DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 10-041	Hearing Location: Madison, Wisconsin
Rule Number: Chapter Comm 137	Hearing Date: May 13, 2010
Relating to: Reallocations for Recovery Zone Facility Bonds	

Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral	Mickey Beil Dane County 210 Martin Luther King Jr. Blvd. Madison, Wisconsin	1. Indicates Dane County is recommending modifications that are needed in the rules.	Comment is noted.
Oral and 1	Chuck Hicklin Dane County 210 Martin Luther King, Jr. Boulevard Madison, Wisconsin	2a. Comm 137.05 (7), (9) and (10): States the items required in these sections take time and effort for local governments and private entities to secure. To fulfill these requirements, Dane County would need to introduce and adopt a resolution, a process that requires 3-4 weeks, and would also incur expenses for bond counsel advice prior to even knowing if the Department supports a project. In addition, the private entity would need to pursue credit options such as identifying a bond purchaser or obtaining a letter of credit, without any initial reallocation decision from the department. Believes requiring receipt of these items prior to an initial reallocation will discourage use of the recovery zone facility (RZF) bonds by adding time and costs to the transaction. Believes the Department should delay requiring receipt of these items until after making an initial reallocation decision, which could be based on the information in sections Comm 137.05 (1) to (6).	2a. Agree. The proposed rules have been changed as recommended.
		2b. Comm 137.05 (12): Believes requiring the $300 payment in this section to be through a certified or cashiers check is unnecessary. Indicates if the Department receives any check from a local government, the Department should honor the check.	2b. Agree. The proposed rules have been changed as recommended.
		2c. Comm 137.09 (2) (b) 1.: Fails to see how the Department can justify a fee of thousands of dollars under this section, after receiving an application fee of $300. The local-government issuer bears the administrative costs of completing the bond issue, not the Department. Once the Department has reviewed the application and made a reallocation decision, the local government is required to report certain information regarding the bond issuance. The retention of that information by the Department will not warrant a fee of this magnitude. As companies are turning to financial incentives to complete transactions in this difficult economy, it is unfortunate that the Department is seeking to impose a fee that will draw resources away from critical economic development projects.	2c. This fee is the same as the fee for the Midwestern disaster area bonds. It is also similar to the closing fee for standard industrial revenue bonds, other than there is no cap for those bonds. It is not uncommon to charge an origination fee to cover administration costs. The fee is not excessive, due in part to the cap, and should be considered part of the cost of borrowing. The Department has not

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			received any other complaints about this fee from businesses, bond attorneys or others.
		2d. Comm 137.09 (4) (a): States the fee imposed by this section to retain an allocation beyond the initial 30 days is entirely unreasonable. It is important that the Department recognize that economic development projects may incur delays, especially those involving government approvals of a conduit bond issue. The Department should not impose punitive measures, such as this required fee, on transactions where parties might be working with all diligence to complete. Once the reallocation has been secured from the Department, the local government and private entity should be allowed 60 days to consummate the transaction. If the transaction runs beyond 60 days, then the local government should be allowed to provide the Department with a petition for a 15-day extension with a date certain of a bond issue.	2d. All of the requirements relating to this fee have been deleted from the proposed rules.
		2e. Believes that with the recommended modifications, the rules in chapter Comm 137 will allow local governments to better proceed with what are sometimes delicate and often tenuous negotiations on critical economic development projects. The imposition of additional bureaucratic requirements and unnecessary fees such as those referenced in the current rules will not constructively advance economic development and job creation in this state.	2e. Comment is noted.
Oral and 2	Liz Stephens Wisconsin Counties Association 22 East Mifflin Street Suite 900 Madison, Wisconsin	3a. Appreciates the Department's efforts to expediently implement the provisions of 2009 Wisconsin Act 112. Agrees with the recommendations from Dane County, and suggests the following modifications with the goal of equitably and cost-effectively redistributing these bonds.	3a. Support and comment are noted.
		3b. Comm 137.04: Believes there needs to be more specific detail about any project that has multiple components, some of which qualify for Midwestern disaster area (MDA) bonds and some of which may not. Believes it is important to specify that where such a project exists, the Department will award RZF bonds for the portion of the project that may not be eligible for MDA bonds but may be eligible for RZF bonds. Projects should first be structured using as much MDA bonds as possible, and then using RZF bonds for any MDA-ineligible portions of the project. This would not create a more difficult situation for	3b. Agree projects should generally be so structured. The proposed rules have been changed to instead specifically address this consideration during the Department's review process under section Comm 137.05.

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		the issuer, the borrower or the bond buyer.	
		3c. Comm 137.06: Believes all qualifying projects that a county submits within its original allocation authority should be approved by the Department. That is, if a county is seeking an authorization under this section, the Department should not have discretion in approving the project, since the project falls under the county's originally allocated amount. Similarly, does not believe that a county seeking a reallocation should have to provide the information under this section. Rather, a county should only have to provide the information necessary to demonstrate that a project qualifies for use of RZF bonds. Any project that meets the corresponding Internal Revenue Service requirements should be approved, regardless of whether any additional requirements in this section are met, except if public welfare or safety is involved. Wants to demonstrate to the federal government that all of the available bonding will be used, so that further bonding will be authorized, since these bonds are an extremely flexible and powerful tool for economic development. States that for the first time the federal government is recognizing counties as players at the economic-development table, and wants to demonstrate that counties can be effective players, so that economic activity can be further increased.	3c. Disagree that the referenced information should not be required. The Department anticipates having to provide an accounting of the reallocations that it issues, and the information required in this section will be needed for that accounting. In addition, under section 560.033 (3) of the Statutes, as created in 2009 Act 112, the Department is authorized to establish procedures for, and place conditions upon, the granting of a reallocation that the Department deems to be in the best interest of the State.
		3d. Comm 137.09 (2) (b) 1. Believes this section requires an unreasonable fee, on top of a $300 application fee. Believes the Department should not receive these payments, because it is not issuing the bonds. Understands the need for the Department to recover an administrative fee, and does not object to the $300 application fee, but an additional fee of up to $10,000 could mitigate the potential financial advantage to a business pursuing an RZF bond allocation. Because the margins between traditional financing and bond financing are much narrower now than in the past, the 0.1% fee in this section could make the difference between a project stalling or going forward, partly because of the additional elements that go into a bond issuance compared to traditional financing, such as other fees that will be imposed by the bond issuers. This interference would conflict with the goal of using all of the available bonding so that further bonding will be authorized.	3d. See response 2c.

File reference: Comm 137/Hearing summary