

SECOND REGULAR SESSION

SENATE BILL NO. 559

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOWARD.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2601S 011

AN ACT

To amend chapter 348, RSMo, by adding thereto twelve new sections relating to the Missouri agribusiness development authority.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 348, RSMo, is amended by adding thereto twelve new sections, to be known as sections 348.440, 348.443, 348.446, 348.449, 348.452, 348.455, 348.458, 348.461, 348.464, 348.467, 348.470 and 348.473, to read as follows:

348.440. As used in sections 348.440 to 348.473, the following terms mean:

(1) "Agribusiness development fund", established pursuant to section 348.443 for the purpose of lending money to any borrower engaged in value-added production of raw agricultural commodities;

(2) "Board", the Missouri agribusiness development authority board established pursuant to section 348.449;

(3) "Department", the department of agriculture;

(4) "Eligible borrower", any person, partnership, public or private corporation, association or any other entity engaging in an eligible project for funding under sections 348.440 to 348.473;

(5) "Eligible project", any project resulting in a value-added production from raw agricultural commodities;

(6) "Participating lender", a lender participating with the board in the making of a loan secured by the agribusiness development fund;

(7) "Project", the purchase, construction, extension, and improvement of real estate, plants, buildings, structures or facilities, whether or not now in existence, used or to be used primarily as a facility for processing or otherwise adding value to raw agricultural commodities;

(8) "Value-added", using or refining a raw agricultural commodity such as grains, fruits, vegetables, or livestock thereby increasing its value in the market.

348.443. 1. There is hereby created in the state treasury a fund, to be known as the "Agribusiness Development Fund", into which the following may be deposited:

(1) Any moneys appropriated by the general assembly for use by the board in carrying out the powers set forth in sections 348.440 to 348.473;

(2) Any moneys received from grants or which are given, donated, or contributed to the fund from any source;

(3) Any moneys received in repayment of loans or from application fees, guarantee fees and premium payments as provided for under sections 348.440 to 348.473;

(4) Any moneys received as interest on deposits or as income on approved investments of the fund;

(5) Any moneys obtained from the issuance of revenue bonds or notes by the board; and

(6) Any moneys obtained from any other available source.

2. The agribusiness development fund shall be administered by the board as provided in sections 348.440 to 348.473.

3. Moneys in the agribusiness development fund shall be invested by the board in the manner prescribed by the board and any interest earned on invested moneys shall accrue to the benefit of the fund. The provisions of section 33.080, RSMo, to the contrary notwithstanding, any moneys remaining in the fund at the end of any fiscal year shall not revert to the general revenue fund.

348.446. Moneys in the agribusiness development fund shall be used to make low-interest or interest-free loans and loan guarantees to eligible projects.

348.449. 1. There is hereby created within the department of agriculture the "Missouri Agribusiness Development Authority Board", which shall constitute a body corporate and politic and shall consist of twelve members, including the lieutenant governor, the director of the department of economic development and the director of the department of agriculture. No more than five members appointed by the governor to the board shall be of the same political party. Except for the lieutenant governor, the director of the department of economic development and the director of the department of agriculture, all members shall be appointed by the governor by and with the advice and consent of the senate, and shall serve for terms of four years.

2. Each member of the board appointed by the governor shall have resided in this state for at least five years prior to appointment. Except for the lieutenant governor, director of the department of economic development and the director of the department of agriculture, no person may be appointed to the board who is an elected officer or employee of the state, or any agency, board, commission, or authority established by the state.

3. The governor shall designate one of the members of the board to serve as chairman. The board shall meet at such times and places as it shall designate. Seven members shall constitute a quorum. No vacancy in the membership shall impair the right of a quorum of the members to exercise all of the rights and powers and to perform all of the duties of the board.

4. Members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

348.452. The board shall have the power to:

(1) Sue and be sued in its official name;
(2) Adopt and use an official seal;
(3) Confer with agencies of the state and with representatives of business, industry, and labor for the purpose of promoting the agricultural value-added businesses of this state;

(4) Consider and review applications for loans or loan guarantees to be made from the agribusiness development fund or for loans, bonds or notes to be made by or secured by the agribusiness development fund or any other available money, under sections 348.440 to 348.473;

(5) Enter into agreements with borrowers, participating lenders and others to implement any of the provisions of sections 348.440 to 348.473;

(6) Direct disbursements from the agribusiness development fund as provided in sections 348.440 to 348.473;

(7) Convey to the state treasurer any portion of such funds not required for immediate disbursement for investment in obligations of the United States, or any agency or instrumentality of the United States, in obligations of the state of Missouri and its political subdivisions, in certificates of deposit and time deposits or other obligations of banks and savings and loan associations or in such other obligations as may be prescribed by the board;

(8) Apply for and accept gifts, grants, appropriations, loans or contributions to the agribusiness development fund from any source, public or private, and enter into contracts or other transactions with any federal or state agency, private organization, or any other source in furtherance of the purposes of sections 348.440 to 348.473, and

do any and all things necessary in order to avail itself of such aid and cooperation;

(9) Issue, from time to time, negotiable revenue bonds or notes in such principal amounts as, in its opinion, shall be necessary to provide sufficient funds for achieving its purposes;

(10) Establish reserves to secure bonds, notes and loans issued or made by the board or participating lenders;

(11) Make, purchase, or participate in the making or purchase, of loans, bonds, or notes to finance the costs of projects;

(12) Procure insurance, letters of credit, or other form of credit enhancement, to secure the payment of principal and interest on any loans, bonds or notes or other obligations of the board;

(13) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(14) Sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property, or any interest therein, wherever situated;

(15) Conduct hearings and other methods of examination, and authorize any of its members to do so, on any matter material for its information and necessary to the exercise of the duties of the board;

(16) Employ and fix the compensation of an executive director and such other agents or employees as it considers necessary;

(17) Adopt, alter, or repeal its own bylaws and internal regulations governing the manner in which its business may be transacted;

(18) Assess or charge a fee for each application it receives for funding for a project and assess or charge other fees as the board determines to be reasonable to carry out its purposes, including, but not limited to, fees or premiums for loans made from the agribusiness development fund for loans, bonds or notes secured by the agribusiness development fund;

(19) Make all expenditures which are incident and necessary to carry out its purposes and powers;

(20) Take such action, enter into such agreements and exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in sections 348.440 to 348.473;

(21) Insure, coinsure, guarantee loans and make loans relating to qualified transactions and adopt criteria, by means of rules and regulations, establishing which projects shall be eligible for the insurance, coinsurance, loan guarantees and loans which may be extended by the board;

(22) Receive funds from the federal government for deposit into the agribusiness

development fund and authorize disbursements therefrom in accordance with appropriations. The board may enter into agreements with agencies of the federal government and may, on behalf of the state of Missouri, do all things necessary to ensure full participation by the state of Missouri in any federal program which may relate to the development of businesses adding value to raw agricultural commodities in the state;

(23) Set guidelines and priorities for loans and loan guarantees from the agribusiness development fund. The board is the sole state agency authorized to set such guidelines and priorities with respect to the agribusiness development fund on behalf of the state and loans or loan guarantees shall only be made upon approval of the board.

348.455. 1. The board may at any time issue revenue bonds for the purpose of paying any part of the cost of any project or projects, or part thereof, and for the purpose of refunding any of its bonds. Every issue of its bonds shall be payable out of the revenues of the board which may be pledged for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds or pledging any specified revenues. The bonds shall be authorized by resolution of the board, shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution of the board shall specify. The bonds shall be in such denominations, bear interest at such rates, be in such form, either coupon or registered, be issued in such manner, be payable in such place or places and be subject to redemption as such resolution may provide. The bonds of the board may be sold at public or private sale, as the board may specify, at such price or prices as the board shall determine, but at not less than ninety-five percent of the principal amount thereof, and at such interest rate as the board shall determine, notwithstanding the provisions of section 108.170, RSMo.

2. The board may issue notes payable from the proceeds of bonds to be issued in the future or from such other sources as the board may specify. Such notes shall mature in not more than five years and shall be sold at public or private sale, as the board may specify, at not less than ninety-five percent of the principal amount thereof and at such interest rate as the board shall determine, notwithstanding the provisions of section 108.170, RSMo. The other details with respect to such notes shall be determined by the board as in the case of bonds.

3. The state shall not be liable for any notes or bonds of the board. Such notes or bonds shall not be a debt of the state and shall contain on the faces thereof a statement to such effect.

4. No member of the board nor any person authorized to execute notes or bonds of the board shall be liable personally on such notes or bonds or shall be subject to any

personal liability or accountability by reason of the issuance thereof.

5. The notes and bonds of the board are securities in which all public bodies and political subdivisions of this state; all insurance companies and associations and all other persons carrying on an insurance business; all banks, trust companies, saving associations, savings and loan associations, credit unions, and investment companies; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons who now or may hereafter be authorized to invest in notes and bonds or other obligations of this state may properly and legally invest funds, including capital, in their control or belonging to them.

6. The board shall not be required to pay any taxes or any assessments whatsoever to this state, any political subdivision of this state, or any other governmental agency of this state. The notes and bonds of the board, and the income therefrom, shall, at all times, be exempt from any taxes and any assessments, except for estate taxes, gift taxes, and taxes on transfers.

7. Nothing contained in sections 348.440 to 348.473 shall be deemed to constitute a use of state funds or credit in violation of the provisions of article III, sections 37, 38(a) and 39, of the Missouri Constitution.

348.458. 1. A request for a loan from the agribusiness development fund to carry out a project shall be in the form of an application for the project to the board, which application shall be in such form as the board may specify. After reviewing the application and such other information as the board may require, the board may grant all or a part of the loan request, provided the board determines that:

(1) The project will be a benefit to the economy of the host community and the state by adding value to raw agricultural commodities;

(2) The project will generate sufficient revenues or the borrower will otherwise have sufficient revenues available to enable the borrower to repay the loan to the agribusiness development fund, along with any interest to be charged; and

(3) The loan will not exceed five million dollars.

2. When the board makes a loan under the provisions of sections 348.440 to 348.473, copies of all documents filed in support of the loan application and copies of all agreements, notes, evidence of debts, or security agreements connected with such loan may be forwarded to the department of agriculture, and if so forwarded, that department shall thereafter be responsible for the administration of such agreements. In the event of a substantial default in the terms of any such agreements, the department of agriculture shall notify the board in order that the board may take whatever steps it deems necessary to protect its interests.

3. When the board issues bonds to provide loans for more than one project, the board shall make a reasonable effort to sell the bonds to a purchaser that represents

a group consisting of more than one underwriter.

348.461. 1. Within the discretion of the board, the agribusiness development fund may be pledged to secure the payment of any bonds or notes issued by the board, or to secure the payment of any loan made by the board with a participating lender which loan:

- (1) Is requested to finance any eligible borrower;**
- (2) Is requested by an eligible borrower who is demonstrated to be financially responsible;**
- (3) Can reasonably be expected to provide a benefit to the economy of this state by adding value to raw agricultural commodities;**
- (4) Is otherwise secured by a mortgage or deed of trust on real or personal property or other security satisfactory to the board; and**
- (5) Does not exceed five million dollars.**

2. The board shall prescribe standards for the evaluation of the financial condition, business history, and qualifications of each eligible borrower and the terms and conditions of loans which may be secured, and may require each application to include a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as may be conducted by any participating lender.

3. Each application for a loan secured by the agribusiness development fund shall be reviewed in the first instance by any participating lender to whom the application was submitted. If satisfied that the standards prescribed by the board are met and that the loan is otherwise eligible to be secured by the agribusiness development fund, the participating lender shall certify the same and forward the application for final approval to the board.

4. The securing of any loans or loan guarantees by the agribusiness development fund shall be conditioned upon approval of the application by the board, and receipt of an annual participation fee, as prescribed by the board, submitted by or on behalf of the borrower.

5. Any taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to the agribusiness development fund during the taxpayer's tax year, provided, however, the total tax credits awarded in any calendar year beginning after January 1, 2000, shall not be the greater of ten million dollars or five percent of the average growth in general revenue receipts in the preceding three fiscal years. If the board receives, as a contribution, real property, the contributor at such contributor's

own expense shall have two independent appraisals conducted by certified appraisers. Both appraisals shall be submitted to the board, and the tax credit certified by the board to the contributor shall be based upon the value of the lower of the two appraisals. The board shall not certify the tax credit until the property is deeded to the board. Such credit shall not apply to fees paid by borrowers under sections 348.440 to 348.473. The portion of earned tax credits which exceeds the taxpayer's tax liability may be carried forward for up to five years.

6. Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 5 of this section under the terms and conditions prescribed in subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the assignor for the purpose of this subsection, may sell, assign, exchange or otherwise transfer earned tax credits:

- (1) For no less than seventy-five percent of the par value of such credits; and
- (2) In an amount not to exceed one hundred percent of annual earned credits.

The taxpayer acquiring earned credits, hereinafter the assignee for the purpose of this subsection, may use the acquired credits to offset up to one hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo. Unused credits in the hands of the assignee may be carried forward for up to five years, provided all such credits shall be claimed within ten years following the tax years in which the contribution was made. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the board in writing within thirty calendar days following the effective day of the transfer and shall provide any information as may be required by the board to administer and carry out the provisions of this section. Notwithstanding any other provision of law to the contrary, the amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the par value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

348.464. 1. The agribusiness development fund shall be used to prevent a default in payment of principal or interest or to defray losses which may be incurred in connection with bonds, notes or loans secured by the agribusiness development fund in accordance with the terms and provisions of the resolution or trust indenture of the board authorizing such bonds, notes or loans.

2. Upon certification by a participating lender that a loan secured by the agribusiness development fund is in default and noncollectible, and that the property which secured the loan has been liquidated and applied against the debt, and after a review by the board and its determination of the same, the board shall distribute, from

funds available in the agribusiness development fund, an amount not to exceed ninety percent of the balance remaining to be paid by the borrower to the participating lender. Upon payment to a participating lender to repay any loan, the board shall become subrogated to the extent of such payment to all rights which the participating lender had against the borrower.

3. A loan or issue of bonds or notes secured by the agribusiness development fund shall in no case constitute or be construed as an obligation or an indebtedness of this state or of the board, and neither the state nor the board shall be liable to repay any such loan, bonds or notes upon any condition.

348.467. 1. The board may issue guarantees using moneys in the agribusiness development fund for bonds or notes issued by the board when the board makes the following findings:

(1) That the owners and lessees of the projects to be financed are found to be financially responsible, and that sufficient income may reasonably be expected to be derived from the projects to amortize the interest and principal amount of the bonds or notes;

(2) That the projects will benefit the economy of this state by adding value to raw agricultural commodities.

2. The board shall evaluate the financial condition and business history of project owners and lessees, and may require the attachment to each application for guarantee under sections 348.440 to 348.473 a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as the board may make, in determining whether the owner or lessee meets prescribed minimum standards and qualifications before entering into any guarantee under sections 348.440 to 348.473.

348.470. 1. Guarantee agreements for bonds or notes entered into by the board pursuant to the provisions of sections 348.440 to 348.473 shall provide that:

(1) The board guarantees, and is hereby required, to use the moneys in the guarantee fund to meet amortization payments as guaranteed under the provisions of sections 348.440 to 348.473, as the same become due; and

(2) The guarantee shall not be a general obligation of the state of Missouri and in no event shall the guarantee be deemed an indebtedness of the state of Missouri and shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

2. Whenever the board, acting under the terms of any guarantee agreement, deems it necessary to assume the obligation of maintenance of any project the amortization payments of which have been guaranteed by the board, the board may use funds available in the agribusiness development fund to pay insurance and

maintenance costs required for the preservation of the project and to protect such fund from loss, or to minimize loss, in such manner as deemed necessary by the board.

3. In addition to the provisions required by this section, the guarantee agreement shall include such other additional provisions, restrictions, and conditions as the board shall determine to be necessary, including, but not limited to, a detailing of the remedies that must be exhausted by the bondholders or noteholders prior to any enforcement of the guarantee agreement and the subrogation or other rights of the board with reference to the project and its operation in the event the board makes payment pursuant to the applicable guarantee agreement.

348.473. Except as provided in section 620.014, RSMo, sections 348.440 to 348.473 shall be subject to the provisions of 610.010 to 610.030, RSMo, relating to the meetings of governmental bodies. A member shall not vote or participate in any matter in which the member has a direct or indirect interest. For the purposes of sections 348.440 to 348.473, a "direct or indirect interest" means the ownership of ten percent or more of any class of equity securities in any corporation seeking a guarantee pursuant to the provisions of sections 348.440 to 348.473, occupying the office of vice president or other office senior to the office of vice president, or a director, of any corporation seeking a guarantee pursuant to the provisions of sections 348.440 to 348.473; provided, nothing contained in sections 348.440 to 348.473, nor the provisions of chapter 105, RSMo, shall prevent any corporation, bank, or trust company from purchasing, selling, or otherwise dealing in bonds or notes or mortgages guaranteed pursuant to the provisions of sections 348.440 to 348.473. The agribusiness development fund may be pledged to secure loans made through a participating lender with which a member of the board is affiliated so long as the member does not participate in or attempt to influence the approval of any such loan.

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