

Publication Date: March 22, 2010

Effective Dates: March 22, 2010 through July 1, 2010

The Wisconsin Department of Commerce adopts an order to create chapter Comm 124 relating to the Forward Innovation Fund, and affecting small businesses.

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.

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.

Mark Richardson, Wisconsin Department of Commerce, Division of Business Development, P.O. Box 7970, Madison, WI, 53703; telephone (608) 267-0770; e-mail Mark.Richardson@wi.gov.

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.

FISCAL ESTIMATE DOA-2048 (R06/99)	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB or Bill No./Adm. Rule No.
	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	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

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> 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