

RESPONSE COMMENTS TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

Clearinghouse comment 2. c. Chapter Comm 100 was created as an emergency rule effective June 30, 2009, and is expected to be replaced by a corresponding permanent rule on or before July 1, 2010.

Clearinghouse comment 5. As directed by section 560.075 (2) of the Statutes, the Department currently executes a contractual agreement with each recipient of a grant, loan or tax benefit, that requires the recipient to repay the grant, loan or tax benefit if, within 5 years after either receiving the grant or loan or being certified to receive the tax benefit, the recipient (1) ceases to conduct in Wisconsin the economic activity for which the recipient either received the grant or loan or was certified to receive the tax benefit, and (2) then commences substantially the same economic activity outside Wisconsin.

The Department plans to continue including this requirement in these contractual agreements, and plans to add a “clawback rights agreement” as a rider to these contracts, for establishing the Department’s clawback rights and detailing when and how they will be pursued, along with any applicable appeal or adjudication procedures.

Based on Clearinghouse comment 5, the Department has added an informational Note to section Comm 149.50 (1) describing the contractual agreement and repayment that are required by section 560.075 (2) of the Statutes, and we have expanded section Comm 149.50 (1) (c) to specify the form of the further forfeitures that the Department may impose – namely, cash penalties, an increase in the loan interest rate, debarment from accessing Commerce programs, or other forfeitures as specified in the contract between the Department and the recipient.

The Department prefers to then expand the contract to include the procedures for imposing forfeitures and the range of their amounts, as is now clarified in section Comm 149.50 (2) – rather than specify them in an administrative rule – in order to retain the flexibility needed for adequately addressing the broad range of programs and projects within the scope of this chapter, and to reduce the potential for the rule to become outdated and misleading as administrative practices evolve in conjunction with changes in the marketplace of economic development.

File reference: Comm 205/Legislative Review Clghse