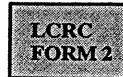


WISCONSIN LEGISLATIVE COUNCIL STAFF

***RULES CLEARINGHOUSE***

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-063

AN ORDER to amend AB 2.09 (5), relating to the distribution of arts challenge initiative incentive grant funds.

Submitted by **WISCONSIN ARTS BOARD**

03-29-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-19-00 REPORT SENT TO AGENCY.

RS:AS:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

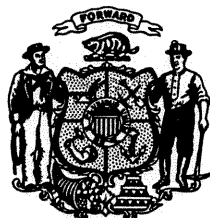
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-063

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 44.565 (3), Stats., provides that if the amount in the appropriation for arts challenge initiative grants in any fiscal year is insufficient to fund all requests for grants, the Arts Board must award grants on a prorated basis. Section AB 2.09 (5) provides that when proration is required, the maximum award will not exceed 12% of available board funds and the minimum award will be not less than the greater of \$1,000 or .1743% of available board funds. While the creation of minimum and maximum awards may be a reasonable way of ensuring that more recipients receive cost-effective grants from limited funds, the agency should explain its statutory authority for the rule. [See s. 44.565 (2) (c), (d) and (e), Stats., which evidence the ability of the Legislature to specify various minimum and maximum grant levels. Compare these provisions with s. 44.565 (3), Stats., which makes no reference to minimum or maximum grants.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In the first paragraph of the analysis, the word "of" should be inserted before the phrase "one dollar" and the last occurrence of the phrase "raw award" should be placed within quotation marks.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that pursuant to s. 44.565 (4), Stats., the Wisconsin Arts Board will hold a hearing at the time and place shown below to consider a proposed order to amend AB 2.09 (5) relating to the distribution of arts challenge initiative incentive grant funds.

HEARING INFORMATION

The hearing will be held at the Arts Board, in Meeting Room 132B, 101 E Wilson Street, Madison, Wisconsin on April 26, 2000 at 10:00 a.m.

WRITTEN COMMENTS

Written comments on the proposed rules may be sent to the contact person by May 25, 2000. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by the Wisconsin Arts Board

Statutory authority: s. 44.565(4), Stats.

Statutes interpreted: s.44.565, Stats.

Current rules that govern the distribution of arts initiative funding under the incentive program for large arts organizations provide that each eligible recipient receives a "raw award" one dollar for each four dollars of growth in eligible income during the previous fiscal year. If there is insufficient funding, the final awards are determined by proration. When proration is employed to determine the distribution of funding, the total funding available is divided by the total of all "raw awards". Each eligible recipient receives that fractional amount of its "raw award."

During each year of the program proration has been required for distribution of the funds. In the most current distribution, one organization received \$203,846 (approximately 35%) of the \$573,860 funding available. The smallest award during that same distribution was \$14.

The proposed rule establishes maximum and minimum grant amounts for the incentive program when proration is required to be employed to determine the distribution. The maximum proposed by the rule is 12% of the available funding, and the minimum is the greater of \$1,000 or .1743% of the available funding.

The proposed rule will produce a more equitable distribution of the arts challenge initiative funding and eliminate the situation where the administrative cost of providing a grant substantially exceeds the grant amount.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY GIVEN that pursuant to 227.14 Stats., the proposed rule will have minimal impact on small businesses. The initial regulatory flexibility analysis as required by 227.17 (3)(f), Stats., is as follows:

(1) Type of small business affected by the rule: None

- (2) The proposed reporting, bookkeeping and other procedures required for compliance with the rule: None
- (3) The types of professional skills necessary for compliance with the rule: None.

Fiscal Estimate

The proposed rule has no fiscal effect.

Contact Person

For additional information about or for copies of the proposed rules contact:

Dennis Fay, General Counsel, 608/266-6747
Wisconsin Department of Tourism
P. O. Box 7976
Madison, WI 53707-7976

Pursuant to the authority vested in the Arts Board, by s. 44.565 (4), Stats., and interpreting s. 44.565, Stats., the Board hereby creates rules as follows:

SECTION 1. AB 2.09 (5) is amended to read:

AB 2.09 (5) When the total amount of raw awards exceeds the total amount of available board funds, final awards shall be determined by proration as specified in s. 44.565 (3), Stats. When proration is required under this subsection, the maximum award shall not exceed 12% of available board funds, and the minimum award shall not be less than the greater of \$1,000 or .1743% of available board funds.

EFFECTIVE DATE. The regulations set forth in this order shall be effective on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2) (intro.), Stats.

Dated: _____

Agency:
George Tzougros
Executive Director

JUN 23 2000

May 26, 2000

The Honorable Fred Risser
President of the Senate
Room 220 South
State Capitol
Madison, WI 53702

Dear Senator Risser:

In compliance with s. 227.19 (2), Stats., the Arts Board hereby submits the final draft of the proposed rule (00-063) relating to the distribution of arts challenge initiative incentive grant funds.

Statutory authority for the proposed rule is s. 44.565(4), Stats., and the statute interpreted is s. 44.565, Stats. Current rules that govern the distribution of arts initiative funding under the incentive program for large arts organizations provide that each eligible recipient receives a "raw award" of one dollar for each four dollars of growth in eligible income during the previous fiscal year. If there is insufficient funding, the final awards are determined by proration. When proration is employed to determine the distribution of funding, the total funding available is divided by the total of all "raw awards". Each eligible recipient receives that fractional amount of its "raw award".

During each year of the program proration has been required for distribution of the funds. In the most current distribution, one organization received \$203,846 (approximately 35%) of the \$573,860 funding available. The smallest award during that same distribution was \$14.

The proposed rule establishes maximum and minimum grant amounts for the incentive program when proration is required to be employed to determine the distribution. The maximum proposed by the rule is 12% of the available funding, and the minimum is the greater of \$1,000 or .1743% of the available funding.

The proposed rule will produce a more equitable distribution of the arts challenge initiative funding and eliminate the situation where the administrative cost of providing a grant substantially exceeds the grant amount.

The Board held a hearing on the proposed rule on April 26, 2000 in Madison. . Two people appeared and commented on the proposed rule at the hearing. The Board also received comments in writing from 7 persons. The two people who appeared both expressed support for the proposed rule. Of the 7 written comments 6 expressed support for the rule and one expressed opposition to the rule. A summary of each person's comments is attached.

The Legislative Council Clearinghouse report suggests that the Board explain its statutory authority for the draft rule. It is the Board's belief that the meaning of proration is sufficiently broad to provide for proportionate distribution that includes limitations intended to produce a broad and equitable distribution. Furthermore, the entire design of the incentive grant program suggests that it was the intent of the Legislature to provide financial support to arts organizations throughout the state. Without the limits, two results occur that it does not appear the Legislature intended. First, the vast majority of the funds would be used to support a few larger organizations. Second, grants to many of the remaining organizations would be so small that their value would be eclipsed by the administrative expense incurred to issue or receive them. The proposed rule more effectively carries out the Legislative intention than the existing rule.

The Clearinghouse report also recommended a grammatical change, which the Board has made.

Copies of the fiscal estimate, regulatory flexibility analysis and the final draft rules are enclosed. If you have any questions about the rule, please call me at 267-2006.

Sincerely,

George Tzougros
Director

April 26 Arts Board Administrative Rule Hearing

Summary of Testimony

Oral Testimony

1. Dennis Best – Children's Theater of Madison

Stated support for the proposed rule and particularly the minimum grant limit.

2. Jennifer McFarland – Wisconsin Chamber Orchestra

Stated support for the proposed rule. Fairer method of distribution of the funds and is helpful for budgeting.

Written Testimony

1. Betsey Folsom – Waukesha Civic Theatre

Stated support for the proposed rule. More equitable method of distribution and the minimum will justify the time and effort in preparing a grant application.

2. Pat Guttenberg – Council for the Performing Arts-Jefferson County

Stated support for the proposed rule. More equitable method of distribution and minimum will eliminate the situation where the administrative cost exceeds the grant amount.

3. Doug Miller – Folklore Village

Stated support for the proposed rule. Under the current system the grant amounts received barely covered the cost of application. The establishment of maximum and minimum limits will ensure more widespread and fair distribution of the funds.

4. Thomas Lidtke – West Bend Art Museum

Stated support for the proposed rule. The change will produce greater equity and more widespread distribution of the funds producing only a negligible negative impact upon the ability of the largest art institutions ability to serve the public while substantially increasing the ability of smaller institutions to serve the public.

5. Michael Duncan – Sunset Playhouse

Stated support for the rule. Will produce a more equitable distribution of funds. Would like to see additionally a provision that provides at least some minimum grant every year even for those institutions that fail to qualify on the basis of income growth.

6. Lucia Petrie – Milwaukee Art Museum

Stated support for the rule. Will produce more equitable distribution and eliminate inordinate administrative cost.

7. Tom Gabbard – Weidner Center for the Performing Arts

The 2 boards representing the Weidner center voted unanimously against the proposed changes. The Legislative scheme for the arts challenge initiative funding was intended to encourage arts organizations to increase their funding and thus their services to the community. The proposed cap undermines the scheme.

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Contact Person

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