

10-044

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce adopts an order to create chapter Comm 124 relating to the Forward Innovation Fund, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Sections 560.30 to 560.305.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.301.

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 560.301 of the Statutes requires the Department to promulgate rules for administering the Forward Innovation Fund, as established under subchapter II of chapter 560 of the Statutes.

4. Related Statute or Rule.

The Department has various rules for administering several economic development programs, but those rules do not specifically include the rule text in this order for providing grants and loans that will fund innovative proposals to strengthen inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

5. Plain Language Analysis.

Under 2009 Wisconsin Act 28, the Department's Minority Business Development Fund and Community-Based Economic Development Fund were merged into the Forward Innovation Fund – and the corresponding rules in this order are expected to foster innovative start-up, expansion or retention of minority businesses and businesses in economically distressed areas. The rules in this order also address grants and loans for other entities that undertake innovative projects for strengthening inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

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

The U.S. Commerce Department is creating an Office of Innovation and Entrepreneurship and launching a National Advisory Council on Innovation and Entrepreneurship, to promote high-growth entrepreneurship in America. The mission is to maximize the economic potential of new ideas by removing barriers to entrepreneurship, and to foster the development of high-growth and innovation-based businesses. The Office will drive policies that help entrepreneurs translate new ideas, products and services into economic growth. The Office will focus on the following areas:

- Encouraging entrepreneurs through education, training, and mentoring.
- Improving access to capital.
- Accelerating technology commercialization of federal research and development.
- Strengthening interagency collaboration and coordination.
- Providing data, research and technical resources for entrepreneurs.
- Exploring policy incentives to support entrepreneurs and investors.

The Minority Business Development Agency in the U.S. Commerce Department has recently allocated \$900,000 to seven minority business centers across the country to increase minority business access to contracting opportunities under the federal American Recovery and Reinvestment Act (ARRA). The funding will allow each center to hire at least one business development specialist to focus exclusively on ARRA to ensure minority businesses have access to federal, state and local contracting opportunities that are expected to create jobs, jumpstart growth and rebuild the economy.

7. Comparison With Rules in Adjacent States.

None of the adjacent States were found to have rules that are likewise primarily directed at innovatively fostering business and community investment, job creation and retention, workforce development, and diversification of the state's economy, particularly in economically distressed areas and through minority businesses. However, the following programs in the adjacent States for enhancing community-based economic development and minority businesses appear to address some of the activities that are expected to occur under these rules, for achieving this objective.

Michigan

Michigan helps minority-owned businesses access State purchasing contracts by requiring bidders on State construction contracts to submit an equal-employment-opportunity plan. This plan describes in detail the equal-employment-opportunity efforts that the potential contract recipient has engaged in.

The Michigan State Housing Development Authority Board oversees several community and faith-based grant programs that focus on rural housing and economic development, housing counseling, community reinvestment, and Community Development Block Grants.

Minnesota

Minnesota supports minority and inner-city business development through a Small Business Administration (SBA) Microloan program. The program helps women, low-income individuals, and minority entrepreneurs and business owners operate successful businesses, particularly in economically distressed areas. The SBA makes direct loans to eligible intermediary lenders who then make short-term loans to start-up, newly established, and growing small-business concerns. The loans can range from a few hundred dollars to \$35,000. The SBA also makes grants to eligible intermediary lenders for providing marketing, management, and technical assistance to their borrowers.

Minnesota also assists economic-development efforts of a certain size in a specific area through a Certified Development Company loan program that provides joint federal and private-sector financing to small businesses – which creates jobs, increases the local tax base, and expands business-ownership opportunities. Long-term fixed-asset financing is provided by a Certified Development Company in conjunction with a second loan from a commercial lender.

Iowa

Iowa does not appear to have a business-development program for minority-owned businesses, other than a certification program that is similar to Wisconsin's. However, Iowa has a grant program that is designed to assist low- to moderate-income entrepreneurs and microenterprises. A microenterprise is defined as a start-up, home-based or self-employed business which has five or fewer employees and which encounters barriers to obtaining business development assistance or to securing financing from conventional lending sources. Microenterprise development programs differ from traditional small business development programs by focusing on low- to moderate-income and low-wealth individuals, and on economically distressed communities and neighborhoods.

Iowa's community-based economic development programs range from Community Development Block Grant programs and Neighborhood Stabilization Grants to initiatives that support energy efficiency and conservation. They provide technical assistance and grant-writing workshops to assist communities in securing federal grants. Like Wisconsin, Iowa has a Mainstreet/Downtown program that funds renewal efforts for aged buildings and infrastructure.

Illinois

The Illinois Business Enterprise Program promotes economic development for diverse businesses – such as those owned by minorities, women, and persons with disabilities – and awarded nearly \$400 million to BEP-certified firms in 2009. The Illinois BEP-certification program operates very similarly to the Wisconsin minority-business certification program. The primary intent is to connect minority-business owners with State procurement opportunities, although in Illinois, State agencies and universities are encouraged to spend at least 19 percent of their procurement budgets with BEP-certified companies.

Illinois also has an Office of Urban Assistance that addresses the pressing economic needs of residents, businesses and stakeholders in the State's urban areas. The Office oversees an Employment Opportunities Grant Program; and implements new strategies such as an Urban Weatherization Initiative and an innovative, community-based Illinois Fresh Food Financing Initiative. The Office is also responsible for (1) incentivizing new industrial enterprises to locate in the urban areas of Illinois, thereby stimulating local economies and creating jobs; (2) gathering and providing information on revitalization efforts in urban areas to public and private entities; (3) recommending and formulating policies that result in the reconstruction of urban economies; and (4) recommending urban economic policies to the General Assembly and Governor relating to a wide variety of topics including housing, urban youth unemployment, and business incubators.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) applying the corresponding provisions in 2009 Wisconsin Act 28; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

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

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 28. The rules and the applicable portion of this Act apply their private-sector requirements only to entities that choose to pursue a corresponding grant or loan. No economic impact report was prepared.

10. Effect on Small Business.

The rules are expected to result in only beneficial effects on small business because the rules only address grants and loans for entities that undertake innovative projects for strengthening inner cities; rural municipalities; entrepreneurship; and industrial, academic and artistic clusters.

11. Agency Contact Person.

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SECTION 1. Chapter Comm 124 is created to read:

CHAPTER Comm 124, FORWARD INNOVATION FUND

Comm 124.01 Purpose and authority. (1) **PURPOSE.** The purpose of this chapter is to set forth the criteria the department will use to administer the Forward Innovation Fund Program established under subch. II of ch. 560, Stats.

(2) **AUTHORITY.** This chapter is promulgated under the authority in s. 560.301, Stats.

Comm 124.02 Definitions. In this chapter:

(1) “Business” means a company located in this state, a company that has made a firm commitment to locate a facility in this state, or a group of companies at least 80 percent of which are located in this state.

(2) “Cluster” means a geographic, categorical, horizontal, or vertical concentration of interconnected, interdependent, or synergistic businesses, industries, research centers, or venues for the performance, creation, or display of the arts.

(3) “Community-based organization” means an organization that is involved in economic development and helps businesses which are likely to employ persons.

(4) “Department” means the department of commerce.

(5) “Economically distressed area” means an area designated by the department using the methodology established under s. Comm 124.04.

(6) “Eligible activity” means any of the following:

(a) The start-up, expansion, or retention of minority businesses.

(b) The start-up, expansion, or retention of businesses in economically distressed areas.

(c) Innovative proposals to strengthen inner cities or rural municipalities or to address economically distressed areas.

(d) Innovative programs to strengthen clusters or promote industry partnerships.

(e) Innovative proposals to strengthen entrepreneurship.

(7) “Eligible recipient” means any of the following:

(a) A business or small business.

(b) The governing body of a municipality.

(c) A community-based organization.

(d) A cooperative or association incorporated under ch. 185, Stats., or organized under ch. 193, Stats.

(e) A local development corporation.

(f) A nonprofit organization whose primary purpose is to promote the economic development of or community development in a particular area or region in this state.

(8) “Governing body” means a county board, city council, village board, or town board.

(9) “Local development corporation” means any of the following:

(a) The elected governing body of a federally recognized American Indian tribe or band in this state or any business created by the elected governing body.

(b) A corporation organized under ch. 181, Stats., which is a nonprofit corporation, as defined in s. 181.0103 (17), Stats., and which is at least 51 percent controlled and actively managed by minority group members, and which does all of the following:

1. Operates primarily within specific geographic boundaries.
2. Promotes economic development and employment opportunities for minority group members or minority businesses within the specific geographic area.
3. Demonstrates a commitment to or experience in promoting economic development and employment opportunities for minority group members or minority businesses.

(10) “Minority business” has the meaning given in s. 560.036 (1) (e) 1., Stats.

Note: Section 560.036 (1) (e) 1. of the Statutes reads as follows: “ ‘Minority business’ means a sole proprietorship, partnership, limited liability company, joint venture or corporation that fulfills both of the following requirements: a. It is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20). b. It is currently performing a useful business function.”

(11) “Minority group member” has the meaning given in s. 560.036 (1) (f), Stats.

Note: Section 560.036 (1) (f) of the Statutes reads as follows: “ ‘Minority group member’ means any of the following: 1. A Black. 2. A Hispanic. 3. An American Indian. 4. An Eskimo. 5. An Aleut. 6. A native Hawaiian. 7. An Asian-Indian. 8. A person of Asian-Pacific origin.”

(12) “Municipality” means a county, city, village, or town.

(13) “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.

(14) “Rural municipality” means any of the following:

(a) A municipality that is located in a county with a population density of less than 150 persons per square mile.

(b) A municipality with a population of 6,000 or less.

(15) “Small business” means a business with fewer than 100 employees, including employees of any subsidiary or affiliated organization.

Comm 124.03 Economic development objectives. (1) GENERAL. The department shall consider and may approve projects that have one or more of the following objectives:

(a) The start-up, expansion, or retention of minority businesses.

- (b) The start-up, expansion, or retention of businesses in economically distressed areas.
- (c) Strengthening inner cities.
- (d) Strengthening rural municipalities.
- (e) Strengthening clusters or promoting industry partnerships.
- (f) Strengthening entrepreneurship.

(2) **PRIORITY.** Projects with the highest potential for innovatively fostering business and community investment, job creation or retention, workforce development, or diversification of this state's economy shall have the highest priority for funding.

Comm 124.04 Methodology for designating an area as economically distressed. The department shall consider the most current data available for the area and for this state on the following indicators in determining whether to designate an area as economically distressed:

- (1) Unemployment rate.
- (2) Percentage of families with incomes below the poverty line established under 42 USC 9902 (2).
- (3) Median family income.
- (4) Median per capita income.
- (5) Average annual wage.
- (6) Real property values.
- (7) Other significant or irregular indicators of economic distress, such as a natural disaster.

Comm 124.05 Procedures, policies, and standards. The department shall prepare application materials that set forth the following requirements for funding under this chapter:

- (1) The process for submitting applications for grants and loans by eligible recipients.
- (2) The criteria for evaluating applications and determining whether to award a grant or loan under this chapter, which may include the following:
 - (a) Whether the eligible activity proposed to be conducted by the eligible recipient serves a public purpose.
 - (b) Whether the eligible activity proposed to be conducted by the eligible recipient will retain or increase employment in this state.

(c) Whether the eligible activity proposed to be conducted by the eligible recipient is likely to occur without the grant or loan.

(d) Whether and the extent to which the eligible activity proposed to be conducted by the eligible recipient will contribute to the economic growth of this state and the well-being of residents of this state.

(e) Whether the eligible activity proposed to be conducted by the eligible recipient will be located in an economically distressed area.

(f) The economic condition of the community in which the eligible activity proposed to be conducted by the eligible recipient is proposed to occur.

(g) The potential of the eligible activity proposed to be conducted by the eligible recipient to promote the employment of minority group members.

(h) Any other criteria established by the department by rule, including the types of projects that are eligible for funding and the types of eligible projects that will receive priority.

Comm 124.06 Contracts. Successful applicants shall enter into a contract with the department, that includes all of the following:

(1) The terms and conditions applicable to the grants and loans. The department shall require, as a condition of a grant or loan, that an eligible recipient contribute cash to a project in an amount that is not less than 25 percent of the amount of the grant or loan. The department shall also specify procedures relating to obtaining any reimbursement of grants and loans provided under this chapter. This reimbursement may include full repayment of the principal amount of the grant or loan plus interest, a share of future profits from or an interest in a product or process, or other payment acceptable to the department.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants, loans or tax credits; (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.

(2) The process for monitoring project performance, including the procedures for verification of economic growth, job creation, and the number and percentage of newly created jobs for which residents of this state are hired.

(3) The process for auditing the grants and loans.

Note: Section 560.305 (1) of the Statutes requires the Department to encourage and assist small businesses in applying for grants and loans under this chapter.

Comm 124.07 Administrative expenditures. In each biennium, the department may expend or encumber up to a total of 1 percent of the moneys appropriated under s. 20.143 (1) (f), Stats., for that biennium for any of the following:

(1) Evaluations of proposed technical research projects.

(2) Evaluation costs, collection costs, foreclosure costs, and other costs associated with administering the loan portfolio under this chapter, excluding staff salaries.

Comm 124.08 Fees. The department may charge a grant or loan recipient an origination fee of not more than 2 percent 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) (g), Stats.

Comm 124.09 Biennial plan. Before the commencement of each odd-numbered fiscal year, the department shall develop a plan for awarding grants and making loans and shall submit this plan to the governor and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), 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 124/rules, analysis-pA