

98-061-COMM 119-MINING-ECON.
DEVELOPMENT-GRANTS

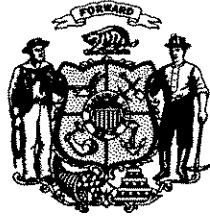
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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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 98-061

AN ORDER to create chapter Comm 119, relating to the mining economic development grants and loan program.

Submitted by **DEPARTMENT OF COMMERCE**

04-29-98 RECEIVED BY LEGISLATIVE COUNCIL.
05-28-98 REPORT SENT TO AGENCY.

RS:WF;jt;wu

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)]

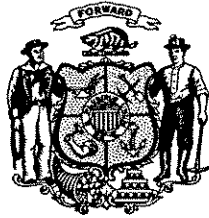
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-061

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 October 1994.]

1. Statutory Authority

Section Comm 119.05 (2) provides that an applicant receiving funds for a revolving loan fund project must administer and use the funds in accordance with requirements contained in the revolving loan fund manual established by the department. Section Comm 119.06 provides that eligible applicants must submit an application addressing the items in an application manual provided by the department. Finally, s. Comm 119.07 (2) provides that the board may develop other evaluation criteria in order to make a determination to award a grant or loan. To the extent that requirements and items in department manuals and board-established criteria affect the award of grants and loans, the requirements, items and criteria should be promulgated as administrative rules under ch. 227, Stats.

2. Form, Style and Placement in Administrative Code

- a. In s. Comm 119.05 (2), the word "must" should be replaced by the word "shall."
- b. Sections Comm 119.05 (2) and 119.06 refer to manuals established by the department. Assuming the manuals contain material that need not be promulgated as administrative rules, the rule should state where copies of the manuals may be obtained.
- c. In s. Comm 119.10, the notation "s." should precede the reference to "Comm 119.07."

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The reference to "ch. 560" in the introductory clause to Clearinghouse Rule 98-061 is unnecessary because the reference to s. 560.135 means that the section is in ch. 560, Stats.

b. A definition of "Department of Commerce" should be included in s. Comm 119.03. The term "department" is used throughout the rule but is not defined anywhere within it.

c. The references to s. Comm 119.03 in s. Comm 119.05 (4) should be replaced with references to s. Comm 119.04.

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

a. The reference to "minority" economic development grants and loans program in the first paragraph of the analysis to Clearinghouse Rule 98-061 should be replaced with a reference to the "mining" economic development grants and loans program. In addition, the word "programs" in the first paragraph of the analysis and the word "includes" in the third paragraph of the analysis should be written in the singular tense. In addition, the bracket at the end of par. 2G. should be eliminated.

b. The department should consider replacing the word "investment" in s. Comm 119.05 (1) with the word "loan." In addition, as drafted, Clearinghouse Rule 98-061 suggests that the department intends to require reimbursement of both grants and loans under the mining economic development grants and loans program. Section Comm 119.05 states that the board will require repayment of the "funds plus a reasonable return on the investment," without specifying whether this requirement applies to both grants and loans. In addition, s. Comm 119.09 requires grant recipients to provide "periodic reimbursement documentation" without regard to whether the recipient is the recipient of a grant or a loan. It is suggested that the department clarify its intent as to this matter. In other words, the rule is confusing because a grant of funds normally implies that the funds need not be repaid; however, the rule appears to assume that a grant will be repaid, thus transforming the grant into a loan.

c. The rule does not contain an effective date provision. [See s. 1.02 (4), Manual.]

NOTICE OF PUBLIC HEARING

NOTICE IS GIVEN that pursuant to ss. 560.02 and 560.85 (1), Stats., the Department of Commerce proposes to hold public hearings to consider the proposed rules to create COMM 119, Wis. Adm. Code, relating to the mining economic development grants and loans program.

Hearing Information

The public hearings are scheduled as follows:

Date: June 17, 1998	June 18, 1998
Time: 9:00 a.m.	9:00 a.m.
City: Wausau, WI	Pewaukee, WI
Facility: North Central Technical College	Waukesha County Technical College
Street Address: 1000 W. Campus Drive	800 Main Street
Building Name: Health Resource Center	Industrial Occupations Building
Room Number: D 105	I 131

Written Comments and Copies of Rule

A copy of the rules to be considered may be obtained from the Department of Commerce, Bureau of Policy and Budget Development, P. O. Box 7970, Madison, Wisconsin 53707, by calling (608) 267-9382 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than June 30, 1998, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Ms. Louie Rech, Bureau of Policy and Budget Development, Department of Commerce, P. O. Box 7970, Madison, Wisconsin 53707. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 267-9382 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis Prepared by the Department of Commerce

Statutory Authority: Sections 560.135, Stats., creates the Minority Economic Development Grants and Loans Program. Sections 560.02 and 560.135 (7) authorizes the Department to promulgate rules required to administer the programs. ^④
→ *Minority*

The proposed rule creates procedures for administering the new program. The program was created in 1997 Wis. Act 27, the biennial budget bill.

The provisions in the proposed rule includes:

1. The Wisconsin Development Finance Board may make grants or loans for various activities in an area that has been affected by metallic mineral mining. The eligible entities, maximum award amount, and the eligible activities are:

A. A business may receive up to \$100,000 to finance costs associated with the start-up, maintenance or expansion of the business.

B. A city, village, town, or county (municipality) may receive up to \$100,000 to develop an economic diversification plan.

C. A municipality, community-based organization, or local development corporation may receive up to \$200,000 to establish a local revolving loan fund to finance businesses that will create long-term employment opportunities.

D. A community-based organization or local development corporation may receive up to \$100,000 to conduct a local economic development project that will create long-term employment opportunities and to provide assistance to businesses or entrepreneurs.

E. A business may receive up to \$15,000 to obtain professional services related to the start-up, maintenance or expansion of the business. The professional services may include feasibility studies, financial plan, marketing plans, or managerial assistance after the start-up or expansion.

2. The rule also includes evaluation criteria to be used by the Board in making funding decisions. The criteria include:

A. The extent to which the project will retain or increase employment in this state.

B. The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.

C. Whether the project will be located in an area of high unemployment or low average income.

D. The financial soundness of the business.

E. The intention of the eligible recipient to repay the grant or loan. [?]

F. Whether the project will be located in a targeted area.

G. The extent to which the business or other entity assisted by the project is likely to provide stable, long-term employment opportunities to reduce the dependence of the area on mining.]

3. The rule also provides procedures for the Department to contract with successful applicants, applicant reporting and auditing requirements, the Department's responsibilities relating to administering the program, and the Wisconsin Development Finance Board's responsibilities relating to administering the program.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules. These rules will not affect small businesses.

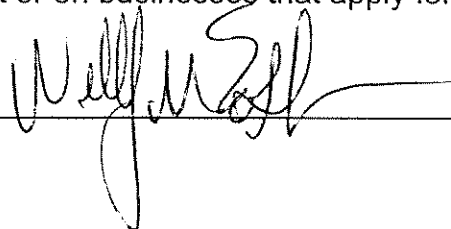
2. Reporting, bookkeeping and other procedures required for compliance with the rules: These rules will impose no new requirements.

3. Types of professional skills necessary for compliance with the rules: No professional skills are required to comply with the rules.

Fiscal Estimate

The rules creates provision for the mining economic development grants and loans program that was created in 1997 Wisconsin Act 27. These rules will have no fiscal effect on the Department or on businesses that apply for funding under the program.

Secretary's Signature:



Date:

4/27/98

COMMERCE

Rule Submittal Date

On April 27, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Legislative Council rules Clearinghouse creating Ch. COMM 119, Wis. Adm. Code, relating to the mining economic development grants and loans program.

Analysis

Statutory Authority: Sections 560.135, Stats., creates the Minority Economic Development Grants and Loans Program. Sections 560.02 and 560.135 (7) authorizes the Department to promulgate rules required to administer the programs.

The proposed rule creates procedures for administering the new program. The program was created in 1997 Wis. Act 27, the biennial budget bill.

The provisions in the proposed rule includes:

1. The Wisconsin Development Finance Board may make grants or loans for various activities in an area that has been affected by metallic mineral mining. The eligible entities, maximum award amount, and the eligible activities are:

A. A business may receive up to \$100,000 to finance costs associated with the start-up, maintenance or expansion of the business.

B. A city, village, town, or county (municipality) may receive up to \$100,000 to develop an economic diversification plan.

C. A municipality, community-based organization, or local development corporation may receive up to \$200,000 to establish a local revolving loan fund to finance businesses that will create long-term employment opportunities.

D. A community-based organization or local development corporation may receive up to \$100,000 to conduct a local economic development project that will create long-term employment opportunities and to provide assistance to businesses or entrepreneurs.

E. A business may receive up to \$15,000 to obtain professional services related to the start-up, maintenance or expansion of the business. The professional services may include feasibility studies, financial plan, marketing plans, or managerial assistance after the start-up or expansion.

2. The rule also includes evaluation criteria to be used by the Board in making funding decisions. The criteria include:

- A. The extent to which the project will retain or increase employment in this state.
- B. The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.
- C. Whether the project will be located in an area of high unemployment or low average income.
- D. The financial soundness of the business.
- E. The intention of the eligible recipient to repay the grant or loan.
- F. Whether the project will be located in a targeted area.
- G. The extent to which the business or other entity assisted by the project is likely to provide stable, long-term employment opportunities to reduce the dependence of the area on mining.]

3. The rule also provides procedures for the Department to contract with successful applicants, applicant reporting and auditing requirements, the Department's responsibilities relating to administering the program, and the Wisconsin Development Finance Board's responsibilities relating to administering the program.

Agency Procedure for Promulgation

A public hearing is required.

Contact Person

Louie Rech
Department of Commerce
Telephone (608) 267-9382

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Pursuant to the authority vested in the Department of Commerce by ss. 560.02 (4), 560.135 (7), and 227.11 (2), Stats., the Department of Commerce hereby creates rules interpreting s. 560.135, Ch. 560, Stats.

SECTION 1. Chapter Comm 119 is created to read:

COMM 119 - MINING ECONOMIC DEVELOPMENT GRANTS AND LOANS

Comm 119.01 Purpose	Comm 119.06 Application Content
Comm 119.02 Policy Statement	Comm 119.07 Evaluation Criteria
Comm 119.03 Definitions	Comm 119.08 Contracts
Comm 119.04 Eligible Applicants	Comm 119.09 Reporting and Auditing
Comm 119.05 Grant and Loan Amounts and Restrictions	Comm 119.10 Administration
	Comm 119.11 Board Operations

COMM 119.01 PURPOSE. The purpose of this chapter is to establish a procedure for the administration of the mining economic development grants and loans program as provided by s. 560.135, Stats.

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COMM 119.02 POLICY STATEMENT. As the state economic development agency, the department shall administer and coordinate economic and business development programs to foster investment, job creation, and diversification of the state's economy. The department shall provide financial and technical assistance to businesses for economic development and diversification purposes in areas affected by metallic mineral mining. Through the use of the mining economic development grant and loan program the department shall seek to maximize the use of limited funds by leveraging private investment and utilizing other sources of available funds.

COMM 119.03 DEFINITIONS. In this chapter:

- (1) "Area affected by mining" has the meaning given in s. 560.135 (1) (a), Stats.
- (2) "Board" has the meaning given in s. 15.155 (1), Stats.
- (3) "Business" has the meaning given in s. 560.60 (2), Stats.
- (4) "Community based organization" has the meaning given in s. 560.14 (1) (c), Stats.
- (5) "Local development corporation" has the meaning given in s. 560.135 (1) (e), Stats.
- (6) "Mining" has the meaning given in s. 560.135 (1) (f), Stats.

COMM 119.04 ELIGIBLE APPLICANTS (1) An eligible applicant includes any of the following:

(1) A business, to finance costs associated with start-up, maintenance or expansion in an area affected by mining.

(2) A city, village, town or county, to develop an economic diversification plan.

(3) A city, village, town, county, community-based organization or local development corporation, to establish a local revolving loan fund to finance businesses that will create long-term employment opportunities.

(4) A community-based organization or local development corporation, to conduct a local economic development project that will create long-term employment opportunities and to provide assistance to businesses or entrepreneurs.

(5) A business, to obtain professional services related to the start-up maintenance or expansion of the business, including assistance with feasibility studies or financial and marketing plans and managerial assistance after the start-up or expansion.

COMM 119.05 GRANT AND LOAN AMOUNTS AND RESTRICTIONS (1) The amount of funding for a project and a determination as to whether the project will be funded as a grant or loan will be at the discretion of the board. Insofar as it is practical, the board will require repayment of the funds plus a reasonable return on the investment. The repayment provisions shall be determined on a case-by-case basis by the board. (S) *amt of grant or loan?*

(2) An applicant that is awarded funds for a revolving loan fund project under this chapter must administer and use the fund in accordance with all the requirements in the revolving loan fund manual established by the department. (2) *when*

(3) The board may not award a grant or loan under this chapter if the proceeds will be used to establish or expand a business that is solely dependent on mining activity.

(4) The maximum award the board can make for any one project is:

(a) For a project under s. Comm 119.03⁰⁴ (1), (2), or (4), \$100,000. (4)

(b) For a project under s. Comm 119.03 (3), \$200,000.

(c) For a project under s. Comm 119.03 (5), \$15,000.

COMM 119.06 APPLICATION CONTENT. Eligible applicants shall submit an application for funding that addresses all the instructions and items in an application manual provided by the department. } *rules?*

(2) *when.*

COMM 119.07 EVALUATION CRITERIA. (1) In awarding grants and loans under this chapter, the board shall consider all of the criteria in s. 560.135 (5), Stats.

(2) The board may develop other evaluation criteria in order to make a determination in accordance with the provisions of this chapter and s. 560.135, Stats. (1) ?

COMM 119.08 CONTRACTS. Successful applicants shall ~~be required to~~ enter into a contract with the department for the purpose of implementing the proposed grant or loan. The contract shall be signed by the secretary of the department and the person or persons authorized by the applicant to enter into the contract. The department may void a contract and seek a return of any funds released under the contract for failure by the recipient to perform its obligations under the contract. Amendments to these contracts may be adopted by the consent of both parties. (5)

COMM 119.09 REPORTING AND AUDITING. Each successful applicant shall ~~be required to~~ provide the department periodic reimbursement documentation and program reports on the project. A financial audit and final program report shall be submitted at the end of each contract. The financial audit shall be performed to the satisfaction of the department. The cost of the audit may be covered by the grant or loan. The reimbursement documentation, audit and program reports shall be submitted to the department by a date specified in the contract. The reimbursement documentation, financial audit and the program reports become the property of the department and are open to public inspection. *for grants?* *what contr.*

COMM 119.10 ADMINISTRATION. The department is responsible for soliciting applications; reviewing applications; making recommendations to the board on the disposition of applications; entering into contracts with successful applicants; authorizing payments and otherwise implementing contractual obligations entailed in grants or loans made under this chapter; monitoring project activities; receiving and reviewing the reimbursement documentation and program reports submitted under Comm 119.07; and for collecting any repayments of loans from successful applicants. S-

COMM 119.11 BOARD OPERATIONS. The board shall consider the recommendation of the department relating to the project. The board shall approve an application before the department may enter into a contract for a grant or loan under this chapter. The department shall maintain records of the board proceedings and provide staff support as may be necessary to the board. X