

# MINNESOTA RULES 1991

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## CHAPTER 1589

### DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

### MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT BOARD

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#### **1589.0100 PURPOSE OF SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.**

The small business development loan program issues financial assistance in a form involving a guarantee or insurance from the economic development fund or any account thereof and revenue bonds to finance small business loans.

**Statutory Authority:** *MS s 41A.04 subd 4*

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

#### **1589.0200 ELIGIBLE APPLICANTS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.**

Persons, partnerships, firms, or corporations engaged in and determined by the board to constitute a small business as defined in the regulations of the United States Small Business Administration, Code of Federal Regulations, title 13, part 121, are considered eligible small businesses or eligible applicants.

**Statutory Authority:** *MS s 41A.04 subd 4*

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

#### **1589.0300 ELIGIBLE LOANS FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.**

Subpart 1. **In general.** The board shall make small business loans to applicants in compliance with the act and parts 4305.1000 to 4305.1200 and 4307.0100 to 4307.0500 in order to help create or retain jobs for the state.

Subp. 2. **Purpose of loan.** A small business loan must be used to provide interim or long term financing for certain capital expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws, including:

- A. acquisition costs of land, buildings, or both;
- B. site preparation;
- C. construction costs;
- D. engineering costs;
- E. costs of equipment, machinery, or both;
- F. bond issuance costs;
- G. underwriting or placement fees;
- H. trustee's fees;

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I. fee of guarantor, insurer, or financial institution, other than the board, who provides letters of credit, surety bonds, or equivalent security;

J. board fees, including application and guaranty fees of the board and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the board's bond counsel; and

N. debt service reserve fund.

Working capital loans are not eligible for financial assistance under this loan program.

**Subp. 3. Size of eligible loans.** The principal amount of any financial assistance in the form of bonds to be financed by the board may not be less than \$250,000, unless the applicant agrees to pay all bond issuance costs, and may not exceed the maximum amount permitted to be loaned to an eligible small business as defined in the act for the total value of eligible items listed in subpart 2.

**Subp. 4. Equity requirements.** The maximum amount of a loan for project equipment is 75 percent of the cost of the equipment, and for all other authorized project expenses is 80 percent of the cost. The applicant must contribute at least 25 percent of the cost of project equipment and at least 20 percent of all other costs. Instead of a cash equity contribution the board shall accept collateral which, if contributed to the financial assistance, would make the maximum loan percentage of the project costs for equipment equal to 75 percent and for all other authorized expenses equal 80 percent. The board may require a lower loan to project percentage based upon the economic feasibility of the application. The board may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

**Subp. 5. Maximum term.** The maximum term of a small business development loan may not exceed the average useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

A. for real property, land, or buildings, 21 years;

B. for equipment or machinery, 11 years;

C. for a combination of items A and B, a weighted average of those years will be used.

**Subp. 6. Interest rate.** The board shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

**Subp. 7. Security requirements.** Financial assistance, either for real property or equipment, may be secured only with the best available security including one or more of the following:

A. A mortgage or other adequate security as determined by the board on the real property to be financed.

B. A lien or other adequate security as determined by the board on equipment to be financed by the board.

C. Other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the board less the value, as determined by the board, of the security provided in items A and B, if any. Other security shall be in a form and kind satisfactory to the board and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant;

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses);

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(3) a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders or corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant; or

(4) additional forms of security, if necessary to strengthen the board's collateral position on the financial assistance.

D. In addition to or in substitution for any of the items A to C, any guarantee or other collateral or security, as required by insurers or other providers of collateral or security with respect to the bonds, other than the board, or as required by the board in accordance with generally accepted commercial lending practices.

**Statutory Authority:** *MS s 41A.04 subd 4*

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

## 1589.0400 DEBT SERVICE RESERVE FUND FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

In conjunction with each amount of financial assistance it extends, the board shall establish and fund a debt service reserve fund sufficient to cover approximately 12 months' debt service or a lesser amount to ensure the tax exempt status of interest on the bonds if the bonds are intended to be tax exempt. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant except to the extent necessary to ensure the tax exempt status of the interest on the bonds if the bonds are intended to be tax exempt. This amount must be applied to offset the principal and interest payments on an annual basis or to redeem bonds prior to maturity provided the financial assistance is current.

**Statutory Authority:** *MS s 41A.04 subd 4*

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

## 1589.0500 FINAL RESOLUTION FOR SMALL BUSINESS DEVELOPMENT LOAN PROGRAM.

Subpart 1. **Final resolution.** After the board passes a preliminary resolution, the board may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, both as discussed in part 4305.1200, subpart 10. Whether the board may pass the final resolution for an application under the program depends, in part, upon the following:

A. a determination that there are no adverse changes in the financial condition or key personnel of the applicant since the date of completion of the application;

B. market conditions;

C. availability of bond issuance authority; and

D. other conditions that the board considers necessary in accordance with generally accepted commercial lending practices.

Subp. 2. **Bond issuance.** Upon passage of the final resolution, the board shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate bond sale. Funds will not be disbursed at the loan closing until it has been determined by the commissioner that there are no adverse changes in the condition or key personnel of the business entity applying for the financial assistance in accordance with generally accepted commercial lending practices. After the bonds are issued and sold, there will be a loan closing at which the funds are transferred and documents are signed

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in accordance with the terms of the final resolution and the respective bond resolution.

**Statutory Authority:** *MS s 41A.04 subd 4*

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