

**STATE OF MINNESOTA  
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT**

**In the Matter of The Proposed Rule  
Amendments of the Department of Trade and  
Economic Development to Rules  
Governing Community Block Grants,  
Minn. R Chapter 4300.4300.3200**

**STATEMENT OF NEED  
AND REASONABLENESS**

**I. INTRODUCTION**

The Department of Trade and Economic Development has rules that were originally drafted in 1983 governing Community Block Grants. The rules have also been used to govern other subsequent state finance programs. The Department of Trade and Economic Development is proposing to amend these rules in order to bring them in accordance with current statutes as they relate to the following economic needs:

- The many changes and changing needs that have occurred in the field of community and economic development over the past 13 years.
- The need to effectively align and implement clearly stated and accepted State *Economic Blueprint Goals*.
- The need to pursue and successfully achieve the stated mission of the Department of Trade and Economic Development.
- The need to retain and attract jobs, particularly well-paying jobs, to create income that provides a reasonable standard of living.
- The need to leverage private investment to influence business location and expansion decisions.
- The need to stimulate and expand Minnesota's tax base.

## **II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY**

The commissioner's authority to adopt the rule amendments is set forth in MS s 116J.035, Subd. 2 (1992) which provides:

### **116J.035 DUTIES AND POWERS OF THE COMMISSIONER; RULES**

Subd. 2. Rules. The commissioner may adopt rules pursuant to chapter 14 as necessary to carry out the commissioner's duties and responsibilities pursuant to this chapter.

## **III. BACKGROUND**

It was with the benefit of two independent surveys targeted at individuals and organizations most acquainted with community and business development issues, an extensive degree of research done by Department of Trade and Economic Development's (DTED) professional staff, and a Notice of Solicitation printed in the *State Register* October 23, 1995 seeking interested persons or groups to submit comments on a potential rulemaking amendment, that the department came to collect its information.

Additionally, over the past several years, DTED has received a good deal of empirical data that would suggest the state should consider amending its rules considering community and business development programs in order to more effectively deal with economic and marketplace realities.

After careful analysis of all the information and input the department received, it became overwhelmingly clear that the existing rules currently governing business and community development block grants are antiquated, outdated and no longer provide or possess the correct eligibility requirements consistent with statutes in order to properly address the needs or opportunities Minnesotans face.

## **The 1995 Small Cities Development Grant Program Survey**

### **Introduction**

Each year the Small Cities Development Grant Program of the Department of Trade and Economic Development receives funding from the U.S. Department of Housing and Urban Development (HUD) for use to help meet housing and community development needs in Minnesota. The grant program's goal is to target the distribution of funds to the types of projects that are most needed by Minnesota communities. To achieve that goal, the grant program conducted a survey to assess housing and community development needs of Minnesota communities.

### **Methodology**

A mailed questionnaire method was used for data collection. A mailing list was constructed to include all potential recipients of funds in Minnesota under the Community Development Block Grant (CDBG) program. The recipients included individuals or organizations involved in housing and community and economic development in Minnesota communities.

A questionnaire was developed for the survey and mailed out on August 1, 1995. Of 1,086 potential recipients who were sent the questionnaires, 570 returned their survey forms.

### **Summary**

Overall results indicate that general residential housing development (2.51) and industrial/commercial development projects (2.54) had almost identical scores in receiving the highest ranking of the five general project areas. Within these two project areas, respondents consistently reported that single family owner-occupied housing development, industrial development and new commercial development were the most important project types.

When asked specifically about funding priorities for CDBG, potential recipients, including Housing and Redevelopment Authorities, ranked industrial/commercial development the highest with a rating of 1.68 and residential housing development next highest with a rating of 2.51.

Table--Importance Rankings of Housing and Community Development Projects  
1995 Housing and Community Development Needs Survey

Housing and Community Development Projects	Importance Ranking		
	Average Ranking*	Number Responding	Percent**
Infrastructure Construction	2.78	427	91.8%
Industrial/Commercial Development	1.68	435	93.5%
Office Space Development	2.88	420	90.3%
Residential Housing Development	2.51	437	94.0%
Housing Rehabilitation	3.25	427	91.8%
Commercial Rehabilitation	3.82	417	89.7%

\* Respondents were asked to rank the importance from 1 through 6 (1 as the most important and 6 as the least important).

\*\* Percentages were calculated based on the total number of respondents, which is 465.

Extrapolations of Survey Results

- Greater emphasis needs to be placed on capturing job creation, especially high quality jobs that pay head of household incomes and good benefits.

- Importance of employment security.
- A clear expectation that state government should have a leadership role in doing what it can to help local communities with economic development.
- How economic development is considered a significant underpinning to the local community.
- Jobs by the majority of respondents are considered a major factor impacting a local community.
- The quality of life (in terms of wages and benefits) for a majority of Minnesota citizens has been founded upon employment opportunities provided to them by successful, stable, growing companies.
- A linkage does exist between economic development and residential housing development.

### **Marketing and Incentives Survey**

As part of the Governor's Task Force on Marketing and Incentives, a survey was sent to 1,258 business service providers in July 1995. Of these surveys, 365 were returned. Business service providers are primarily cities, counties, agricultural extension offices, local nonprofit development agencies and consultants representing various public agencies and nonprofits with business clients. The goal of the survey was to gather information about the importance of state marketing and incentive tools, program conditions, or requirements, and appropriate targets.

#### **Importance**

Overall 86.4 percent of respondents said that state incentive tools were somewhat or very important. When asked about specific tools, the most important tools were job

training (85.7 percent), grants to communities for business loans (85.3 percent), funding for infrastructure in support of business development (82.6 percent), loans to businesses through local/regional organizations (82.3 percent), and direct business loans (80.5 percent).

### Coordination

Although respondents said that incentives were important, only 42.3 percent said that the tools were somewhat or very coordinated.

### Conditions

Of the possible conditions listed for programs, the five rated most important by business service providers were based on overall economic strategy (87.0 percent), job creation (86.6 percent), job retention (86.5 percent), subject to cost-benefit analysis (84.5 percent) and business held accountable to performance goals (83.4 percent).

### Targets

When asked about appropriate targets for state incentive programs, 90 percent said that manufacturing would be somewhat or very appropriate, followed by clusters of related industries (81.6 percent), agriculture (81.4 percent), firm size (78.3 percent) and general economic growth (76.3 percent).

### Economic Blueprint

Overall, 83.4 percent of respondents said that the seven economic goals in Minnesota's *Economic Blueprint* would be effective measures for evaluating and refining incentive programs. The seven goals of the *Economic Blueprint* are:

- 1) Sustained, above-average growth, that is consistent with environmental protection,

- 2) A diversified industry mix to insulate the state economy from shocks and national business cycles,
- 3) Capital investment in the state adequate to ensure economic renewal and competitiveness,
- 4) Internationally competitive levels of productivity growth,
- 5) Family incomes adequate to provide a reasonable standard of living,
- 6) Improved employment and economic opportunity for all citizens in all regions,
- 7) A business environment that stimulates business creation, innovation and retention.

The survey instrument also contained several open-ended questions about improving incentive programs. The most common suggestions were to simplify/consolidate/coordinate state incentive programs. Other similar suggestions were to make incentives more flexible and shorten the process (time and regulatory burdens). Respondents also said that programs were underfunded and several suggested new sources of funding.

#### Marketing and Incentives Summary

State business service providers stated that business financing is important but needs to be better coordinated, more flexible, better funded and more supportive of the *Blueprint* goals. This group also favored targeting manufacturers and supported basing business finance programs on an overall economic development strategy like the *Blueprint*.

#### Need and Reasonableness of the Rule as A Whole

There is consensus based upon department findings that the future community and economic success of Minnesota is highly dependent upon having a growing, expanding, and vibrant business base. In fact, it is recognized that the quality of life for the majority of Minnesota citizens has always been founded upon the employment opportunities provided to them by private sector businesses.

The proposed rule change is clearly needed in order to be consistent with current statute in allowing the State of Minnesota to more fully assist and influence employment and housing decisions being made by the private sector.

Current rules, because of their inattentiveness to the changing conditions and dynamics of the marketplace, coupled with rules that are too onerous and rigid, often limit or even sabotage the State's ability to capture quality jobs. One of the top priorities of every state in the country is that of securing, retaining, and building a healthy economic base. To accomplish the goal of providing its citizens with good work opportunities, <sup>1</sup>83 percent of state legislatures in 1994 approved new incentive programs. In <sup>2</sup>1994 alone, states were utilizing over 500 different incentive programs to leverage investment and create jobs in the private sector.

Rules regarding community and economic development need to reflect Minnesota's commitment toward investing in its citizens where the state can have the most positive and significant impact.

At any given time or location around the state, the opportunity for making a significant impact will be different. This is particularly true when considering all the economic cycle variables the state finds itself facing year in and year out. Given the reality of a constantly changing set of economic dynamics, the state needs to have the ability to respond accordingly and appropriately to whatever challenges or opportunities that present themselves.

It is most reasonable for Minnesota citizens to expect that their state government is not only academically interested in their economic future but is also an active participant in doing something about it. It is reasonable to expect that the rules which govern the State's community and economic development resources would allow the State to fully retain and attract the best and highest quality jobs possible while still maintaining a commitment toward assisting local communities with their housing and public facilities needs.



Given the fact that in the future limited resources will not be adequate to do everything for everyone, it will be absolutely vital for the resources that are available to be allocated against rules that provide the best return on investment and a steadily increasing quality of life for the citizens of Minnesota.

In summary, the SONAR has stated:

1) DTED'S financial assistance programs need to stimulate the creation and retention of well-paying private sector jobs.

2) DTED's customers have informed us that DTED needs to focus its assistance programs at industrial/commercial development projects and new housing projects.

3) The rules governing the use of both federal and state resources must allow DTED to be able to respond to current community and economic development needs.

4) The rules should be crafted in a manner that will allow DTED to respond to changing needs and opportunities in the future.

The proposed rule amendments meet the above stated goals. First, several proposed amendments address DTED's desire to use available resources to create living-wage jobs. One proposed amendment (4300.0100, Subp. 16) eliminates the requirement that state financial assistance programs meet a stringent federal low and moderate income benefit test. By eliminating this requirement, the state will be able to use some its own resources to finance eligible projects that will create jobs for well trained and educated employees. These jobs are typically higher paying and more often provide a living wage. Federal funds will be reserved for eligible projects that benefit low and moderate income persons. Of course, the goal of the federal funds will still be to bring people out of low to moderate income status, but because there is a correlation between education, training and income, most low income persons don't possess the education or skills necessary to immediately assume a high paying job.

DTED does not want to lose the opportunity to financially assist a project that will create high paying jobs because of a federally imposed standard.

Another amendment (4300.1901, Subp. 2), incorporates a reasonable standard of living objective into the eligibility threshold section for both federal and state funding. In other words, in addition to assessing an applicant's ability to create or retain jobs, leverage private investment and increase local tax base, DTED will incorporate the proposed wage levels into economic development application analysis.

A third amendment (4300.1901, Subp. 3), incorporates wage levels into the economic development application scoring process. Again, the intent is to specifically state that proposed wage levels will affect application scores.

A proposed amendment found at 4300.2000, Subp. 2, addresses the goal of focusing on industrial/commercial and new housing development, as well as the responsiveness goals, by modifying the division of funds provisions. The proposed amendments are designed to provide the commissioner with additional discretion on the division of funds in order to respond to the most pressing business and community development needs. The amendments erase arbitrary and artificial funding thresholds for housing and public facilities projects and similarly erase an unnecessary waiting period to utilize unawarded funds.

#### **IV. SMALL BUSINESS CONSIDERATIONS**

These rule changes will have no direct impact as it relates to small business. Proposed rule changes will give small business the same access to public assistance programs as larger companies, provided program objectives are met.

#### **V. DEPARTMENTAL CHARGES IMPOSED BY THE RULES**

Minnesota Statutes, section 16A.1285, does not apply because the rules do not establish or adjust charges for goods and services, licenses or regulations.

## **VI. FISCAL IMPACT**

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

## **VII. AGRICULTURAL LAND IMPACT**

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

## **VIII. WITNESSES**

If these rules go to a public hearing, the following witnesses may testify on behalf of the department in support of the need for and reasonableness of the rules--the commissioner, deputy commissioner, director of community finance, or director of business development and finance. The witnesses will be available to answer questions about the development and the content of the rules.

## **IX. RULE-BY-RULE ANALYSIS**

### **Chapter 4300 Business and Community Development**

There is a need to accurately describe the name of the division of the department that administers the program. The correct name of the division is Business and Community Development Division.

## **4300.0100 DEFINITIONS**

### **Subp. 2b. Business and community development application.**

This change is needed to accurately describe the division of the department that administers the program. The correct name of the division is Business and Community Development Division. The term "community" has been changed to "business and community" because applications for assistance can benefit both community and business needs. The application for funding assistance can be for both business and community assistance programs.

### **Subp. 3. Business and community development need.**

Because the programs administered by the division address both business and community needs, the definition has been expanded to include the need to improve/increase economic development opportunities that are further described in section 4300.1901 that primarily deal with businesses. This change is needed to reflect the direct linkage that exists between community and economic development. An integral part of developing and maintaining a viable community is based upon successful economic development activities.

### **Subp. 5a. Division.**

This change is needed to accurately reflect the correct name of the division. The correct name of the division is Business and Community Development Division.

### **Subp. 5b. Economic development grant.**

This change is needed in order to differentiate between competitive grants and economic development grants. Previous rules did not have a definition for economic development grant. It is reasonable to have a definition for the types

of grants made by the division. In practice the division has always made these types of grants, and this rule amendment will provide a definition for economic development grant.

**Subp. 13. Low and moderate income.**

This language is needed to differentiate the criteria for awards between federal and state funds for the program. Projects that are funded from federal sources need to comply with federal requirements. These requirements state that persons benefiting from the assistance from federal sources need to meet the definition of low and moderate income as defined by the U.S. Department of Housing and Urban Development. Awards that are made from state funding sources do not need to meet the federal requirements. This change is reasonable in that awards made with state funds should not be constrained by federal definitions of low and moderate income persons. State statute does not limit grant awards only to those projects that benefit low and moderate income persons. In addition, the State *Economic Blueprint* goals clearly indicate that a state economic development objective is to retain and attract the highest quality jobs possible.

**Subp. 18. Population**

This repeal is needed to eliminate language in the rule that has not been useful to administer the program. The term population as defined has not been used to evaluate or make eligibility determinations for applicants. It is reasonable for the rule to be repealed because it has not been used in administering the program.

**Subp. 23. Project**

This repeal is needed to eliminate some redundancy in the rules. The term project does not need a separate definition, and in fact adds some confusion to

the rules. The term "economic development project," "single purpose project," and "comprehensive program" are all defined in the rule and provide applicants definitions as to the types of projects eligible for the program. It is reasonable for the rule to be repealed because the definition is redundant.

#### **4300.0300 OBJECTIVE OF THE COMPETITIVE PROGRAM**

This change is reasonable because it differentiates the objectives of the competitive program and the economic development program. Because the competitive program is all funded with federal funds, it is reasonable to require applicants to meet federal objectives. Because the economic development program awards are made with both state and federal funds, it is reasonable to require applicants for state funds to meet state economic development objectives and applicants for federal funds to meet federal objectives as stated in 4300.1901, Subp. 2.

#### **4300.1200 APPLICATION PROCESS AND REQUIREMENTS.**

##### **Subp. 1. Business and community development application manual.**

This is needed to accurately reflect the correct name of the division and the applications and other material provided by the division to instruct applicants in the preparation of applications.

##### **Subp. 3. Disqualification of applicants.**

This change is needed for clarity. Previous language was confusing and restrictive. The word "shall" has been changed to "may" because the division may disqualify an applicant if the division determines any of the conditions in paragraphs A through C exist. The term "shall" implies an obligation of the division to disqualify an applicant, whereas the term "may" allows the division to

acknowledge that extenuating circumstances may exist and can be corrected before it unilaterally disqualifies an applicant. The other part of the rule is amended for clarity.

**Subp. 3A. Disqualification of applicants.**

This amendment is needed to clarify the types of grants made by the division, either economic development or competitive. Previous rule only refers to community development grants and the division actually awards economic development grants or competitive grants under M.S. 116J.873. It is reasonable to make the distinction in the rule as to the types of grants that are made by the division.

**Subp. 4.**

See analysis for 4300.0100 Subp. 2b.

**Subp. 4E.**

See analysis for 4300.0100 Subp. 2b.

**4300.1901 EVALUATION OF ECONOMIC DEVELOPMENT PROJECTS.**

**Subp. 2. Federal and state eligibility objectives.**

This language is needed to differentiate the criteria used to determine awards made with federal or state funds. Awards made from state funds need to demonstrate how they will meet the state economic development objectives in paragraphs A through D. Applicants for federal funds will have to demonstrate how they will address state economic development objectives in addition to meeting one of the federal objectives listed in 4300.0300. This change is reasonable because it provides a distinction between the criteria used to

evaluate applications made for the federal funds or the state funds. It also provides a broader framework by which the worth, value, and impact to the community of a project can be evaluated. Current statute provides the authority by which all four objectives can and should be considered when evaluating an economic development project. When considering an application for economic assistance, it is reasonable for the state to ask the applicant how their project would meet the stated economic development objectives. The additional objective from the previous rule is the improved employment and economic opportunity for Minnesota citizens to create a reasonable standard of living.

**Subd. 3. Project review.**

It is reasonable to make this change because the division needs to evaluate applicants based on meeting state economic development objectives. The applicant will have to demonstrate how the project is meeting the objectives listed in 4300.1901, subpart 2. These objectives have been identified by State *Economic Blueprint* goals, Governor's task force on marketing and incentives, and the small cities development grant program survey. Consideration for an economic development project has been expanded to include the number of permanent jobs that will be created or retained, the wage level of those jobs and the increase in tax base. This is reasonable because the original rule was drafted in a period of time when the state had high unemployment and economic distress. During this period, there also existed more of a philosophy that any job was a good job. While there is certainly truth in that statement, building rules to support such a concept can prevent the State's ability to attract or secure higher quality jobs. This change is also reasonable because it more accurately reflects the scope of the project review with the economic development criteria listed in 4300.1901, subp. 2 and is consistent with Minnesota Laws for 1995, Chapter 224, Sec. 58.

The current basis for considering the need of an economic development project is currently too constraining and narrow in relationship to current statute intent.



The main problem is that by only addressing current deficiencies you can easily pass over high quality employment projects that may well indeed prevent future economic distress for another area in the state. State rules need to have the ability to respond and participate in securing the best jobs possible wherever they are being retained or created. To lose jobs for lack of state assistance just because a particular area was not currently considered distressed would not be reasonable if the end result would be putting that area into distress.

**Subp. 4. Funding recommendations.**

The word "will" needs to be changed to "may." This change is needed because not all projects that attain 400 points will receive funding. This is reasonable because there are often long periods of time when the department is out of funding, and it would be impossible to recommend a project for which the department has no ability to provide assistance.

**4300.2000 DETERMINATION OF GRANT AWARDS**

**Subp. 1. Funds available for grants.**

This change is needed for clarity. Because the department is actually the entity that received the funds both from the federal and state governments, the term division has been changed to department.

**Subp. 2. Division of funds.**

The purpose of the proposed amendments to Subpart 2 is to provide DTED with the ability to respond to high priority community and economic development needs. The proposed amendment may or may not substantively alter how DTED will distribute funds in the future. Rather it is primarily intended to override fixed category funding percentages when submitted applications suggest that the category allocations will not address their highest priority

needs and to secondarily streamline the process by which funds may be moved from one category to another in order to respond to our applicants' needs in a more timely manner.

In practice, the proposed amendment will allow DTED to more promptly adjust the percentages of funds available to all categories, including economic development, in order to respond to applicants' needs. In the current rule, single purpose and comprehensive category percentages could be adjusted immediately upon review and analysis of the competitive applications. The economic development category percentage, however, could not be adjusted until the end of the application year (June 30). To make matters worse, the current rule requires that any funds taken from the economic development category for re-distribution will not be available to applicants until the next grant year. In an era when increasing needs are being addressed by shrinking resources, a year wait is unacceptable.

The rule amendment will also allow DTED to increase the percentage of funds allocated to the economic development category if there is a shortage of fundable applications in the single purpose or comprehensive category. This proposed amendment is reasonable given the responses to DTED housing and community development needs survey. But it is a rather cautious amendment in that it does not provide an outright increase in the amount of funds available for economic development projects.

To affect the necessary change, the second and third paragraphs of Subpart 2 can be eliminated in their entirety when the first paragraph is modified. The first paragraph is modified by striking the phrases "for single purpose and comprehensive grants" and "after all applications," and by adding the word "any."

In the current rule, the purpose of the last sentence in paragraph one, and all of the second and third paragraphs of Subpart 2, was to allow DTED to move

grant funds from one category to another in the event that a shortage of fundable applications existed in one category and a surplus of fundable applications existed in another. Historically, DTED has used the flexibility offered in all three paragraphs to finance worthy projects in a given category, but as stated earlier, the process is clumsy and untimely.

DTED does not want to eliminate the flexibility offered in Subpart 2. Rather, DTED wants to simplify and clarify the language that allows the flexibility to occur, and DTED needs to have the ability to adjust the category allocations for all categories in a more timely manner. DTED needs to simplify and clarify the rules to make them more understandable to our clients.

The proposed amendment to Subpart 2 which strikes the word "division" and inserts the word "commissioner" is intended to make the provisions of Subpart 2 consistent with the provisions of 4300.2000, Subp. 3, and Subp. 4. Chapter 4300.2000, Subps. 3 and 4 clearly give the commissioner of DTED the authority to award grants. In the current rule, it is the commissioner, not the division, that awards the grants. Again, this rule amendment will not change current practice. It simply more accurately describes the current practice. It is necessary to provide as much clarity in DTED's rules as possible. It is reasonable to make housekeeping modifications at the same time more substantive amendments are being proposed.

#### **4300.3100 GRANT AGREEMENT**

##### **Subp. 2C. Contents of grant contract.**

This change is made for clarity. It is reasonable to make this change because the rule is ambiguous with existing language. To delete the phrase "at least" lets the applicant know that they must comply with all state and federal requirements for which the state is made responsible for enforcement in *Code of Federal Regulations*, title 24, sections 570.495 and 570.496.

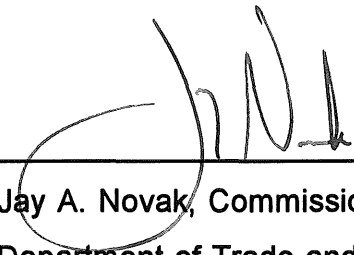
**Subp. 8. Grant termination.**

This amendment is needed because the department must have the ability to terminate grants if the provisions of the grant agreement are not met or if funds have been used for unauthorized purposes. It is reasonable to make this amendment because the department has a fiduciary responsibility to make sure money is spent appropriately.

**X. CONCLUSION**

Based on the foregoing, the Department of Trade and Economic Development's proposed amendments to the rules are both necessary and reasonable.

12/15/95  
\_\_\_\_\_  
Date

  
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Jay A. Novak, Commissioner  
Department of Trade and Economic Development

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