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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-079

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

a. The statutes appear to contemplate that the rules governing the department’s administration of grants and loans under the Wisconsin Development Fund would be more thorough than the current and proposed ch. Comm 106. Specifically, s. 560.602, Stats., states that “the department shall promulgate rules to establish policies and standards for awarding grants and loans under this subchapter.” It is clear that the statute requires the rules to establish, i.e., create or bring into existence, those policies and standards.

Some examples of areas in which more detail should be included in the rules, in order to meet the statutory requirement that the policies and standards be “established” in the rules, are the following:

- In s. Comm 106.35, rather than referring to an application manual, the rule itself should set forth at least the basic parameters of the application procedures and requirements.
- The rule should specify the process by which the biennial plan referred to under s. Comm 106.15 (3) will be developed, including any opportunities for public input or review of the plan.

- Section Comm 106.30 should set forth the specific factors that the department will consider to determine which types of projects have the highest potential for fostering investment, job creation or retention, or diversification of the state's economy.
- The rules should set forth a policy relating to obtaining reimbursement of grants and loans, as required under s. 560.68 (4), Stats.
- In s. Comm 106.40 (3), the statement that "the department shall determine conditions applicable to a grant or loan under s. 560.61, Stats." should be replaced with a description of the conditions that may be placed on a grant or loan and the standards that the department will apply to determine whether any condition will be applied to a grant or loan.
- The rule should specifically require grant and loan recipients to provide verification of economic growth, job creation, and the number and percentage of newly created jobs for which state residents are hired, as required under s. 560.68 (5m), Stats.

b. Section 560.68 (6), Stats., requires a grant or loan recipient to provide a match in an amount that is not less than 25% of the amount of the grant or loan. Section Comm 106.45 requires a recipient to provide a match that is not less than 25% of the "eligible project costs." Since the rule does not establish that the amount of a grant or loan must be the same amount as the "eligible project costs," this provision appears to conflict with the statutory requirement.

c. The rule does not ensure that at least 35% of the total amount of grants and loans made from the Wisconsin Development Fund are made to businesses in distressed areas, as is required under s. 560.605 (7), Stats.

## **2. Form, Style and Placement in Administrative Code**

In s. Comm 106.40 (1), "the biennial plan prepared under" should be inserted after "in accordance with."

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

a. The plain language analysis should explain in detail why the statement that the department shall place special emphasis on the financing needs of small businesses, women and minority-owned businesses and firms located in targeted areas of the state, which is found in current s. Comm 106.405 (2), is deleted from s. Comm 106.15 (2), which takes its place.

b. The plain language analysis should explain in detail why s. Comm 106.40 (2) states that the department "may" consider the statutory criteria that are cross-referenced, while the counterpart to that provision in the existing rule states that the department "shall" consider those criteria.

- c. In s. Comm 106.15 (1), the first comma should be replaced by the word “of.”
- d. Section Comm 106.20 (5) refers to “goals specified under s. Comm 106.55.” Section Comm 106.55, however, does not contain any information pertaining to goals