CHAPTER 41A

AGRICULTURAL RESOURCE LOAN AND ETHANOL DEVELOPMENT PROGRAMS

41A.02 DEFINITIONS; ACTIONS BY THE STATE.

[For text of subds 1 and 2, see M.S.2002]

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 employment and economic development, the commissioner of the Pollution Control Agency, the president of Minnesota Technology, Inc. or the president's designee, and two public members with experience in finance, appointed by Minnesota Technology, Inc. The membership terms, compensation, removal, and filling of vacancies of public members of the board are as provided in section 15.0575.

[For text of subds 4 to 17, see M.S.2002]

History: *1Sp2003 c 4 s 1*

41A.036 SMALL BUSINESS DEVELOPMENT LOANS.

[For text of subd 1, see M.S.2002]

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, or enhance the quality of existing jobs in those areas;

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

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

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

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

[For text of subds 3 to 5, see M.S.2002]

History: *2003 c 128 art 13 s 3*

41A.04 APPLICATION AND APPROVAL.

Subdivision 1. **Requirements.** (a) Any applicant may file a written application with the state commissioner of employment 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 subd 2, see M.S.2002]

Subd. 3. **Commitment.** The commissioner of employment 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.

[For text of subd 4, see M.S.2002]

History: *1Sp2003 c 4 s 1*

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 employment 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.

[For text of subd 2, see M.S.2002]

History: *1Sp2003 c 4 s 1*

41A.09 ETHANOL DEVELOPMENT.

Subdivision 1. [Repealed, 2003 c 128 art 3 s 47]

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

(1) 240,000,000 gallons in 2003;

(2) 300,000,000 gallons in 2004;

(3) 360,000,000 gallons in 2005 and 2006;

(4) 420,000,000 gallons in 2007; and

(5) 480,000,000 gallons in 2008 and subsequent years.

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

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

(1) meets all of the specifications in ASTM specification D4806-01; and

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

(b) "Ethanol plant" means a plant at which ethanol is produced.

(c) "Commissioner" means the commissioner of agriculture.

Subd. 3a. **Ethanol producer payments.** (a) The commissioner shall make cash payments to producers of ethanol located in the state that have begun production by June 30, 2000. For the purpose of this subdivision, an entity that holds a controlling interest in more than one ethanol plant is considered a single producer. The amount of the payment for each producer's annual production, except as provided in paragraph (c), is 20 cents per gallon for each gallon of ethanol produced on or before June 30, 2000, or ten years after the start of production, whichever is later. The first claim for production after June 30, 2003, must be accompanied by a disclosure statement on a form provided by the commissioner. The disclosure statement must include a detailed description of the organization of the business structure of the claimant listing the percentages of ownership by any person or other entity with an ownership interest of five percent or greater, the distribution of income received by the claimant, including operating income and payments under this subdivision. The disclosure statement must include information sufficient to demonstrate that a majority of the ultimate beneficial interest in the entity receiving payments under this section is owned by farmers or spouses of farmers, as defined in section 500.24, residing in Minnesota. Subsequent quarterly claims must report changes in ownership. Payments must not be made to a claimant that has less than a majority of Minnesota farmer control except that the commissioner may grant an exemption from the farmer majority ownership requirement to a claimant that, on May 29, 2003, has demonstrated greater than 40 percent farmer ownership which, when combined with ownership interests of persons residing within 30 miles of the plant, exceeds 50 percent. In addition, a claimant located in a city of the first class which qualifies for payments in all other respects is not subject to this condition. Information provided under this paragraph is nonpublic data under section 13.02, subdivision 9.

(b) No payments shall be made for ethanol production that occurs after June 30, 2010.

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

(d) Total payments under paragraphs (a) and (c) to a producer in a fiscal year may not exceed $3,000,000.

(e) By the last day of October, January, April, and July, each producer shall file a claim for payment for ethanol production during the preceding three calendar months. A producer that files a claim under this subdivision shall include a statement of the producer's total ethanol production in Minnesota during the quarter covered by the claim. For each claim and statement of total ethanol production filed under this subdivision, the volume of ethanol production must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(f) Payments shall be made November 15, February 15, May 15, and August 15. A separate payment shall be made for each claim filed. Except as provided in paragraph (g), the total quarterly payment to a producer under this paragraph may not exceed $750,000.

(g) Notwithstanding the quarterly payment limits of paragraph (f), the commissioner shall make an additional payment in the fourth quarter of each fiscal year to ethanol producers for the lesser of: (1) 20 cents per gallon of production in the fourth quarter of the year that is greater than 3,750,000 gallons; or (2) the total amount of payments lost during the first three quarters of the fiscal year due to plant outages, repair, or major maintenance. Total payments to an ethanol producer in a fiscal year, including any payment under this paragraph, must not exceed the total amount the producer is eligible to receive based on the producer's approved production capacity. The provisions of this paragraph apply only to production losses that occur in quarters beginning after December 31, 1999.

(h) The commissioner shall reimburse ethanol producers for any deficiency in payments during earlier quarters if the deficiency occurred because appropriated money was insufficient to make timely payments in the full amount provided in paragraph (a). Notwithstanding the quarterly or annual payment limitations in this subdivision, the commissioner shall begin making payments for earlier deficiencies in each fiscal year that appropriations for ethanol payments exceed the amount required to make eligible scheduled payments. Payments for earlier deficiencies must continue until the deficiencies for each producer are paid in full.

[For text of subd 4, see M.S.2002]

Subd. 5a. [Repealed, 2003 c 128 art 3 s 47]

Subd. 6. [Repealed, 2003 c 128 art 3 s 47]

Subd. 7. [Repealed, 2003 c 128 art 3 s 47]

Subd. 8. [Repealed, 2003 c 128 art 3 s 47]

History: *2003 c 107 s 26; 2003 c 128 art 3 s 37,38; 1Sp2003 c 14 art 7 s 1*