

Report From Agency

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 06-036

The Wisconsin Department of Transportation proposes an order to amend TRANS 510.03(1) and (2), 510.06(1)(a) and (b), 510.07(2) and 510.09(3)(e)1.; and create TRANS 510.04(2)(f) and 510.07(3), relating to the Transportation Facilities Economic Assistance and Development (TEA) Program

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

CARI ANNE RENLUND
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8752

PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 84.185(3)(b)1., (3m), (4), (6m) and (8r), Stats.

Statutory authority: s. 84.185, 85.16 and 227.11, Stats.

Explanation of agency authority: The secretary has the authority, pursuant to s. 84.185, Stats., to provide economic assistance for transportation facility improvements.

Related statute or rule: s. 84.185, Stats.

Plain Language Analysis: This proposed rule modifies ch. Trans 510 relating to the Transportation Facilities Economic Assistance and Development (TEA) Program by: (1) establishing criteria and procedures for the granting of TEA loans in addition to TEA grants; (2) changing funding cycles from quarterly to a year round first-come, first-serve basis; (3) correcting program contacts due to recent reorganizations; (4) eliminating program inconsistencies that both prohibit and allow grant ceiling adjustments; and (5) requiring ethanol plant constructions to be competitively bid in order to be eligible for TEA.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: There are no existing or proposed federal regulations.

Comparison with Rules in Adjacent States:

Michigan: (Transportation Economic Development Fund)

- (1) Loans – 20% of projects
- (2) Cycles – quarterly
- (3) Contacts changed - No
- (4) Adjust awards upward – Yes
- (5) Ethanol plants competitively bid requirement – No.

Minnesota: No program

Illinois: (Economic Development Program)

- (1) Loans – No
- (2) Cycles – Year round (July 1 – June 30) 50% must be proposed locally
- (3) Contacts – same throughout history
- (4) Adjust awards upward - Formerly could, no more (budget issues)
- (5) Ethanol plants must be bid – No, just transportation improvements do.

Iowa: (Revitalize Iowa's Sound Economy Fund (RISE) Program)

- (1) Loans – Have ability, but not used. Grants are sum sufficient.
- (2) Cycles – Year round, but 50% to job creation, 50% to local transportation improvements.

- (3) Contacts changed - Yes, one office now oversees entire program (formerly split).
- (4) Adjust up – No.
- (5) Ethanol plants must be bid - No, just transportation improvements do.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen:

TEA Loans. No TEA loans have been made to date as we have permissive authority to institute loans; they are not mandatory (see s. 84.185(6m), Stats.). Although TEA loans may be an effective economic development tool where TEA grants cannot be given, rules need to be promulgated that include the criteria and procedures for the repayment of TEA loans (see s. 84.185(4), Stats). From 18 years of TEA program experience, projects in more rural areas that pay a weighted average hourly wage far below the industry standard produce benefit/cost ratios less than 1.0, i.e., they are poor investments. However, these projects may be very desirable to local communities for economic development. We are proposing to give TEA loans instead of grants to these projects. These loans could not exceed 50% of project costs (see s. 84.185(6m), Stats. limitation). We propose repayment to commence up to one year after project completion to allow communities to arrange financing. Loan repayment terms would be 7 years, the same time that a guaranteed number of jobs have to be generated by the project. Interest would be at prevailing rates for loans to a government, typically the lowest rates available anywhere.

Funding Cycles. The 2004-2005 Biennial Budget changed TEA funding to first-come, first-serve. TEA was formerly funded quarterly, with a priority ranking employed. Because there are no more specific funding dates, ss. Trans 510.03(2) and 510.07(2) are being amended to reflect this change. TEA applications are more likely to be successful under first come, first serve, since priority ranking would only be employed late in the fiscal year when funding is nearly depleted. Projects not funded would be deferred to the next fiscal year.

Contacts. Previous TEA contacts no longer exist due to departmental reorganization. Therefore, s. Trans 510.03(1) and (2) are being amended to reflect more general contact points.

Adjust award. Ch. Trans 510 both allows and disallows TEA grant ceiling increases [ss. Trans 510.02(7) and 510.06(1)]. This proposed rule removes conflicting and ambiguous language. The ability to revise grant ceilings upward in special circumstances is specifically allowed per s. 84.185(3)(b)(1), Stats.

Ethanol plants. This will require private business construction of ethanol plants to be competitively bid in order to be eligible for TEA. This change was enacted as part of the 2005-2007 Biennial Budget in s. 84.185(8r), Stats. Change was enacted because two contractors (both outside Wisconsin) currently build all ethanol plants. Local Wisconsin contractors also feel they have the capability to build these facilities. Competitive bidding should lower construction costs thereby allowing Wisconsin contractors to compete yet

ensure that unqualified bidders be dismissed. This rule seems to be good for all even though it requires competitive bidding for private facilities. We recommend requiring copies of bid ads in the Western Builder, the Daily Report, or Dodge Reports as proof of competitive bidding.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The proposed rule changes will make TEA more available to small business: (1) Loans to communities will reduce local transportation infrastructure improvement costs helping small businesses to proceed with their expansion plans; (2) First-come, first-serve funding will allow formerly lower ranked projects (typically smaller businesses with low hourly wages) to more likely be funded (especially if early in fiscal year); and (3) Wisconsin contractors will be allowed to bid on ethanol plant construction, a privilege previously controlled by just two national contractor specialists. Other proposed changes to ch. Trans 510 only clarify program functionality, so there is no change upon small business. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates a potential positive impact on state revenues. The Department expects the TEA program to become partially self-funded due to interest income earned in the TEA loan program. TEA grants or loans will lower infrastructure development costs to the private sector. The program is intended as an inducement for business to expand in or relocate to Wisconsin. TEA is usually used in coordination with the Wisconsin Department of Commerce business incentives to present a more complete inducement package. These proposed rule changes will not alter that; it will make TEA available to a larger segment of the private sector. There could be an impact on the cost of private ethanol plant construction.

Copies of Proposed Rule: Copies of the proposed rule can be obtained, without cost, by writing to Gati Grundmanis, Department of Transportation, Bureau of Planning and Economic Development, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Grundmanis by phone at (608) 266-3488.

PART 2 **TEXT OF PROPOSED RULE**

SECTION 1. Trans 510.03(1) and (2) are amended to read:

Trans 510.03(1) APPLICATION PACKET. Applicants shall contact ~~either the department's director of the bureau of policy planning and analysis or the chief planning engineer of a department district office~~ the department secretary or his or her designee for

an application packet containing the application requirements and a description of the application screening, evaluation, and funding process.

(2) APPLICATION PROCESS. Completed applications shall be sent to the ~~department's director of the bureau of planning and analysis~~ department secretary or his or her designee. Applications shall be accepted throughout the year. The department shall expeditiously screen and evaluate applications ~~as received~~ in the order of receipt. ~~Application deadlines and funding dates shall be established, listed in the application packet and announced publicly through varying media. The department, as is necessary, may establish additional application deadlines and funding dates. The department shall only consider applications received on or before the application deadline for a given funding date.~~ Applications shall may not be evaluated for eligibility unless all information required in the application packet is ~~made available prior to the application deadline~~ included upon submission. The results of the screening and evaluation shall be reported promptly to the applicant when completed.

SECTION 2. Trans. 510.04(2)(f) is created to read:

Trans 510.04(2)(f) Transportation improvements for ethanol production facilities unless the department determines that a competitive bidding process, consistent with s. Trans 510.09(3)(e)1., is used for the construction of the ethanol production facility.

SECTION 3. Trans 510.06(1)(a) and (b) are amended to read:

Trans 510.06(1)(a) When awarding a grant, the department shall establish a grant ceiling. ~~The grant ceiling shall not be amended after the secretary has approved an application for funding.~~ The grant ceiling shall be the lesser of either 50% of the reviewed transportation facility improvement cost, except that the department's resulting cost per job shall not exceed \$5000 unless or \$5,000 for each job created in this state as a direct

result of the improvement or economic development. The grant ceiling may be increased if the secretary finds special circumstances exist and justifying the increase. Special circumstances include change orders due to unforeseen circumstances in engineering design, construction or environmental compliance. The department may set ceilings at a reduced level for reasons including, but not limited to, the following:

(b) The department's final level of financial participation in a transportation facility improvement ~~shall be~~ may not exceed 50% of the final transportation facility improvement cost, ~~except that the grant ceiling shall not be exceeded.~~

SECTION 4. Trans. 510.07(2) is amended to read:

Trans 510.07(2) PRIORITY. If eligibility is established for more transportation facility improvements than can be funded at any ~~funding date~~ time, priorities shall be determined by considering the department's cost per direct job, the geographic diversity of previous transportation facilities economic assistance and development grants and the extent to which each application meets other criteria in s. 84.185(2)(b), Stats.

SECTION 5. Trans. 510.07(3) is created to read:

Trans 510.07(3) LOANS. When an economic development project contributes minimally to the economic growth of the state, such as when the project benefit/cost ratio is less than 1.0, the department may make loans for transportation facility improvements, not exceeding 50% of the cost of the improvement. Loan repayment shall commence no later than one year after completion of the project. Loan duration cannot exceed 7 years. The department shall charge interest at prevailing rates to a government as determined by the department.

SECTION 6. Trans 510.09(3)(e)1. is amended to read:

Trans 510.09(3)(e)1. Except as noted in subd. 2., all contracts ~~must~~ shall be let to competitive bid and contracts awarded to the lowest responsible bidder. The applicant ~~must~~ shall submit copies of bid advertisements and a certification of the date bids were taken, listing all bidders and bid amounts. A written explanation ~~must~~ shall accompany any certification where the contract is awarded to someone other than the low bidder.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of June, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 06-036

ANALYSIS OF FINAL DRAFT OF TRANS 510

(a) **Basis and Purpose of Rule.** This proposed rule modifies ch. Trans 510 relating to the Transportation Facilities Economic Assistance and Development (TEA) Program by: (1) establishing criteria and procedures for the granting of TEA loans in addition to TEA grants; (2) changing funding cycles from quarterly to a year round first-come, first-serve basis; (3) correcting program contacts due to recent reorganizations; (4) eliminating program inconsistencies that both prohibit and allow grant ceiling adjustments; and (5) requiring ethanol plant constructions to be competitively bid in order to be eligible for TEA.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on 5-25-06. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing:** No one appeared/registered at the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments:** No public comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes made.

(f) **Response to Legislative Council Recommendations:** The Legislative Council report contained a number of recommendations, all of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** The proposed rule changes will make TEA more available to small business: (1) Loans to communities will reduce local transportation infrastructure improvement costs helping small businesses to proceed with their expansion plans; (2) First-come, first-serve funding will allow formerly lower ranked projects (typically smaller businesses with low hourly wages) to more likely be funded (especially if early in fiscal year); and (3) Wisconsin contractors will be allowed to bid on ethanol plant construction, a privilege previously controlled by just two national contractor specialists. Other proposed changes to ch. Trans 510 only clarify program functionality, so there is no change upon small business.