

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 97-037**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

a. Section Comm 108.09 provides that comparative ranking for the public facilities program will be established based upon factors set forth in the rule and “other factors that the department considers relevant.” In addition, the department will prepare an application manual for the public facilities program that may establish standards governing the allocation of additional ranking points to local governments. The department does not have statutory authority to make use of standards that are not promulgated as administrative rules under ch. 227, Stats. Any standard used by the department to distribute community development block grant (CDBG) funds will meet the definition of the term “rule” in s. 227.01 (13), Stats., and, consequently, must be placed in the Administrative Code. [Presumably, the application manual described in s. Comm 108.05 will be descriptive of the application process and not contain unpromulgated standards.]

b. It is unclear why the analysis refers to s. 560.045, Stats., as a source of statutory authority and as the statute interpreted by the rule. It appears that s. 560.045, Stats., relates only to the department’s authority to contract with the Department of Administration for the administration of certain housing programs under the CDBG program, not to the general authority to administer the CDBG program. Also, in the first sentence in the text of the rule, s. 560.032, Stats., is cited as authority for the rule. This section of the statutes relates to the allocation of volume cap on tax-exempt bonds and appears to have no relevance to the rule.

#### **2. Form, Style and Placement in Administrative Code**

a. In the first sentence of item 1. of the analysis, the clause beginning with the phrase “and any county” is incomplete and should be expanded to clearly indicate that certain counties

may apply for CDBG funds. Also, the notation “s.” should appear before the Administrative Code citation.

b. In the last sentence of item 2. of the analysis, it appears that the phrase “the use of” should be inserted between “authorizes” and the “CDBG.”

c. In the second sentence of item 4. of the analysis, it appears that “project” should be inserted following the first occurrence of “development.”

d. Since s. Comm 108.17 relates to the public facilities economic development program, it appears that the title of subch. IV should be amended to delete the word “for.”

e. In s. Comm 108.03, the phrase “of this chapter” following references to particular subchapters of ch. Comm 108 is unnecessary and should be deleted.

f. Since ch. Comm 108 is newly created by this rule, the definitions in s. Comm 108.03 should be consecutively numbered without a gap between subs. (24) and (26). Also, the order of subs. (24) and (26) should be reversed so that the definitions are in alphabetical order.

g. The introductory material in s. Comm 108.04 should be rewritten to clarify that the department must find that an applicant for CDBG funds has demonstrated that the project to be funded will meet one of the national objectives before the department provides CDBG funds to the applicant. Also, it appears that the titles to the subsections are meant to be substantive provisions of the rule. If so, the titles should be rewritten to eliminate their presentation as titles and to make them part of the substantive text of the subsections.

h. In s. Comm 108.05, it appears that “may” should be changed to “shall.” In addition, a note should be inserted following that section indicating where an application manual may be obtained.

i. The introductory material in s. Comm 108.11 should be rewritten to conform to the requirement that introductory material always ends in a colon and grammatically leads into the following subunits. [See s. 1.03 (8), Manual.]

j. Sections Comm 108.10 (intro.), 108.11 (intro.) and 108.12 (intro.) should be rewritten in the active voice. For example, s. Comm 108.11 (intro.) could be rewritten as follows: “The department shall award points to each local government based upon the department’s evaluation of the local government’s documented need for the public facilities project. The department shall award points as follows:”. In addition, ss. Comm 108.10, 108.11 and 108.12 should use consistent terminology and follow a consistent format. As currently written, each section uses different terminology to describe essentially the same activity: allocating points to grant applicants to determine the comparative ranking of those applicants. For example, in setting forth the points which an applicant may be granted for meeting certain criteria, s. Comm 108.10 uses the phrase “scores shall range from . . .”; s. Comm 108.11 uses the phrase “local governments shall be eligible for . . .”; and s. Comm 108.12 uses the phrase “the department shall rank each of the applications . . .” In addition, it is unclear why s. Comm 108.11 (4) specifies that local governments that are not eligible for any of the points as specified in the rule are ineligible for points under that section, while ss. Comm 108.10 and 108.12 do not contain similar language.

k. For the sake of consistency and clarity, it appears that each subchapter should contain a statement of purpose as does subch. VI. In addition, should s. Comm 108.24 (1) (e) contain language similar to that in s. Comm 108.17 (1) (i), which would specify that the local government's 25% contribution must be from funding sources other than grants from the federal and state governments?

l. In s. Comm 108.22 (1) (c) and (e), the word "subchapter" should be replaced by the notation "subch."

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

a. In s. Comm 108.03 (4), the correct statutory citation is "s. 66.431 (2m) (bm), Stats."

b. In s. Comm 108.08, "s." should be inserted prior to "Comm 108.04." [See s. 1.07 (2), Manual. See, also, s. Comm 108.19 (2) (a).]

c. Section Comm 108.16 (3) (a) makes a possible reference to departmental forms. Subsection (4) makes a clear reference to forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. Item 2. of the analysis should clarify that the rule-making order does not repeal the national objectives set forth under the current rule but merely adds to them.

b. In s. Comm 108.04 (2) (b), the phrase "or recently became urgent within 18 months of the certification" is confusing and should be rewritten.

c. In s. Comm 108.07, are there any cumulative limits which apply to the receipt of CDBG funds under more than one category by the same local government?

d. In s. Comm 108.08, the phrase "rules in this" is unnecessary and should be deleted.

e. Section Comm 108.09 governs the "semiannual public facilities competition." That section should set forth the timelines for the receipt of applications and the granting of awards under that program.

f. There appears to be an inconsistency in s. Comm 108.09. Specifically, that rule states that the maximum number of points available under ss. Comm 108.10 to 108.13 "shall be 335 points." However, the next sentence states that the department may establish standards governing the allocation of additional points to local governments. Thus, it is unclear whether 335 points is actually the maximum number of points which the department may grant. This point should be clarified.

g. In s. Comm 108.11 (3), it appears that the phrase "a likely health and safety problems" needs to be amended either by deleting the word "a" or replacing the word "problems" with the word "problem." [See, also, the phrase "job titles for each full-time jobs" in ss. Comm 108.15 (3) and 108.18 (3).]

h. Section Comm 108.14 (1) authorizes the department award of “a *grant* under the economic development program”; s. Comm 108.14 (2) (h) refers to an “economic development *loan*.” (Emphasis added.) The rule should clarify whether funds provided under s. Comm 108.14 are to be in the form of a grant or a loan. See also s. Comm 108.15 (1), which requires a business to execute a loan agreement. Perhaps this confusion could be clarified by inserting appropriate language in each section similar to that set forth in s. Comm 108.20 (1), which lists the uses to which the CDBG funds may be put and specifies that a recipient may grant or loan CDBG funds to a business or nonprofit corporation.

i. Section Comm 108.16 in part provides that a local government must return certain program income to the department if the local government has failed to accomplish specified goals. Should the rule require that a grant itself be returned under specified circumstances?