

10-079

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce adopts an order to repeal and recreate chapter Comm 106 relating to the Wisconsin Development Fund, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.203 – and subchapter V of chapter 560, as affected by 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265.

2. Statutory Authority.

Sections 227.11 (2) (a), 560.602, and 560.68.

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.602 requires the Department to promulgate rules establishing the policies and procedures for awarding grants and loans through the Wisconsin Development Fund. Section 560.68 requires the Department to establish criteria for the types of projects that are eligible for funding and the types of eligible projects which will receive priority.

4. Related Statute or Rule.

Several statute sections and other Departmental rules address financial incentives for business and economic development in Wisconsin. For example, (1) sections 560.70 to 560.7995 of the Statutes and chapters Comm 100, 107, 112, and 118 address statewide tax-credit programs for job creation, capital investment, employee training, and corporate headquarters; and (2) several other sections of chapter 560 and other Comm chapters address more-narrowly targeted economic development incentives, such as for film productions, dairy manufacturing facilities, technology commercialization, rural economic development, and brownfield redevelopment.

5. Plain Language Analysis.

These rule changes update chapter Comm 106 to make it consistent with the portions of 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265 that address the Wisconsin Development Fund, as administered by the Department under subchapter V of chapter 560 of the Statutes. For example, these rule changes repeal all of the current requirements relating to the

Economic Policy Board that exists under section 15.155 (2) of the Statutes, due to the corresponding repeal of associated requirements in 2009 Wisconsin Act 265. In addition, a reference in the current rules to placing special emphasis on the financing needs of small businesses, women and minority owned businesses, and firms located in targeted areas of the state is repealed because that specific emphasis is not currently prescribed in subchapter V of chapter 560 of the Statutes. Similarly, a reference in the current rules to the Department being required to consider the grant and loan criteria enumerated in section 560.605 (1) and (2m) of the Statutes is changed to state the Department may consider those criteria, to be consistent with the terminology currently used in section 560.605 (1) (intro.) and (2m) (intro.) of the Statutes.

These rule changes should more effectively direct economic development grants and loans toward capital financing, worker training, entrepreneurial development, providing assistance to technology-based business or to businesses at a foreign trade show or event, promoting urban or regional economic development, establishing revolving loan funds, providing working capital, and promoting employee ownership.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

The Department is not aware of any existing or proposed federal regulation that addresses these rule changes.

7. Comparison with Rules in Adjacent States

Illinois

Illinois offers several grant and loan programs that are similar to those available through the Wisconsin Development Fund. The Illinois Large Business Development Program provides grants to any business which is expanding or relocating and which is (1) creating or retaining a significant number of jobs or (2) investing significant private resources. Though the Manufacturing Modernization Loan Program, Illinois provides loans at sub-prime rates to existing manufacturing companies which are retooling, upgrading equipment, or expanding their business, and which employ fewer than 500 full-time employees. Loan amounts range from \$10,000 to \$750,000 and are limited to 25% of the total project cost. Funding under both programs is available to finance building construction or renovation, and to purchase land or buildings, and certain types of machinery and equipment.

The Employer Training Investment Program provides single-company or multi-company grants to individual companies, intermediary organizations, and original equipment manufacturers, to reimburse them for up to 50% of the cost of training employees. Grants are available to single companies that are expanding, introducing more efficient technologies or continuous improvement systems, or providing training to employees threatened with layoff. Additional incentive funds may also be provided to companies undertaking permanent expansion, location, or retention projects.

Illinois also operates a Rural Micro-Business Participation Loan Program that provides subordinated loans of up to \$25,000 (50% of a project) to rural micro-businesses through participating lending institutions. The borrower provides equity of at least 10% up to \$1,000.

Iowa

Iowa provides funding to support capital financing, entrepreneurial development, worker training, foreign trade show assistance, and research and development, through a number of programs. The Grow Iowa Values Financial Assistance Program provides loans and forgivable loans to companies which create new employment opportunities or which retain existing jobs and make new capital investments in Iowa. Eligible project costs include land or building acquisition, building construction or remodeling, site preparation, and the purchase of machinery and equipment, computer hardware, and furniture and fixtures. Businesses must meet county wage threshold requirements.

The Iowa Networking Fund provides reimbursement of up to \$5,000 for networking events designed to generate new innovations, partnerships, and deal flow in the advanced manufacturing, biosciences, or information technology industries.

Iowa also offers several employee training programs including the Information Technology Training Program, the Iowa Industrial New Jobs Training Program, and the Iowa Jobs Training Program. These programs provide (1) funding to IT firms to upgrade technical skills of existing high-level employees; (2) no-cost or reduced-cost job training services to new employees of eligible businesses, through Iowa's community college system; and (3) job training services to current employees of eligible businesses in Iowa. Iowa's employee-training programs are not structured primarily as business expansion or retention tools, as is the case under the Wisconsin Development Fund.

The Export Trade Assistance Program pays for up to 75% of an Iowa company's eligible cost to participate in a trade show or trade mission outside of the United States. An applicant may receive up to \$3,000 in assistance per event up to three times per year. The applicant must have fewer than 500 employees (75% of whom are employed in Iowa), and the product or services exhibited must be manufactured, processed, value-added, grown, or raised in Iowa.

Michigan

Michigan offers capital financing, worker training, and employee ownership, through several programs. The Michigan Charter One Job Creation Loan Program provides first-lien loans to companies currently doing business in Michigan or to those planning a significant investment in Michigan. Loans are limited to 75% of total project costs and range from \$500,000 to \$10,000,000. Eligible project costs include the cost to purchase or upgrade machinery or equipment and the cost of building acquisition or remodeling.

Michigan's Economic Development Job Training Program provides training resources to retain and attract businesses and workers. Priority funding is provided to projects that meet at least two of the following criteria: demonstrate a need for highly skilled training; invest in Michigan through the purchase of property or equipment; create or retain high-wage or high-skill jobs; or train workers in advanced manufacturing or materials, life sciences, technology, homeland security or defense, or alternative energy industries. Businesses are required to provide a 30% match for training incumbent workers, and training must be provided to Michigan residents only. Funding may be provided directly to companies if at least 100 jobs will be created or if the company employs fewer than 50 employees.

Michigan also provides services to any company, individual, or organization interested in employee ownership. These services include general consulting and information on

employee ownership program options, referrals to specialists who can assist in designing and implementing an employee stock ownership plan, identification of funding sources and options, and referrals to other technical assistance and training programs.

Minnesota

Minnesota provides capital financing and worker training assistance through the following two programs. The Minnesota Investment Fund provides grant funding to municipal governments to offer low-interest loans to businesses in the industrial, manufacturing, and technology-related industries. Grants are limited to a maximum of \$500,000, and projects must be at least 50% privately financed. Eligible costs include the cost to purchase land, machinery, and equipment.

Minnesota also provides Training Grants of up to \$400,000 to educational institutions to support training-related costs or infrastructure improvements that benefit businesses located in or intending to locate within Minnesota. Businesses are required to provide at least a one-to-one match on program funds. Funds are given to training providers rather than individual businesses.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rule changes were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265 that address the Wisconsin Development Fund; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic and business development.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary documents that were used to determine the effect of the rules on small business were 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2, 28, and 265. The portions of those Acts relating to the Wisconsin Development Fund apply their private-sector requirements only to businesses for which a corresponding grant or loan is desired.

10. Effect on Small Business.

These rule changes are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue grants or loans from the Wisconsin Development Fund.

11. Agency Contact Person.

John Stricker, at Wisconsin Department of Commerce, Bureau of Business Finance, 201 West Washington Avenue, Madison, WI, 53703; telephone: (608) 261-7710; or E-Mail: John.Stricker@wi.gov.

SECTION 1. Chapter Comm 106 is repealed and recreated to read:

Chapter Comm 106

WISCONSIN DEVELOPMENT FUND

Comm 106.10 Purpose. The purpose of this chapter is to establish the procedure for the administration of grants and loans by the department as provided under ss. 20.143 (1) (c) and 560.61, Stats.

Comm 106.15 Policy and plan. (1) APPLICABILITY. The provisions of this section apply to this chapter and subch. V of ch. 560, Stats.

(2) POLICY STATEMENT. As this state's primary economic development agency, the department shall administer and coordinate economic and business development programs to foster investment, job creation or retention, and diversification of the state's economy. The department shall provide financial and technical assistance to businesses for economic development, training, and technology-related projects. Through the use of the Wisconsin development fund, the department shall seek to maximize the use of limited funds by leveraging private investment and utilizing other sources of available funds.

(3) BIENNIAL PLAN. The department shall develop funding goals for awarding grants and loans that allocate available funds for economic development, training, and technology-related projects for each fiscal biennium. Before the commencement of each odd-numbered fiscal year, the department shall submit the goals to the governor and chief clerk of each house of the legislature. The goals shall be established through a process that includes consideration of all of the following:

- (a) Changing economic conditions.
- (b) New or evolving needs identified by business clients.
- (c) Availability of other economic resources.

Comm 106.20 Definitions. In this chapter:

(1) "Application" means a proposal from an eligible applicant as specified in s. Comm 106.25 and containing all of the elements required in s. Comm 106.35.

(2) "Business" has the meaning given in s. 560.60 (2), Stats.

Note: Section 560.60 (2) of the Statutes reads as follows: " 'Business' means a company located in this state, a company which has made a firm commitment to locate a facility in this state or a group of companies at least 80% of which are located in this state."

(3) "Department" means the department of commerce.

(4) "Project" means a business development activity that increases the productivity of a business or its employees in this state, leads to significant capital investment in a business in this state, leads to the retention of existing jobs in this state or creates new jobs in this state.

(5) “Project report” means a report to the department describing progress made toward achieving goals.

(6) “Training” means to teach or to demonstrate skills necessary for successfully performing a task associated with a product, process or service of a business.

Comm 106.25 Eligible applicants and activities. (1) Any business proposing to undertake a project in this state that involves one or more of the following is eligible for funding under this chapter:

(a) Capital financing.

(b) Worker training.

(c) Entrepreneurial development.

(d) Providing assistance to technology-based businesses or to businesses at a foreign trade show or event.

(e) Providing working capital.

(f) 1. Converting existing manufacturing facilities to the production of renewable energy or the manufacturing of equipment used in the production of renewable energy.

2. Any grants under this paragraph shall be awarded before July 1, 2011; and the total amount of these grants may not exceed \$2,000,000.

(g) Other activity determined to contribute to the economic vitality of this state.

(h) Other activity prescribed by the legislature as being eligible.

(2) Any individual creating a new business under s. 560.203, Stats., is eligible for a loan under this chapter, within the parameters specified in that section.

Note: Section 560.203 of the Statutes addresses microloans which are (1) limited to two high unemployment areas in Wisconsin, as designated by the Department; (2) capped at \$25,000 each; and (3) unavailable after July 31, 2013. For further information about these two designated areas, contact the Department of Commerce, Bureau of Business Development, at P. O. Box 7970, Madison, Wisconsin 53707, or telephone 608/266-1018 or Contact Through Relay.

Comm 106.30 Priority. Projects with the highest potential for fostering investment, job creation or retention, or diversification of the state’s economy shall have the highest priority for funding. Factors to be considering in determining this potential include all of the following:

(1) Projections of job creation and retention.

(2) Capital investment.

(3) Short-term and long-term employment impact in an area or statewide.

(4) An applicant's presence in this state.

Comm 106.35 Application manual. (1) The department shall prepare an application manual that may be updated as needed. The manual shall contain the application procedures, requirements and instructions for funding under this chapter.

(2) The application process shall occur on a continuous basis, as funds are available.

(3) The application process shall seek to obtain details about key project parameters including employment impacts, capital investment and the financial background of the applicant.

Note: The application manual may be obtained at no charge from the Department of Commerce, Bureau of Business Development, at P.O. Box 7970, Madison, Wisconsin 53707, or telephone 608/266-1018 or Contact Through Relay.

Comm 106.40 Grant and loan amounts and restrictions. (1) The department shall determine whether a project will be funded and determine the amount of funding for the project in accordance with the biennial plan prepared under s. Comm 106.15 (3).

(2) The department may consider the criteria under s. 560.605 (1) and (2m), Stats., before funding a project.

(3) The department shall determine conditions applicable to a grant or loan under s. 560.61, Stats. Any reimbursement provisions shall be determined on a case-by-case basis by the department and specified in the contract executed under s. Comm 106.50.

Note: Section 560.605 (7) of the Statutes requires the Department to award at least 35 percent of the total amount of grants and loans made under this chapter to businesses in distressed areas. Distressed area is defined there as an area to which any of the following apply:

(1) The area has a high level of unemployment.

(2) The area has a low median household income.

(3) A significant number of workers in the area have been permanently laid off.

(4) An employer in the area has given public notice of a plant closing or a substantial reduction in force that will result in a significant number of workers in the area being permanently laid off.

(5) As determined by the department, the area is affected by another factor that indicates the area is a distressed area.

Comm 106.45 Match requirements. The applicant shall provide a match for the grant or loan received. The match shall be in cash and shall be not less than 25% of the eligible project costs established in the contract executed under s. Comm 106.50. The department may require a higher match to the extent that the financial documentation in the application indicates the ability on the part of the business to finance a greater share of the project.

Comm 106.50 Contracts. Successful applicants shall enter into a contract with the department for the purpose of implementing the proposed grant or loan. The contract shall be signed by the secretary of the department, or their designee, and the person or persons authorized by the applicant to enter into a contract. The contract shall include default provisions relating to nonperformance of the provisions of the contract.

Comm 106.55 Reporting and auditing. Successful applicants shall provide the department with periodic reimbursement documentation and project reports. The elements addressed in a progress report shall include verification of capital investment, job creation, and the number of newly created jobs for which state residents are hired, if applicable. A financial audit of project expenditures and final project report shall be submitted at the end of the contract term. The financial audit shall be performed to the requirements and satisfaction of the department. The reimbursement documentation, audit and the project reports shall be submitted to the department by a date specified in the contract. The reimbursement documentation, financial audit and the project reports become the property of the department and are open to public inspection.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants or loans; (2) submittal of statements for such grants and loans; and (3) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

Comm 106.60 Administration. (1) The department shall solicit applications, review applications, enter into contracts with successful applicants, authorize payments and otherwise implement contractual obligations entailed in grants or loans made under the terms of this chapter, monitor the provision of training, receive and review the reimbursement documentation and project reports submitted under s. Comm 106.55, and collect any repayments of grants and loans or any payments of fees and penalties from successful applicants.

(2) The department may charge a grant or loan recipient an origination fee of not more than 2% of the grant or loan amount if the grant or loan equals or exceeds \$100,000. The department shall deposit all origination fees collected under this subsection into the appropriation account under s. 20.143 (1) (gm), Stats.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 106/rules 2009 LRac