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Bureau

STATE OF WISCONSIN)
) s.s.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records do hereby certify that the rule relating to the Wisconsin Transportation Facilities Economic Assistance and Development Program was duly approved and adopted by this department on January 17th, 1990.

I further certify that this copy has been compared by me with the original on file in this 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 and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 17th day of January, 1990.

for Ronald R. Fiedler, Deputy
RONALD R. FIEDLER, P.E.
Secretary

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JAN 17 1990

STATE OF WISCONSIN Revisor of Statutes
DEPARTMENT OF TRANSPORTATION Bureau
OFFICE OF THE SECRETARY

IN THE MATTER OF THE CREATION *
OF CHAPTER TRANS 510, WISCONSIN *
ADMINISTRATIVE CODE, RELATING * ORDER ADOPTING RULE
TO THE TRANSPORTATION FACILI- *
TIES ECONOMIC ASSISTANCE AND *
DEVELOPMENT PROGRAM *

Analysis Prepared by the Wisconsin Department of Transportation

General summary of rule. 1987 Wisconsin Act 27 established the Transportation Facilities Economic Assistance and Development Program. The statute authorizes the Secretary of the Department of Transportation to approve transportation facility improvements and to provide financial assistance when the transportation improvement is a component of an economic development project.

This program was created to assure a flexible and expeditious process for evaluating and approving requests for grants for transportation facility improvements essential to planned business development that would create new jobs in Wisconsin and increase the overall productivity of this state.

The purpose of this rule is to set forth the policies of the Department of Transportation regarding the Wisconsin Transportation Facilities Economic Assistance and Development Program.

The rule provisions establish and prescribe policies and procedures for administering the program. These provisions include:

- Grant application procedures
- Initial screening and evaluation criteria
- Program management requirements

Authority for rule. Section 84.185(4), Stats., requires the Department to adopt rules establishing criteria for making determinations regarding transportation facilities improvements under this program.

Fiscal estimate. 1989 Wisconsin Act 31 provides an annual appropriation of \$3,000,000 for the Department to assist financially approved transportation facilities improvements. The provisions of this rule do not, however, impose any other significant additional costs on the state or local units of government. A complete fiscal estimate is available upon request.

Final regulatory flexibility analysis. This rule can positively assist those small businesses that may be a part of an economic development project as defined in s. 84.185(1), Stats. This rule should not negatively impact small businesses.

This analysis was prepared by Mark Wolfgram, Chief, Economic Policy and Analysis, Wisconsin Department of Transportation, Room 901, P.O. Box 7913, Madison, Wisconsin 53707, 608/266-0255.

RULE TEXT

Pursuant to the authority vested in the state of Wisconsin, department of transportation, by s. 84.185 (4), Stats., as affected by 1981 Wisconsin Act 31, the department of transportation hereby adopts a rule interpreting s. 84.185, Stats., as affected by 1981 Wisconsin Act 31, and establishing the criteria for determining the funding eligibility of transportation facility improvements essential to economic development projects.

SECTION 1. Chapter Trans 510, Wis. Admin. Code, is created to read:

CHAPTER TRANS 510

TRANSPORTATION FACILITIES ECONOMIC ASSISTANCE AND
DEVELOPMENT (TEA) PROGRAM

Trans 510.01 PURPOSE AND SCOPE. (1) As required by s. 84.185 (4), Stats., the purpose of this chapter is to establish department criteria for implementing a flexible and expeditious process of evaluating and approving transportation facility improvements that are essential to economic development projects.

(2) The objective of the transportation facilities economic assistance and development program is to increase the number of jobs in this state by responding to the transportation needs of

an economic development project when that project is contingent on the transportation facility improvement.

Trans 510.02 DEFINITIONS. In addition to the words and phrases as defined in s. 84.185, Stats., in this chapter:

(1) "Applicant" means a business, consortium or governing body.

(2) "Applicant's share" means an amount of money or in kind services equaling no less than 50 percent of the final transportation facility improvement cost. In kind services may include, but are not limited to, engineering, land acquisition and construction.

(3) "Cost per direct job" means the grant ceiling divided by the number of direct jobs.

(4) "Department" means the department of transportation.

(5) "Direct jobs" means the number of eligible jobs directly associated with an economic development project and listed on the application, as reviewed and approved by the department.

(6) "Eligible jobs" means jobs that represent net employment gains in this state.

(7) "Final transportation facility improvement cost" means the actual contract cost incurred for constructing participating elements of approved transportation facility improvements, including contract change orders for work approved by the department.

(8) "Grant ceiling" means the department's maximum financial participation in a transportation facility improvement.

(9) "Reviewed transportation facility improvement cost" means the estimated cost of the transportation facility improvement as reviewed and approved by the department.

(10) "Secretary" means the secretary of transportation.

Trans 510.03 APPLICATION PROCEDURE. (1) APPLICATION PACKET. Applicants shall contact either the department's director of the bureau of policy planning and analysis or the chief planning engineer of a department district office for an application packet containing the application requirements and a description of the application screening, evaluation, and funding process.

(2) APPLICATION PROCESS. Completed applications shall be sent to the department's director of the bureau of policy planning and analysis. Applications shall be accepted throughout the year. The department shall expeditiously screen and evaluate applications as received. Application deadlines and funding dates shall be established, listed in the application packet and announced publicly through varying media. The department, as is necessary, may establish additional application deadlines and funding dates. The department shall only consider applications received on or before the application deadline for a given funding date. Applications shall not be evaluated for eligibility unless all information required in the application packet is made available prior to the application deadline. The results of the screening and evaluation shall be reported promptly to the applicant when completed.

(3) INFORMATION REQUIREMENTS. (a) The application shall request information necessary to determine how well the proposed transportation facility improvement and economic development project satisfy the criteria contained in s. 84.185, Stats., and this chapter. In addition, the application shall require the following: (1) A certification that the applicant will comply with all federal and state laws and local ordinances as they relate to the development and use of the transportation facility improvement.

(2) A written endorsement of the application from any governing body which will own or have jurisdictional responsibility for the transportation facility improvement.

(3) A description of the economic development project and the transportation facility improvement. The description shall contain appropriate maps or drawings and estimates of specific cost items for the transportation facility improvement such as land, engineering, and construction.

(b) Supplemental information beyond that contained in the application packet may be needed by the department in order to complete its review of an application. The department shall notify the applicant in writing of any supplemental information that is needed and shall set reasonable additional deadlines for the receipt of this information. If the information is not received by the additional deadlines established, the department may remove the application from consideration.

Trans 510.04 SCREENING. (1) CRITERIA. Applications that meet the following screening criteria shall be evaluated for funding eligibility if they are for transportation facility improvements not excluded under sub. (2): (a) The economic development project is unlikely to occur in Wisconsin unless the transportation facility improvement is built.

(b) The transportation facility improvement is not likely to occur without the grant.

(c) The business development meets the definition of an "economic development project" set forth in s. 84.185 (1)(am), Stats.

(d) Construction of the transportation facility improvement would be scheduled to begin within 3 years of the date when a grant is awarded for the improvement.

(2) EXCLUSIONS. The following transportation facility improvements are ineligible for assistance: (a) Street, road and highway improvements that are not open to the public and not under either the jurisdiction or ownership of a public authority.

(b) Any improvement that is not described under par. (a) and is not under the jurisdiction of a public authority, unless businesses or persons other than the economic development project may use the improvement.

(c) Airplane hangars and other airport facilities not listed in s. 84.185 (1)(d)2, Stats.

(d) Parking lots, parking lanes and other lanes exceeding those required to provide adequate traffic capacity.

(e) Transportation facility improvements needed for business developments that are likely to displace employment in the state rather than create net employment gains. Such business developments are likely to include, for example, retail stores, eating and drinking establishments, recreation and entertainment facilities, and hotels and motels. An economic development project may include business developments that displace employment in the state, but the jobs associated with them shall not be counted as direct jobs.

Trans. 510.05 EVALUATION OF ELIGIBILITY. Applications passing the initial screening shall be evaluated based on the criteria in s. 84.185 (2)(b), Stats., and this chapter. Determination of the eligibility of an application for funding shall be documented in an evaluation report and shall be based on how well the application satisfies the criteria in s. 84.185 (2)(b), Stats., and this chapter. Applications shall be ineligible for funding if the criteria in this chapter would result in a grant ceiling of less than 25 percent of the reviewed transportation facility improvement cost.

Trans 510.06 FUNDING SHARES. (1) DEPARTMENT SHARE.
(a) When awarding a grant, the department shall establish a grant ceiling. The grant ceiling shall not be amended after the Secretary has approved an application for funding. The grant ceiling shall be 50 percent of the reviewed transportation facility improvement cost, except that the department's resulting cost per job shall not exceed \$5000 unless the secretary finds special circumstances exist and the department may set ceilings

at a reduced level for reasons including, but not limited to, the following: (1) A grant for 50 percent of the reviewed transportation facility improvement cost would result in a grant exceeding \$1 million.

(2) Grants for all eligible applications would exceed available funds.

(b) The department's final level of financial participation in a transportation facility improvement shall be 50 percent of the final transportation facility improvement cost, except that the grant ceiling shall not be exceeded.

(2) APPLICANT SHARE. The applicant's share may include any of the following: (a) Any combination of local government and private funding.

(b) Funds from the federal government if the use of the funds are under the jurisdiction of the applicant and the granting agency's rules permit using the funds for matching purposes.

(c) In kind services including, but not limited to, engineering, land acquisition, and construction.

Trans 510.07 GRANT AWARDS. (1) AUTHORITY. The secretary has the final authority to determine the eligibility of a transportation facility improvement, determine the grant ceiling, schedule improvements, obligate state funds, and set priorities.

(2) PRIORITY. If eligibility is established for more transportation facility improvements than can be funded at any funding date, priorities shall be determined by considering the department's cost per direct job, the geographic diversity of

previous Transportation Facilities Economic Assistance and Development grants and the extent to which each application meets other criteria in s. 84.185 (2)(b), Stats.

TRANS 510.08 ASSISTANCE AGREEMENTS. (1) The scheduling of an approved transportation facility improvement and the obligation of state funds shall occur only after the eligible applicant, the department, and any applicable third parties execute a formal project agreement, setting forth specific terms, conditions and responsibilities of the parties. The secretary or his or her designee shall execute the agreement on behalf of the department. Responsibilities for scheduling and monitoring an approved transportation facility improvement shall be determined cooperatively by the department, the applicant and the governmental entity in which the transportation facility improvement is primarily located.

(2) A jobs guarantee with the local governing body shall be part of the project agreement when deemed necessary by the department in order to protect the public interest. The local governing body shall, in turn, be encouraged to develop a similar agreement with the economic development project. The jobs guarantee shall obligate the local governing body to reimburse the department for up to the full amount of the grant if either of the following occurs: (a) the guaranteed number of direct jobs associated with the economic development project do not result within 3 years of the date the project agreement is executed, or

(b) the guaranteed number of direct jobs associated with the economic development project do not exist 7 years after the date the project agreement is executed. The base number of jobs to be used for comparison shall be established on the date funds are awarded. Verification of the number of direct jobs associated with the economic development project shall be made utilizing information available from the Department of Industry Labor and Human Relations and other sources.

(3) In order to ensure compliance with the terms of the project agreement under sub. (1), the department may perform audits and inspections of the applicant's and third parties' records related to the transportation facility improvement. The applicant shall, on request, provide the department with information necessary to document whether the jobs guarantee has been satisfied.

TRANS 510.09 PROJECT DEVELOPMENT PROCESS. (1) ADMINISTRATIVE REVIEW. The department shall review all applications in order to determine the extent to which the transportation facility improvement shall comply with the department's facility development process under sub. (2). When the department has determined that it will not delegate responsibility for any portion of the facility development process, the department shall sign a project agreement only after all the steps in sub. (2) are completed. When the department chooses to delegate some responsibility for the facility development process, the conditions in sub. (3) shall apply.

(2) FACILITY DEVELOPMENT PROCESS. The department's facility development process includes the following steps: (a) Departmental approval of a complete environmental analysis appropriate for the level of the transportation facility improvement.

(b) Departmental approval of a final design study report for highway and road improvements or an equivalent document for airport, rail and harbor improvements.

(c) Acquisition of necessary rights-of-way using departmental procedures.

(d) Departmental approval and processing of the plans, specifications, and estimates for letting.

(3) DELEGATION OF RESPONSIBILITY FOR THE FACILITIES DEVELOPMENT PROCESS. When the department has determined that it is appropriate, the department may choose to delegate responsibility for approving plans, enforcing department standards, acquiring necessary rights-of-way, and letting bids to the local jurisdiction which is responsible for project management. The following conditions shall be applied: (a) Highway, road, and airport improvements must employ the services of a registered professional engineer to be responsible for design and construction.

(b) The applicant must assume all responsibility for complying with all germane environmental requirements for the transportation facility improvement, and certify that an environmental analysis was completed and that all applicable environmental laws were followed.

(c) A design study report for highway and road improvements or an equivalent document for airport, rail and harbor improvements must be submitted to the department for approval prior to preparing final plans.

(d) A copy of the plans and specifications containing the engineer's seal as prepared for bidding purposes must be provided to the department prior to the start of construction.

(e) (1) Except as noted in subd. 2, all contracts must be let to competitive bid and contracts awarded to the lowest responsible bidder. The applicant must submit a certification of the date bids were taken, listing all bidders and bid amounts. A written explanation must accompany any certification where the contract is awarded to someone other than the low bidder. (2) Upon written determination by the local jurisdiction responsible for project management of the necessity to let a contract for construction of all or part of a rail improvement on railroad owned or controlled land, and with the written concurrence of the department in this determination, a contract for construction at cost may be let to the railroad without competitive bid.

(f) All real estate acquisition and required relocation of persons, families, businesses, or farms must be accomplished in accordance with existing state law. A written certification from the applicant to this effect shall be required after the real estate is acquired.

(g) State payments will be made after the improvement is complete and sufficient proof of cost is sent to the department. On improvements where the reviewed transportation facility

improvement cost is over \$100,000, the department may pay on the basis of actual costs, but no more than monthly.

(END OF RULE TEXT)

Effective date: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Signed at Madison, Wisconsin, this
17th day of January, 1990.

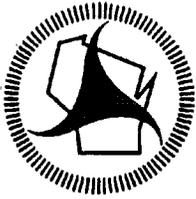
Donald H. Janssen, Deputy

for

RONALD R. FIEDLER, P.E.

Secretary

Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

January 17, 1990

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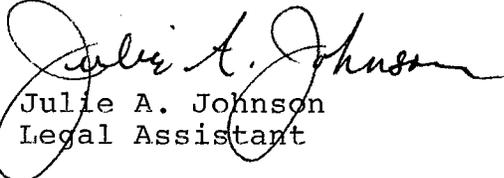
Mr. Gary Poulson
Assistant Revisor of Statutes
30 West Mifflin Street
Suite 702
Madison, Wisconsin 53703

RE: Clearinghouse Rule 89-166
In the Matter of the Adoption of Trans 510, Wisconsin Administrative Code, Relating to the Wisconsin Transportation Facilities Economic Assistance and Development Program

Dear Mr. Poulson:

Enclosed for filing, pursuant to sec. 227.20, Wis. Stats., is a certified copy of CR 89-166, an administrative rule relating to the Wisconsin Transportation Facilities Economic Assistance and Development Program. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Julie A. Johnson
Legal Assistant

Enclosures

cc: Tom Walker
Linda Thelke
Sandy Beaupre
Mark Wolfgram