a preliminary or conceptual design of the project and a description of the technology to be applied;

B. the identity of the borrower and the prior experience of the borrower as it relates to the project;

C. a detailed, itemized estimate of the total cost of the project, including escalation and contingencies, with an explanation of the assumptions underlying the estimates;

D. a general description of the financial plan of the project, including the sources and uses of funds, the types and priorities of all security interests to be granted as security for the guaranteed loans or loans from bond proceeds and the project, and all other project related debt and equity;

E. an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other available data that is relevant to an environmental assessment;

F. a description of applications to be filed and an estimated timetable of approvals or permits required by federal, state, and local government agencies as conditions for construction and commencement of operation of the project;

G. an estimated construction schedule;

H. an analysis of the estimated cost and volume of production and market demand for the product, including economic factors justifying the analysis, and proposed and actual contracts or letters of intent relating to the supply of feedstock and raw materials and marketing or purchase of the production;

I. financial statements that include a balance sheet, an opening statement, and footnotes to the statements if available for the following time periods:

(1) financial statements for the previous three years, if applicable; and 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) pro forma cash flow statements for the first five years of project operation, including income statements and balance sheets;

J. a description of the borrower's organization and, where applicable, a copy of its articles of incorporation or partnership agreement and bylaws;

K. the estimated amount of the loan from bond proceeds or the percentage of the loan guarantee requested, the proposed repayment schedule, a description of all security and collateral, and other terms and conditions of the loan;

L. an estimate of the amounts and times of receipt of guarantee and bond fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the state guarantee fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;

M. a copy of any lending commitment or letter of intent issued by a lender to the borrower;

N. if a loan guarantee is requested, a statement from the lender, concerning the lender's general experience in financing and servicing debt incurred for projects of the size and general type of the project, and its proposed servicing and monitoring plan. In addition, the following information must be submitted:

(1) the term of the loan, the interest rate, and amortization schedule and other terms and conditions of the lender;

(2) a certification and supporting documentation that the lender has determined the project to be economically feasible in accordance with generally accepted commercial lending practices;

(3) an appraisal of collateral showing total retail value;

(4) a statement of informed consent signed by an authorized officer of the lender regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d);

O. a description of any legal actions pending or to be commenced against the borrower, including an explanation of each of these actions and borrower's defenses, if any;

P. a description of all potentially competitive products that are produced or processed in Minnesota and an analysis of the competitive impact of the project on the competing products and producers;

Q. if the application is made by an applicant other than the county authority and if tax increment financing is to be used for the project pursuant to Minnesota Statutes, section 41A.06, subdivision 5, a copy of a resolution adopted by the county authority where the project is located authorizing the use of tax increment financing;

R. 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); and

S. any additional information reasonably related to (1) the criteria in part 1580.0600, and reasonably required for the board's consideration of project eligibility and conformity to generally accepted commercial lending practices as required by banks or other financial institutions considering such a project for debt financing and (2) to the purposes of Minnesota Statutes, section 41A.01.

Subp. 2. **Waiver of application requirements.** An applicant may request the board to waive any of the requirements of subpart 1, items A to O. The request must be made in writing to the administrator. The board may waive a requirement if it determines that the requirement is not necessary to evaluate the eligibility or feasibility of the project. A request for waiver must state the reasons why, in the applicant's judgment, the information is not necessary.

Subp. 3. **Feasibility study.** The board must require a feasibility study for the project, if the board determines that a study is necessary for its consideration of the project's eligibility for a loan guarantee or a loan from bond proceeds. The feasibility study must address those factors that the board determines are necessary in light of generally accepted commercial lending practices and the requirements of Minnesota Statutes, chapter 41A.

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

**History:** *11 SR 713*

**Published Electronically:** *September 10, 2007*

#### **1580.0500 APPLICATION PROCEDURE.**

Subpart 1. **Application forms.** Upon the request of a person seeking a loan guaranty or a loan from bond proceeds, the administrator shall provide application forms for use by the person.

Subp. 2. **Submission of application.** An applicant for eligible financial assistance must make written application to the board. This written application must include the information described in part 1580.0400, subpart 1. The applicant shall submit the completed application along with the necessary exhibits and attachments to the administrator. The administrator may require the borrower or lender to provide additional information that is necessary for the review of the application. The administrator shall notify the applicant of receipt of the application.

Subp. 3. **Review by administrator.** The administrator shall review the application according to generally accepted commercial lending practices to determine whether or not to submit the application to the board for final action.

The administrator shall submit the application to the board for final action if the administrator determines:

A. that the project appears to be eligible for a loan guarantee or a loan from bond proceeds, and conforms to the purpose and requirements of Minnesota Statutes, chapter 41A;

B. that the application is complete or would be complete except for the applicant's request for a waiver pursuant to part 1580.0400, subpart 2;

C. that the project is both economically and technically feasible, and can reasonably be expected to maintain a sound financial condition and to retire the principal and pay interest on the guaranteed loan or on the bonds in accordance with the terms of the loan agreement;

D. that the project and its development are economically advantageous to the state; and

E. that money is available to fund the loan guaranties or bonds.

The administrator shall notify the applicant of the administrator's decision whether or not to submit the application to the board. If the administrator determines to submit the application to the board, the administrator shall submit copies of the application to the board for approval or rejection.

Subp. 4. **Appeal of administrator's determination.** If the administrator decides not to submit the application to the board for approval, the applicant may request the board to review the administrator's decision. The request must be made in writing and submitted to the chair. Upon request the board shall conduct a de novo review of the application pursuant to subpart 5.

Subp. 5. **Board review of application.** The board shall review the completed application pursuant to part 1580.0600, and may seek assistance from the administrator and the board's advisory committee, if one exists. The board may hire consultants or professionals who are reasonably required for an evaluation of the eligibility and feasibility of the project.

Subp. 6. **Approval and conditional commitment.** If the board approves an application, it may adopt a resolution that conditionally commits the state to guarantee the portion of the proposed loan or to issue bonds, not exceeding the limit in part 1580.0300, subpart 2. The commitment is not binding upon the state unless the board has executed on behalf of the state a final loan guarantee agreement or has issued bonds in conformity with parts 1580.0700 and 1580.0900.

Subp. 7. **Denial of application.** If the application is not approved by the board, the administrator shall notify the applicant promptly in writing of the denial.

Subp. 8. **Application fee.** When the application is filed, the applicant shall pay a fee equal to 0.25 percent of the amount of the loan guarantee or loan from bond proceeds requested. The fee must be paid to the commissioner of management and budget. The board must charge against the fee its costs of processing, reviewing, and evaluating the application. The costs charged against the fee may include, as applicable, the direct and indirect cost of work performed by state employees, the expenses of the advisory committee, and the fees, charges, and expenses paid to consultants or professionals the board considers necessary and reasonably required for its determination of project feasibility and eligibility for a loan guarantee or loan from bond proceeds.

If the board denies an application, the remaining fee balance must be refunded to the applicant. If the board issues a commitment for the project, the remaining fee balance must be transferred from the general fund to the guaranty fund and credited against the amount of commitment fee required in part 1580.0700.

Subp. 9. **Misrepresentation in application.** Whenever a change occurs in the information provided by an applicant and borrower to the board or to the lender, the applicant and borrower shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information shall constitute grounds to reject any application, revoke any notice of approval, and refuse to close any loan guaranty or issue bonds.

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

**History:** *11 SR 713; L 2009 c 101 art 2 s 109*

**Published Electronically:** *August 7, 2009*

#### **1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.**

In determining whether to approve or deny an application for a loan guarantee or a loan from bond proceeds, the board shall consider the following criteria:

- A. the extent to which the project will further the development of the state's agricultural resources and improve the market for its agricultural products;
- B. the extent to which the public financial assistance sought by the applicant under the program would provide the project with an unfair advantage in competing with other products produced or processed in Minnesota;
- C. the viability of the project, including economic and commercial feasibility, technical feasibility, financial projections, and managerial capability;
- D. conformity of the project to environmental standards;
- E. the qualifications and credit history of the owners, operators, and lenders;
- F. the nature and extent of the security;
- G. the degree of financial participation by private persons not supported by the loan guarantee or bonds;
- H. the availability of the board's bonding authority, proceeds, and money from other sources to support the guarantee; and
- I. the market conditions and terms required for the sale of any bonds or loan guarantee.

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

**History:** *11 SR 713*

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#### **1580.0700 GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.**

The loan guarantee agreement between the state and the lender, and the loan agreement between the lender and the borrower must contain the following provisions, unless the board determines that the applicant has shown in writing that a required term or condition is not necessary to ensure the lender and the state of repayment according to the terms of the loan agreement in light of generally accepted commercial lending practices:

- A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.
- B. A period of grace must be allowed of at least 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance under part 1580.0800. Payment

as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender shall not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless:

- (1) the borrower fails to pay a required payment of principal or interest;
- (2) the board consents in writing; or
- (3) as otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the board and lender, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the board is subrogated to the rights of the lender with respect to payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited or reviewed financial statements of the project prepared by a certified public accountant according to generally accepted accounting principles.

F. Duly authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental requirements. The records shall include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The board must be paid at or before the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee must be one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage lien on the real estate and the security interest in all personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed that are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

L. The lender must notify the board in writing without delay of:

- (1) the date, amount of, and use for each disbursement of loan proceeds;
- (2) any loan payments that are two weeks overdue;



(3) any failure to honor a commitment by any person of an intended source of capital for the project; and

(4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when:

(1) scheduled payments are 60 days past due;

(2) the borrower is or may become unable to meet in full the principal or interest payments, or both, that are due or to become due within a specified period; or

(3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, with a letter of credit, or in cash or securities of a specified market value at least one-half of the annual amount that would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

O. The lender must service the loan and receive the payments of principal and interest. In the event of default, the lender must continue to service the loan if requested by the board to do so. Upon written approval of the administrator, the lender may sell or transfer the loan or loan servicing functions.

P. The agreement shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

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

**History:** *11 SR 713*

**Published Electronically:** *September 10, 2007*

### **1580.0800 PRINCIPAL AND INTEREST ASSISTANCE.**

Subpart 1. **Availability of assistance.** The board may at any time enter into a written contract with the borrower to pay the lender, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the board determines that:

A. the borrower is not more than 60 days overdue in payments of principal or interest due;

B. the borrower is or may become unable to meet in full principal or interest payments, or both, that are due or to become due within a specified period;

C. it is in the public interest to permit the borrower to continue to pursue the purposes of the project;

D. the probable net financial loss to the board will be less than that which would result in the event of a default;

E. the borrower is obligated by the contract to reimburse the state for the principal or interest advanced thereunder, with interest on those amounts, upon terms and conditions satisfactory to the board in light of generally accepted commercial lending practices; and

F. adequate funds are available to make the principal and interest payments pursuant to Minnesota Statutes, section 41A.03, subdivision 4.

Subp. 2. **Terms of assistance.** All sums advanced for principal and interest assistance and interest on those amounts must be secured by the best available collateral and security interest granted by the loan agreement, but none of the advances made thereafter be repaid to the board until and unless all principal and interest currently due on the loan has been fully paid. In the event of subsequent default by the borrower, acceleration by the lender, and payment by the board of the full amount due under the loan guarantee or bonds, the board is subrogated to the rights of the lender with respect to the principal paid by it under the contract. Upon payment of the loan in full, with accrued interest, the remaining amount of the advances and interest on the advances may be paid to the board.

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

**History:** *11 SR 713*

**Published Electronically:** *September 10, 2007*

#### 1580.0900 ISSUANCE OF BONDS.

Subpart 1. **Bond resolution.** If the board intends to fund the eligible financial assistance by issuing bonds for a project pursuant to Minnesota Statutes, section 41A.05, subdivision 2, the board shall first pass a preliminary resolution. The preliminary resolution must not obligate the board to issue bonds or to fund eligible financial assistance, but must constitute an expression of current intention of the board to issue bonds or to fund eligible financial assistance. If the board subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant or borrower, market conditions, availability of bond issuance authority, and other conditions that the board considers necessary, and the board decides in conformance with Minnesota Statutes, section 41A.01, and in accordance with generally accepted commercial lending practices to make eligible financial assistance available, the board shall pass a final resolution that authorizes the issuance and sale of bonds to extend eligible financial assistance to the project. 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 issuance of bonds, may be revoked or amended by the board at any time before the final resolution of the board without liability to the board, and may impose any conditions or requirements that the board considers desirable. The administrator 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 or borrower.

Subp. 2. **Bond reserve.** A bond reserve fund must be established by the borrower in order to provide additional security for the bonds. The reserve may come out of bond proceeds. The amount of the reserve must not be less than one-half of the annual amount that would be required to amortize the entire amount of the bonds over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the bond issue resolution.

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

**History:** *11 SR 713*

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