

## CHAPTER 41A

### AGRICULTURAL RESOURCE LOAN GUARANTY PROGRAM

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#### 41A.01 PURPOSE.

Sections 41A.01 to 41A.06 provide a framework for an agricultural resource loan guaranty program, the purposes of which are to further the development of the state's agricultural resources and improve the market for its agricultural products. 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 loan guaranty 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:** *1Sp1985 c 13 s 145*

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

*[For text of subds 1 to 4, see M.S.1984]*

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.

*[For text of subd 6, see M.S.1984]*

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.

*[For text of subds 9 and 10, see M.S.1984]*

Subd. 11. **Lender.** "Lender" means any investment or commercial banking institution, savings and loan institution, insurance company, investment company, or

other financial institution or institutional investor making, purchasing, or participating in a loan or any part of a loan.

*[For text of subds 12 to 15, see M.S.1984]*

**History:** *1Sp1985 c 13 s 146-150*

#### **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.

*[For text of subd 2, see M.S.1984]*

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 determine its technical and financial conditions and its compliance with environmental requirements. The records shall include the amounts of all sales and

use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes 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.

*[For text of subd 4, see M.S.1984]*

**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 loan guaranties or bonds are not a general obligation or debt of the state.

**History:** *1Sp1985 c 13 s 151-153*

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

**Subdivision 1. Requirements.** (a) Any applicant may file a written application with the state commissioner of energy and economic development on behalf of the board, to be considered by the agricultural resource loan guaranty 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;

(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 state guaranty 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) The applicant shall pay upon filing of the application a fee equal to .25 percent of the amount of the loan guaranty or bond requested. The fee shall be paid to the commissioner of finance and deposited in the general fund. If the board determines not to issue a commitment for the project, the fee shall be refunded to the applicant, less the board's cost of processing, reviewing, and evaluating the applica-

tion. If the board issues a commitment for the project and the application fee exceeds the board's cost of processing, reviewing, and evaluating the application, the balance shall be transferred from the general fund to the project account in the guaranty fund and credited against the amount of the commitment fee required in section 41A.03, subdivision 3, clause (j). The county or rural development finance authority may require the proposed borrower under the project to pay the application fee.

(c) 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.

*[For text of subd 2, see M.S.1984]*

**Subd. 3. Commitment.** The commissioner of energy 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.07, the board shall adopt rules which are subject to the provisions of chapter 14. The board may adopt emergency rules and permanent rules.

**History:** *1Sp1985 c 13 s 154-156*

#### **41A.05 MINNESOTA AGRICULTURAL RESOURCE LOAN GUARANTY FUND AND BONDS.**

**Subdivision 1. Establishment of fund.** For the purpose of developing the state's agricultural resources by extending credit on real estate security, the agricultural resource loan guaranty fund is established as a special and dedicated fund to be held and invested separately from all other funds of the state. All money appropriated to the fund, and all guaranty fees, retail sales taxes, property tax increments, and other money from any source which may be credited to the fund pursuant to law or pursuant to the terms of grants, contributions, or contracts are appropriated and shall remain available for the purposes of the fund until those purposes have been fully accomplished. The board may establish within the guaranty fund reserve funds, project accounts, or other restrictions it determines

necessary or appropriate to carry out the purposes of this chapter. Except as otherwise provided in this section, the fund may be used only for paying amounts due under loan guaranties and principal and interest assistance contracts entered into by the state, pursuant to the agricultural resource loan guaranty program.

Subd. 2. **Issuance of bonds.** (a) Subject to section 16A.80, upon application pursuant to section 41A.04, the board by resolution may exercise the powers of a rural development authority under sections 362A.01 to 362A.05 and the powers of a municipality under chapter 474 for the purposes of providing money to pay the costs of a project, including the issuance of bonds and the loan of the bond proceeds pursuant to a lease 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. Sections 16A.80 and 474.23 do not apply to the bonds. 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 guaranty fund 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 guaranty 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 guaranty 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) The issuance of bonds pursuant to this subdivision is subject to sections 474.18 to 474.25. For purposes of sections 474.16 to 474.20, 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.

*[For text of subd 4, see M.S.1984]*

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:** *1Sp1985 c 13 s 157-160*

#### **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.

*[For text of subds 2 to 4, see M.S.1984]*

**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 362A.05, 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 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 273.75, subdivision 2, clause (d), until the increment has been discharged under the agreement or section 362A.05.

**History:** *1Sp1985 c 13 s 161,162*

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

Subject to all other applicable laws governing employees of or employment by a department or agency of the state, the commissioner of energy 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.

**History:** *1Sp1985 c 13 s 163*