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Details: Emergency Rules by Department of Commerce.
(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**ORDER OF THE
DEPARTMENT OF COMMERCE**

EMERGENCY RULE RELATING TO MIDWESTERN DISASTER AREA BONDS

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 3 day
of NOVEMBER, A.D. 2009,
by the Department of Commerce


for Richard J. Leinenkugel, Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 136
Amendment No. if Applicable

Subject

Midwestern Disaster Area Bonds

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

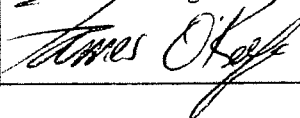
Although the rules will newly result in review of documentation relating to designating applicants as eligible for Midwestern Disaster Area Bonds, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax-exempt private activity bonds for the recovery and rebuilding of areas which were declared major disaster areas in 2008.

Long-Range Fiscal Implications
None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

10/26/09

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 Chapter Comm 136

Subject
 Midwestern Disaster Area Bonds

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$0	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James O'Keefe

Date

10/26/09

The Wisconsin Department of Commerce adopts an order to create chapter Comm 136 relating to allocation of the Midwestern disaster area bonding authority provided to Wisconsin under the federal Heartland Disaster Tax Relief Act of 2008, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.03.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.03.

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 560.03 of the Statutes authorizes and directs the Department to assist in implementing economic and community development programs, and to perform such other functions as the Governor may direct for aiding industrial development.

4. Related Statute or Rule.

Chapter Comm 113 contains rules relating to allocating a volume cap on tax-exempt private activity bonds for housing, pursuant to 26 USC 146.

5. Plain Language Analysis.

The rules in this order establish a procedure by which the Governor can designate tax-exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

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

In the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), subtitle A of title VII is the Heartland Disaster Tax Relief Act of 2008 (HDTRA). HDTRA modified section 1400N(a) of the Internal Revenue Code of 1986 to establish tax-exempt Qualified Midwestern Disaster Area (MDA) bonds for areas that in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding. HDTRA limits the aggregate face amount of bonds that may be designated as MDA bonds. HDTRA also delegates to the Governor the power to make certain designations in connection with the issuance of MDA bonds, including designation of the bonds as MDA bonds and designation of a trade or business as replacing another trade or business for these purposes.

7. Comparison With Rules in Adjacent States.

Although each of the adjacent states are listed in HDTRA as having areas eligible for MDA bonds, an Internet-based search produced corresponding administrative rules only in Iowa. Those rules and related information, by the Iowa Finance Authority, are available at http://www.iowafinanceauthority.gov/en/economic_development/midwestern_disaster_area_bonds/.

Highlights of the Iowa rules include the following:

- Through December 2009, \$2,000,000,000 of Iowa's allocation of MDA bonds will be apportioned based on the amount of damage suffered by each county, and based on FEMA allocations of housing assistance. The remaining \$615,995,000 of Iowa's allocation will be available to all eligible projects. After December 2009, any remaining MDA bonds will be available to all eligible projects. MDA bonds will be allocated on a first-come, first-served basis. Applications are received on a continuous basis.
- An application must be completed and submitted to the Governor's designee by the borrower, or an agent acting on behalf of the borrower. Applications may be submitted at any time after an inducement resolution for the project has been adopted. A fee of two basis points (.02%) of the amount of MDA bonds for which an application is made must be paid by the applicant upon filing the application.
- A Certification of Allocation is sent to the applicant when an allocation is made. Allocations are valid for 150 days. After the bonds are issued, a representative of the borrower must complete and return a Notice of Issuance and Delivery of Bonds within 10 days of the delivery date for the bonds.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of reviewing the criteria in HDTRA and in Executive Order #288 as issued by Governor Jim Doyle.

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

The primary documents that were used to determine the effect of the rules on small business were HDTRA and Executive Order #288.

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 tax-exempt private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail Steven.Sabatke@Wisconsin.gov.

File reference: Comm 136/rules, analysis-e

SECTION 1. Chapter Comm 136 is created to read:

CHAPTER Comm 136, MIDWESTERN DISASTER AREA BONDS

Comm 136.01 Purpose. The purposes of this chapter are as follows:

(1) To establish a procedure for the designation by the governor of bonds issued by, or on behalf of, the state of Wisconsin, or any political subdivision thereof, as qualified Midwestern disaster area bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(2) To implement allocation of the qualified Midwestern disaster area bonding authority provided to Wisconsin under the Act specified in sub. (1), for eligible projects in affected counties, with a basis of providing assistance to areas in the order in which such assistance is most needed.

Comm 136.02 Definitions. In this chapter:

(1) "Affected county" means any of the following counties in Wisconsin: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

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

(3) "Issuer" means any of the following:

(a) A municipality.

(b) An agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including any redevelopment authority, community development authority, housing authority or other public corporation or commission established by or on behalf of these entities.

(c) A person acting for or on behalf of the entities listed in par. (a) or (b).

(4) "Limitation on aggregate amount" means the limitation on the aggregate amount for the issuance of bonds designated as Midwestern disaster area bonds applicable to the state of Wisconsin, which is \$3,830,112,000.

(5) "Midwestern disaster area bonds" or "MDA bonds" means bonds described in, and designated for the purposes of, 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(6) "Municipality" has the meaning given in s. 67.01 (5), Stats.

(7) "Nonresidential real property project" means a project located in any of the affected counties for which private activity bonds, as defined in 26 USC 141(a), may be issued for the cost of acquisition, construction, reconstruction or renovation of nonresidential real property, including fixed improvements associated with such property.

(8) "Project" means any residential rental project, owner-occupied residence financed with a qualified mortgage issue, public utility property project, or nonresidential real property project for which exempt facility bonds may be issued under 26 USC, as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(9) "Public utility property project" means any public utility property, as defined in 26 USC 168(i)(10), located in any of the affected counties.

(10) "Qualified mortgage issue" means a qualified mortgage issue as defined in 26 USC 143(a)(2) and as modified and applied by section 702(d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, the proceeds of which are used to finance owner-occupied residences located in any of the affected counties.

(11) "Residential rental project" means a qualified residential rental project under 26 USC 142(d)(1) and 1400N(a), as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, located in any of the affected counties.

Comm 136.03 Reservation for each affected county. (1) Prior to January 1, 2011, \$50,000,000 of the limitation on aggregate amount shall be reserved and made available for designations in respect to bonds issued for projects located in each affected county, and the balance of the limitation on aggregate amount shall be available for designations without regard to the affected county in which the project to be financed is located.

(2) Commencing on January 1, 2011, the \$50,000,000 of designations reserved for each affected county under sub. (1) shall terminate, and thereafter designations may be made from the entire unused balance of the limitation on aggregate amount for bonds to finance projects located in any of the affected counties without regard to the affected county in which the project is located.

Comm 136.04 Eligible applicants. Applicants for a designation to allow the issuance of MDA bonds are eligible only if either of the following conditions is met:

(1) The person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding in 2008.

(2) The cost is or will be incurred by a person who will be designated as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss as specified in sub. (1).

Comm 136.05 Request, review and designation process. (1) A request for a designation under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

- (a) The name and address of the issuer.
- (b) A description of the project, including, except for bonds expected to qualify as a qualified mortgage issue, the name and address of the owner, operator or sponsor of the project.
- (c) The location of the project in one or more of the affected counties.
- (d) Evidence that official action has been taken by the issuer with respect to the issuance of the bonds which, for bonds issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the bonds.
- (e) A certification of the applicant to the effect that a preliminary determination has been made by bond counsel that the obligations would constitute private activity bonds under federal tax law and that the bonds are expected to qualify as one or more of the following:
 - 1. Bonds for a nonresidential real property project.
 - 2. Bonds for a public utility property project.
 - 3. Bonds for a residential rental project.
 - 4. A qualified mortgage issue.
- (f) The requested amount of the designation.
- (g) Evidence of compliance with s. Comm 136.04.
- (h) A nonrefundable payment of \$300 by cash or by a certified or cashiers check payable to the department.

Note: The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707.

(2) An application may be made only within 150 days prior to the planned issuance of the MDA bonds.

(3) Upon receipt of a completed application, the department shall evaluate whether it meets the requirements of sub. (1).

(4) The department shall forward a request for a designation to the governor, in the order in which qualifying requests are received, if the department determines all of the following:

- (a) The application meets the requirements of sub. (1).

(b) A designation in the requested amount would not cause the aggregate amount of bonds designated under this chapter to exceed \$3,830,112,000 and would be in compliance with s. Comm 136.03.

Note: The \$3,830,112,000 limitation on aggregate amount is established under 26 USC 1400N(a), as modified and applied by section 702(d) (1) (E) (i) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

Comm 136.06 Emergency. Based upon the extensive damage to property in the affected counties that resulted from severe storms, tornados or flooding in 2008 and the resulting substantial adverse economic impact to the affected counties caused thereby, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

Comm 136.07 Post-designation process. (1) After the governor makes a designation, the department shall record that the corresponding portion of the limitation on aggregate amount has been designated.

(2) (a) Each issuer shall notify the department in writing as to the amount of MDA bonds issued pursuant to the designation from the limitation on aggregate amount, within 15 business days after the issuance of the bonds.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount issued in the bonds, up to a maximum of \$10,000, by cash or by a certified or cashiers check payable to the department.

2. The payment in subd. 1. may be reduced by the amount paid to the department under s. Comm 136.05 (1) (h).

(3) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a designation under this chapter. Upon receipt of such notice, the department shall record the surrender.

(4) All MDA bonds shall be issued before January 1, 2013.

(END)

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 136/rules 2009d,ac



RULES CERTIFICATE

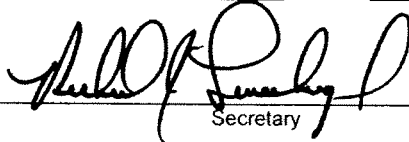
Emergency Rule Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard J. Leinenkugel, Secretary of the Department of Commerce,
and custodian of the official records of said department, do hereby certify that the annexed emergency rule
relating to public swimming pool and water attraction plan review and inspection fees
(Subject)
was duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the department and
that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set
my hand at 201 West Washington Avenue
in the city of Madison, this 16TH
day of DECEMBER A.D. 2009


Secretary

ORDER OF ADOPTION

Emergency Rule

Department of Commerce

Pursuant to authority vested in the Department of Commerce by section(s) 101.02 (19) and

145.26 Stats., the Department of Commerce creates; amends;

repeals and recreates; repeals and adopts an emergency rule of Wis. Admin. Code chapter(s):

Comm 2 (number) Fee Schedule (Title)

Pursuant to section 227.24 (1)(c), Stats., the attached emergency rule shall take effect on _____
publication in the official state newspaper.

Adopted at Madison, Wisconsin this

date: 12/16/2009

DEPARTMENT OF COMMERCE


Secretary

DEPARTMENT OF COMMERCE

EMERGENCY RULE
RELATING TO
PUBLIC SWIMMING POOL AND WATER ATTRACTION
PLAN REVIEW AND INSPECTION FEES

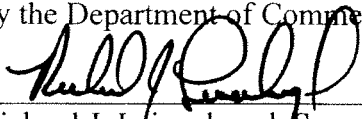
Basis for Issuance of Emergency Rules

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.
2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.
3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act. As of December 1, 2009, approximately 1,800 pool modifications have been submitted to the department for review and approval.
4. There are claims that the availability of parts to make the necessary modifications is limited.
5. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.
6. The department believes that a fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

Pursuant to section 227.24 (1) (c), Stats., this rule is adopted as an emergency rule to take effect on January 1, 2010.

Dated at Madison this 16th
day of DECEMBER, 2009,
by the Department of Commerce.


Richard J. Leinenkugel, Secretary

The Wisconsin Department of Commerce adopts an order to create Comm 2.68 (3) (a) relating to fees for plan review and inspection of public swimming pools and water attractions and affecting small business.

Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: ss. 101.19 and 145.26, Stats.

2. Statutory Authority

Statutory Authority: ss. 101.19 and 145.26, Stats.

3. Related Statute or Rule

Statutes: none
Administrative Rules: Chapter Comm 90

4. Explanation of Agency Authority

Chapters 101 and 145, Stats., grant the department general authority for the purpose of protecting public health, safety and welfare by establishing standards and regulatory oversight programs for the construction and maintenance of buildings, structures and dwellings, public swimming pools and water attractions. These programs are administered by the Safety and Buildings Division. Sections 101.19 and 145.26, Stats., grant the department authority to promulgate rules to fix and collect fees that reflect the cost of administering the public swimming pool and water attraction program.

5. Summary of Proposed Rules

The rules adjust the plan review and inspection fees for public swimming pools and water attractions. The rules create a separate plan review and inspection fee for modifications to existing swimming pools and water attractions that are necessary in order to comply with the federal Virginia Graeme Baker Pool and Spa Safety Act. The federal Virginia Graeme Baker Pool and Spa Safety Act requires most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

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

An internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to public swimming pool and water attraction plan review or inspection fees. The federal Consumer Product Safety Commission's implementation of the Virginia Graeme Baker Pool and Spa Safety Act necessitates the modification of existing pools to address entrapment at suction outlets.

7. Comparison with Rules in Adjacent States

An Internet-based search for the states of Illinois, Iowa, Michigan and Minnesota found the following:

Illinois: The Illinois Department of Public Health provides for the inspection and licensing of all public swimming pools, spas, waterslides, wading pools, and bathing beaches. Effective February 2003, the Department reviews all plans and specifications before construction can begin. The state's permit for the construction, development, major alteration or installation of each swimming facility is \$50, and must accompany any application.

Iowa: The Iowa Department of Public Health Swimming Pool Program regulates the construction and reconstruction of swimming pools and spas. Plan Review fees range from \$165 for swimming pools less than 500 square feet to \$825 for pools 4000 square feet or greater which may include a water slide. Water slides with a dedicated plunge pool have a plan review fee of \$550 with a fee of \$165 for each additional water slide. The plan review fees for spas range from \$165 for a spa less than 500 square feet to \$385 for a spa of 1000 square feet or greater. The reconstruction plan review fee is \$250 for each swimming pool, spa, or bathhouse altered in the reconstruction.

Michigan: The Michigan Department of Environmental Quality Water Bureau regulates public swimming pool construction permits and licensing fees, which range from \$596 for a new pool 500 square feet or less to \$1,951 for a new pool more than 4000 square feet in area. The permit fee for modification of an existing pool is \$298.

Minnesota: The Minnesota Department of Health regulates swimming pool and spa pool plan review. Plan review and inspection fees are \$800 each for swimming pools, wading pools, therapy pools, spray decks and interactive water features; \$500 each for spa pools and a request for variance; \$400 for slides and alterations not altering shape or size; and \$75 for a disinfection system change.

8. Summary of Factual Data and Analytical Methodologies

The changes are necessary in order to bring revenues in line with the cost of providing the services for public swimming pools and water attractions. The department is statutorily directed to establish and collect fees which should, as closely as possible, equal the cost of providing those services.

Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The department estimates that 3,700 existing pools and water attractions will need to undergo some type of modifications. The current plan review fees reflect the estimated average time and costs to provide the service. For types of pool and attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the fee structure of section Comm 2.68.

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

The fee reduction is occurring in light of the implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act which necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The plan review and inspection fees for these types of pool and water attraction modifications are reduced by 50 to 67%. The reduction will save pool and water attraction owners \$200 to \$650 per plan submittal. The department estimates there are still approximately 1,900 existing public swimming pools and water attractions in Wisconsin needing to submit plans for the necessary federally mandated modifications. The department estimates that 90% of the future plan submittals, 1,710, will fall under the category involving department inspections and 10% of the future plan submittals, 190, will fall under the category where the department does not conduct the inspections. Under this assumption, the department will not realize \$703,000 in plan review and inspection revenue from these plan submittals under the rules.

The Department believes that the rules will have a minimal direct impact on small business in that most businesses would utilize the plan review and inspection services on an infrequent basis and are typically a one time occurrence. These types of fees would not be significant to the overall operation of the business in comparison to overall expenses.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this emergency rule will remain open until January 29, 2010. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

SECTION 1. Comm 2.68 (3) (a) is created to read:

Comm 2.68 (3) (a) Virginia Graeme Baker alterations. 1. Fees for the review and approval of modifications to existing pools involving circulation systems or submerged suction outlets for the sole purpose of complying with the federal Virginia Graeme Baker Consumer Product Safety Commission rules shall be one of the following:

- a. Three hundred fifty dollars, if the installation inspection is performed by department staff.
- b. Two hundred dollars, if the installation inspection is not performed by department staff.

2. Additional installation inspections, beyond one, performed by department staff for modifications to existing pools involving circulation systems or submerged suction outlets for the sole purpose of complying with the federal Virginia Graeme Baker Consumer Product Safety Commission rules shall be assessed in accordance with s. Comm 2.04 (2).

END

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule on January 1, 2010.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Comm 2.68
Amendment No. if Applicable

Subject

Public Swimming Pool and Water Attraction Plan Review and Inspection Fees

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation
 Decrease Existing Appropriation
 Create New Appropriation
 Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The fee reduction is occurring in light of the implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act which necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets. The plan review and inspection fees for these types of pool and water attraction modifications are reduced by 50 to 67%. The reduction will save pool and water attraction owners \$200 to \$650 per plan submittal. The department estimates there are still approximately 1,900 existing public swimming pools and water attractions in Wisconsin needing to submit plans for the necessary federally mandated modifications. The department estimates that 90% of the future plan submittals, 1,710, will fall under the category involving department inspections and 10% of the future plan submittals, 190, will fall under the category where the department does not conduct the inspections. Under this assumption, the department will not realize \$703,000 in plan review and inspection revenue from these plan submittals under the rules.

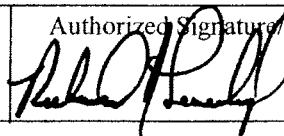
The Department believes that the rules will have a minimal direct impact on small business in that most businesses would utilize the plan review and inspection services on an infrequent basis and are typically a one time occurrence. These types of fees would not be significant to the overall operation of the business in comparison to overall expenses.

Long-Range Fiscal Implications

No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/James Quast, 266-9292

Authorized Signature Telephone No.

 608-266-7058

Date

12/16/09

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED
 UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 Comm 2.68

Subject
 Public Swimming Pool and Water Attraction Plan Review and Inspection Fees

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 \$703,000 less revenue generated.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -
(FTE Position Changes)	(0 FTE)	(- FTE)
State Operations - Other Costs	0	-
Local Assistance	0	-
Aids to Individuals or Organizations	0	-
TOTAL State Costs By Category	\$	\$ -
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
TOTAL State Revenues	\$ 0	\$ -

NET ANNUALIZED FISCAL IMPACT

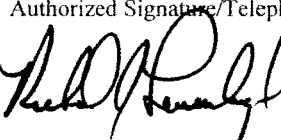
STATE

LOCAL

NET CHANGE IN COSTS \$ 0 \$ 0

NET CHANGE IN REVENUES \$ 0 \$ 0

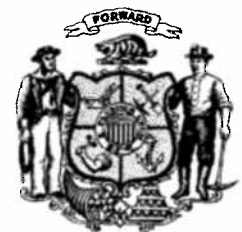
Agency/Prepared by: (Name & Phone No.)
 Commerce/James Quast, 266-9292

Authorized Signature/Telephone No.
 608-266-7088

Date
 12/16/09



WISCONSIN STATE LEGISLATURE



**ORDER OF THE
DEPARTMENT OF COMMERCE**

**EMERGENCY RULE RELATING TO REALLOCATIONS FOR
RECOVERY ZONE FACILITY BONDS**

Exemption From Finding of Emergency

The Legislature, by SECTION 5 (1) (b) in 2009 Wisconsin Act 112, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 1 day
of March, A.D. 2010,
by the Department of Commerce

for 
Richard J. Leinenkugel, Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 137
Amendment No. if Applicable

Subject

Reallocations for Recovery Zone Facility Bonds

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Although the rules will newly result in review of documentation relating to reallocations for recovery zone facility bonds, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by governmental units that choose to pursue obtaining recovery zone facility bonding authority which is reallocated by the Department.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James O'Keefe 264-7837

Date

12/26/10

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Chapter Comm 137

Amendment No.

Subject

Reallocations for Recovery Zone Facility Bonds

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$0	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

Commerce/ Jim O'Keefe 264-7837

James O'Keefe

7/26/10

The Wisconsin Department of Commerce adopts an order to create chapter Comm 137 relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.033.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.033.

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 560.033 (1) of the Statutes directs the Department to establish by rule, a system for reallocating waived allocations for recovery zone facility bonds – as defined under 26 USC 1400U-3(b)(1) – to the authorities and local governmental units which are defined in sections 66.1104 (1) (a) and (b) of the Statutes. Section 560.033 (3) of the Statutes authorizes the Department to place any condition on these reallocations that the Department deems is in the best interest of the State.

4. Related Statute or Rule.

Chapter Comm 113 contains rules relating to allocating volume cap on tax-exempt private activity bonds for manufacturing and housing, pursuant to 26 USC 146.

Chapter Comm 136 establishes a procedure by which the Governor can designate tax-exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

5. Plain Language Analysis.

The rules in this order establish a system for reallocating all of the federal recovery zone facility bond allocations that are not used by June 1, 2010, to the authorities and local governmental units which are defined in sections 66.1104 (1) (a) and (b) of the Statutes, as created in 2009 Wisconsin Act 112. This reallocation system includes deadlines that are designed to result in complete use of the federal bond allocation prior to its expiration on December 31, 2010.

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

Current federal law, including the American Recovery and Reinvestment Act of 2009 (ARRA), authorizes certain local governments to issue several different types of tax-exempt

bonds, including recovery zone facility bonds. The amount of bonds that may be issued is limited. Through each State, the ARRA allocates to counties, and to cities with a population of at least 100,000, the limited amount of recovery zone facility bonds that may be issued. The ARRA also authorizes these counties and cities to then waive some or all of their allocation, in which case the State in which the local units are located may reallocate the waived allocation to other units of government in that State.

7. Comparison With Rules in Adjacent States.

Minnesota, Illinois, Iowa and Michigan have not yet promulgated any rules relating to counties or cities waiving allocations for recovery zone facility bonds. As a result, each county or city within those States may have developed their own requirements or guidelines for utilizing their portion of the State's recovery zone facility bond allocation.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) reviewing 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development.

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

The primary documents that were used to determine the effect of the rules on small business were 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009.

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 tax-exempt private activity bonds that allow businesses to finance certain depreciable capital projects in areas which are designated by the bond issuers as having significant poverty, unemployment, rate of home foreclosures, or general distress.

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail Steven.Sabatke@Wisconsin.gov.

File reference: Comm 137/rules, analysis-e

SECTION 1. Chapter Comm 137 is created to read:

CHAPTER Comm 137, REALLOCATIONS FOR RECOVERY ZONE FACILITY BONDS

Comm 137.01 Purpose. The purpose of this chapter is to establish a system for the reallocation of waived allocations of the limitation on the issuance of recovery zone facility bonds, as defined under 26 USC 1400U-3(b)(1), among authorities and local governmental units.

Note: 26 USC 1400U-3 was created by Section 1401 of Title I in Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Comm 137.02 Definitions. In this chapter:

- (1) "Authority" has the meaning specified in s. 66.1104 (1) (a), Stats.
- (2) "Department" means the department of commerce.
- (3) "Issuer" means any of the following:
 - (a) A municipality.
 - (b) An agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including any redevelopment authority, community development authority, or housing authority established by or on behalf of these entities.
 - (c) A person acting for or on behalf of an entity listed in par. (a) or (b).
 - (d) Any public corporation or commission established by or on behalf of an entity listed in par. (a) or (b).
- (4) "Limitation on aggregate amount" means the limitation applicable to the state of Wisconsin on the aggregate amount for the issuance of recovery zone facility bonds, which is \$238,217,000.
- (5) "Local governmental unit" has the meaning specified in s. 66.1104 (1) (b), Stats.
- (6) "Midwestern disaster area bonds" means bonds described in, and designated for the purposes of, 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.
- (7) "Municipality" has the meaning given in s. 67.01 (5), Stats.

Note: Section 67.01 (5) of the Statutes reads as follows: " 'Municipality' means any of the following which is authorized to levy a tax: a county, city, village, town, school district, board of park commissioners, technical college district, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, town sanitary district under subch. IX of ch. 60, transit authority created under s. 66.1039, public inland lake protection and rehabilitation district established under s. 33.23, 33.235, or 33.24, and any other public body empowered to borrow money and issue obligations to repay the money out of public funds or revenues.

'Municipality' does not include the state."

(8) "Project" means any project for which recovery zone facility bonds may be issued.

(9) "Recovery zone facility bonds" means bonds that are treated as such for purposes of 26 USC 1400U-3.

Comm 137.03 Accounting for the limitation on aggregate amount, waiver and reallocation. (1) The department shall keep a record of all waived allocations received, and reallocations made, by the department pursuant to s. 560.033, Stats.

(2) (a) The allocation of the limitation on aggregate amount received by a city or county shall be considered waived on March 1, 2010, except with regard to any amount about which the city or county sends written notice to the department before that date in which the city or county does one of the following:

1. States that recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount.

2. Identifies the amount of a proposed issuance of recovery zone facility bonds and the nongovernmental entity that will own or operate the project being financed and includes a letter addressed to the department from the prospective purchaser of the recovery zone facility bonds that states the expectation of the prospective purchaser that an agreement will be executed before May 1, 2010, providing for the purchase of the recovery zone facility bonds and that the recovery zone facility bonds will be issued before June 1, 2010.

(b) The allocation of the limitation on aggregate amount received by a city or county and not waived pursuant to par. (a) shall be considered waived on May 1, 2010, except with regard to any amount about which the city or county sends written notice to the department before that date in which the city or county states one of the following:

1. That recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount.

2. That an agreement has been executed by the city, county, other local governmental unit, or authority which will issue the recovery zone facility bonds, and a bond purchaser, providing for the purchase of recovery zone facility bonds.

(c) The allocation of the limitation on aggregate amount received by a city or county and not waived pursuant to par. (a) or (b) shall be considered waived on June 1, 2010, except with regard to any amount about which the city or county sends written notice to the department before that date in which the city or county states that recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount.

(3) (a) The written notice to the department under sub. (2), shall consist of an official letter from a city or county, that is signed by the mayor, city manager, county board chairman or county executive.

(b) A written notice to the department in which the city or county states that recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount shall include all of the following information for statistical purposes:

1. The amount of the bond issue.
2. The nongovernmental entity that will own or operate the project being financed.
3. The date of the bond issue.
4. The bond purchaser.
5. The economic impact of the project being financed including all of the following information:
 - a. The total investment in the project
 - b. The total number of full-time jobs that will be created, retained or substantially upgraded in connection with the project.
 - c. The average wages and benefits that will be provided to persons hired as a result of the project.

Note: The written notice can either be sent by mail to Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI 53707, or by fax at 608-264-6151, or by email to Steven.Sabatke@Wisconsin.gov.

(c) A written notice to the department in which the city or county states that an agreement has been executed by the city, county, other local governmental unit, or authority that will issue the recovery zone facility bonds, and a bond purchaser, providing for the purchase of recovery zone facility bonds shall include a copy of the agreement.

Comm 137.04 Eligible projects. A project is eligible for a reallocation of the limitation on aggregate amount only if the department determines that Midwestern disaster area bonds are not an alternative source of financing for the project.

Comm 137.05 Request process. A request for a reallocation of the limitation on aggregate amount under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

- (1) The name and address of the issuer.
- (2) A description of the project, including the name and address of the owner, operator or sponsor of the project and the trade or business in which the project will be used.
- (3) The location of the project including both the county and the city, village or town.

(4) The total investment in the project.

(5) The total number of full-time jobs that will be created, retained or substantially upgraded in connection with the project.

(6) The average wages and benefits that will be provided to persons hired as a result of the project.

(7) Evidence that official action has been taken by the issuer with respect to the issuance of the bonds which, for bonds issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the bonds.

(8) Evidence that a recovery zone, as defined in 26 USC 1400U-1(b), has been designated by the issuer or by the county or the city in which the project is located.

(9) A letter from bond counsel to the effect that the obligations would constitute recovery zone facility bonds.

(10) A letter from a financial institution indicating a commitment to either purchase the obligations upon delivery by the issuer or issue a letter of credit.

(11) The requested amount of the reallocation.

(12) A nonrefundable payment of \$300 by cash or by a certified or cashiers check payable to the department.

Note: The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707.

Comm 137.06 Review process. (1) Except as provided in sub. (3), the department shall review each reallocation request in the order in which qualifying requests are received.

(2) For the reallocation requests that meet the requirements of ss. Comm 137.04 and 137.05, the department shall evaluate the included projects based upon consideration of the following:

(a) The prospects for new investment and economic development in the area.

(b) The amount of investment that is likely to result from the project.

(c) The number of full-time jobs that are likely to be created or retained as a result of the project including "green" jobs that are created as a result of the project. A "green" job is one that provides a service or produces a product in any of the following categories:

1. Increasing energy efficiency.

2. Producing renewable energy.
3. Recycling existing materials.
4. Preventing, reducing or mitigating environmental degradation.
5. Cleaning up and restoring the natural environment.

(d) Whether the project will result in the dislocation of a business from one municipality to another.

(e) The feasibility of the financial commitment for the bond issue.

(f) Whether the project is likely to occur or continue without the reallocation.

(g) The degree to which the project is shovel-ready.

(h) Whether a reallocation in the requested amount would not cause the aggregate amount of allocations under this chapter to exceed the aggregate amount of waived allocations.

(i) The adequacy of any remaining waived allocation for other pending or expected requests.

(j) Any other factors that the department considers relevant.

(3) In reviewing an application for a reallocation that is made after March 1, 2010, but before June 1, 2010, the department shall give priority to those requests for projects in the cities or counties that waived their allocations provided the request does not exceed the amount of the allocation that the city or county waived.

Note: Any priority assigned under this subsection must comply with the allocation limitations specified in section 560.033 (5) of the Statutes.

Comm 137.07 Certification process. If the department approves an application under this chapter, the department shall promptly certify and reallocate the amount requested to the issuer. The reallocation shall be valid for a period equal to the lesser of 60 calendar days or the remainder of the calendar year 2010. The amount of the reallocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain reallocations are subject to earlier termination pursuant to s. Comm 137.09 (3) and (4). Any reallocation made under this section shall be valid only with respect to bonds issued in calendar year 2010.

Comm 137.08 Emergency. Based upon the federal tax law requirement that a recovery zone facility bond must be issued prior to January 1, 2011, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

Comm 137.09 Post-reallocation process (1) After making a reallocation, the department shall record that the corresponding portion of the limitation on aggregate amount has been allocated.

(2) (a) Each issuer shall notify the department in writing as to the amount of recovery zone facility bonds issued pursuant to the reallocation, within 5 business days after the issuance of the bonds. Each notification shall include all of the following information:

1. The date of the bond issue.
2. The term of the bond issue and interest rate.
3. The bond purchaser and whether the bond issue was either a private placement or public sale.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount of the bonds issued pursuant to the reallocation, up to a maximum of \$10,000, by cash or by a certified or cashier's check payable to the department.

2. The payment in subd. 1 may be reduced by the amount paid to the department under s. Comm 137.05 (12).

(3) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a reallocation under this chapter. Upon surrender, the surrendered portion of the reallocation shall expire.

(4) (a) Unless the department has received notice of the issuance of bonds pursuant to sub. (2) or a deposit of cash or a certified or cashier's check in an amount equal to 0.5% of the allocation requested, any allocation will terminate on the earlier of 30 days after the reallocation is made or December 1, 2010. No additional deposit may be required with respect to an allocation made upon reapplication if the required deposit has already been made, and not refunded, with respect to the project.

(b) 1. Subject to subd. 2., the deposit shall be refunded, without interest, if prior to January 1, 2011, the bonds are issued by the issuer pursuant to the allocation or to an allocation made upon reapplication.

2. A ratable portion of the deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds may not be refunded.

3. Any deposits, or portions of the deposits, which have not become refundable pursuant to subds. 1. and 2., as of the fifth business day of the succeeding year shall remain in the department and be used as determined by the department.

4. Any refund shall be made within 30 days after a request for refund, together with any

evidence as the department may reasonably require, is furnished to the department.

(5) All recovery zone facility bonds shall be issued before January 1, 2011.

(END)

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 137/rules e2



**ORDER OF THE
DEPARTMENT OF COMMERCE**

EMERGENCY RULE RELATING TO THE FORWARD INNOVATION FUND

Exemption From Finding of Emergency

The Legislature, by SECTION 9110 (8) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 16 day
of March, A.D. 2010,
by the Department of Commerce

Alan Ode
for Richard J. Leinenkugel, Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 124
Amendment No. if Applicable

Subject

Forward Innovation Fund

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation

Increase Existing Appropriation
 Decrease Existing Appropriation
 Create New Appropriation
 Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs - May be Possible to Absorb
Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive Mandatory

2. Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Although the rules will newly result in review of documentation relating to applications and reports for grants or loans under this chapter, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by entities that choose to pursue obtaining grants or loans under this chapter.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)

Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James O'Keefe 264-7837

Date

2/26/10

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, each of the adjacent States have community-based economic development or minority business programs that appear to address some of the activities which are expected to occur under these emergency rules, for achieving this objective.

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 proposed 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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File reference: Comm 124/rules, analysis-e

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) "Board" means the economic policy board created under s. 15.155 (2), Stats.

(2) "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.

(3) "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.

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

(5) "Department" means the department of commerce.

(6) "Economically distressed area" means an area designated by the department using the methodology established under s. Comm 124.04.

(7) "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.

(8) "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.

(9) "Governing body" means a county board, city council, village board, or town board.

(10) "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.

(11) "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."

(12) "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."

(13) "Municipality" means a county, city, village, or town.

(14) "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.

(15) "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.

(16) "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, including the types of projects that are eligible for funding and the types of eligible projects that will receive priority.

(3) 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.

(4) 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.

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

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.

Comm 124.06 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) (fi), 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 124.07 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) (gm), Stats.

Comm 124.08 Biennial plan. The department shall develop and submit to the board a plan for awarding grants and making loans. The department shall also submit this plan to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), Stats. The department shall notify the board of all grants and loans issued under this subchapter.

(END)

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 124/rules e7



**ORDER OF THE
DEPARTMENT OF COMMERCE**

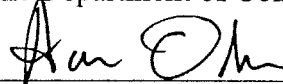
**EMERGENCY RULE RELATING TO SMALL BUSINESS INNOVATION
AND RESEARCH ASSISTANCE GRANTS**

Exemption From Finding of Emergency

The Legislature, by SECTION 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 14 day
of April, A.D. 2010,
by the Department of Commerce



Aaron Olver, Deputy Secretary