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# Chapter Comm 129

## TECHNOLOGY COMMERCIALIZATION PROGRAMS

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**Note:** Chapter Comm 129 was created as an emergency rule effective December 2, 2004.

### Subchapter I – General Provisions

**Comm 129.01 Purpose and authority. (1)** PURPOSE. The purpose of this chapter is to set forth the criteria the department will use to administer the Early Stage Business Investment Program and the Technology Commercialization Grant and Loan Program.

**(2)** AUTHORITY. (a) The rules of this chapter relating to the Early Stage Business Investment Program are promulgated under the authority of s. 560.205, Stats.

(b) The rules of this chapter relating to the Technology Commercialization Grant and Loan Program are promulgated under the authority of s. 560.275, Stats.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.02 Definitions.** In this chapter:

**(1)** "Approved" means acceptable to the department.

**(2)** "Department" means the department of commerce.

**(3)** "Headquarters" means the principal central administrative offices, or the business pays at least 80% of its payroll to employees employed in this state.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.03 Application materials.** The department shall prepare application materials which may be updated as needed. The application materials shall set forth the application instructions and requirements for certification and funding under the programs described in this chapter.

**Note:** Application materials and forms required in this chapter are available on request without charge from the Department of Commerce, Division of Business Development, P.O. Box 7970, Madison, WI 53707–7970, telephone 608/266–9467, TTY (608) 264–8777. Application materials may also be accessed from the Commerce Web site at www.commerce.wi.gov/BD/.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

### Subchapter II – Early Stage Business Investment Program

**Comm 129.09 Definitions.** In this subchapter:

**(1)** "Accredited investor" means, for purposes of the credit under s. 71.07 (5d), Stats., an individual who:

(a) Invests his or her own monies in a qualified new business venture;

(b) Does not own, control or hold power to vote 20% or more of the outstanding securities of the qualified new business venture in which the eligible investment is proposed;

(c) Is not a spouse, parent, grandparent, sibling, child, stepchild or grandchild of an individual who owns, controls or holds power to vote 20% or more of the outstanding securities of the qualified new business venture in which the eligible investment is proposed; and

(d) Meets any of the requirements in subds. 1. to 4. at the time that the original investment is made.

1. The investor is an individual with a net worth, or a joint net worth together with his or her spouse, in excess of $1,000,000.

2. The investor is an individual who had an income in excess of $200,000 in each of the prior 2 years or a joint income with his or her spouse in excess of $300,000 in each of those years and reasonably expects to reach the same income level in the current year.

3. The investor is an individual who is a director, executive officer or general partner of the issuer of the securities being offered or sold, or a director, executive officer or general partner of a general partner of that issuer.

4. The investor is an individual who has knowledge and experience in financial and business matters and he or she is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that the purchaser comes within this description.

**(2)** "Angel investment network" means an entity comprised of accredited investors organized for the sole purpose of making a bona fide angel investment in a single qualified new business venture.

**(3)** "Angel investor" means an accredited investor who makes a bona fide angel investment.

**(4)** "Bona fide angel investment" means an investment made by an accredited investor or an angel investment network in a qualified new business venture.

**(5)** "Business" means an entity and all its consolidated affiliates.

**(6)** "In operation" means in existence since the date of first incorporation or registration.

**(7)** "Investment" means the investment of cash in a qualified new business venture that is used for legitimate business purposes in exchange for any of the following:

(a) Common stock.

(b) Partnership or membership interest.

(c) Preferred stock.

(d) An equivalent ownership interest in the qualified new business venture acceptable to the department.

**(8)** "Legitimate business purposes" does not include activities such as refinancing any prior investments on which tax credits were earned.

**(9)** "Original investment" means the initial investment in a business.

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**(10)** "Qualified new business venture" means a business that the department has determined meets the requirements in s. Comm 129.10.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.10 Business certification. (1)** CERTIFICATION CONDITIONS. A business may be certified by the department as a qualified new business venture for purposes of ss. 71.07 (5b), 71.07 (5d), 71.28 (5b) and 71.47 (5b), Stats., and may maintain the certification, only if the business satisfies all of the following conditions:

(a) It has its headquarters in this state.

(b) At least 51 percent of the employees employed by the business are employed in this state.

(c) It is engaged in, or has committed to engage in, any of the following:

1. Developing a new product or business process.

2. Manufacturing, agriculture, or processing or assembling products and conducting research and development.

(d) It is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction.

(e) It is conducting pre−commercialization activity related to proprietary technology.

(f) It has not received more than $1,000,000 in aggregate investments that have qualified for tax credits under s. 71.07 (5d), Stats.

(g) At the time it is first certified, it meets all of the following:

1. It has less than 100 full time equivalent employees.

2. It has been in operation for not more than 7 consecutive years.

3. It has not received aggregate private equity investment in cash of more than $5 million.

(h) It qualifies under the criteria established in sub. (3).

**(2)** APPLICATION. A business desiring certification shall submit an application to the department in each taxable year of the business for which the business desires certification.

**(3)** QUALIFICATIONS. In determining whether to certify a business, the department shall consider at least the following factors:

(a) The business is in one of Wisconsin's targeted industries as determined by the department.

(b) High growth potential of the business.

(c) Management team experience.

(d) Financial need.

(e) Percentage of funds that will be spent in Wisconsin.

(f) Barriers to entry.

(g) Innovative or novel product or process.

**(4)** ISSUANCE OF CERTIFICATE. If the department determines that the business is eligible to be certified, the department shall issue a certificate to the business.

**(5)** TAX CREDIT ELIGIBILITY. The maximum investment in a qualified new business venture that may qualify for tax credits shall be limited to an aggregate of $4 million over the life of that business.

**(6)** DISCLAIMER. The business shall provide a statement in its private placement memorandum or equivalent documents indicating that the department does not endorse the quality of management of the business and is not liable for damages or losses to an investor.

**(7)** REPORT TO REVENUE. The department shall notify the department of revenue of every business certification issued under this section.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.11 Fund manager certification. (1)** CERTIFICATION CONDITIONS. Investment fund managers shall be certified by the department for purposes of ss. 71.07 (5b), 71.28 (5b) and 71.47 (5b), Stats. In determining whether to certify an applicant as a certified fund manager, the department shall consider all of the following factors:

(a) The applicant's experience in the following:

1. Managing venture capital funds.

2. Investing in high growth, early stage businesses.

(b) The past performance of the following:

1. Investment funds managed by the applicant.

2. Businesses assisted by the applicant.

(c) The portion of the investment fund's capital that the fund manager expects to invest in qualified new business ventures.

(d) Geographic distribution.

(e) Focus on targeted industries or target group members.

(f) Ability to access follow−on funding.

(g) Services provided.

(h) Commitment to Wisconsin.

(i) Administrative and management fees.

**(2)** APPLICATION. (a) Applicants desiring certification as a certified fund manager shall submit an application to the department.

(b) If the department determines that the applicant meets the requirements for certification, the department shall issue a certificate to the fund manager.

**(3)** REPORT TO DEPARTMENT. At the time of final closing of the fund, the certified fund manager shall provide the department with a copy of the fund's private placement memorandum or equivalent document, capitalization table and the ratio of taxpaying and non−taxpaying investors. If the department determines that a document submitted under this subsection contains a trade secret as defined in s. 134.90 (1) (c), Stats., that document shall not be subject to the right of inspection and copying under s. 19.35, Stats.

**(4)** TAX CREDIT ELIGIBILITY. A certified fund manager may make investments in qualified new business ventures and in other businesses. Only investments in qualified new business ventures shall be eligible for a tax credit.

**(5)** DISCLAIMER. The fund manager shall provide a statement in its private placement memorandum indicating that the department does not endorse the quality of management of the fund and is not liable for damages or losses to an investor.

**(6)** REPORT TO REVENUE. The department shall notify the department of revenue of every fund manager certification issued under this section.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.12 Tax credit claims. (1)** INVESTMENT SUBSTANTIATION. For each investment in the qualified new business venture, the angel investor, angel investment network or certified fund manager shall provide to the department a copy of its investor agreement and proof of the investment. The treasurer of the qualified new business venture shall provide an attestation to the investment.

**(2)** ACCREDITED INVESTOR ATTESTATION. An investor under s. 71.07 (5d), Stats., shall attest to being an accredited investor on a form prescribed by the department. Angel investment networks shall verify that each member is an accredited investor on a form prescribed by the department.

**(3)** TAX CREDIT ELIGIBILITY. (a) Investments made in a business prior to the time the business is certified as a qualified new business venture are not eligible for a tax credit.

(b) An investment in a qualified new business venture is not eligible for a tax credit unless it meets all of the following criteria:

1. The initial qualifying investment by the fund manager into the qualified new business venture occurs after the date the fund manager is certified by the department.

2. The funds invested into the qualified new business venture shall be clearly identifiable as being from cash invested in the fund managed by the certified fund manager after the date the fund manager is certified by the department.

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(c) If investments have been made in a business by the angel investor, angel investment network or certified fund manager prior to the certification of the business, then no follow−on investment after December 31, 2005, in the qualified new business venture by the angel investor, angel investment network or certified fund manager will qualify for tax credits.

**(4)** DEPARTMENT VERIFICATION. The department shall issue a verification form to the angel investor, angel investment network or certified fund manager stating the amount of tax credits that may be claimed.

**(5)** CLAIM INFORMATION. Angel investors, angel investment networks and certified fund managers shall file for tax benefits using forms acceptable to the department of revenue. Tax benefit claims shall include at least all of the following:

(a) A copy of the certification issued by the department to the business and fund manager, as applicable.

(b) A copy of the verification form that includes all of the following:

1. The amount of the tax credits that may be claimed.

2. The name, address and social security number of the claimant.

3. The date and amount of the investment.

**(6)** REVOCATION OF CREDITS. If the investment was held for less than 12 months or not used for legitimate business purposes, the department shall revoke the verification of the tax credits and notify the department of revenue.

**Note:** The department of revenue may require tax credits to be recaptured.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.13 Tax credit limits. (1)** ANGEL INVESTMENTS. (a) The aggregate amount of tax credits under s. 71.07 (5d), Stats., that may be claimed for investments in businesses certified under s. Comm 129.10 shall be limited to $3,000,000 per year for years beginning after December 31, 2004.

(b) Up to $500,000 in aggregate investment by an angel investor or a member of an angel investment network in a qualified new business venture shall qualify for tax credits.

**(2)** EARLY SEED INVESTMENTS. (a) The aggregate amount of tax credits under ss. 71.07 (5b), 71.28 (5b), and 71.47 (5b), Stats., that may be claimed for investments paid to fund managers certified under s. Comm 129.11 shall be limited to $3,500,000 per year for years beginning after December 31, 2004.

(b) Up to $2 million in aggregate investment by a certified fund manager in a qualified new business venture over the life of that business shall qualify for tax credits.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.14 Reporting requirements. (1)** DEPARTMENT REPORT. Annually, no later than September 15, the department shall submit a report to the chief clerk of each house of the legislature, listing all of the following information:

(a) The total amount of tax credits verified under ss. 71.07 (5b) and (5d), 71.28 (5b) and 71.47 (5b), Stats., per taxable year.

(b) The name of each business in which investments qualifying for such tax credits were made, the amount of such tax credits, and the amount of such investments.

(c) Any other information the department considers reasonable to include.

**(2)** INVESTOR'S REPORT. (a) An angel investor, angel investment network and certified fund manager shall report to the department on the number and types of jobs created, how the funds were used, benchmarks achieved, commercialization success, and additional investments in the qualified new business venture. The report shall be submitted annually as long as the investor holds the investment, or in the case of a fund, for the life of the fund or 10 years, whichever is shortest. If the department determines that a document submitted under this paragraph contains a trade secret as defined in s. 134.90 (1) (c), Stats., or a business secret, that document shall not be subject to the right of inspection and copying under s. 19.35, Stats.

(b) An angel investor, angel investment network and certified fund manager shall notify the department within 20 business days if the investment is withdrawn or otherwise recovered or if the qualified new business venture ceases operation or ceases operation in this state.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.15 Revocation of certifications. (1)** BUSINESS CERTIFICATION REVOCATION. The department shall revoke the certification of a business certified under s. Comm 129.10 and no new investment will qualify after revocation if the business does any of the following:

(a) Supplies false or misleading information to obtain the certification.

(b) Fails to continue to meet the required conditions or qualifications for obtaining the certification.

(c) Has violated state, federal or local laws or regulations related to the conduct of the activities of the business.

(d) Has had an officer or director of the business arrested for or convicted of a crime substantially related to the activities of the business.

**(2)** FUND MANAGER CERTIFICATION REVOCATION. The department shall revoke the certification of a fund manager certified under s. Comm 129.11 if the fund manager does any of the following:

(a) Supplies false or misleading information to obtain the certification.

(b) Fails to continue to meet the required conditions or qualifications for obtaining the certification.

(c) Has violated state, federal or local laws or regulations related to the conduct of the activities of the fund.

(d) Has been arrested for or convicted of a crime substantially related to the activities of the fund.

**(3)** REPORT TO REVENUE. The department shall notify the department of revenue of the date on which a certification is revoked or expires.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

## Subchapter III − Technology Commercialization Grant and Loan Program

**Comm 129.29 Definitions.** In this subchapter:

**(1)** "Applicant" means an individual.

**(2)** "Individual" means a person or small business.

**(3)** "Professional services" includes, but is not limited to, costs incurred by a qualified independent third party for feasibility studies, business plans, engineering studies, market research, patent protection, and related legal, accounting and managerial services, and other activities determined eligible by the department.

**(4)** "Project costs" means costs that, in accordance with sound business and financial practices, are appropriately incurred in connection with a project as determined by the department.

**(5)** "Small business" means a business having less than 100 full−time equivalent employees.

**History: CR 04−108: cr. Register June 2005 No. 594, eff. 7−1−05.**

**Comm 129.30 Criteria.** In determining whether to make a grant or loan and the amount of the grant or loan, the department shall consider at least the following factors:

**(1)** The amount of economic impact the applicant, if successful, will have in this state.

**(2)** The quality of any businesses assisting the applicant.

**(3)** The level of need demonstrated by the applicant.

**(4)** The applicant's record of obtaining early stage financing, including federal funds, in the past.

**(5)** The viability of the applicant's business or proposed business.

**(6)** The likelihood that the applicant will successfully commercialize technology.

**(7)** The applicant's management plan and management team.

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**(8)** The applicant is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by physicians or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.31 Early stage planning grants and loans. (1)** AUTHORIZED GRANTS AND LOANS. The department may make an early stage planning grant or loan for any of the following activities:

(a) For the purpose of funding professional services related to completing an application to be submitted to the federal government for the purpose of obtaining early stage research and development funding.

(b) For the purpose of funding professional services that are required to accomplish specific tasks established as a condition of receiving early stage financing from third parties that is necessary for business development.

**(2)** LIMITATIONS ON GRANT AND LOAN AMOUNTS. An early stage planning grant or loan may not exceed $15,000.

**(3)** ELIGIBILITY. The department may make an early stage planning grant or loan to an applicant only if all of the following apply:

(a) The applicant is any of the following:

1. A small business, or individual entrepreneur who intends to form a small business, that is completing a grant application to be submitted to the federal government for the purpose of obtaining early stage research and development funding.

2. An individual who is starting or developing a business which has significant growth potential, as evidenced by the potential to attract and receive early stage financing from third parties, but who needs assistance with a specific facet of starting or developing the business.

(b) The applicant has sufficient funding from sources other than the state to finance at least 25% of the project costs.

(c) The applicant has or will have a business location in this state.

(d) If the application relates to a product, the product will be manufactured substantially in this state.

(e) If the application relates to a service, the principal place of business from which the service will be sold will be located in this state.

(f) All grant moneys will be spent in this state.

**(4)** ADMINISTRATION. The department may contract with, and pay the proceeds of an early stage planning grant directly to, any person who provides services which the grant is intended to fund.

**(5)** MATCH REQUIREMENT. At least 25% of the project costs shall be from sources other than the state.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.32 Matching grants and loans. (1)** AUTHORIZED GRANTS AND LOANS. The department may make a matching grant or loan for any of the following activities:

(a) For the purpose of funding professional services related to developing a proposed technologically innovative product, process, or service, if the applicant has received a grant from the federal government for a substantially similar purpose.

(b) For the purpose of funding professional services related to the accelerated commercialization of a technologically innovative product, process, or service, if the federal government has notified the applicant that the applicant will receive a grant from the federal government for a substantially similar purpose.

**(2)** LIMITATIONS ON GRANT AND LOAN AMOUNTS. A matching grant or loan may not exceed 20% of the project costs or $250,000, whichever is less.

**(3)** ELIGIBILITY. The department may make a matching grant or loan to an applicant only if all of the following apply:

(a) The applicant is any of the following:

1. A small business, or individual entrepreneur who intends to form a small business.

2. An individual who is starting or developing a business which has significant growth potential, as evidenced by the potential to attract and receive early stage financing from third parties, but who needs assistance with a specific facet of starting or developing the business.

(b) The applicant has or will have a business location in this state.

(c) If the application relates to a product, the product will be manufactured substantially in this state.

(d) If the application relates to a service, the principal place of business from which the service will be sold will be located in this state.

(e) All grant moneys will be spent in this state.

**(4)** ADMINISTRATION. The department may contract with, and pay the proceeds of a matching grant directly to, any person who provides services which the grant is intended to fund.

**(5)** MATCH REQUIREMENT. The applicant shall provide funding from other sources to finance at least 80% of the project costs.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.33 Bridge grants and loans. (1)** AUTHORIZED GRANTS AND LOANS. (a) The department may make a bridge grant or loan to a person who has received early stage financing from third parties or a grant from the federal government to fund early stage research and development, and who has sought additional early stage financing from third parties or applied for an additional grant from the federal government to fund early stage research and development.

(b) The department may make a bridge grant or loan for the purpose of funding professional services necessary to maintain the project research and management team and funding basic operations until the applicant's additional third party financing request or federal grant application is approved or denied.

**(2)** LIMITATIONS ON GRANT AND LOAN AMOUNTS. A bridge grant or loan may not exceed 75% of the project costs or $100,000, whichever is less.

**(3)** ELIGIBILITY. The department may make a bridge grant or loan to an applicant only if all of the following apply:

(a) The applicant is any of the following:

1. A small business, or individual entrepreneur who intends to form a small business, that is completing a grant application to be submitted to the federal government for the purpose of obtaining early stage research and development funding.

2. An individual who is starting or developing a business which has significant growth potential, as evidenced by the potential to attract and receive early stage financing from third parties, but who needs assistance with a specific facet of starting or developing the business.

(b) The applicant has or will have a business location in this state.

(c) If the application relates to a product, the product will be manufactured substantially in this state.

(d) If the application relates to a service, the principal place of business from which the service will be sold will be located in this state.

(e) All grant moneys will be spent in this state.

**(4)** ADMINISTRATION. The department may contract with, and pay the proceeds of a bridge grant directly to, any person who provides services which the grant is intended to fund.

**(5)** MATCH REQUIREMENT. The applicant shall provide funding from other sources to finance at least 25% of the project costs.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.34 Venture capital grants and loans. (1)** AUTHORIZED GRANTS AND LOANS. The department may make a venture capital grant or loan for the purpose of enhancing the

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applicant's ability to obtain early stage financing from third parties.

**(2)** LIMITATIONS ON GRANT AND LOAN AMOUNTS. A venture capital grant or loan may not exceed 50% of the project costs or $250,000, whichever is less.

**(3)** ELIGIBILITY. The department may make a venture capital grant or loan to an applicant only if all of the following apply:

(a) The applicant is any of the following:

1. A small business, or individual entrepreneur who intends to form a small business, that is completing a grant application to be submitted to the federal government for the purpose of obtaining early stage research and development funding.

2. An individual who is starting or developing a business which has significant growth potential, as evidenced by the potential to attract and receive early stage financing from third parties, but who needs assistance with a specific facet of starting or developing the business.

(b) The applicant has or will have a business location in this state.

(c) If the application relates to a product, the product will be manufactured substantially in this state.

(d) If the application relates to a service, the principal place of business from which the service will be sold will be located in this state.

(e) All grant moneys will be spent in this state.

**(4)** ADMINISTRATION. The department may contract with, and pay the proceeds of a venture capital grant directly to, any person who provides services which the grant is intended to fund.

**(5)** MATCH REQUIREMENT. The applicant shall provide funding from other sources to finance at least 50% of the project costs.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.35 Entrepreneurial and technology transfer center grants. (1)** AUTHORIZED GRANTS AND LOANS. The department may make an entrepreneurial and technology transfer center grant for the purpose of supporting any entrepreneurial and technology transfer center that satisfies all of the following criteria:

(a) The center serves multiple regions of this state.

(b) The center provides assistance, other than financial assistance, to entrepreneurs to facilitate business development.

(c) The center reviews and analyzes entrepreneurial business plans and offers advice concerning the improvement of the plans.

(d) The center provides advice to entrepreneurs concerning patent, trademark and copyright issues.

(e) The center provides appropriate referral services to entrepreneurs.

**(2)** LIMITATIONS ON GRANT AND LOAN AMOUNTS. The total amount of entrepreneurial and technology transfer center grants may not exceed $500,000 in any fiscal year.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.36 Administration. (1)** APPLICATION. (a) The department shall solicit applications, review applications, and authorize payments and otherwise implement contractual obligations entailed in grants or loans made under this subchapter.

(b) Each successful applicant shall enter into a contract with the department for the purpose of implementing the proposed grant or loan under this subchapter. Each contract shall be signed by the department and the person authorized by the applicant to enter into a contract. The contract shall contain default provisions relating to non–performance of the provisions of the contract. The contract shall include reporting, monitoring and auditing requirements.

**(2)** REPORTING, MONITORING AND AUDITING. A successful applicant for a grant or loan under this subchapter shall provide the department with reimbursement documentation, program reports, and a financial audit by the dates specified in the contract. The financial audit shall be performed to the satisfaction of the department. The reimbursement documentation, program reports and financial audit become the property of the department and are open to public inspection.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**

**Comm 129.37 Department report.** No later than December 1 of each even–numbered year, the department shall develop a biennial plan for awarding grants and loans under this subchapter and shall submit the plan to the governor and to the chief clerk of each house of the legislature.

**History: CR 04–108: cr. Register June 2005 No. 594, eff. 7–1–05.**