



Ohio Revised Code

Section 166.06 Contracts to guarantee repayment of loans from loan guarantee fund.

Effective: March 23, 2005

Legislation: Senate Bill 165 - 125th General Assembly

(A) Subject to any limitations as to aggregate amounts thereof that may from time to time be prescribed by the general assembly and to other applicable provisions of this chapter, the director of development may, on behalf of the state, enter into contracts to guarantee the repayment or payment of not more than ninety per cent of the unpaid principal amount of loans made, including bonds, notes, or other certificates issued or given to provide funds, to pay allowable costs of eligible projects. Such guarantees shall be secured solely by and payable solely from the loan guarantee fund created by this section and unencumbered and available moneys in the facilities establishment fund in the manner and to the extent provided in such guarantee contracts consistent with this section. Such guarantees shall not constitute general obligations of the state or of any political subdivision, and moneys raised by taxation shall not be obligated or pledged for the payment of such guarantees.

(B) Before guaranteeing any such repayments or payments the director shall determine that:

- (1) The project is an eligible project and is economically sound;
- (2) The principal amount to be guaranteed does not exceed ninety per cent of the allowable costs of the eligible project as determined by the director. To assist the director in making this determination, the director may, in the director's discretion, engage an independent engineer, architect, appraiser, or other professional pursuant to a contract to be paid solely from the facilities establishment fund, subject to controlling board approval.
- (3) The principal amount to be guaranteed has a satisfactory maturity date or dates, which in no case shall be later than twenty years from the effective date of the guarantee;
- (4) The rate of interest on the loan to be guaranteed and on any other loan made by the same parties or related persons for the eligible project is not excessive;



(5) The principal obligor, or primary guarantor, is responsible and is reasonably expected to be able to meet the payments under the loan, bonds, notes, or other certificates;

(6) The loan or documents pertaining to the bonds, notes, or other certificates to be guaranteed contains provisions for payment by the principal obligor, and is in such form and contains such terms and provisions for the protection of the lenders as are generally consistent with commercial practice, including, where applicable, provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, acceleration of maturity, prior, additional and secondary liens, and other matters as the director may approve.

(C) The contract of guarantee may make provision for the conditions of, time for and manner of fulfillment of the guarantee commitment, subrogation of the state to the rights of the parties guaranteed and exercise of such parties' rights by the state, giving the state the options of making payment of the principal amount guaranteed in one or more installments and, if deferred, to pay interest thereon from the loan guarantee fund and the facilities establishment fund, any other terms or conditions customary to such guarantees and as the director may approve, and may contain provisions for securing the guarantee in the manner consistent with this section, including, at the discretion of the director, a lien provided for under section 9.661 of the Revised Code, and may contain covenants on behalf of the state for the maintenance of the loan guarantee fund created by this section and of receipts to it permitted by this chapter, including covenants on behalf of the state to issue obligations under section 166.08 of the Revised Code to provide moneys to the loan guarantee fund to fulfill such guarantees and covenants authorized by division (R)(1) of section 166.08 of the Revised Code, and covenants restricting the aggregate amount of guarantees that may be contracted under this section and obligations that may be issued under section 166.08 of the Revised Code, and terms pertinent to either, to better secure the parties guaranteed.

(D) The "loan guarantee fund" of the economic development program is hereby created as a special revenue fund and a trust fund which shall be in the custody of the treasurer of state but shall be separate and apart from and not a part of the state treasury to consist of all grants, gifts, and contributions of moneys or rights to moneys lawfully designated for or deposited in such fund, all moneys and rights to moneys lawfully appropriated and transferred to such fund, including moneys received from the issuance of obligations under section 166.08 of the Revised Code, and moneys deposited to such fund pursuant to division (F) of this section; provided that the loan guarantee fund



shall not be comprised, in any part, of moneys raised by taxation.

(E) The director may fix service charges for making a guarantee. Such charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

(F) The treasurer of state shall serve as agent for the director in the making of deposits and withdrawals and maintenance of records pertaining to the loan guarantee fund. Prior to the director's entry into a contract providing for the making of a guarantee payable from the loan guarantee fund, the treasurer of state shall cause to be transferred from the facilities establishment fund to the loan guarantee fund an amount sufficient to make the aggregate balance therein, taking into account the proposed loan guarantee, equal to the loan guarantee reserve requirement. Thereafter, the treasurer of state shall cause the balance in the loan guarantee fund to be at least equal to the loan guarantee reserve requirement. Funds from the loan guarantee fund shall be disbursed under a guarantee made pursuant to this section to satisfy a guaranteed repayment or payment which is in default. The treasurer of state shall first withdraw and transfer moneys then on deposit in the loan guarantee fund. Whenever these moneys are inadequate to meet the requirements of a guarantee, the treasurer of state shall, without need of appropriation or further action by the director, provide for a withdrawal and transfer to the loan guarantee fund and then to the guaranteed party of moneys in such amount as is necessary to meet the guarantee from unencumbered and available moneys in the facilities establishment fund. Such disbursements shall be made in the manner and at the times provided in such guarantees. Within ninety days following a disbursement of moneys from the loan guarantee fund, the treasurer of state, without need of appropriation or further action by the director, shall provide for a withdrawal and transfer to the loan guarantee fund from unencumbered and available moneys in the facilities establishment fund, including moneys from the repayment of loans made from that fund, of an amount sufficient to cause the balance in the loan guarantee fund to be at least equal to the loan guarantee reserve requirement.

(G) Any guaranteed parties under this section, except to the extent that their rights are restricted by the guarantee documents, may by any suitable form of legal proceedings, protect and enforce any rights under the laws of this state or granted by such guarantee or guarantee documents. Such rights include the right to compel the performance of all duties of the director and the treasurer of state required by this section or the guarantee or guarantee documents; and in the event of default with respect to the payment of any guarantees, to apply to a court having jurisdiction of the cause to



appoint a receiver to receive and administer the moneys pledged to such guarantee with full power to pay, and to provide for payment of, such guarantee, and with such powers, subject to the direction of the court, as are accorded receivers in general equity cases, excluding any power to pledge or apply additional revenues or receipts or other income or moneys of the state or governmental agencies of the state to the payment of such guarantee. Each duty of the director and the treasurer of state and their officers and employees, and of each governmental agency and its officers, members, or employees, required or undertaken pursuant to this section or a guarantee made under authority of this section, is hereby established as a duty of the director and the treasurer of state, and of each such officer, member, or employee having authority to perform such duty, specifically enjoined by the law resulting from an office, trust, or station within the meaning of section 2731.01 of the Revised Code. The persons who are at the time the director and treasurer of state, or their officers or employees, are not liable in their personal capacities on any guarantees or contracts to make guarantees by the director.

(H) The determinations of the director under divisions (B) and (C) of this section shall be conclusive for purposes of the validity of a guarantee evidenced by a contract signed by the director, and such guarantee shall be incontestable as to moneys advanced under loans to which such guarantees are by their terms applicable.