



5.6 BUSINESS, FARM and NON-PROFIT RELOCATIONS

WisDOT provides benefits and services to businesses displaced by highway improvement projects under [Wisconsin Statute s. 32.19 - 32.27](#); the Uniform Act, [49 CFR Part 24](#), and [Adm 92 – Relocation Assistance](#).

The relocation assistance program establishes uniform procedures to implement requirements of these statutes and codes. The purpose of this section is to explain procedures and policy of WisDOT relating to the relocation services of businesses, farms and non-profits and includes direction for determining the business replacement payment (BRP) and incidental expenses.

The term 'business' as used throughout this section refers to business, farm and non-profit organizations. Discussion will typically apply to all three entities as described by statute, except for those instances as noted that may apply specifically to businesses, farms or non-profit organizations. REPM/Section 5.5 Residential Relocations describes many situations that may also apply procedurally with exceptions noted here. An owner or tenant displaced business may receive a maximum BRP of \$50,000 and \$30,000 respectively. This payment may include an additional amount needed to purchase or rent a comparable business property. A displaced business may also be reimbursed expenses incidental to the purchase of a replacement business when costs are incurred for loss of favorable financing and costs of obtaining a mortgage on a replacement site. All such benefits and services are subject to the statutory limitation of \$50,000 for an owner-occupied business and \$30,000 for a tenant-occupied business.

5.6.1 Planning for Business Relocations

The most sensitive part of the planning process is the move of the business to a new site. Requirements by local units of government, move logistics and the numerous other details can be challenging. Agents working with the relocation of businesses are encouraged to begin the planning process as early as possible, so that contingencies can be resolved and accounted for. In addition, the necessary site requirements in terms of zoning, building permits, occupancy permits, etc., all require lead-time to ensure that businesses have adequate time for the relocation. Every agent should take care in fully informing businesses of their rights and obligations. The planning process should include a full assessment of the issues to be resolved for each business.

Example - The sitting and code requirements for moving an auto body shop may be different from those of a manufacturing plant, retail or convenience store; this should be reflected in the planning. Installing equipment at an auto body shop is clearly different from a retail store; this should be reflected in the planning for moving inventory, equipment, machinery and fixtures.

5.6.1.1 Procedures Specific to Appraisal

The relocation agent is required to accompany the appraiser on the scheduled appointment to review the site to be acquired. Differentiating realty and personal property issues at this

time is required. WisDOT will make every effort to implement this provision. This requirement is also tied to the [49 CFR Part 24 Subpart B - Real Property Acquisition](#) requirements for determination in the appraisal. The appraisal process should validate and/or substantiate any change that has an impact on the business and may signal a significant reduction in functional utility to the present business.

In farm operations, the appraiser and relocation agent should carefully review issues of circuitry of travel during the appraisal process to determine the effect on the farm operation and if a relocation of the farm is warranted. Such discussions may also include RE management, project management and engineering staff.

Circuitry of travel and access issues may affect other types of businesses. This issue should be carefully reviewed during the project development phase of a highway project (preliminary engineering) and during the appraisal process. Such reviews should be considered in determining if relocation is warranted.

Complex relocation situations may require discussions with experts from other areas of WisDOT. Referral and discussion with project design engineers and other work groups must take place prior to completing the appraisal/relocation interviews so that all the issues can be adequately addressed to accomplish the move in a timely manner.

5.6.2 Interviewing Businesses

A personal interview with each business is required. The Business Questionnaire (RE1970) must be used at the time of the interview. For further guidance, see [49 CFR 24.205](#). These issues should be discussed at the interview:

- An estimate of anticipated difficulty in locating a replacement property.
- An estimate of time required for business to vacate site.
- Determining the need for an outside specialist in accordance with 49 CFR Part 24 required to assist in planning move, assistance in actual move and in reinstallation of machinery and/or other personal property.
- Every effort must be made to identify and resolve realty and personal property issues prior to or at time of appraisal. A fixture appraisal may be necessary.
- Replacement site requirements, current lease terms and other contractual obligations and financial capacity of business to accomplish the move.

5.6.3 Eligibility Requirements

A displaced owner or tenant is eligible for a business replacement payment (BRP) when:

1. Given written notice by WisDOT of intent to acquire property by a given date.
2. He/she owns and occupies business operation or owned farm operation at the initiation of negotiations for acquisition of real property in whole or in part.
3. Ownership has been for at least one year immediately prior to initiation of negotiations, or date of vacation if owner has been given a notice of intent to be acquired, whichever is earlier.
4. Purchased a replacement business or farm site not later than two years after latest of:

- a. Date acquired site is vacated.
 - b. Date that person received final payment for site from WisDOT.
 - c. In case of condemnation (or Award of Damages), date that condemnor deposits required acquisition amount in court for benefit of owner.
5. Property was acquired from owner by WisDOT.

Landlords - Owners of rental property who do not physically occupy the real property (landlords) acquired for public use are ineligible for business replacement payments under [s. 32.19\(4m\)](#), Wis. Stats. (City of Milwaukee v. Roadster LLC, 2003 WI App 131). A circumstance in which a tenant business-owner rents from a legal entity that is the same individual(s) is included in this provision. The tenant business owner would be eligible for a BRP, where determined by the agency through the comparable and BRP computation; however, the landlord entity is not eligible, unless it can be shown that the landlord is operating as a separate business entity on site under criteria found in [Adm 92.66](#). See REPM/5.6.5.4.

5.6.4 Filing Claims

A displaced person is eligible to file BRP claims when displacee:

- Acquires an existing property.
- Constructs or contracts for construction of a new comparable structures on a site that displacee owns or acquires. Note: Adding new features simply to bring cost up to the maximum replacement property payment will not be eligible for reimbursement. Costs shall include:
 - Improvements and infrastructure on a site;
 - Labor furnished by a self-help business; and,
 - Value of the land at the time it was acquired.
- Relocates and/or rehabilitates a property that displacee owns or acquires. If a replacement property selected by the displacee has code deficiencies and/or is in need of physical changes to render the property comparable to the property acquired, the cost of correcting the code deficiencies and physical changes is eligible for reimbursement as part of the BRP. Such costs remain capped at the approved business or farm replacement computation. Photos of the replacement site that document the changes to the structure are considered a best practice.

For a person who has entered into a contract for the construction or rehabilitation of a replacement property and for reasons beyond the owner's reasonable control, the construction and/or rehabilitation cannot be completed by the end of the two-year period as determined under this section, the claim would have to be filed no later than two years after WisDOT takes physical possession of the entire property acquired; payments under this section should be deferred until final construction is completed.

5.6.5 Business Replacement Payment Considerations

There are numerous issues and items to consider during the process of determining the BRP under [Adm 92.90](#). Agents less experienced in business relocations should carefully review the relocation provisions in the REPM prior to calculating the BRP; and partner with experienced agents, management and the BTS-RE statewide relocation facilitator for assistance in this process.

5.6.5.1 Physical Changes

Owner-occupied business - If an existing business or farm property is available for sale on the market but requires physical changes to meet comparable standards or code requirements, the reasonable cost of such changes will be determined and included in the cost of a comparable property.

Tenant-occupied business - If an existing business or farm property is available for rent on the market but requires physical changes to meet comparable standards or code requirements, the reasonable cost of such changes will be determined and included in the cost of a comparable property.

In both instances all costs must reflect changes to make the replacement site comparable to the subject site, must be warranted and be actual, reasonable and necessary. Costs shall be included in the rent differential payment per the following:

- Improvements by tenant business are amortized over life of lease.
- Landlord includes costs of improvements in lease amount; such arrangements are not uncommon and may often be advertised as “build to suit” in lease arrangements.

5.6.5.2 Partial Acquisition of Business (other than a Farm)

The entire business operation (other than a farm) must be displaced to qualify for a BRP; however, a business operation is considered eligible for a BRP when:

- Acquisition substantially interfered with the principal operation or nature of the business operation to constitute a displacement.
- Property remaining after acquisition is not an economic unit or would result in a significant reduction in net earnings for same type of business operation, as determined by WisDOT.

It is the responsibility of WisDOT to determine when a business is displaced. Note: An alternative offer to purchase the entire site may be made when the remainder land/building (economic or uneconomic) are uneconomic to the displaced business.

5.6.5.3 Mixed-Use Properties

When an owner-occupied business or farm property being acquired by WisDOT includes space unrelated to the business or farm being conducted (mixed business and residential use), or if the owner occupies a portion of the premises for business purposes, but leases the remainder to other businesses, the owner occupant is entitled to a business or farm BRP based only on occupied space. In the case of a business or farm operation that includes a residential property, the value of the residential unit is excluded from the computation of the BRP. See REPM/Section 5.5. The residential portion may be entitled to a Residential Housing Payment (RHP). A BRP is calculated in accordance either an owner-occupied business and/or a tenant-occupied business. Finally, a mixed-use property should be used as the replacement site. If one is not available, a lower density property should be used as a comparable.

5.6.5.4 Multiple Businesses or Farms on Site

In determining whether more than one business or farm entity exists on a single site, WisDOT will use these factors as a guide to determine the extent to which:

- Entities are held to public and to those customarily dealing with them as one operation.
- Same facilities and equipment are shared.
- Same person or closely related persons own, control or manage affairs of entities.
- Substantially identical or interrelated businesses or farm functions are carried out and financial affairs are commingled.

5.6.5.5 New Construction

If an existing comparable business or farm operation is not available on the market, or an existing property is not available that can be rendered comparable through physical changes or additions, the BRP is computed based on the cost of new construction and an available comparable site. This process should only be used where, after a thorough market study, no comparable properties suitable for the business can be found.

5.6.6 Acquisition of Farms

In determining whether a farm operation has been displaced, relocation agents must determine if a farm to be displaced is operated as a business or a hobby. BRPs and other eligible payments can be made only to operations that have been determined to be a business and not a hobby. A farm operation means an activity conducted mainly for the production of one or more agricultural products or commodities or timber, for sale or home use, and customarily producing these in sufficient quantity to contribute materially to a person's income.

5.6.6.1 Partial Acquisitions

In the case of a partial acquisition of a farming operation, the owner or tenant displaced person of the farm may be considered displaced if:

- Acquisition caused a substantial change in the principal operation or nature of the existing farm operation as to constitute a displacement.
- Acquisition caused a farm operator to be displaced from his/her residence on the farm when the residence is an essential part of the operation on the remaining land; or, a strip taking removes buildings on the farming site, and the owner indicates a desire to relocate those buildings in another location on the site.
- Property remaining after the acquisition is no longer an economic unit for the same type of farming operation.

5.6.7 Calculating Business Replacement Payments

The relocation agent will determine the cost of a comparable replacement business or farm operation by conducting a market study and analyzing three or more comparable replacement businesses and selecting one that is most comparable. If the market study does not find three businesses, fewer may be used. The cost of modifications and improvements necessary to meet comparable standards in the selected comparable or the actual replacement will be included in the maximum BRP. The number one comparable selected must be equal to or better than the acquired property.

5.6.7.1 Owner Occupant Electing to Purchase

The BRP is calculated as the differences between acquisition price of the part of the property for their business or farm and the listing price of another comparable site available for purchase. The differential amount released to the displaced person is the amount, when added to the acquisition payment for the acquired business or farm operation, equals an amount a person pays for a comparable replacement property or the amount determined by WisDOT whichever is less. When no comparable sites are available, the payment calculation is based on new construction. Also, see REPM/5.6.5.5 New Construction.

Example - WisDOT has acquired a retail gift shop for an upcoming highway project for \$225,000; it is located at an interchange and is a freestanding, one-story building, of approximately 3,000 square feet. A comparable study was undertaken and three comparable sites were found within the local area. All three were found to be comparable; however, the agent chose one of the sites and calculated the following:

Scenario 1: The selected comparable allows for a differential greater than the maximum \$50,000.

	Calculation	Max. BRP	
#1 Comparable business replacement site	\$300,000		
Subject site	\$225,000		
Difference	\$75,000		
Maximum Business Replacement Payment (BRP)		\$50,000	

The amount the owner of the business must pay for the replacement site in order to receive the full amount of the BRP (\$50,000) is \$275,000. If the owner purchases a replacement site for \$300,000, the amount of the BRP shall be the maximum calculated, \$50,000. Under this scenario, owner has collected the maximum amount of the BRP available under [Adm 92.90](#); refinancing costs, incidental expenses and closing costs are not eligible for reimbursement.

Scenario 2: Same relocation activity as indicated above; the selected comparable allows for a differential less than the maximum \$50,000.

	Calculation	BRP
#1 Comparable replacement business site	\$250,000	
Subject site	\$225,000	
Difference	\$25,000	
Business Replacement Payment (BRP)		\$25,000

The maximum amount of the BRP is \$50,000, which includes the BRP, incidental expenses, closing costs and refinancing payments. Under this scenario, if the owner incurs costs for incidental expenses, closing costs and refinancing payments, they would be eligible for reimbursement up to \$25,000.

5.6.7.2 Owner Occupant Electing to Rent

An owner occupant who elects to rent a replacement site will be paid a rental assistance payment not to exceed \$30,000. The calculation is the same as a tenant occupant who rents (see below), except that relocation agent must calculate an economic rent for the subject site.

5.6.7.3 Tenant Occupant Electing to Rent or Purchase

This payment may be either a rental assistance payment or a down payment on the purchase of a comparable replacement site, at the displaced person's option. The rental assistance payment is the amount, not to exceed \$30,000, which is necessary to lease or rent a comparable replacement business or farm operation for a period of 48 months (4 years). The payment is computed by determining the average monthly rent paid for the property from which the person was displaced for the 12 months prior to the initiation of negotiations for the parcel acquired and the monthly rent of a comparable replacement business, this difference should be multiplied by 48. The maximum amount payable is \$30,000, which includes incidental expenses, closing costs and refinancing payments. This amount may be used to either rent or purchase a replacement site.

5.6.7.4 Tenant Occupant Calculations

Scenario 1: BRP is calculated at less than \$30,000.

	Calculation	BRP
# Comparable replacement site	\$1,400	
Subject site rent	\$1,000	
Difference	\$400	
X 48 months (4 yrs)	\$19,200	
Business Replacement Payment (BRP)		\$19,200

Under this scenario, tenant may submit incidental expenses for reimbursement to the maximum allowed of \$30,000.

Scenario 2: BRP is calculated at more than \$30,000.

	Calculation	BRP
# Comparable replacement site	\$1,700	
Subject site rent	\$1,000	
Difference	\$700	
X 48 months (4 yrs)	\$33,600	
Business Replacement Payment (BRP)		\$30,000 capped*
* Incidental expenses are not allowed if tenant occupant collects full BRP as calculated.		

5.6.7.5 Tenant Occupant Payment

The differential BRP amount released to a displaced tenant occupant who elects to rent, is the amount, when added to the rent payment for the acquired business or farm operation, equal to the amount paid to rent a comparable replacement property, or an amount determined by WisDOT, whichever is less.

Scenario 1:

	Calculation	BRP
#1 Comparable replacement site rent	\$2,100	
Subject site rent	-\$1,500	\$625
X 48 months (BRP)		\$30,000
Actual rent at replacement site		\$1,800
Amount of BRP to be released		\$14,400

Under this scenario, tenant may submit incidental expenses for reimbursement to a maximum of \$30,000.

Scenario 2:

		Calculation	BRP
#1 Comparable replacement site rent	\$2,100		
Subject site rent	-\$1,500	\$625	
X 48 months (BRP)		\$30,000	
Actual rent at replacement site		\$2,500	
Amount of BRP to be released			\$30,000

Under this scenario, incidental expenses are not allowed as the maximum has been released.

5.6.7.6 Other Considerations

5.6.7.6.1 Partial Acquisition of Business Sites

If a business, other than a farm, is located on a tract of land adequate in size for the business, the maximum BRP is the difference between the listing price of a comparable replacement business and the before value of the acquired business. WisDOT will offer to purchase the entire property from the owner; the owner at their option may elect to either sell or retain remaining land. For further reference of utilizing the before value in computations, see Section 5.5 of this manual. If it is warranted, a carve-out of the site may be utilized if the site is larger than a typical site. Also, see 5.6.5.2 above.

5.6.7.6.2 Joint Business and Investment (Landlord) Use

The comparable BRP is computed based on the amount of the building or square footage actually occupied by the business. See REPM/Section 5.7 for landlord eligibility for reestablishment and moving expenses for the portion of the building leased to other businesses or residential tenants.

Example - An owner occupant (or tenant occupant) of a business in a strip mall occupies one unit and operates a business and leases or rents the remaining three units to other businesses. The owner occupant may receive a BRP based on the actual area their business occupied.

5.6.7.6.3 Owner Retention of Improvements/Real Property

The owner may elect to retain improvements to the real property (i.e., the building or outbuildings and move to the same site or another site). Provisions of owner retention in REPM/Section 5.5 apply except, the maximum amount available and payable to a business is the amount calculated for the BRP, either under the provisions for owner occupant or tenant occupant in this section.

For filing claims under this provision, payment is calculated as follows: value of the retained improvements or realty as determined by WisDOT property management; current fair market value of the site when purchased; reasonable costs of developing the site; other expenses incidental to the move of the building or improvement; and, restoring the improvement to a comparable condition. If the improvements need additional work to meet building codes, those costs can be included in a BRP claim.

The BRP is released once the displacee occupies the relocated buildings for business purposes. The two-year period to perform and apply for the BRP applies to the owner retention of improvements, except as noted in 5.6.3 above.

5.6.8 Incidental Expenses

The following expenses are reimbursable only in circumstances where the BRP for an owner occupant or tenant occupant has not been calculated or released at the statutory maximum allowable. When these maximums for the BRP have been reached, no additional payments under this section are eligible for reimbursement. Business owner occupant maximum BRP is \$50,000 and business tenant occupant BRP maximum is \$30,000.

5.6.8.1 Refinancing Payment

The business or farm operation may qualify for a refinancing payment if the mortgage on the replacement property bears a higher rate of interest than that of the present mortgage. To qualify, the displaced person must have had a mortgage or land contract valid for a least one year prior to initiation of negotiations by the condemner for the purchase of the business or farm. The refinancing will be an amount that reduces the mortgage balance on the replacement business to an amount that could be amortized with the same monthly payment for principal and interest as was being paid on the acquired property.

See REPM/Section 5.4 of this manual for computing a refinancing (increased interest) payment. Such payments are subject to the cap of the BRP at \$50,000 (owner) or \$30,000 (tenant).

5.6.8.2 Closing and Related Costs

The closing cost expense payment is the amount necessary to reimburse the owner for the actual costs incurred incidental to the purchase of a comparable replacement business. Such costs may include these items if normally paid by the buyer:

- Application fee.
- Appraisal fee.
- Code compliance, when required by governmental agency.
- Credit report.
- Escrow agent's fee, if necessary.
- Legal, closing and related costs including title search, preparing conveyance contracts, surveys, preparing drawings or plats and recording charges.

No fee, cost, charge or expense is reimbursable as an incidental expense if it is determined to be a part of the debt service or finance charges under [15 USC 1631-1641 and Regulation Z](#) issued by the Board of Governors of the Federal Reserve System. Prepaid expenses such as insurance, taxes and interest are not eligible for reimbursement.