

## CHAPTER 41A

AGRICULTURAL RESOURCE LOAN GUARANTY  
PROGRAM

41A 01	Purpose.	41A 036	Small business development loans
41A 02	Definitions; actions by the state.	41A 04	Application and approval
41A 021	Successor status	41A 05	Minnesota agricultural and economic development account and bonds
41A 022	Minnesota energy and economic development authority, successor status	41A 06	Project taxes and other charges
41A 023	Powers.	41A.066	Hazardous waste processing facility loans
41A 03	Loan guaranties.	41A 08	Staff
41A.035	Agricultural resources loan participation	41A 09	Ethanol development

**41A.01 PURPOSE.**

Sections 41A.01 to 41A.08 provide for agricultural and economic development in the state. All credit advanced pursuant to loan guaranty commitments is to be secured by subrogation of the state to mortgage security and other security interests granted to the private lender, in proportion to the amount advanced by the state. A board is established to investigate the feasibility of each project, its conformity to public policy and to environmental standards, the qualifications of the owners, operators, and lenders, and the nature and extent of the security, prior to commitment. The board shall also seek to secure financial participation by private persons not supported by the guaranty, to assure that in these respects each project satisfies and will continue to satisfy criteria which are adequate in the judgment of the board.

**History:** 1984 c 502 art 10 s 1; 1Sp1985 c 13 s 145; 1987 c 386 art 9 s 1

**41A.02 DEFINITIONS; ACTIONS BY THE STATE.**

Subdivision 1. **Scope.** The definition of each term given in this section applies whenever the term is used in sections 41A.01 to 41A.066.

Subd. 2. **Agricultural resource.** "Agricultural resource" means any organic matter which is available on a renewable basis from agricultural processes, including agricultural crop, animal, and wood production, waste, and residues.

Subd. 3. **Minnesota agricultural and economic development board; board.** "Minnesota agricultural and economic development board" or "board" consists of the commissioner of finance as chair, the commissioner of agriculture, the commissioner of trade and economic development, the commissioner of the pollution control agency, the president of Minnesota Technology, Inc. or the president's designee, and two public members with experience in finance, appointed by Minnesota Technology, Inc. The membership terms, compensation, removal, and filling of vacancies of public members of the board are as provided in section 15.0575.

Subd. 4. **Minnesota agricultural and economic development account; development account.** "Minnesota agricultural and economic development account" or "development account" means the account created by section 41A.05.

Subd. 5. **Agricultural resource loan guaranty program; program.** "Agricultural resource loan guaranty program" or "program" includes all projects, loan guaranties and bonds approved or issued pursuant to this chapter.

Subd. 6. **Agricultural resource project; project.** "Agricultural resource project" or "project" means (1) any facility, or portion of a facility, located in the state which is operated or to be operated primarily for the production from agricultural resources of marketable products, (2) buildings, equipment, and land used for the commercial production of turkeys or turkey products, (3) a facility or portion of a facility used for the commercial production of fish or of products made from commercially-produced fish or rough fish, as defined in section 97A.015, subdivision 43, that are not commercially produced, or (4) real or personal property used or useful in connection with a revenue-producing enterprise, or a combination of two or more revenue-producing enterprises engaged in a business, that is not used for the

# MINNESOTA STATUTES 1998

production of livestock, other than poultry, or for the production of crops, plants, or milk. The land in clause (2) is limited to land on which buildings and equipment are situated and immediately surrounding land used for storage, waste disposal, or other functions directly related to the commercial production of turkeys or turkey products at that project site. The land in clause (2) does not include land used for the growing or raising of crops or the grazing of livestock other than poultry. A project includes a facility or portion of a facility for mixing or producing substances to be mixed with other substances for use as a fuel or as a substitute for petroleum or petrochemical feedstocks.

Subd. 7. **Applicant.** "Applicant" means any borrower or lender acting on behalf of a borrower or any rural development finance authority organized, or any county exercising the powers of such an authority, pursuant to chapter 362A, which applies to the state for approval of a guaranty of a loan to a borrower or issuance of bonds for a project.

Subd. 7a. **Bonds.** "Bonds" means bonds, notes, or other obligations issued by the board pursuant to this chapter.

Subd. 8. **Borrower.** "Borrower" means any private individual, company, cooperative, partnership, corporation, association, consortium, or other entity organized for a common business purpose, which is obligated or to be obligated to pay a guaranteed loan or receives a loan of bond proceeds.

Subd. 9. **Construction.** "Construction" means construction of a new agricultural resource project, or conversion of a facility to such a project, or expansion or improvement of a project to increase its capacity or efficiency. "Construction" includes acquisition of land, easements, buildings, structures, improvements, and equipment and machinery for use in or at the site of a project or on easements adjacent to the project site.

Subd. 10. **Cost.** "Cost" of a project means the sum of all obligations paid or to be paid or incurred by the borrower which are reasonably required for the construction and completion of the project, including but not limited to (i) surveys, estimates, plans, specifications, supervision of construction, and other engineering and architectural service; (ii) payments under construction contracts and for payment and performance bonds; (iii) purchase and installation of equipment and machinery; (iv) recording, filing, permit, legal, financial, underwriting, placement, commitment, publication, advertising, and other charges, fees, and expenses incurred for establishing title, mortgage liens, and security interests with respect to the project, for securing permits for construction and approval of the loan guaranty, for establishing the terms of the loan and underlying security agreements, and for offering, selling, or placing with investors and printing and delivering the obligations evidencing the loan; and (v) interest, discount, fees, and expenses accruing with respect to the loan, and taxes and other government charges payable with respect to the project, during construction.

Subd. 11. **Lender.** "Lender" means a corporation or any investment or commercial banking institution, savings and loan institution, insurance company, investment company, other financial institution or institutional investor making, purchasing, or participating in a loan or any part of a loan, or a public entity authorized to make agricultural loans.

Subd. 12. **Loan.** "Loan" means any obligation to repay money borrowed to finance the construction of a project or to refund or refinance such an obligation.

Subd. 13. **Loan agreement.** "Loan agreement" means a written agreement or agreements setting forth the terms and conditions of the obligation of the borrower to the lender and the pledges and covenants made and mortgage lien and other security interests granted for the security of the obligations, including a mortgage, note, indenture, or other agreement however designated.

Subd. 14. **Loan guaranty.** "Loan guaranty" means a written agreement executed on behalf of the state that guarantees, in accordance with the terms and conditions contained in the agreement or in a loan agreement, the payment of sums of money owing by a borrower to a lender.

Subd. 15. **State.** "State" actions contemplated in sections 41A.01 to 41A.06 may be taken on behalf of the state by resolutions of the Minnesota agricultural and economic development board, subject to approval by the governor if required by the governor, or by a member of the board or another state officer in the department headed by the member, pursuant to

authority delegated by resolution of the board. Resolutions of the board are effective when approved by the vote of a majority of its members.

Subd. 16. **Eligible small business.** "Eligible small business" means:

(1) an enterprise determined by the board to constitute a small business concern as defined in regulations of the United States Small Business Administration under United States Code, title 15, sections 631 to 647; or

(2) an enterprise eligible to receive assistance under section 41A.036.

Subd. 17. **Small business development loan.** "Small business development loan" means a loan to a business that is an "eligible small business" to finance capital expenditures on an interim or long-term basis to acquire or improve land, acquire, construct, rehabilitate, remove, or improve buildings, or to acquire and install fixtures and equipment useful to conduct a small business, including facilities of a capital nature useful or suitable for a business engaged in an enterprise promoting employment including, without limitation, facilities included within the meaning of the term "project" as defined in sections 469.153, subdivision 2, and 469.155, subdivision 4.

**History:** 1984 c 502 art 10 s 2; 1Sp1985 c 13 s 146-150; 1986 c 444; 1987 c 186 s 15; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 9 s 2-7,20; 1988 c 615 s 1,2; 1989 c 209 art 2 s 1; 1989 c 335 art 4 s 12; 1991 c 322 s 19; 1993 c 337 s 3

#### 41A.021 SUCCESSOR STATUS.

The board is the legal successor in all respects of the Minnesota agricultural and economic development board established by Laws 1984, chapter 502, article 10, and all bonds, resolutions, contracts, and liabilities of the Minnesota agricultural and economic development board are the bonds, resolutions, contracts, and liabilities of the board as renamed and reconstituted by section 41A.02, subdivision 3.

**History:** 1987 c 386 art 9 s 8,20

#### 41A.022 MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY; SUCCESSOR STATUS.

The board is the legal successor in all respects of the Minnesota energy and economic development authority under the general bond resolution for the Minnesota small business development loan program, as amended and restated by the authority on September 24, 1986. All bonds, resolutions, contracts, and liabilities of the Minnesota energy and economic development authority relating to the Minnesota small business development loan program are the bonds, resolutions, contracts, and liabilities of the Minnesota agricultural and economic development board.

**History:** 1987 c 386 art 9 s 9

#### 41A.023 POWERS.

In addition to other powers granted by this chapter, the board may:

(1) sue and be sued;

(2) acquire, hold, lease, and transfer any interest in real and personal property for its corporate purposes;

(3) sell at public or private sale, at the price or prices determined by the board, any note, mortgage, lease, sublease, lease purchase, or other instrument or obligation evidencing or securing a loan made for the purpose of economic development, job creation, redevelopment, or community revitalization by a public agency to a business, for-profit or nonprofit organization, or an individual;

(4) obtain insurance on its property;

(5) obtain municipal bond insurance, letters of credit, surety obligations, or similar agreements from financial institutions;

(6) enter into other agreements or transactions, without regard to chapter 16B or 16C, that the board considers necessary or appropriate to carry out the purposes of this chapter with federal or state agencies, political subdivisions of the state, or other persons, firms, or corporations;

# MINNESOTA STATUTES 1998

- (7) establish and collect fees without regard to chapter 14 and section 16A.1285;
- (8) accept appropriations, gifts, grants, and bequests;
- (9) use money received from any source for any legal purpose or program of the board;
- (10) participate in loans for agricultural resource projects in accordance with section 41A.035;
- (11) provide small business development loans in accordance with section 41A.036; and
- (12) guarantee or insure bonds or notes issued by the board.

**History:** 1987 c 386 art 9 s 10; 1988 c 580 s 1; 1996 c 305 art 3 s 6; 1998 c 386 art 2 s 18

## 41A.03 LOAN GUARANTIES.

**Subdivision 1. Authority for and limitation of guaranty.** Subject to the provisions of sections 41A.01 to 41A.06 and upon determination that a loan will serve the public purposes and satisfy the conditions set forth in sections 41A.01 to 41A.06, the state may guarantee and commit to guarantee against loss an amount not exceeding 90 percent, exclusive of accrued interest, of a loan for the cost of an agricultural resource project or the refunding or refinancing of a loan. The loan must be secured by the best available collateral including but not limited to a mortgage on and security interest in all real and personal property comprising the project and other collateral as provided in the loan agreement.

**Subd. 2. Limitation of loan amount.** The total principal amount of any guaranteed loan may not exceed 80 percent of the total cost of the related project as estimated by the state at the time the commitment to guarantee 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. If the actual cost exceeds the estimate the state may, upon request of the borrower and the lender, consent to an increase of the loan by a principal amount not greater than 80 percent of the excess cost, and may increase the guaranteed amount by not more than 90 percent of the increase in the principal amount, and accrued interest on that amount.

**Subd. 3. Required provisions.** A loan guaranty or loan agreement pertaining to any loan guaranteed by the state may provide that:

(a) Payments of principal and interest made by the borrower under the loan shall be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion shall not in any event receive preferential treatment over the guaranteed portion.

(b) A period of grace shall be allowed of not less than 60 days from a date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guaranty, to permit adequate time for a decision on behalf of the state regarding principal and interest assistance in accordance with subdivision 4. Payment as required by the loan guaranty shall be made within 60 days after receipt by the state of written demand complying with the terms and conditions of the guaranty.

(c) The lender may not accelerate repayment of the loan or exercise other remedies available to the lender if the borrower defaults, unless (i) the borrower fails to pay a required payment of principal or interest, or (ii) the state consents in writing, or (iii) as otherwise permitted in the loan guaranty. In the event of a default, the lender may not make demand for payment pursuant to the guaranty unless the state agrees in writing that such default has materially affected the rights or security of the parties, and finds that the lender should be entitled to receive payment pursuant to the loan guaranty.

(d) If a payment of principal or interest is made by the state upon default of the borrower, the state shall be subrogated to the rights of the lender with respect to the payment.

(e) The borrower shall have promptly prepared and delivered to the state 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 state shall 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 state may deter-

# MINNESOTA STATUTES 1998

1017

AGRICULTURAL RESOURCE LOAN GUARANTY PROGRAM 41A.03

mine 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 shall 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 shall be provided for in the event of default, with an option on the part of the state to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

(j) The state shall be paid at or prior to the closing of the guaranteed loan a fee or fees for the loan guaranty or the commitment to guarantee the loan. The aggregate fee may not exceed 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 personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed which are normally required or performed by a reasonable and prudent lender with respect to a loan without a guaranty.

(l) The state shall be notified in writing without delay of (i) the date and amount of and basis for each disbursement of loan proceeds; (ii) any nonpayment of principal or interest due; (iii) any failure to honor a commitment by any person of an intended source of capital for the project; and (iv) 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 loan agreement shall require the borrower 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 in cash or securities of a specified market value not less than one-half of the annual amount which would be required to amortize the entire amount of the loan over the term and at the interest rate (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

(n) The agreement shall contain other terms and conditions that the board in its sole discretion determines necessary and appropriate to carry out the purposes of this chapter.

**Subd. 4. Principal and interest assistance.** The state may at any time enter into a written contract with the borrower to pay the lender, on behalf of the borrower, an amount not greater than the amount of principal and interest to become due on one or more subsequent dates, without acceleration, if the state determines that (i) the borrower is not in default in payment of principal or interest due more than 60 days prior to the date of the contract; (ii) the borrower is or may become unable to meet in full principal or interest payments, or both, which are due or to become due within a specified period; (iii) it is in the public interest to permit the borrower to continue to pursue the purposes of the project; (iv) the probable net financial loss to the state will be less than that which would result in the event of a default; (v) the borrower is obligated by the contract to reimburse the state for all principal or interest advanced, with interest on those amounts, upon terms and conditions satisfactory to the state; and (vi) funds are available for allocation to the account established for the project in the guaranty fund, and are continuously allocated to the account in accordance with the provisions of section 4, subdivision 3, in an amount equal to the amount of interest on the advances until actually reimbursed to the state by the borrower. All sums so advanced and interest on those amounts shall be secured by the mortgage lien and security interest granted by the loan agreement, but none of the advances shall thereafter be repaid to the state 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 state of the full amount due under the loan guaranty, the state shall be 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 state.

**Subd. 5. Limitation on liability.** The liability of the state for loan guaranties or bonds authorized under this chapter is limited to the amount of funds appropriated to the guaranty fund pursuant to section 41A.06. The legislature intends not to appropriate money from the general fund to the guaranty fund, other than the sales and use taxes from a project as provided for in section 41A.06, subdivision 4. The loan guaranties or bonds are not a general obligation or debt of the state.

**History:** 1984 c 502 art.10 s 3; 1Sp1985 c 13 s 151-153; 1990 c 610 art 2 s 2.

#### 41A.035 AGRICULTURAL RESOURCES LOAN PARTICIPATION.

The board may participate in loans made to finance agricultural resource projects by purchasing from a lender up to 75 percent of the amount of each eligible loan. If the loan participated in is for \$500,000 or less, the loan may be for 100 percent of the cost of the project. If the loan participated in exceeds \$500,000, the loan may not exceed 80 percent of the cost of the project. The lender shall service the loan or cause it to be serviced in a manner that equally protects the lender's and the board's interests.

**History:** 1987 c 386 art 9 s 11

#### 41A.036 SMALL BUSINESS DEVELOPMENT LOANS.

**Subdivision 1. Loans; limitations.** (a) The board may make, purchase, or participate with financial institutions in making or purchasing small business development loans not exceeding \$1,000,000 in principal amount with respect to small business loans made or purchased by the board and not exceeding \$1,000,000 principal amount with respect to the board's share when the board participates in making or purchasing small business loans.

(b) With respect to loans that the board makes or purchases or participates in, the board may determine or provide for their servicing, the percentage of board participation, if any, the times the loans or participations are payable and the amounts of payment, their amount and interest rates, their security, if any, and other terms, conditions, and provisions necessary or convenient in connection with them and may enter into all necessary contracts and security instruments in connection with them. The board may enter into commitments to purchase or participate with financial institutions or other persons upon the terms, conditions, and provisions determined by it. Loans or participations may be serviced by financial institutions or other persons designated by the board.

(c) The board shall obtain the best available security for all loans. The board may provide for or require the insurance or guaranteeing of the loans or board participations in whole or in part by the federal government or a department, agency, or instrumentality of it, by an appropriate board account, or by a private insurer.

**Subd. 2. Small business development loans; preferences.** The following eligible small businesses have preference among all business applicants for small business development loans:

(1) businesses located in rural areas of the state that are experiencing the most severe unemployment rates in the state;

(2) businesses that are likely to expand and provide additional permanent employment in rural areas of the state;

(3) businesses located in border communities that experience a competitive disadvantage due to location;

(4) businesses that have been unable to obtain traditional financial assistance due to a disadvantageous location, minority ownership, or other factors rather than due to the business having been considered a poor financial risk;

(5) businesses that utilize state resources and reduce state dependence on outside resources, and that produce products or services consistent with the long-term social and economic needs of the state; and

(6) businesses located in designated enterprise zones, as described in section 469.168.

**Subd. 3. Local governmental unit sponsor; resolution.** A business applying for a loan must be sponsored by a resolution of the governing body of the local governmental unit within whose jurisdiction the project is located. For purposes of this paragraph, "local govern-

mental unit" means a home rule charter or statutory city when the project is located in an incorporated area, a county when the project is located in an unincorporated area, or an American Indian tribal council when the project is located within a federally recognized American Indian reservation or community.

**Subd. 4. Exemption from limitation.** If the board determines that a revenue-producing enterprise is eligible for special assistance, the \$1,000,000 limitation established in subdivision 1 does not apply.

**Subd. 5. Designation; criteria.** A revenue-producing enterprise is not eligible to receive special assistance unless the board has passed a resolution designating the revenue-producing enterprise as being in need of special assistance. The resolution must include findings that the designation and receipt of the special assistance will be of exceptional benefit to the state of Minnesota in that at least three of the following criteria are met:

(1) to expand or remain in Minnesota, the revenue-producing enterprise has demonstrated that it cannot obtain suitable financing from other sources;

(2) special assistance will enable a revenue-producing enterprise not currently located in Minnesota to locate a facility in Minnesota that directly increases the number of jobs in the state;

(3) the revenue-producing enterprise will create, or retain significant numbers of jobs in a Minnesota community;

(4) the revenue-producing enterprise has a significant potential for growth in jobs or economic activities in Minnesota during the ensuing five-year period; and

(5) the revenue-producing enterprise will maintain a significant level of productivity in Minnesota during the ensuing five-year period.

**Subd. 6.** [Repealed, 1988 c 615 s 7]

**History:** 1987 c 386 art 9 s 12; 1988 c 615 s 3-5

#### 41A.04 APPLICATION AND APPROVAL.

**Subdivision 1. Requirements.** (a) Any applicant may file a written application with the state commissioner of trade and economic development on behalf of the board, to be considered by the board, for a guaranty by the state of a portion of a loan or for issuance of bonds for an agricultural resource project. In general, the application must provide information similar to that required by an investment banking or other financial institution considering such a project for debt financing. Specifically, each application must include in brief but precise form the following information, as supplied by the applicant, the borrower, or the lender:

(1) a description of the scope, nature, extent, and location of the proposed project, including the identity of the borrower and a preliminary or conceptual design of the project;

(2) a description of the technology to be used in the project and the prior construction and operating experience of the borrower with such projects;

(3) a detailed estimate of the items comprising the total cost of the project, including escalation and contingencies, with explanation of the assumptions underlying the estimate;

(4) a general description of the financial plan for the project, including the mortgage and security interests to be granted for the security of the guaranteed loan or the bonds, and all sources of equity, grants, or contributions or of borrowing the repayment of which is not to be secured by the mortgage and security interests, or, if so secured, is expressly subordinated to the guaranteed loan;

(5) an environmental report analyzing potential environmental effects of the project, any necessary or proposed mitigation measures, and other relevant data available to the applicant to enable the board to make an environmental assessment;

(6) a list of applications to be filed and estimated dates of approvals of permits required by federal, state, and local government agencies as conditions for construction and commencement of operation of the project;

(7) an estimated construction schedule;

(8) an analysis of the estimated cost of production of and market for the product, including economic factors justifying the analysis and proposed and actual marketing contracts, letters of intent, and contracts for the supply of feedstock;

# MINNESOTA STATUTES 1998

(9) a description of the management experience of the borrower in organizing and undertaking similar projects;

(10) pro forma cash flow statements for the first five years of project operation including income statements and balance sheets;

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

(12) the estimated amount of the loan or bonds and percentage of the guaranty requested, the proposed repayment schedule, and other terms and conditions and security provisions of the loan;

(13) an estimate of the amounts and times of receipt of guaranty fees, sales and use taxes, property tax increments, and any other governmental charges which may be available for the support of the agricultural development fund as a result of the construction of the project, with an analysis of the assumptions on which the estimate is based;

(14) a copy of any lending commitment issued by a lender to the borrower;

(15) a statement from the lender, if identified, as to its 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; and

(16) additional information required by the board.

(b) If the application is made by an applicant other than the county or rural development finance authority and tax increment financing is to be used for the project, the application must include a copy of a resolution adopted by the governing body of the county or rural development finance authority in which the project is located. The resolution must authorize the use of tax increment financing for the project as required by section 41A.06, subdivision 5.

**Subd. 2. Environmental assessment.** Notwithstanding any other law or rule, no environmental impact statement must be completed prior to the approval of an application and the issuance of a conditional commitment for the guaranty of a loan for an agricultural resource project, or the taking of any other action permitted by sections 41A.01 to 41A.066, including the issuance of bonds, which is considered necessary or desirable by the board to prepare for a final commitment and to make it effective. Environmental review, to the extent required by law, shall be made in conjunction with the issuance by state agencies of environmental permits for the project. Permits may be applied for prior to the issuance of a conditional commitment. Action shall be taken as expeditiously as possible on environmental review and all permits required. Environmental review shall be completed within 180 days after the initial filing of an application to the pollution control agency for the first permit. Final action shall be taken on permits within 90 days after completion of environmental review or, as to any permit requiring a public hearing, within 90 days after the receipt of the administrative law judge's report.

**Subd. 3. Commitment.** The commissioner of trade and economic development on behalf of the board shall determine as to each project for which an application is submitted whether it appears in the commissioner's judgment to conform to the requirements of this chapter. The board may waive any of the application requirements in subdivision 1 if it determines in its sole discretion that the waiver of the requirements is necessary or appropriate to carry out the purposes of this chapter. The board may not waive the requirements of subdivision 1, paragraph (c). In evaluating applications the board shall consider the extent to which the public subsidies 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. It may but need not adopt rules setting forth criteria for evaluating applications for loan guaranties. Upon determination by the board that a project conforms to the requirements of this chapter, it may by resolution make on behalf of the state a conditional commitment to guarantee a portion of the proposed loan or to issue bonds as it determines, not exceeding the limitations set forth in section 41A.03. No action is allowable under section 116B.03, subdivision 1, with respect to acts of any person authorized or required in order to execute the resolution. The commitment is not binding upon the state unless the board has executed on behalf of the state a final loan guaranty instrument in conformity with section 41A.03 or has issued bonds.

Subd. 4. **Rulemaking authority.** In order to effectuate the purposes of sections 41A.01 to 41A.066, the board shall adopt rules which are subject to the provisions of chapter 14.

**History:** 1984 c 502 art 10 s 4; 1984 c 640 s 32; 1Sp1985 c 13 s 154-156; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 9 s 13; 1993 c 337 s 4,5; 1996 c 305 art 2 s 5

#### **41A.05 MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT ACCOUNT AND BONDS.**

Subdivision 1. **Establishment of account.** The Minnesota agricultural and economic development account is established in the special revenue fund and may be invested by the state board of investment. All money appropriated to the account, and all guaranty fees, retail sales taxes, property tax increments, and other money from any source may be credited to the account and are appropriated to the board to carry out the purposes of this chapter. The board may maintain or establish within the Minnesota agricultural and economic development account reserve accounts, project accounts, trustee accounts, special guaranty fund accounts, or other restrictions it determines necessary or appropriate. The board may enter into pledge and escrow agreements or indentures of trust with a trustee for the purpose of maintaining the accounts.

Subd. 2. **Issuance of bonds.** (a) The board by resolution may exercise the powers of a rural development authority under sections 469.142 to 469.151 and the powers of a municipality under sections 469.152 to 469.165 for the purposes of financing one or more projects, including the issuance of bonds and the application of the bond proceeds and investment income pursuant to a lease, loan, loan guaranty, loan participation, or other agreement. The bonds must be issued, sold, and secured on the terms and conditions and in the manner determined by resolution of the board. Notwithstanding subdivision 1, a reserve established for the bonds provided by the borrower, including out of bond proceeds, may be deposited and held in a separate account in the Minnesota agricultural and economic development account and applied to the last installments of principal or interest on the bonds, subject to the reserves being withdrawn for any purpose permitted by subdivision 1. The board may by resolution or indenture pledge any or all amounts in the fund, including any reserves and investment income on amounts in the fund, to secure the payment of principal and interest on any or all series of bonds, upon the terms and conditions as provided in the resolution or indenture. To the extent the board deems necessary or desirable to prevent interest on bonds from becoming subject to federal income taxation, (1) the amounts in the fund shall be invested in obligations or securities with restricted yields; and (2) the investment income on the amounts are released from the pledge securing the bonds or loan guaranty and appropriately applied to prevent taxation.

(b) Bonds issued pursuant to this chapter are not general obligations of the state or the board. The full faith and credit and taxing powers of the state and the board are not and may not be pledged for the payment of the bonds. No person may compel the levy of a tax for the payment or compel the appropriation of money of the state or the board for the payment of the bonds, except as specifically provided in this chapter.

(c) For purposes of sections 474A.01 to 474A.21, the board is a local issuer and may apply for allocations of authority to issue private activity obligations and may enter into an agreement for the issuance of obligations by another issuer.

Subd. 3. **Covenant.** In fulfillment of the state's covenant with the beneficiary of each loan guaranty executed by the board on behalf of the state pursuant to the agricultural resource loan guaranty program, in accordance with section 41A.04, subdivision 3, the state will not limit or alter the rights vested in the board to comply with the terms of the loan guaranties.

Subd. 4. **Income tax exemption.** In the issuance of state bonds and the making of loan guaranties for the purposes of the program, the commissioner of finance and the board may and shall make all provisions and do or cause to be done all acts and things, consistent with sections 41A.01 to 41A.06, which are or may be effective under federal laws and regulations to comply with conditions for the exemption of interest on such bonds from federal income taxation. However, if for any reason, whether existing at the date of issue of any bonds or the date of execution of any loan guaranty or thereafter, the interest on any such bonds shall be or

become subject to federal income taxes, this shall not impair or affect the validity of the bonds or of any loan guaranty or the provisions made for the security thereof, and shall not impair or affect the covenant made by the state in subdivision 3. Nothing herein affects the federal or state income tax treatment of interest on obligations of a borrower other than the state, whether or not guaranteed by the state.

**Subd. 5. Guaranty fund; reduction.** Amounts in the guaranty fund may be transferred to the general fund if the remaining amount in the fund exceeds the principal amount and one year's interest on the outstanding bonds and the guaranteed portion of outstanding guaranteed loans.

**History:** 1984 c 502 art 10 s 5; 1Sp1985 c 13 s 157-160; 1987 c 291 s 193; 1987 c 384 art 2 s 9; art 3 s 23; 1987 c 386 art 9 s 14,15; 1989 c 335 art 4 s 13,106; 1990 c 594 art 3 s 2; 1994 c 465 art 2 s 4

**41A.051** [Repealed, 1992 c 513 art 4 s 60]

#### **41A.06 PROJECT TAXES AND OTHER CHARGES.**

**Subdivision 1. Appropriation.** The payments, taxes, and governmental charges described in this section which are received as a consequence of the undertaking, completion, and operation of each agricultural resource loan project for which a loan guaranty is made by the state are appropriated to the loan guaranty fund. This appropriation shall not lapse at the close of any fiscal year under the provisions of section 16A.28, and the receipts from the appropriation shall remain available as provided in section 41A.05, subdivision 1. The state is not obligated, however, to continue the appropriation with respect to charges not yet collected, except to the extent determined to be necessary for compliance with the terms of the loan guaranty agreement.

**Subd. 2. Allocation to project accounts.** Receipts of charges related to a particular project shall be deposited and recorded in its project account in the guaranty fund; but the board may reallocate receipts in any project account which cause the amount held in the account to exceed the minimum balance established initially pursuant to section 41A.04, subdivision 3, clause (2). The reallocation may be made to another project account for the purpose of maintaining the minimum balance in the account.

**Subd. 3. Payments by borrowers.** Guaranty and commitment fees paid by borrowers pursuant to the loan guaranty provision required by section 41A.03, subdivision 3, clause (j), and repayments by borrowers of amounts advanced by the state under contracts referred to in section 41A.03, subdivision 4, shall be deposited in the project account for the borrower's project and shall not be disbursed or transferred for any purpose other than the fulfillment of the state's obligations under the loan guaranty for that project. Funds may be transferred out of the account if the minimum required balance in the project account is maintained and exceeds the aggregate amount of fees and payments previously received from the borrower plus interest received from the investment thereof.

**Subd. 4. Sales and use taxes.** All collections of the excise taxes imposed by chapter 297A upon retail sales, and upon the privilege of use, storage, or consumption in Minnesota, of personal property and services purchased for the construction or operation of any project for which a loan guaranty has been made or conditionally committed, less any refunds required by law and a proportionate share of the cost of administration and enforcement of the assessment and collection of the taxes, are appropriated and shall be deposited from the general fund into the project account in the guaranty fund at least once each year from and after the date of the conditional commitment. The commissioner of finance shall secure from each borrower the amount of taxes so imposed and from the commissioner of revenue the amount of refunds or costs to be deducted from them.

**Subd. 5. Property tax increments.** If tax increment financing is to be used for the project, the applicant for a loan guaranty or bonds for any project, and the county in which the project is situated, shall do all acts and things necessary for the computation and segregation of property tax increments resulting from the construction of the project in accordance with the provisions of section 469.149, and for the remittance to the commissioner of finance, for deposit in the loan guaranty fund, of all tax increments received from and after the date of the conditional commitment for the loan guaranty. If the project account contains an amount

# MINNESOTA STATUTES 1998

1023

AGRICULTURAL RESOURCE LOAN GUARANTY PROGRAM 41A.08

equal to the average annual payment of principal and interest on the bonds or for the guaranteed portion of a guaranteed loan, the board must annually return the excess tax increment to be distributed as provided by section 469.176, subdivision 2, clause (4), until the increment has been discharged under the agreement or section 469.149.

**History:** 1984 c 502 art 10 s 6; 1Sp1985 c 13 s 161,162; 1987 c 291 s 194

**41A.065** [Repealed, 1993 c 177 s 15]

## **41A.066 HAZARDOUS WASTE PROCESSING FACILITY LOANS.**

Subdivision 1. **Authority to make loans.** The Minnesota agricultural and economic development board may make, purchase, or participate in making or purchasing hazardous waste processing facility loans in any amount, and may enter into commitments therefor. A private person proposing to develop and operate a hazardous waste processing facility is eligible to apply for a loan under this subdivision. Applications must be made to the Minnesota agricultural and economic development board. The Minnesota agricultural and economic development board shall approve the application and make the loan if money is available for it and if the Minnesota agricultural and economic development board finds that:

(1) development and operation of the facility as proposed by the applicant is economically feasible;

(2) there is a reasonable expectation that the principal and interest on the loan will be fully repaid; and

(3) the facility is unlikely to be developed and operated without a loan from the Minnesota agricultural and economic development board.

The Minnesota agricultural and economic development board and the office of waste management shall establish coordinated procedures for loan application, certification, and approval.

The Minnesota agricultural and economic development board may use the Minnesota agricultural and economic development account to provide financial assistance to any person whose hazardous waste processing facility loan application has been certified by the office of environmental assistance and approved by the Minnesota agricultural and economic development board, and for this purpose may exercise the powers granted in Minnesota Statutes 1986, section 116M.06, subdivision 2, with respect to any loans made or bonds issued under this subdivision regardless of whether the applicant is an eligible small business.

The Minnesota agricultural and economic development board may issue bonds and notes in the aggregate principal amount of \$10,000,000 for the purpose of making, purchasing, or participating in making or purchasing hazardous waste processing facility loans.

Subd. 2. **Minnesota energy and economic development authority; successor status.** Notwithstanding the repeal of section 116M.07, subdivision 9, the Minnesota agricultural and economic development board is the legal successor in all respects of the Minnesota energy and economic development authority for the hazardous waste processing facility loan program for a project or facility described under Minnesota Statutes 1986, section 116M.03, subdivision 15, with respect to which the Minnesota energy and economic development authority passed a preliminary resolution before May 1, 1987. All resolutions of the Minnesota energy and economic development authority relating to the projects or facilities are the resolutions of the Minnesota agricultural and economic development board.

**History:** 1987 c 386 art 9 s 20; 1989 c 335 art 1 s 269; art 4 s 106; 1991 c 199 art 1 s 8; 1995 c 247 art 2 s 54; 1996 c 305 art 2 s 6

**41A.07** [Repealed, 1993 c 337 s 20]

## **41A.08 STAFF.**

Subdivision 1. **Employees.** Subject to all other applicable laws governing employees of or employment by a department or agency of the state, the commissioner of trade and economic development, on behalf of the board, may retain or employ the officers, employees, agents, contractors, and consultants the commissioner determines necessary or appropriate to discharge the functions of the board in respect to the agricultural resource loan program. The commissioner shall define their duties and responsibilities.

# MINNESOTA STATUTES 1998

Subd. 2. **Executive director.** The commissioner shall employ, with the concurrence of the board, an executive director. The executive director shall perform the duties that the board may require in carrying out its responsibilities. The executive director's position is in the unclassified service.

**History:** *1Sp1985 c 13 s 163; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 9 s 17*

## 41A.09 ETHANOL DEVELOPMENT.

Subdivision 1. **Appropriation.** A sum sufficient to make the payments required by this section is annually appropriated from the general fund to the commissioner of agriculture and all money so appropriated is available until expended.

Subd. 1a. **Ethanol production goal.** It is a goal of the state that ethanol production plants in the state attain a total annual production level of 240,000,000 gallons.

Subd. 2. [Repealed, 1995 c 220 s 141]

Subd. 2a. **Definitions.** For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources, that:

(1) meets all of the specifications in ASTM specification D 4806-88; and

(2) is denatured as specified in Code of Federal Regulations, title 27, parts 20 and 21.

(b) "Wet alcohol" means agriculturally derived fermentation ethyl alcohol having a purity of at least 50 percent but less than 99 percent.

(c) "Anhydrous alcohol" means fermentation ethyl alcohol derived from agricultural products as described in paragraph (a), but that does not meet ASTM specifications or is not denatured and is shipped in bond for further processing.

(d) "Ethanol plant" means a plant at which ethanol, anhydrous alcohol, or wet alcohol is produced.

Subd. 3. [Repealed, 1995 c 220 s 141]

Subd. 3a. **Payments.** (a) The commissioner of agriculture shall make cash payments to producers of ethanol, anhydrous alcohol, and wet alcohol located in the state. These payments shall apply only to ethanol, anhydrous alcohol, and wet alcohol fermented in the state and produced at plants that have begun production by June 30, 2000. For the purpose of this subdivision, an entity that holds a controlling interest in more than one ethanol plant is considered a single producer. The amount of the payment for each producer's annual production is:

(1) except as provided in paragraph (b), for each gallon of ethanol or anhydrous alcohol produced on or before June 30, 2000, or ten years after the start of production, whichever is later, 20 cents per gallon; and

(2) for each gallon produced of wet alcohol on or before June 30, 2000, or ten years after the start of production, whichever is later, a payment in cents per gallon calculated by the formula "alcohol purity in percent divided by five," and rounded to the nearest cent per gallon, but not less than 11 cents per gallon.

The producer payments for anhydrous alcohol and wet alcohol under this section may be paid to either the original producer of anhydrous alcohol or wet alcohol or the secondary processor, at the option of the original producer, but not to both.

(b) If the level of production at an ethanol plant increases due to an increase in the production capacity of the plant and the increased production begins by June 30, 2000, the payment under paragraph (a), clause (1), applies to the additional increment of production until ten years after the increased production began. Once a plant's production capacity reaches 15,000,000 gallons per year, no additional increment will qualify for the payment.

(c) The commissioner shall make payments to producers of ethanol or wet alcohol in the amount of 1.5 cents for each kilowatt hour of electricity generated using closed-loop biomass in a cogeneration facility at an ethanol plant located in the state. Payments under this

# MINNESOTA STATUTES 1998

1025

AGRICULTURAL RESOURCE LOAN GUARANTY PROGRAM 41A.09

paragraph shall be made only for electricity generated at cogeneration facilities that begin operation by June 30, 2000. The payments apply to electricity generated on or before the date ten years after the producer first qualifies for payment under this paragraph. Total payments under this paragraph in any fiscal year may not exceed \$750,000. For the purposes of this paragraph:

(1) "closed-loop biomass" means any organic material from a plant that is planted for the purpose of being used to generate electricity or for multiple purposes that include being used to generate electricity; and

(2) "cogeneration" means the combined generation of:

(i) electrical or mechanical power; and

(ii) steam or forms of useful energy, such as heat, that are used for industrial, commercial, heating, or cooling purposes.

(d) Except for new production capacity approved under paragraph (i), clause (1), the total payments under paragraphs (a) and (b) to all producers may not exceed \$34,000,000 in a fiscal year. Total payments under paragraphs (a) and (b) to a producer in a fiscal year may not exceed \$3,000,000.

(e) By the last day of October, January, April, and July, each producer shall file a claim for payment for ethanol, anhydrous alcohol, and wet alcohol production during the preceding three calendar months. A producer with more than one plant shall file a separate claim for each plant. A producer shall file a separate claim for the original production capacity of each plant and for each additional increment of production that qualifies under paragraph (b). A producer that files a claim under this subdivision shall include a statement of the producer's total ethanol, anhydrous alcohol, and wet alcohol production in Minnesota during the quarter covered by the claim, including anhydrous alcohol and wet alcohol produced or received from an outside source. A producer shall file a separate claim for any amount claimed under paragraph (c). For each claim and statement of total ethanol, anhydrous alcohol, and wet alcohol production filed under this subdivision, the volume of ethanol, anhydrous alcohol, and wet alcohol production or amounts of electricity generated using closed-loop biomass must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(f) Payments shall be made November 15, February 15, May 15, and August 15. A separate payment shall be made for each claim filed. The total quarterly payment to a producer under this paragraph, excluding amounts paid under paragraph (c), may not exceed \$750,000. Except for new production capacity approved under paragraph (i), clause (1), if the total amount for which all other producers are eligible in a quarter under paragraphs (a) and (b) exceeds \$8,500,000, the commissioner shall make payments for production capacity that is subject to this restriction in the order in which the portion of production capacity covered by each claim went into production.

(g) If the total amount for which all producers are eligible in a quarter under paragraph (c) exceeds the amount available for payments, the commissioner shall make payments in the order in which the plants covered by the claims began generating electricity using closed-loop biomass.

(h) After July 1, 1997, new production capacity is only eligible for payment under this subdivision if the commissioner receives:

(1) an application for approval of the new production capacity;

(2) an appropriate letter of long-term financial commitment for construction of the new production capacity; and

(3) copies of all necessary permits for construction of the new production capacity.

The commissioner may approve new production capacity based on the order in which the applications are received.

(i) After April 22, 1998, the commissioner may only approve: (1) up to 12,000,000 gallons of new production capacity at one plant that has not previously received approval or payment for any production capacity; or (2) new production capacity at existing plants not to exceed planned expansions reported to the commissioner by February 1997. The commissioner may not approve any new production capacity after July 1, 1998.

# MINNESOTA STATUTES 1998

(j) For the purposes of this subdivision “new production capacity” means annual ethanol production capacity that was not allowed under a permit issued by the pollution control agency prior to July 1, 1997, or for which construction did not begin prior to July 1, 1997.

**Subd. 4. Rulemaking authority.** The commissioner shall adopt rules to implement this section.

**Subd. 5.** [Repealed, 1995 c 220 s 141]

**Subd. 5a. Expiration.** This section expires June 30, 2010, and the unobligated balance of each appropriation under this section on that date reverts to the general fund.

**Subd. 6. Continued payments.** A plant in production or under construction by January 1, 1990, shall continue to receive uninterrupted payments under subdivision 3 of at least 20 cents per gallon of ethanol produced until July 1, 2000.

**Subd. 7. Coordination with departments of revenue and public service.** The agriculturally derived ethanol definition and specifications in this section are intended to match the definition and specifications in sections 239.761 and 296.01.

**Subd. 8. Promotional and educational materials; description of multiple sources of ethanol required.** Promotional or educational efforts related to ethanol that are financed wholly or partially with state funds and that promote or identify a particular crop or commodity used to produce ethanol must also include a description of the other potential sources of ethanol listed in subdivision 2.

**History:** *1Sp1986 c 1 art 8 s 1; 1987 c 390 s 1,2; 1988 c 688 art 18 s 1; 1989 c 257 s 1,2; 1989 c 269 s 37; 1989 c 277 art 1 s 2; 1989 c 335 art 4 s 106; 1991 c 254 art 3 s 21; 1991 c 302 s 1; 1992 c 513 art 2 s 18; 1992 c 575 s 1,2; 1993 c 13 art 1 s 52; 1993 c 172 s 30,31; 1993 c 366 s 2; 1994 c 632 art 2 s 15-17; 1995 c 220 s 45-48; 1996 c 471 art 5 s 1; 1997 c 7 art 5 s 8; 1997 c 216 s 57; 1998 c 401 s 19,20*