

The Wisconsin Department of Commerce proposes an order to: renumber and amend Comm 108.01 as 108.01 (1); Comm 108.03 (5) as 108.03 (27); Comm 108.03 (6) to (24) as Comm 108.03 (5) to (23); Comm 108.03 (26) (a) and (b) as 108.03 (26); Comm 108.12 (intro.) and (1) as 108.12 (1) and (2); amend Comm 108.02 (2); Comm 108.03 (2), (4), (5), (6), (11), and (17); Comm 108.04 (1) and (3); Comm 108.05; Comm 108.06; Comm 108.07 (1) to (5); Comm 108.08; Comm 108.09 (title); Comm 108.11 (1) to (3) (titles); Comm 108.13; Comm 108.19 (1) (intro.), (c) and (f); Comm 108.20 (title), (2) and (4); repeal and recreate Comm 108.03 (13), (14), and (15); Comm 108.09 as 108.09 (1) and (2); Comm 108.12; Comm 108.19 (2) (f) and (g); and create Comm 108.01 Note and (2); 108.03 (2) Note and (4) Note; Comm 108.03 (13) Note, (14) Note, and (15) Note; Comm 108.03 (24); Comm 108.05 Note; Comm 108.06 Table 108.06-1; Comm 108.07 (6); Comm 108.09 (3); Comm 108.13 (3); and Comm 108.24 Subch. VII (title).

Analysis of Proposed Rules

Statutory authority: ss. 16.358, 560.04 and 560.045

Statutes interpreted: s. 560.045, Stats.

Under s. 560.045, Stats., the Department of Commerce has the responsibility of accepting and evaluating applications, and awarding grants. One mechanism of the Department in fulfilling this responsibility has been the promulgation of rules for the state community development block grant program, ch. Comm 108.

This rule revision relates to changes in definitions which occurred in the 1999 Wisc. Act 9; additional program funds now available from U.S. Housing and Urban Development (HUD); revising the application schedule on a continuing basis; and updating the process of scoring applications.

Currently public facility grants to eligible communities are awarded annually. Under this proposal, grants can be awarded throughout the year making it easier for communities to prepare and submit their proposals.

A number of definitions have been updated to reflect changes in Statutory citations, to include the complete definition as a Note for the user, and to clarify terms that may have been used interchangeably in the previous edition of the code.

The rule revisions reflect the expansion of funding programs for public facilities planning to issue grants to eligible local governments for public facilities planning up to \$12,500 per plan.

Some sections relating to the scoring of applications are being amended to reflect the intent of both the issue as well as staff experience with ranking applications.

Other minor revisions throughout the chapter relate to code clarification, Statutory notes, and rule format.

SECTION 1. Comm 108.01 is renumbered as Comm 108.01 (1) and amended to read:

Comm 108.01 (1) PURPOSE. The purpose of this chapter is to set forth the criteria the department will use to administer ~~CDBG~~ the Community Development Block Grant (CDBG) program with funds that the department receives from the federal government under 42 USC 5301 to 5319 and 24 CFR Part 570.

SECTION 2. Comm 108.01 (1) Note is created to read:

Comm 108.01 (1) Note: Copies of 42 USC 5301 to 5319 and 24 CFR Part 570 are available on request from U. S. Government Printing Office (GPO); phone (202) 512-1530 or (888) 293-6498; fax (202) 512-1262. Copies also may be accessed from the webpage: <http://www.access.gpo.gov/nara/cfr>.

SECTION 3. Comm 108.01 (2) is created to read:

Comm 108.01 (2) AUTHORITY. This chapter constitutes the process for accepting, evaluating and scoring applications, and awarding of grants for the CDBG program as promulgated under the authority given in ss. 16.358, 560.04 and 560.045, Stats.

SECTION 4. Comm 108.02 (2) is amended to read:

Comm 108.02 (2) A local government that fails to comply with any of the administrative, underwriting, recordkeeping, reporting, auditing, closeout, payment, reimbursement or other requirements of this chapter may not apply for ~~and~~ or receive CDBG funds from the department under ~~subs. II, III, IV and V of this chapter~~ until such time the noncompliance has been determined to be resolved to the satisfaction of the department.

SECTION 5. Comm 108.03 (2) and (4) are amended to read:

Comm 108.03 (2) "~~Blighted area~~ Blight" has the meaning set forth in s. ~~66.43~~ 66.1331 (3) (a), Stats.

(4) "Blighted property" has the meaning set forth in s. ~~66.431~~ 66.1333 (2m) (bm), Stats. For the purposes of this chapter, the definition of blighted property shall apply to cities, villages, towns and counties.

SECTION 6. Comm 108.03 (2) Note and (4) Note are created to read:

Comm 108.03 (2) Note: Section 66.1331 (3) (a), Stats., reads: "Blighted area" means any area, including a slum area, in which a majority of the structures are residential or in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.'

(4) Note: Section 66.1333 (2m) (bm), Stats., reads: "Blighted property" means any property within a city, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and is detrimental to the public health, safety, morals or welfare, or any property which by reason of faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair market value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any property which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.'

SECTION 7. Comm 108.03 (5) is renumbered as Comm 108.03 (27) and amended to read:

Comm 108.03 (27) "~~Brownfield Site~~ redevelopment plan" means a plan adopted by a local government for the acquisition, clearance, reconstruction, rehabilitation and future use of a blighted or brownfield site.

SECTION 8. Comm 108.03 (6) to (24) are renumbered as Comm 108.03 (5) to (23) and as renumbered Comm 108.03 (5), (6), (11), and (17) are amended to read:

Comm 108.03 (5) "~~Brownfield Blighted site or brownfield site~~ redevelopment project" means any work or undertaking by a local government to acquire a blighted or brownfield site, to conduct an environmental audit, to engage in environmental remediation, and to raze, demolish, remove, reconstruct, renovate or rehabilitate existing buildings, structures or other improvements to promote use of a blighted or brownfield site by a business or person for purposes that will result in end uses with a taxable value in accordance with an approved blighted or brownfield site redevelopment plan.

(6) "~~Brownfield Blighted site or brownfield site~~" means an abandoned, idle or underused industrial or commercial facility or site in a blighted area, or that qualifies as a blighted property, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination pollution.

(11) "Emergency grant program" means the ~~emergency grant~~ program administered under subch. VI.

(17) "Local government" means a city, village or town with a population of less than 50,000 that is not eligible to directly apply for or participate in the federal block grant entitlement program, and any county, other than an urban county as defined in ~~42~~ 24 CFR 570.3, that is eligible to apply for and receive CDBG funds from the department under 24 CFR Part 570.

SECTION 9. Comm 108.03 (13), (14), and (15) are repealed and recreated to read:

Comm 108.03 (13) "Environmental pollution" has the meaning set forth in s. 291.01 (4), Stats.

(14) "Environmental remediation activities" has the meaning set forth in s. 560.13 (1) (d), Stats.

(15) "Full-time job" has the meaning set forth in s. 71.07 (2dx) (a) 4., Stats.

SECTION 10. Comm 108.03 (13) Note, (14) Note and (15) Note are created to read:

Comm 108.03 (13) Note: Section 291.01 (4), Stats., defines "environmental pollution" to mean "the contamination or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

(14) **Note:** Section 560.13 (1) (d), Stats., reads: "Environmental remediation activities" means investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environmental pollution; abating, removing or containing environmental pollution at a brownfields facility or site; or restoring soil or groundwater at a brownfields facility or site.'

(15) **Note:** Section 71.07 (2dx) (a) 4. reads: "Full-time job" means a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. "Full-time job" does not include initial training before an employment position begins.'

SECTION 11. Comm 108.03 (24) is created to read:

Comm 108.03 (24) "Public facilities plan" means a written plan for proposed project for which an eligible local government may seek funding under subch. VII.

SECTION 12. Comm 108.03 (26) (a) and (b) is renumbered as Comm 108.03 (26) and amended to read:

Comm 108.03 (26) "Residential utility rate" means ~~one of the following:~~

~~(a) For~~ for areas served by public water and sanitary sewer service, the average annual household utility rate paid for water and sanitary sewer services ~~determined by dividing the total gross annual residential water and sewer revenue collected for the preceding calendar year by the number of households, as reported by the latest U. S. census and updated periodically by the U. S. department of commerce.~~

~~(b) For areas not served by public water and sanitary sewer service, an estimate of equivalent costs as determined by the department.~~

SECTION 13. Comm 108.04 (1) and (3) are amended to read:

Comm 108.04 (1) BENEFIT TO LOW AND MODERATE INCOME PERSONS. A project shall be considered to address the national objective of ~~benefiting~~ benefiting low and moderate income persons if it meets the criteria in 24 CFR 570.483 (b) (1), (2) or (4).

(3) PREVENTION OR ELIMINATION OF SLUMS OR BLIGHT. A project shall be considered to address the national objective of preventing or eliminating slums or blight if ~~it~~ the project meets the criteria in 24 CFR 570.483 (c).

SECTION 14. Comm 108.05 is amended to read:

Comm 108.05 ~~Application manuals~~ materials. The department shall prepare application ~~materials~~ materials which ~~it may update~~ be updated as needed. The application ~~materials~~ materials shall set forth the application ~~procedures, requirements and instructions~~ and requirements for funding under the programs described in this chapter.

SECTION 15. Comm 108.05 Note is created to read:

Comm 108.05 Note: Application materials are available on request without charge from the department of commerce, division of community development, P.O. Box 7970, Madison, WI 53707; phone (608) 266-8934; fax (608) 266-8969; TTY 608/264-8777. Application materials may also be accessed from the Commerce webpage: <http://www.commerce.state.wi.us/COM/Com-Community.html>.

SECTION 16. Comm 108.06 is amended to read:

Comm 108.06 Distribution of funds. (1) ~~Out of each~~ For each annual grant of CDBG funds ~~the department receives from the federal government, the department may set aside up to 75% for the public facilities program, up to 75% for the economic development program, up to 10% for the public facilities economic development program, up to 10% for the blight elimination and brownfield redevelopment program, and up to 5% for the emergency grant program~~ shall establish distribution amounts as specified in Table 108.06-1.

SECTION 17. Comm 108.06 Table 108.06-1 is created to read:

Table 108.06-1

ANNUAL DISTRIBUTION OF CDBG FUNDS BY GRANT PROGRAM

| Grant Program | Percent of CDBG Funds Set Aside |
|--|--|
| Public facilities program (CDBG-PF) | Up to 75% |
| Public facilities planning grant program (CDBG-PLNG) | Up to 2% |
| Economic development program (CDGB-ED) | Up to 75% |
| Public facilities economic development (CDBG-PFED) | Up to 20% |
| Blight elimination and brownfield redevelopment program (BEBR) | Up to 10% |
| Emergency grant program (CDBG-EMER) | Up to 5% |

SECTION 18. Comm 108.07 (1) to (5) are amended to read:

Comm 108.07 (1) The maximum amount of CDBG funds that may be awarded to any local government under the public facilities program as specified under subch. II shall be \$750,000 ~~per calendar year~~ in a 12-month period.

(2) The maximum amount of CDBG funds that may be awarded to any local government under the economic development program as specified under subch. III shall be \$1 million per calendar year. The maximum amount of CDBG funds that may be borrowed by a business from any one or more local governments under the economic development program shall be \$1 million during any rolling 5-year period.

(3) The maximum amount of CDBG funds that may be awarded to any local government under the public facilities economic development program as specified under subch. IV shall be \$750,000 ~~million~~ per calendar year.

(4) The maximum amount of CDBG funds that may be awarded to a any local government for a blighted or brownfield site redevelopment project ~~under~~ as specified under subch. V shall be \$100,000 per calendar year in a 12-month period for environmental audits and \$500,000 per ~~calendar year~~ 12-month period for environmental remediation or blight removal activities. The maximum amount of CDBG funds that may be awarded to any local government for a blight elimination or brownfield site redevelopment plan is \$12,500 in a 12-month period.

(5) The maximum amount of CDBG funds that may be awarded to a any local government for a natural disaster or catastrophic event ~~under~~ as specified under subch. VI shall be \$500,000 per event.

SECTION 19. Comm 108.07 (6) is created to read:

Comm 108.07 (6) The maximum amount of CDBG funds that may be awarded to a local government for a public facilities planning grant as specified under subch. VI shall be \$12,500 per plan in a 12-month period.

SECTION 20. Comm 108.08 is amended to read:

Comm 108.08 Construction. This chapter shall be liberally construed to effect the national objectives set forth in s. Comm 108.04 and 24 CFR ~~Part~~ 570.

SECTION 21. Comm 108.09 Subchapter II (title) is amended to read:

Subchapter II -- ~~ANNUAL~~ PUBLIC FACILITIES PROGRAM

SECTION 22. Comm 108.09 is repealed and recreated as Comm 109.08 (1) and (2) to read:

Comm 108.09 Public facilities program. (1) GENERAL. (a) 1. The department may award a grant to an eligible local government for a public facilities project based upon the department's evaluation of all applications received from eligible local governments. The department's evaluation shall be established based upon the scoring system set forth in ss. Comm 108.10 to 108.13 and this section.

2. Other considerations that the department may use in this evaluation include, but are not limited to, the ability of the community to borrow funds, project readiness, overall CDBG funds the local government has received in the past, and the previous and current efforts by the local government to address the identified need.

3. A public facilities project may include one specific project or a number of projects that are demonstrated to be related.

(b) 1. Except as specified in s. Comm 108.12 (3), the minimum amount of points an applicant shall score to be eligible for funding under ss. Comm 108.10 to 108.13 shall be no less than 225 of the 300 available points.

2. The attainment of the minimum amount of points shall not be construed as an assurance of receiving funding under this section.

(2) ELIGIBILITY. A local government may not receive funding for more than one application for a public facilities project in any 12-month period.

SECTION 23. Comm 108.09 (3) is created to read:

Comm 108.09 (3) MINIMUM FINANCIAL PARTICIPATION OR LOCAL MATCH. (a) Except as specified in par. (c), the funding for every project proposed by a local government shall include financial participation by that local government or participating local governments of at least 10% of the total project cost.

(b) Local financial participation shall originate from local revenues but not from other grants provided by the federal or state government.

(c) The minimum local financial participation as specified in par. (a) may be waived when the specific project has a particular urgency because existing conditions pose a serious and immediate threat to the safety, health or welfare of the community, where other financial resources are not available to meet such needs or when the specific project is located in a distressed area.

SECTION 24. Comm 108.11 (1) to (3) (titles) are amended to read:

Comm 108.11 (1) ~~URGENT HEALTH AND SAFETY PROBLEM~~ SIGNIFICANT IMPACT PROJECT. A local government shall be eligible for at least 67 points but not more than 100 points if ~~it the local government demonstrates that the public facilities project is needed to alleviate an urgent health and safety problem or to engage in activities that are essential to the local government.~~ a significant existing problem. A significant existing problem may include urgent health and safety problems or other activities essential to the local government, residents or businesses in the community.

(2) ~~IMMINENT HEALTH AND SAFETY PROBLEM.~~ MODERATE IMPACT PROJECT. A local government that does not qualify under sub. (1) or (3) shall be eligible for at least 34 points but not more than 66 points if ~~it the local government demonstrates that the public facilities project is needed to alleviate an imminent health and safety problem or to engage in activities that will become essential to the municipality in the near future~~ a moderately serious problem with a high probability of occurrence.

(3) ~~LIKELY HEALTH AND SAFETY PROBLEMS.~~ LOW IMPACT PROJECT. A local government that does not qualify under subs. (1) ~~and~~ or (2) shall be eligible for at least ~~4~~ one point

but not more than 33 points if ~~it~~ the local government demonstrates that the public facilities project is needed to alleviate a ~~likely health and safety problems or to engage in activities that are likely to become essential to the local government in the near future~~ less serious problem or a problem with a low probability of occurrence.

SECTION 25. Comm 108.12 is repealed and recreated to read:

Comm 108.12 Utility rates. (1) The department shall award up to 25 points to an eligible local government based upon the department's evaluation of the local government's ability to pay for the public facilities project, as measured by the local residential utility rates.

(2) Scores under sub. (1) shall range from a maximum of 25 points for an eligible local government with high residential utility rates to 0 points for a local government with low residential utility rates. The department may base this determination on the statewide average utility rate of the applications received in the previous 12-month period.

(3) For an eligible local government without a utility rate, the maximum available points shall be as specified under s. Comm 108.09 (1) (b) less 25 points.

SECTION 26. Comm 108.13 is amended to read:

Comm 108.13 Leveraging. The department shall award up to 100 points to a local government based upon the department's evaluation of the local government's leveraging of CDBG funds with funds from other public or private sources. To qualify for points under this section, a local government shall document the availability of firm commitments for the balance of project funding from creditworthy sources to ensure timely completion of the project. ~~The department shall award points as follows:~~

(1) ~~Leveraging: general.~~ GENERAL. Except as specified in sub. (2), scores shall range from 100 points for a local government that proposes to leverage ~~one 1.5~~ or more dollars of non-CDBG funds for each dollar of CDBG funds to 0 points for a local government that ~~propose~~ proposes to fund a project solely with CDBG funds.

(2) ~~Additional points: distress communities.~~ DISTRESS COMMUNITIES. A local government that receives at least ~~50 67~~ points under sub. (1) shall be eligible for up to ~~50 33~~ additional points if the local government's median household income is below the statewide median household income. Scores shall range from ~~1 one~~ point for a local government with a median household income that is 1 ~~percent~~ % below the statewide median household income to ~~50 33~~ points for a local government with a median household income that is 50% or more below the statewide median household income. ~~The maximum score available under subs. (1) and (2) shall be 100 points.~~

SECTION 27. Comm 108.13 (3) is created to read:

Comm 108.13 (3) MAXIMUM SCORE. The maximum score available under subs. (1) and (2) shall be 100 points.

SECTION 28. Comm 108.19 (title), (1) (intro.), (c) and (f) are amended to read:

Comm 108.19 Blight elimination and brownfield site redevelopment program. (1) The department may make a grant to an eligible local government for a blighted or brownfield site redevelopment project if the department determines all of the following conditions are met:

(c) The local government has adopted a blighted or brownfield redevelopment plan relating to the brownfield specific site.

(f) The project will likely result in redevelopment of a blighted or brownfield site for commercial or industrial use or other use or uses which will result in the site having a taxable value.

SECTION 29. Comm 108.19 (2) (f) and (g) are repealed and recreated to read:

Comm 108.19 (2) (f) The amount of estimated tax base to be created at project completion.

(g) The likelihood that the proposed activity will commence shortly after receipt of the grant.

SECTION 30. Comm 108.20 (title), (2) and (4) are amended to read:

Comm 108.20 Brownfield Blight elimination and brownfield site redevelopment project requirements; ~~limits~~ and limits.

(2) The department may require a local government and any business or nonprofit ~~corporation~~ entity that receives CDBG funds under this subchapter to execute a blight elimination and brownfield redevelopment agreement and other documents prescribed by the department, committing to the redevelopment of a blighted or brownfield site.

(4) The amount of CDBG funds awarded to a local government for an environmental audit of a blighted or brownfield site may not exceed \$100,000 in a 12-month period. The amount of CDBG funds awarded to a local government for environmental remediation of a blighted or brownfield site may not exceed \$500,000 in a 12-month period.

SECTION 31. Comm 108.24 Subchapter VII (title) is created to read:

Subchapter VII -- Public Facilities Planning Grants

SECTION 32. Comm 108.24 is created to read:

Comm 108.24 Public facilities planning grant program. (1) GENERAL. (a) The department may make a grant to an eligible local government for preparing a plan for a specific project.

(b) An eligible local government may submit an application for a public facilities planning grant to the department at any time.

(c) Only one grant in a 12-month period shall be made to an eligible local government submitting an application under this section.

(d) Grant award limits are as specified in s. Comm 108.07 (6).

(2) APPLICATION. An application for a planning grant under this section shall contain sufficient information to identify how all of the following requirements are satisfied:

(a) The local government has identified a specific project that needs further planning.

(b) The specific project will serve a public purpose.

(c) The specific project is an eligible CDBG activity.

(d) The local government has a citizen participation plan as required under 24 CFR 507.486 (a).

(e) The specific planning cost estimates are reasonable.

(f) At least 50% of the total cost of the planning shall originate from local revenues other than grants provided by the federal or state government. At least half of the local financial participation shall originate from the local government or participating local governments.

(g) The planning for the specific project has the support of local community and economic development organizations or business groups.

(h) The local government has the capacity and capability to conduct the planning or commits to the retention of professional planning services.

(i) The planning will likely result in the implementation of the specific project being planned.

(j) The local government certifies that the planning grant is not a commitment of CDBG funding at a later date for plan implementation.

(k) The application shall include, where applicable, at least the following:

1. An analysis of the current status and any deficiencies in public facilities, services, buildings or a defined geographic area.

2. An analysis of alternative means of correcting such deficiencies described in subd. 1.

3. A written plan for the selection of a proposed course of action, a narrative description, cost estimates and map of the project location or defined geographic area.

(3) OTHER CONSIDERATIONS. When reviewing the applications received under sub. (2), the department shall consider all of the following:

(a) Whether the specific project plan is intended to address one of the three national objectives as specified in s. Comm 108.04.

(b) The extent of poverty, unemployment, labor shortages or other economic factors in the specific project area.

(c) The prospects for other new investment and community and economic development in the specific project area.

(d) The amount of additional investment and public health and safety that is likely to result from the plan implementation.

(e) The likelihood that the specific project will result in the preservation or expansion of the existing tax base.

(f) The planning for the specific project is consistent with other planned or recently completed community or economic development projects such as, but not limited to, smart growth planning as specified in s. 16.965 (1) (b), Stats.

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the first month following publication in the Wisconsin Administrative Register.

(end)