

CHAPTER 41A

AGRICULTURAL RESOURCE LOAN GUARANTY PROGRAM

<p>41A.01 Purpose.</p> <p>41A.02 Definitions; actions by the state.</p> <p>41A.021 Successor status.</p> <p>41A.022 Minnesota energy and economic development authority; successor status.</p> <p>41A.023 Powers.</p> <p>41A.035 Agricultural resources loan participation.</p> <p>41A.036 Small business development loans.</p> <p>41A.04 Application and approval.</p>	<p>41A.05 Minnesota agricultural and economic development fund and bonds.</p> <p>41A.06 Project taxes and other charges.</p> <p>41A.065 Certified development company.</p> <p>41A.066 Hazardous waste processing facility loans.</p> <p>41A.08 Staff.</p> <p>41A.09 Ethanol development fund.</p>
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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: 1987 c 386 art 9 s 1

41A.02 DEFINITIONS; ACTIONS BY THE STATE.

[For text of subs 1 and 2, see M.S.1986]

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 energy and economic development, the director of the pollution control agency, the president of the Greater Minnesota Corporation, and two public members with experience in finance, appointed by the Greater Minnesota Corporation.

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

[For text of subd 5, see M.S.1986]

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 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.

[For text of subs 7 to 10, see M.S.1986]

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.

[For text of subs 12 to 15, see M.S.1986]

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) a business eligible to receive assistance under section 12.

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 474.02, subdivisions 1 to 1f, and 474.03, subdivision 4.

History: 1987 c 386 art 9 s 2-7

41A.021 SUCCESSOR STATUS.

The board is the legal successor in all respects of the agricultural resource loan guaranty board established by Laws 1984, chapter 502, article 10, and all bonds, resolutions, contracts, and liabilities of the agricultural resource loan guaranty 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

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 any instrument or obligation evidencing a loan;

- (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, 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;
- (7) establish and collect fees without regard to chapter 14 and section 16A.128;
- (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

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 273.1312, subdivision 4.

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 governmental 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.

History: 1987 c 386 art 9 s 12

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 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 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.

[For text of subds 2 to 4, see M.S.1986]

History: 1987 c 386 art 9 s 13

41A.05 MINNESOTA AGRICULTURAL AND ECONOMIC DEVELOPMENT FUND AND BONDS.

Subdivision 1. Establishment of fund. The Minnesota agricultural and economic development 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 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 fund 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. Section 16A.80 does 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 Minnesota agricultural and economic development 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 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.

[For text of subs 3 to 5, see M.S.1986]

History: 1987 c 291 s 193; 1987 c 384 art 2 s 9; art 3 s 23; 1987 c 386 art 9 s 14,15

41A.06 PROJECT TAXES AND OTHER CHARGES.

[For text of subs 1 to 4, see M.S.1986]

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 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: 1987 c 291 s 194

41A.065 CERTIFIED DEVELOPMENT COMPANY.

Subdivision 1. Purpose; objectives. The board may create, promote, and assist a development company that will qualify as a certified development company for the purposes of United States Code, title 15, section 697, and Code of Federal Regulations, title 13, section 108.503.

The board shall utilize the development company program to stimulate the state's economic activity.

The development company and its directors and officers shall comply with the organizational, operational, regulatory, and reporting requirements as promulgated by the United States Small Business Administration and the guidelines contained in the bylaws, articles of incorporation, and standard operating procedure prescribed by the Small Business Administration.

Subd. 2. Capital, loan limits; membership requirements. The capital for a certified development company must be derived from corporate holders or members, each of whom must not have more than ten percent of the voting control of the development company. The company must have a minimum of ten members. The members of the company from each economic development region must represent, to the greatest extent practical, the same proportion of the membership of the company as the population of the economic development region is of the population of the state. The loan limit of each member must be established at the time of its acceptance as a member and must be computed on the basis of the financial information contained in or made a part of its application for membership. Loan limits must be established at the thousand dollar amount nearest the amount computed in accordance with the provisions of the articles of incorporation and this section.

Subd. 3. **Members.** Members must be representatives of local government, community organizations, financial institutions, and businesses in Minnesota and must, upon application, have been accepted for membership by a majority vote of the members of the board of directors present at a regular or special meeting of the board at which there is a quorum. A "financial institution" is a business organization recognized under Minnesota or federal law as a banking institution, trust company, savings and loan association, insurance company, or a corporation, partnership, foundation or other institution licensed to do business in the state of Minnesota and engaged primarily in lending or investing money.

Subd. 4. **Membership applications.** Applications for membership must be submitted to the development company's board of directors on forms provided by the corporation and accompanied by additional information as the form may require. Application forms must provide that if the application is approved and the applicant accepted for membership by the development company's board of directors before withdrawal of the application, the applicant agrees to become a member upon the acceptance and to assume the rights and obligations of a member. Notice of approval or rejection of an application must be forwarded, by certified or registered United States mail, to the applicant for the attention of the person signing the application, within 15 days following the date when the approval or rejection is made. Approval of the application constitutes acceptance of the applicant as a member of the corporation.

Subd. 5. **Officers.** The executive officers of the development company are a president, one or more vice presidents including the executive vice president, a secretary, and a treasurer. None of the officers, except the president, need be directors. One person may hold the offices and perform the duties of any two or more of the offices. The development company's board of directors by majority vote may leave unfilled for any period it may fix any office except that of president, treasurer, or secretary.

Subd. 6. **Assistance.** The commissioner of energy and economic development shall make available the professional staff of the department to provide services to the development company including, but not limited to, accounting, legal, and business assistance services. The staff must have the capability to package, process, close and service loans made through the development company.

Subd. 7. **Reports.** The development company shall submit to the Small Business Administration annual reports on its operation. When requested by the Small Business Administration, interim reports of a similar nature must be provided. The reports must be provided in accordance with the instructions and attachments set forth by the Small Business Administration. The development company shall comply with all regulations issued under the Small Business Investment Act of 1958, as amended, as well as applicable state and federal laws affecting its operation.

Subd. 8. **Revolving account.** The development company may charge a one-time processing fee up to the maximum allowed by the Small Business Administration on a debenture issued for loan purposes. In addition, a fee for servicing loans may be imposed up to the maximum allowed by the Small Business Administration based on the unpaid balance of each debenture. These fees must be deposited in the state treasury and credited to a special account. Money in the account is appropriated to the board to pay the costs of administering the program, including personnel costs; compensate members of the board of directors under section 15.0575, subdivision 3, and to create and operate a pool of money for investment in projects that further the purposes of this section.

History: 1987 c 386 art 9 s 16

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 forward the applications to the waste management board for review pursuant to section 115A.162. If the waste management board does not certify the application, the Minnesota agricultural and economic development board may not approve the application nor make the loan. If the waste management board certifies the application, 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 waste management board 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 fund to provide financial assistance to any person whose hazardous waste processing facility loan application has been certified by the waste management board 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.

The Minnesota agricultural and economic development board may adopt emergency rules under sections 14.29 to 14.36 to implement the loan program under this subdivision. Emergency rules adopted by the Minnesota agricultural and economic development board remain in effect for 360 days or until permanent rules are adopted, whichever occurs first.

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

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 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.

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: 1987 c 386 art 9 s 17

41A.09 ETHANOL DEVELOPMENT FUND.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Payments from fund.** The commissioner of revenue shall make cash payments from the development fund to producers of ethanol or agricultural grade alcohol, for use as a motor fuel, located in the state. The amount of the payment for each producer's annual production shall be as follows:

(a) For each gallon of ethanol produced:

(1) For the period beginning July 1, 1986, and ending June 30, 1987, 15 cents per gallon;

(2) For the period beginning July 1, 1987, and ending June 30, 2000, 20 cents per gallon.

(b) For each gallon produced of agricultural grade alcohol of a purity of at least 50 percent but not more than 90 percent and designed to be used in conjunction with diesel fuel in an engine's internal combustion process, for the period beginning July 1, 1987, and ending June 30, 2000, 11 cents per gallon.

The total payments from the fund to all producers may not exceed \$200,000 during the period beginning July 1, 1986, and ending June 30, 1987, and may not exceed \$10,000,000 in any fiscal year during the period beginning July 1, 1987, and ending June 30, 2000. Total payments to any producer from the fund in any fiscal year may not exceed \$3,000,000.

By the last day of October, January, April, and July, each producer shall file a claim for payment for production during the preceding three calendar months. The volume of production must be verified by a certified financial audit performed by an independent certified public accountant using generally accepted accounting procedures.

Payments shall be made November 15, February 15, May 15, and August 15.

[For text of subd 4, see M.S.1986]

Subd. 5. **Expiration.** This section expires July 1, 2000, and all money in the fund on that date reverts to the general fund.

History: 1987 c 390 s 1,2