

1 Agricultural Resources Loan Guaranty Board

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3 Adopted Rules Relating to the Agricultural Resource Loan

4 Guaranty Program

5

6 Rules as Adopted

7 1580.0100 PURPOSE AND AUTHORITY.

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

13 1580.0200 DEFINITIONS.

14 Subpart 1. Scope. For purposes of parts 1580.0100 to
15 1580.0900, the terms defined in this part and in Minnesota
16 Statutes, section 41A.02, have the meanings given to them.

17 Subp. 2. Chair. "Chair" means the commissioner of finance
18 acting as chair of the Agricultural Resource Loan Guaranty Board.

19 Subp. 3. Administrator. "Administrator" means the
20 commissioner of energy and economic development acting as the
21 chief administrative officer of the Agricultural Resource Loan
22 Guaranty Board, or a designee.

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

27 1580.0300 AVAILABILITY OF ELIGIBLE FINANCIAL ASSISTANCE.

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

32 Subp. 2. Amount of loan guarantee or bond issue;
33 criteria. The total principal amount of any guaranteed loan or
34 bond issue may not exceed 80 percent of the total eligible costs

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1 of the related project as estimated by the board at the time the
2 commitment to guarantee a loan or issue bonds is made, or in the
3 case of a refunding or refinancing loan, 80 percent of the
4 aggregate amount of principal and interest refunded or
5 refinanced.

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

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

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

- 21 A. land and building acquisition costs;
- 22 B. site preparation;
- 23 C. construction costs;
- 24 D. engineering costs;
- 25 E. equipment and machinery;
- 26 F. bond issuance costs;
- 27 G. underwriting or placement fees;
- 28 H. permit and application fees, guarantee fees,
29 insurance, letters of credit, and surety bonds;
- 30 I. fees of the board for application and guarantee;
- 31 J. certain contingency costs;
- 32 K. interest costs during construction;
- 33 L. legal fees;
- 34 M. costs of environmental review; or
- 35 N. any other expenses incurred by the borrower that

36 are reasonably required for the construction and completion of

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1 the project.

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

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

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

22 1580.0400 CONTENTS OF APPLICATION.

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

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

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

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

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

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

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

14 G. an estimated construction schedule;

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

21 I. ~~pro-forma-cash-flow-statements-for-the-first-five~~
22 ~~years-of-project-operation, including income statements and~~
23 ~~balance sheets~~ financial statements that include a balance
24 sheet, an opening statement, and footnotes to the statements if
25 available for the following time periods:

26 (1) financial statements for the previous three
27 years, if applicable; and if unaudited, the statements must be
28 signed by an authorized financial officer of the business making
29 application;

30 (2) a current quarterly financial statement that
31 was compiled within 90 days of the date the application was
32 submitted, if quarterly financial statements are regularly
33 prepared;

34 (3) federal tax returns filed by the business for
35 the previous three years if applicable, if the applicant is an
36 individual or partnership;

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1 (4) pro forma cash flow statements for the first
2 five years of project operation, including income statements and
3 balance sheets;

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

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

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

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

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

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

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

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

34 (4) a statement of informed consent signed by an
35 authorized officer of the lender regarding the use and
36 dissemination of the private data as provided in Minnesota

1 Statutes, section 13.05, subdivision 4, paragraph (d).

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

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

9 Q. if the application is made by an applicant other
10 than the county authority and if tax increment financing is to
11 be used for the project pursuant to Minnesota Statutes, section
12 41A.06, subdivision 5, a copy of a resolution adopted by the
13 county authority where the project is located authorizing the
14 use of tax increment financing;

15 R. a statement of informed consent by the applicant
16 regarding the use and dissemination of the private data as
17 provided in Minnesota Statutes, section 13.05, subdivision 4,
18 paragraph (d). If the applicant is a corporation, then an
19 authorized representative of the applicant shall provide a
20 statement of informed consent in a form similar to that provided
21 in Minnesota Statutes, section 13.05, subdivision 4, paragraph
22 (d); and

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

30 Subp. 2. **Waiver of application requirements.** An applicant
31 may request the board to waive any of the requirements of
32 subpart 1, items (A) to (O). The request must be made in
33 writing to the administrator. The board may waive a requirement
34 if it determines that the requirement is not necessary to
35 evaluate the eligibility or feasibility of the project. A
36 request for waiver must state the reasons why, in the

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1 applicant's judgment, the information is not necessary.

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

10 1580.0500 APPLICATION PROCEDURE.

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

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

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

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

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

34 B. that the application is complete or would be
35 complete except for the applicant's request for a waiver

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1 pursuant to part 1580.0400, subpart 2;

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

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

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

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

17 Subp. 4. Appeal of administrator's determination. If the
18 administrator decides not to submit the application to the board
19 for approval, the applicant may request the board to review the
20 administrator's decision. The request must be made in writing
21 and submitted to the chair. Upon request the board shall
22 conduct a de novo review of the application pursuant to subpart
23 5.

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

30 Subp. 6. Approval and conditional commitment. If the
31 board approves an application, it may adopt a resolution that
32 conditionally commits the state to guarantee the portion of the
33 proposed loan or to issue bonds, not exceeding the limit in part
34 1580.0300, subpart 2. The commitment is not binding upon the
35 state unless the board has executed on behalf of the state a
36 final loan guarantee agreement or has issued bonds in conformity

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1 with parts 1580.0700 and 1580.0900.

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

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

18 If the board denies an application, the remaining fee
19 balance must be refunded to the applicant. If the board issues
20 a commitment for the project, the remaining fee balance must be
21 transferred from the general fund to the guaranty fund and
22 credited against the amount of commitment fee required in part
23 1580.0700.

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

32 1580.0600 CRITERIA FOR APPROVAL OF ELIGIBLE FINANCIAL ASSISTANCE.

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

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1 A. the extent to which the project will further the
2 development of the state's agricultural resources and improve
3 the market for its agricultural products;

4 B. the extent to which the public financial
5 assistance sought by the applicant under the program would
6 provide the project with an unfair advantage in competing with
7 other products produced or processed in Minnesota;

8 C. the viability of the project, including economic
9 and commercial feasibility, technical feasibility, financial
10 projections, and managerial capability;

11 D. conformity of the project to environmental
12 standards;

13 E. the qualifications and credit history of the
14 owners, operators, and lenders;

15 F. the nature and extent of the security;

16 G. the degree of financial participation by private
17 persons not supported by the loan guarantee or bonds;

18 H. the availability of the board's bonding authority,
19 proceeds, and money from other sources to support the guarantee;
20 and

21 I. the market conditions and terms required for the
22 sale of any bonds or loan guarantee.

23 1580.0700 GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.

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

32 A. Payments of principal and interest made by the
33 borrower under the loan must be applied by the lender to reduce
34 the guaranteed and nonguaranteed portion of the loan on a
35 proportionate basis, and the nonguaranteed portion may not in

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1 any event receive preferential treatment over the guaranteed
2 portion.

3 B. A period of grace must be allowed of at least 60
4 days from the date a principal or interest payment is due, prior
5 to the making of demand for payment pursuant to the loan
6 guarantee, to permit adequate time for a decision by the board
7 regarding principal and interest assistance under part
8 1580.0800. Payment as required by the loan guarantee must be
9 made within 60 days of receipt by the board of a written demand
10 complying with the terms and conditions of the guarantee.

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

14 (1) the borrower fails to pay a required payment
15 of principal or interest;

16 (2) the board consents in writing; or

17 (3) as otherwise permitted in the loan guarantee.

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

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

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

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

34 G. The borrower shall maintain adequate records and
35 documents concerning the construction and operation of the
36 project in order that representatives of the board may determine

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1 its technical and financial conditions and its compliance with
2 environmental requirements. The records shall include the
3 amounts of all sales and use taxes paid on personal property and
4 services purchased for the construction and operation of the
5 project, with tax receipts furnished by the sellers or other
6 supporting documentation determined by the board to be
7 satisfactory. The amounts of those taxes must be reported to
8 the board in the manner and at the times required by the board.

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

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

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

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

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

- 32 (1) the date, amount of, and use for each
33 disbursement of loan proceeds;
34 (2) any loan payments that are two weeks overdue;
35 (3) any failure to honor a commitment by any
36 person of an intended source of capital for the project; and

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

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

7 (1) scheduled payments are 60 days past due;

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

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

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

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

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

31 1580.0800 PRINCIPAL AND INTEREST ASSISTANCE.

32 Subpart 1. Availability of assistance. The board may at
33 any time enter into a written contract with the borrower to pay
34 the lender, an amount not greater than the amount of principal
35 and interest to become due on one or more subsequent dates,

1 without acceleration, if the board determines that:

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

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

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

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

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

16 F. adequate funds are available to make the principal
17 and interest payments pursuant to Minnesota Statutes, section
18 41A.03, subdivision 4.

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

32 1580.0900 ISSUANCE OF BONDS.

33 Subpart 1. **Bond resolution.** If the board intends to fund
34 the eligible financial assistance by issuing bonds for a project
35 pursuant to Minnesota Statutes, section 41A.05, subdivision 2,

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1 the board shall first pass a preliminary resolution. The
 2 preliminary resolution must not obligate the board to issue
 3 bonds or to fund eligible financial assistance, but must
 4 constitute an expression of current intention of the board to
 5 issue bonds or to fund eligible financial assistance. If the
 6 board subsequently determines that there are no adverse changes
 7 in the financial conditions or key personnel of the applicant or
 8 borrower, market conditions, availability of bond issuance
 9 authority, and other conditions that the board considers
 10 necessary, and the board decides in conformance with Minnesota
 11 Statutes, section 41A.01, and in accordance with generally
 12 accepted commercial lending practices to make eligible financial
 13 assistance available, the board shall pass a final resolution
 14 that authorizes the issuance and sale of bonds to extend
 15 eligible financial assistance to the project. The final
 16 resolution must specify the terms and conditions under which
 17 bonds will be issued. The preliminary resolution may contain a
 18 time limit with respect to issuance of bonds, may be revoked or
 19 amended by the board at any time before the final resolution of
 20 the board without liability to the board, and may impose any
 21 conditions or requirements that the board considers desirable.
 22 The administrator shall notify the applicant of the board's
 23 approval and provide the applicant with a copy of the resolution
 24 passed. Throughout this process, if the board does not extend
 25 financial assistance, the board has no liability to the
 26 applicant or borrower.

27 Subp. 2. Bond reserve. ~~If the board determines, in light~~
 28 ~~of market conditions, that a bond reserve fund is necessary to~~
 29 ~~provide additional security for the bonds, then it must require~~
 30 ~~the borrower to establish a reserve for the bonds. --The reserve~~
 31 ~~may come out of bond proceeds, in order to provide the~~
 32 ~~additional security for the bonds as market conditions may~~
 33 ~~require~~ A bond reserve fund must be established by the borrower
 34 in order to provide additional security for the bonds. The
 35 reserve may come out of bond proceeds. The amount of the
 36 reserve must not be less than one-half of the annual amount that

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1 would be required to amortize the entire amount of the bonds
2 over the term and at the interest rate (or at the rate of yield
3 resulting from the interest rates) provided in the bond issue
4 resolution.

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