

2011 DRAFTING REQUEST

Bill

Received: **01/19/2012**

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Governor 261-6787**

By/Representing: **Nate Yahn**

May Contact:

Drafter: **fknepp**

Subject: **Econ. Development - bus. dev.
Tax, Business - credits**

Addl. Drafters: **jkreye**

Extra Copies:

Submit via email: **YES**

Requester's email: **nate.yahn@wisconsin.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov
joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Early Stage Business Investment Program changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	fknepp 01/24/2012			_____			State
/P1	jkreye 01/24/2012	jdyer 01/24/2012	jmurphy 01/24/2012	_____	sbasford 01/24/2012		State
/1	fknepp 01/27/2012	jdyer 01/30/2012	jmurphy 01/30/2012	_____	sbasford 01/30/2012		State

For Senator Leibham

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	fknepp 02/08/2012	jdye 02/08/2012	jmurphy 02/08/2012	_____	ggodwin 02/08/2012	ggodwin 02/08/2012	

FE Sent For:

<END>

→ A+
Intro.

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/?	fknepp 01/24/2012	<i>2 2/8 jld</i>	<i>jm 2/8</i>	<i>self 2/8</i>			State
/P1	jkreye 01/24/2012	jdyer 01/24/2012	jmurphy 01/24/2012	_____	sbasford 01/24/2012		State
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*Please
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for Senator
Leibham*

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1/?	fknepp	PI 1/24 JLD	dm 1/24/12	PH+dm 1/24/12			

FE Sent For:

<END>

Knepp, Fern

From: Gallagher, Michael
Sent: Thursday, January 19, 2012 10:26 AM
To: Kreye, Joseph; Knepp, Fern
Subject: FW: WEDC Bill Drafting Instructions

Attachments: WEDC - Early Stage Program Changes - Drafting Instructions 011912.doc

A few new requests related to WEDC. They look straightforward. Fern, can you handle the ch. 238 stuff in 1 and 2? Joe, 3 is all yours, I believe, and you will also have to draft for 1 and 2.

Thanks.

Mike

From: Yahn, Nate - DOA [mailto:Nate.Yahn@wisconsin.gov]
Sent: Thursday, January 19, 2012 9:47 AM
To: Gallagher, Michael
Subject: WEDC Bill Drafting Instructions

Hi Mike,

Hope all is well with you.

Attached, are drafting instructions for three subject areas that we would like to get drafted into a single bill.

Please let me know when LRB will have time to start working on this, and as always, please let me know if you have any questions.

Thanks, Mike.

Nate

-
Nate Yahn
Policy Assistant for Economic Development
Office of the Governor
Phone: 608-261-6787
Email: nate.yahn@wisconsin.gov



WEDC – Early State Business Investment Program Changes
Drafting Instructions

1) ISSUE BRIEF: Early Stage Business Investment Program Changes – Relocation Clawback

TOPIC: Business Development

BACKGROUND: Under § 238.15 there are currently no provisions for recapture of tax credits or penalties for companies who receive investment that qualifies for tax credits under this section. If under the program a company receives investment from a qualified third party investor the investor is eligible for up to 25% of the investment in a tax credit. Current legislative proposal would make this tax credit refundable. However, with no existing claw back provisions there is nothing preventing out of state investors from making an investment, qualifying for tax credits, and moving the company out of state. It would seem unfair for investors to be penalized in this situation as they may have had no control over the relocation decision.

RECOMMENDATION: Add a provision under §238.15 (3) that allows the WEDC to impose penalties on certified businesses if the business locates more than 51% of its employees, more than 51% of its payroll, or more than 51% of its headquarters activities outside of the State within 3 years of activities resulting in the allocation of tax credits to its investors. Fines should be repaid to the WEDC and should be paid on a prorated schedule as follows:

- Company locates outside of Wisconsin within 12 months of the investment – 100% recapture
- Company locates outside of Wisconsin within 12 - 24 months of the investment – 66% recapture
- Company locates outside of Wisconsin within 24 - 36 months of the investment – 33% recapture

WEDC – Early State Business Investment Program Changes
Drafting Instructions

2) ISSUE BRIEF: Early Stage Business Investment Program Changes – Three-year Maintenance Provisions

TOPIC: Business Development

BACKGROUND: Under § 238.15 (3) (d), 71.07 (5b) (d) 3., 71.07 (5d) (d) 1., 71.28 (5b) (d) 3., and 71.47 (5b) (d) (3) if an investment is not maintained for a minimum of 3 years from the date of investment then tax credits earned under these sections are to be revoked and repaid to the Wisconsin Department of Revenue. The statutory provisions allow little guidance on how to handle companies that are sold or otherwise liquidated as part of a liquidity event or whose activities result in business failure prior to the end of the investment holding period. Liquidity events are typically a positive result for the program in attracting large corporate merger partners, the corporate partners maintaining offices and employees in Wisconsin, and the investors receiving a positive return on investments allowing for the continued investment in other Early Stage companies. In addition, it seems counterproductive to further penalize investors who have lost most or all of their asset value in a business failure situation.

RECOMMENDATION: Adopt changes to the three year investment holding requirements to allow exemptions under the following conditions:

- If the investment becomes worthless prior to the end of the holding period
- If the investor has held an investment for a minimum of 12 months and there is a bona fide liquidity event as determined by WEDC prior to the end of the holding period

These changes will exempt most exit event activities and business failures from the investment holding requirement. However, the investment holding provision will still prevent most short term investment activities.

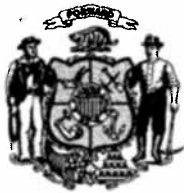
WEDC – Early State Business Investment Program Changes
Drafting Instructions

3) ISSUE BRIEF: Early Stage Business Investment Program Changes – Angel Investment Constraints

TOPIC: Business Development

BACKGROUND: Under § 71.07 (5d) (c) 1. No more than \$47.5 million in credits may be claimed for all taxable years combined. However, 2009 and later 2010 legislation increased the amount of tax credits that can be allocated per year to \$20 million annually. The result is that if tax credits are fully allocated for 2011 the program will have roughly \$6 million in available credits under this provision. The same provision was eliminated from § 71.07 (5b), 71.28 (5b), and 71.47 (5b) the corresponding Early Stage Seed Investment Tax credit program in 2009. The Angel program is highly successful in encouraging angel investment in this state.

RECOMMENDATION: Repeal § 71.07 (5d) (c) 1. in its entirety



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3864
FFK&JK:.....

API
RMR Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 1-24-12
due Tues 1-31

4

Gen

1 AN ACT ...; relating to: the angel investment and early stage seed investment tax
2 credit programs.

Analysis by the Legislative Reference Bureau

Under current law, the angel investment tax credit program allows a taxpayer to claim a tax credit that equals 25 percent of a bona fide angel investment made directly in a qualified new business venture (QNBV) for the tax year. Current law provides that a QNBV is a business that is certified by the Wisconsin Economic Development Corporation (WEDC). Under current law, WEDC may certify a business as a QNBV if the business meets certain conditions, including being headquartered in this state, employing at least 51 percent of its employees in this state, and having less than 100 employees. Under this bill, in addition to the existing certification conditions, to be certified as a QNBV a business must agree to stay in this state for at least three years following the receipt of a bona fide angel investment and must agree to pay a penalty to WEDC if the business relocates outside of this state within three years of receiving a bona fide angel investment.

three

three

Under current law, a person who claims a tax credit for an early stage seed or angel investment must hold the investment for at least three years. If the person does not hold the investment for at least three years, the person must pay to the Department of Revenue (DOR) the amount of the credit that the person received related to the investment. Under this bill, a person that holds such an investment for less than three years does not have to repay the tax credit to DOR, if the person's investment becomes worthless, as determined by WEDC, or if a bona fide liquidity event occurs, as determined by WEDC.

Under current law, the maximum amount of angel investment credits that may be claimed by all claimants for all taxable years combined is \$47,500,000. The bill eliminates this limitation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 71.07 (5d) (c) 1. of the statutes is repealed.

2 SECTION 2. 73.03 (63) of the statutes, as affected by 2011 Wisconsin Act 32, is
3 amended to read:

4 73.03 (63) Notwithstanding the amount limitations specified under s. 71.07
5 (5d) (e) 1. and s. 238.15 (3) (d) or s. 560.205 (3) (d), 2009 stats., in consultation with
6 the department of commerce or the Wisconsin Economic Development Corporation,
7 to carry forward to subsequent taxable years unclaimed credit amounts of the early
8 stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638
9 and the angel investment credit under s. 71.07 (5d). Annually, no later than July 1,
10 the department of commerce or the Wisconsin Economic Development Corporation
11 shall submit to the department of revenue its recommendations for the carry forward
12 of credit amounts as provided under this subsection.

History: 1971 c. 40, 215; 1973 c. 90; 1975 c. 39; 1977 c. 143; 1977 c. 196 s. 130 (7); 1977 c. 313; 1979 c. 34; 1979 c. 110 s. 60 (13); 1979 c. 221, 350; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 275 s. 15 (4); 1983 a. 524; 1983 a. 538 s. 269 (3); 1985 a. 12, 29, 273; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 328, 378, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 74, 335; 1991 a. 39, 219, 313, 316; 1993 a. 16, 112, 205, 490; 1995 a. 27 ss. 3434g to 3440m, 9145 (1); 1995 a. 209, 233; 1997 a. 27, 35, 191, 237, 252; 1999 a. 9, 31, 185; 2001 a. 16, 44, 104, 107, 109; 2003 a. 33, 127; 2005 a. 25, 59; 2007 a. 20, 86; 2009 a. 2, 28, 180, 401; 2011 a. 10, 32.

13 SECTION 3. 238.15 (1) (m) of the statutes is created to read:

14 238.15 (A) (1) It agrees that it will not relocate outside of this state during
15 the 3 years after it receives an investment for which a person may claim a tax credit
16 under s. 71.07 (5d) and agrees to pay the corporation a penalty, in an amount
17 determined under subd. 2., if the business relocates outside of this state during that
18 3-year period. For the purposes of this paragraph, a business relocates outside of

1 this state when the business locates more than 51[✓] percent of any of the following
2 outside of this state:

3 a. The business's employees.[✓]

4 b. The business's total payroll.[✓]

5 c. The activities of the business's headquarters, as determined by the
6 corporation.

7 2. The amount of a penalty payment under subd. 1.[✓] is any of the following:

8 a. If the relocation occurs less than 12[✓] months after the investment,[✓] 100 percent
9 of the tax credit that was claimed under s. 71.07 (5d)[✓] as the result of the investment.

10 b. If the relocation occurs 12 months or more after the investment but less than
11 24[✓] months after the investment, 66[✓] percent of the tax credit that was claimed under
12 s. 71.07 (5d)[✓] as the result of the investment.

13 c. If the relocation occurs occurs 24[✓] months or more after the investment but
14 less than 36[✓] months after the investment, 33[✓] percent of the tax credit that was
15 claimed under s. 71.07 (5d)[✓] as the result of the investment.

16 **SECTION 4.** 238.15 (3) (d) (intro.)^x of the statutes, as affected by 2011 Wisconsin
17 Act 32, is amended to read:

18 238.15 (3) (d) *Rules.* (intro.) The corporation, in consultation with the
19 department of revenue, shall adopt rules to administer this section. The rules shall
20 further define "bona fide angel investment" for purposes of s. 71.07 (5d) (a) 1. The
21 rules shall limit the aggregate amount of tax credits under s. 71.07 (5d) that may be
22 claimed for investments in businesses certified under sub. (1) at \$3,000,000 per
23 calendar year for calendar years beginning after December 31, 2004, and before
24 January 1, 2008, \$5,500,000 per calendar year for calendar years beginning after
25 December 31, 2007, and before January 1, 2010, \$6,500,000 for calendar year 2010,

1 and \$20,000,000 per calendar year for calendar years beginning after December 31,
2 2010, plus, for taxable years beginning after December 31, 2010, an additional
3 \$250,000 for tax credits that may be claimed for investments in nanotechnology
4 businesses certified under sub. (1). The rules shall also limit the aggregate amount
5 of the tax credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638 that may be
6 claimed for investments paid to fund managers certified under sub. (2) at \$3,500,000
7 per calendar year for calendar years beginning after December 31, 2004, and before
8 January 1, 2008, \$6,000,000 per calendar year for calendar years beginning after
9 December 31, 2007, and before January 1, 2010, \$8,000,000 for calendar year 2010,
10 and \$20,500,000 per calendar year for calendar years beginning after December 31,
11 2010, plus, for taxable years beginning after December 31, 2010, an additional
12 \$250,000 for tax credits that may be claimed for investments in nanotechnology
13 businesses certified under sub. (1). The rules shall also provide that, for calendar
14 years beginning after December 31, 2007, ~~no a person may receive who receives a~~
15 ~~credit under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), or 76.638 unless the~~
16 ~~person's~~ must keep the investment is kept in a certified business, or with a certified
17 fund manager, for no less than 3 years, unless the person's investment becomes
18 worthless, as determined by the corporation, during the 3-year period or the person
19 has kept the investment for no less than 12 months and a bona fide liquidity event,
20 as determined by the corporation, occurs during the 3-year period. The rules shall
21 permit the corporation to reallocate credits under this section that are unused in any
22 calendar year to a person eligible for tax benefits, as defined under s. 238.16 (1) (d),
23 if all of the following apply:

24 **History:** 2003 a. 255; 2005 a. 49, 97; 2007 a. 20, 125; 2009 a. 2, 265, 276; 2011 a. 32 s. 3356; Stats. 2011 s. 238.15.

(END)

Knepp, Fern

From: Yahn, Nate - DOA [Nate.Yahn@wisconsin.gov]
Sent: Friday, January 27, 2012 10:53 AM
To: Knepp, Fern
Subject: FW: LRB -3864/P1 (attached)

Attachments: 11-3864/P1.pdf

Fern,

In section 3, page 3, please change the language on line 11 from 66% to 80%, and on line 14 from 33% to 60%.

Thank you.

-
Nate Yahn

*Policy Assistant for Economic Development
Office of the Governor
Phone: 608-261-6787*

From: Basford, Sarah [mailto:Sarah.Basford@legis.wisconsin.gov]
Sent: Tuesday, January 24, 2012 2:21 PM
To: Yahn, Nate - DOA
Subject: LRB -3864/P1 (attached)

Sarah Basford

Senior Program Assistant
Legislative Reference Bureau
1 East Main St., Suite 200
Madison, WI 53703
(608) 266-3561



11-3864P1.pdf (37
KB)

Knepp, Fern

From: Yahn, Nate - DOA [Nate.Yahn@wisconsin.gov]
Sent: Friday, January 27, 2012 1:49 PM
To: Knepp, Fern
Subject: RE: LRB -3864/P1 (attached)

Fern,

Can you please incorporate the changes below before you make the /1?

Thank you.

1. Early Stage Investment Changes – We would also like another provision under the statute that spells out the criteria for certifying and recertifying businesses. Specifically under 238.15 we would request that h, j, and km are required for initial certification only. Briefly, these three items currently require that a company in the program be under 100 employees, has been in operation for less than 10 years, and has less than \$10M in aggregate cash equity investment. We would have those continue to apply for initial certification, but not the annual recertification. (For example, under current law, if a business has been in operation for several years but is only beginning to attract angel investment, it could only be eligible for the program up until its 10th year)

Nate Yahn

*Policy Assistant for Economic Development
Office of the Governor
Phone: 608-261-6787*

From: Yahn, Nate - DOA
Sent: Friday, January 27, 2012 11:15 AM
To: Knepp, Fern - LEGIS
Subject: RE: LRB -3864/P1 (attached)

/1 is fine. Thanks.

Nate Yahn

*Policy Assistant for Economic Development
Office of the Governor
Phone: 608-261-6787*

From: Knepp, Fern [<mailto:Fern.Knepp@legis.wisconsin.gov>]
Sent: Friday, January 27, 2012 11:10 AM
To: Yahn, Nate - DOA
Subject: RE: LRB -3864/P1 (attached)

Nate:

1/27/2012

Would you prefer the redraft of LRB 3864 to be a /1 or a /P2?

Thanks,
Fern

From: Yahn, Nate - DOA [<mailto:Nate.Yahn@wisconsin.gov>]
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Policy Assistant for Economic Development
Office of the Governor
Phone: 608-261-6787

From: Basford, Sarah [<mailto:Sarah.Basford@legis.wisconsin.gov>]
Sent: Tuesday, January 24, 2012 2:21 PM
To: Yahn, Nate - DOA
Subject: LRB -3864/P1 (attached)

Sarah Basford
Senior Program Assistant
Legislative Reference Bureau
1 East Main St., Suite 200
Madison, WI 53703
(608) 266-3561
<< File: 11-3864/P1.pdf >>



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3864(P1)
FFK&JK;jld;jm

In 1-30-2012
Out 2-1-2012

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
2011 BILL

Regen

1 AN ACT *to repeal* 71.07 (5d) (c) 1.; *to amend* 73.03 (63) and 238.15 (3) (d) (intro.);
2 and *to create* 238.15 (1) (m) of the statutes; **relating to:** the angel investment
3 and early stage seed investment tax credit programs.

Analysis by the Legislative Reference Bureau

Under current law, the angel investment tax credit program allows a taxpayer to claim a tax credit that equals 25 percent of a bona fide angel investment made directly in a qualified new business venture (QNBV) for the tax year. Current law provides that a QNBV is a business that is certified by the Wisconsin Economic Development Corporation (WEDC). Under current law, WEDC may certify a business as a QNBV if the business meets certain conditions, including being headquartered in this state, employing at least 51 percent of its employees in this state, and having less than 100 employees. Under this bill, in addition to the existing certification conditions, to be certified as a QNBV a business must agree to stay in this state for at least three years following the receipt of a bona fide angel investment and must agree to pay a penalty to WEDC if the business relocates outside of this state within three years of receiving a bona fide angel investment.

✓
Analysis Ins

Under current law, a person who claims a tax credit for an early stage seed or angel investment must hold the investment for at least three years. If the person does not hold the investment for at least three years, the person must pay to the Department of Revenue (DOR) the amount of the credit that the person received related to the investment. Under this bill, a person that holds such an investment for less than three years does not have to repay the tax credit to DOR, if the person's investment becomes worthless, as determined by WEDC, or if a bona fide liquidity event occurs, as determined by WEDC.

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3 amended to read:

4 73.03 **(63)** Notwithstanding the amount limitations specified under ~~s. 71.07~~
5 ~~(5d) (c) 1.~~ and s. 238.15 (3) (d) or s. 560.205 (3) (d), 2009 stats., in consultation with
6 the department of commerce or the Wisconsin Economic Development Corporation,
7 to carry forward to subsequent taxable years unclaimed credit amounts of the early
8 stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638
9 and the angel investment credit under s. 71.07 (5d). Annually, no later than July 1,
10 the department of commerce or the Wisconsin Economic Development Corporation
11 shall submit to the department of revenue its recommendations for the carry forward
12 of credit amounts as provided under this subsection.

13 **SECTION 3.** 238.15 (1) (m) of the statutes is created to read:

14 238.15 **(1)** (m) 1. It agrees that it will not relocate outside of this state during
15 the 3 years after it receives an investment for which a person may claim a tax credit
16 under s. 71.07 (5d) and agrees to pay the corporation a penalty, in an amount
17 determined under subd. 2., if the business relocates outside of this state during that
18 3-year period. For the purposes of this paragraph, a business relocates outside of

INS
2-12

1 this state when the business locates more than 51 percent of any of the following
2 outside of this state:

3 a. The business's employees.

4 b. The business's total payroll.

5 c. The activities of the business's headquarters, as determined by the
6 corporation.

7 2. The amount of a penalty payment under subd. 1. is any of the following:

8 a. If the relocation occurs less than 12 months after the investment, 100 percent
9 of the tax credit that was claimed under s. 71.07 (5d) as the result of the investment.

10 b. If the relocation occurs 12 months or more after the investment but less than
11 24 months after the investment, ~~66~~⁸⁰ percent of the tax credit that was claimed under
12 s. 71.07 (5d) as the result of the investment.

13 c. If the relocation occurs occurs 24 months or more after the investment but
14 less than 36 months after the investment, ~~33~~⁶⁰ percent of the tax credit that was
15 claimed under s. 71.07 (5d) as the result of the investment.

16 **SECTION 4.** 238.15 (3) (d) (intro.) of the statutes, as affected by 2011 Wisconsin
17 Act 32, is amended to read:

18 238.15 (3) (d) *Rules.* (intro.) The corporation, in consultation with the
19 department of revenue, shall adopt rules to administer this section. The rules shall
20 further define "bona fide angel investment" for purposes of s. 71.07 (5d) (a) 1. The
21 rules shall limit the aggregate amount of tax credits under s. 71.07 (5d) that may be
22 claimed for investments in businesses certified under sub. (1) at \$3,000,000 per
23 calendar year for calendar years beginning after December 31, 2004, and before
24 January 1, 2008, \$5,500,000 per calendar year for calendar years beginning after
25 December 31, 2007, and before January 1, 2010, \$6,500,000 for calendar year 2010,

1 and \$20,000,000 per calendar year for calendar years beginning after December 31,
2 2010, plus, for taxable years beginning after December 31, 2010, an additional
3 \$250,000 for tax credits that may be claimed for investments in nanotechnology
4 businesses certified under sub. (1). The rules shall also limit the aggregate amount
5 of the tax credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638 that may be
6 claimed for investments paid to fund managers certified under sub. (2) at \$3,500,000
7 per calendar year for calendar years beginning after December 31, 2004, and before
8 January 1, 2008, \$6,000,000 per calendar year for calendar years beginning after
9 December 31, 2007, and before January 1, 2010, \$8,000,000 for calendar year 2010,
10 and \$20,500,000 per calendar year for calendar years beginning after December 31,
11 2010, plus, for taxable years beginning after December 31, 2010, an additional
12 \$250,000 for tax credits that may be claimed for investments in nanotechnology
13 businesses certified under sub. (1). The rules shall also provide that, for calendar
14 years beginning after December 31, 2007, ~~no a person may receive who receives a~~
15 ~~credit under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), or 76.638 unless the~~
16 ~~person's~~ must keep the investment is kept in a certified business, or with a certified
17 fund manager, for no less than 3 years, unless the person's investment becomes
18 worthless, as determined by the corporation, during the 3-year period or the person
19 has kept the investment for no less than 12 months and a bona fide liquidity event,
20 as determined by the corporation, occurs during the 3-year period. The rules shall
21 permit the corporation to reallocate credits under this section that are unused in any
22 calendar year to a person eligible for tax benefits, as defined under s. 238.16 (1) (d),
23 if all of the following apply:

24 (END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB3864/lins
FFK:.....

ANALYSIS INS.

^{NO}
* ~~¶~~ Additionally, the bill provides that certain conditions that a business must satisfy to be certified as a QNBV, such as having less than 100 employees and not having operated in Wisconsin for more than ^{ten} 10 consecutive years, apply only to initial certifications.

INS. 2-12

1 **SECTION 1.** 238.15 (1) (intro.) of the statutes, as affected by 2011 Wisconsin Act
2 32, is amended to read:

3 238.15 (1) ANGEL INVESTMENT TAX CREDITS. (intro.) The corporation shall
4 implement a program to certify businesses for purposes of s. 71.07 (5d). A business
5 desiring certification shall submit an application to the corporation in each taxable
6 year for which the business desires certification. The business shall specify in its
7 application the investment amount it wishes to raise and the corporation may certify
8 the business and determine the amount that qualifies for purposes of s. 71.07 (5d).

9 ~~A business may be certified under this subsection, and may maintain such~~
10 ~~certification. The corporation may certify or recertify a business for purposes of s.~~
11 71.07 (5d) only if the business satisfies all of the following conditions:

12 History: 2003 a. 255; 2005 a. 49, 97; 2007 a. 20, 125; 2009 a. 2, 265, 276; 2011 a. 32 s. 3356; Stats. 2011 s. 238.15.

13 **SECTION 2.** 238.15 (1) (h) of the statutes, as affected by 2011 Wisconsin Act 32,
14 is amended to read:

15 238.15 (1) (h) ~~It~~ At the time it is initially certified under this subsection, it has
16 less than 100 employees.

17 History: 2003 a. 255; 2005 a. 49, 97; 2007 a. 20, 125; 2009 a. 2, 265, 276; 2011 a. 32 s. 3356; Stats. 2011 s. 238.15.

18 **SECTION 3.** 238.15 (1) (j) of the statutes, as affected by 2011 Wisconsin Act 32,
19 is amended to read:

20 238.15 (1) (j) ~~It~~ At the time it is initially certified under this subsection, it has
21 been in operation in this state for not more than 10 consecutive years.

22 History: 2003 a. 255; 2005 a. 49, 97; 2007 a. 20, 125; 2009 a. 2, 265, 276; 2011 a. 32 s. 3356; Stats. 2011 s. 238.15.

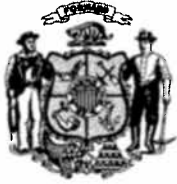


1 SECTION 4. 238.15 (1) (km) [✓] of the statutes, as affected by 2011 Wisconsin Act
2 32, is amended to read:

3 238.15 (1) (km) It has not received aggregate private equity investment in cash
4 of more than \$10,000,000 ~~prior to being~~ before it is initially [✓] certified under this
5 subsection.

History: 2003 a. 255; 2005 a. 49, 97; 2007 a. 20, 125; 2009 a. 2, 265, 276; 2011 a. 32 s. 3356; Stats. 2011 s. 238.15.

(end of INS. 2-12)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3864/0
FFK&JK:jld:jm

12
RMC

In
2-8-2012

2011 BILL

d-note

4

Regen

1 AN ACT *to repeal* 71.07 (5d) (c) 1.; *to amend* 73.03 (63), 238.15 (1) (intro.), 238.15
2 (1) (h), 238.15 (1) (j), 238.15 (1) (km) and 238.15 (3) (d) (intro.); and *to create*
3 238.15 (1) (m) of the statutes; **relating to:** the angel investment and early stage
4 seed investment tax credit programs.

Analysis by the Legislative Reference Bureau

Under current law, the angel investment tax credit program allows a taxpayer to claim a tax credit that equals 25 percent of a bona fide angel investment made directly in a qualified new business venture (QNBV) for the tax year. Current law provides that a QNBV is a business that is certified by the Wisconsin Economic Development Corporation (WEDC). Under current law, WEDC may certify a business as a QNBV if the business meets certain conditions, including being headquartered in this state, employing at least 51 percent of its employees in this state, and having less than 100 employees. Under this bill, in addition to the existing certification conditions, to be certified as a QNBV a business must agree to stay in this state for at least three years following the receipt of a bona fide angel investment and must agree to pay a penalty to WEDC if the business relocates outside of this state within three years of receiving a bona fide angel investment. Additionally, the bill provides that certain conditions that a business must satisfy to be certified as a QNBV, such as having less than 100 employees and not having operated in Wisconsin for more than ten consecutive years, apply only to initial certifications.

Under current law, a person who claims a tax credit for an early stage seed or angel investment must hold the investment for at least three years. If the person

BILL

does not hold the investment for at least three years, the person must pay to the Department of Revenue (DOR) the amount of the credit that the person received related to the investment. Under this bill, a person that holds such an investment for less than three years does not have to repay the tax credit to DOR, if the person's investment becomes worthless, as determined by WEDC, or if a bona fide liquidity event occurs, as determined by WEDC.

Under current law, the maximum amount of angel investment credits that may be claimed by all claimants for all taxable years combined is \$47,500,000. The bill eliminates this limitation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.07 (5d) (c) 1. of the statutes is repealed.

2 **SECTION 2.** 73.03 (63) of the statutes, as affected by 2011 Wisconsin Act 32, is
3 amended to read:

4 73.03 **(63)** Notwithstanding the amount limitations specified under s. ~~71.07~~
5 ~~(5d) (c) 1.~~ and s. 238.15 (3) (d) or s. 560.205 (3) (d), 2009 stats., in consultation with
6 the department of commerce or the Wisconsin Economic Development Corporation,
7 to carry forward to subsequent taxable years unclaimed credit amounts of the early
8 stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638
9 and the angel investment credit under s. 71.07 (5d). Annually, no later than July 1,
10 the department of commerce or the Wisconsin Economic Development Corporation
11 shall submit to the department of revenue its recommendations for the carry forward
12 of credit amounts as provided under this subsection.

13 **SECTION 3.** 238.15 (1) (intro.) of the statutes, as affected by 2011 Wisconsin Act
14 32, is amended to read:

15 238.15 **(1)** ANGEL INVESTMENT TAX CREDITS. (intro.) The corporation shall
16 implement a program to certify businesses for purposes of s. 71.07 (5d). A business

BILL

1 desiring certification shall submit an application to the corporation in each taxable
2 year for which the business desires certification. The business shall specify in its
3 application the investment amount it wishes to raise and the corporation may certify
4 the business and determine the amount that qualifies for purposes of s. 71.07 (5d).
5 ~~A business may be certified under this subsection, and may maintain such~~
6 ~~certification.~~ The corporation may certify or recertify a business for purposes of s.
7 71.07 (5d) only if the business satisfies all of the following conditions:

8 **SECTION 4.** 238.15 (1) (h) of the statutes, as affected by 2011 Wisconsin Act 32,
9 is amended to read:

10 238.15 (1) (h) ~~It~~ At the time it is initially certified under this subsection, it has
11 less than 100 employees.

12 **SECTION 5.** 238.15 (1) (j) of the statutes, as affected by 2011 Wisconsin Act 32,
13 is amended to read:

14 238.15 (1) (j) ~~It~~ At the time it is initially certified under this subsection, it has
15 been in operation in this state for not more than 10 consecutive years.

16 **SECTION 6.** 238.15 (1) (km) of the statutes, as affected by 2011 Wisconsin Act
17 32, is amended to read:

18 238.15 (1) (km) It has not received aggregate private equity investment in cash
19 of more than \$10,000,000 ~~prior to being~~ before it is initially certified under this
20 subsection.

21 **SECTION 7.** 238.15 (1) (m) of the statutes is created to read:

22 238.15 (1) (m) 1. It agrees that it will not relocate outside of this state during
23 the 3 years after it receives an investment for which a person may claim a tax credit
24 under s. 71.07 (5d) and agrees to pay the corporation a penalty, in an amount
25 determined under subd. 2., if the business relocates outside of this state during that

BILL

1 3-year period. For the purposes of this paragraph, a business relocates outside of
2 this state when the business locates more than 51 percent of any of the following
3 outside of this state:

4 a. The business's employees.

5 b. The business's total payroll.

6 c. The activities of the business's headquarters, as determined by the
7 corporation.

8 2. The amount of a penalty payment under subd. 1. is any of the following:

9 a. If the relocation occurs less than 12 months after the investment, 100 percent
10 of the tax credit that was claimed under s. 71.07 (5d) as the result of the investment.

11 b. If the relocation occurs 12 months or more after the investment but less than
12 24 months after the investment, 80 percent of the tax credit that was claimed under
13 s. 71.07 (5d) as the result of the investment.

14 c. If the relocation occurs occurs 24 months or more after the investment but
15 less than 36 months after the investment, 60 percent of the tax credit that was
16 claimed under s. 71.07 (5d) as the result of the investment.

17 **SECTION 8.** 238.15 (3) (d) (intro.) of the statutes, as affected by 2011 Wisconsin
18 Act 32, is amended to read:

19 238.15 **(3)** (d) *Rules.* (intro.) The corporation, in consultation with the
20 department of revenue, shall adopt rules to administer this section. The rules shall
21 further define "bona fide angel investment" for purposes of s. 71.07 (5d) (a) 1. The
22 rules shall limit the aggregate amount of tax credits under s. 71.07 (5d) that may be
23 claimed for investments in businesses certified under sub. (1) at \$3,000,000 per
24 calendar year for calendar years beginning after December 31, 2004, and before
25 January 1, 2008, \$5,500,000 per calendar year for calendar years beginning after

BILL

1 December 31, 2007, and before January 1, 2010, \$6,500,000 for calendar year 2010,
2 and \$20,000,000 per calendar year for calendar years beginning after December 31,
3 2010, plus, for taxable years beginning after December 31, 2010, an additional
4 \$250,000 for tax credits that may be claimed for investments in nanotechnology
5 businesses certified under sub. (1). The rules shall also limit the aggregate amount
6 of the tax credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638 that may be
7 claimed for investments paid to fund managers certified under sub. (2) at \$3,500,000
8 per calendar year for calendar years beginning after December 31, 2004, and before
9 January 1, 2008, \$6,000,000 per calendar year for calendar years beginning after
10 December 31, 2007, and before January 1, 2010, \$8,000,000 for calendar year 2010,
11 and \$20,500,000 per calendar year for calendar years beginning after December 31,
12 2010, plus, for taxable years beginning after December 31, 2010, an additional
13 \$250,000 for tax credits that may be claimed for investments in nanotechnology
14 businesses certified under sub. (1). The rules shall also provide that, for calendar
15 years beginning after December 31, 2007, ~~no a person may receive who receives a~~
16 credit under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), or 76.638 ~~unless the~~
17 ~~person's~~ must keep the investment is kept in a certified business, or with a certified
18 fund manager, for no less than 3 years, ^{SCORE} unless the person's investment becomes
19 worthless, as determined by the corporation, during the 3-year period or the person
20 has kept the investment for no less than 12 months and a bona fide liquidity event,
21 as determined by the corporation, occurs during the 3-year period. The rules shall
22 permit the corporation to reallocate credits under this section that are unused in any
23 calendar year to a person eligible for tax benefits, as defined under s. 238.16 (1) (d),
24 if all of the following apply:

(END)

Knepp, Fern

From: Moench, Lucas
Sent: Wednesday, February 08, 2012 1:13 PM
To: Knepp, Fern
Subject: RE: bill draft release

No, let's just go ahead and fix it now.

Lucas Moench
Office of State Senator Joe Leibham
9th Senate District
608-266-2056

From: Knepp, Fern
Sent: Wednesday, February 08, 2012 1:11 PM
To: Moench, Lucas
Subject: RE: bill draft release

It will require a /2 designation. If you prefer to keep the /1, we could always do a chief's clerk correction after the bill is introduced.

From: Moench, Lucas
Sent: Wednesday, February 08, 2012 1:10 PM
To: Knepp, Fern; Schoenfeldt, Eileen - GOV
Subject: RE: bill draft release

Sure, you can go ahead and fix the error. I assume though that even that minor correction requires a /2 designation? At any rate, it you could, make the correction and then go right a head and jacket both for SENATE.

Thanks,

Lucas Moench
Office of State Senator Joe Leibham
9th Senate District
608-266-2056

From: Knepp, Fern
Sent: Wednesday, February 08, 2012 1:05 PM
To: Knepp, Fern; Schoenfeldt, Eileen - GOV
Cc: Moench, Lucas
Subject: RE: bill draft release

Sorry, the error is on page 5, line 18.

From: Knepp, Fern
Sent: Wednesday, February 08, 2012 1:04 PM
To: Schoenfeldt, Eileen - GOV
Cc: Moench, Lucas
Subject: RE: bill draft release

Eileen and Lucas:

Thanks for the email. I will go ahead and release the drafts to Senator Leibham. I did find one technical error in 3864/1 (on page 7, line 18, there is a comma that is stricken that should be underlined). Lucas, do you mind if I fix that technical error before sending the draft to you?

Thanks,
Fern

From: Schoenfeldt, Eileen - GOV [mailto:Eileen.Schoenfeldt@wisconsin.gov]
Sent: Wednesday, February 08, 2012 12:50 PM
To: Knepp, Fern
Cc: Moench, Lucas; Volz, David J - WEDC
Subject: bill draft release

Fern,

Please release two bills that you had drafted at the request of our office to Senator Leibham's office.

- 1) LRB 2858/6 – relating to: tax credit programs administered by the Wisconsin Economic Development Corporation
- 2) LRB 3864/1 – relating to: the angel investment and early stage seed investment tax credit programs

Senator Leibham is requesting jackets for the two bills. If you need an official request from his office, please let Lucas Moench know.

Thank you!

Eileen Schoenfeldt
Policy Advisor
Office of Governor Scott Walker
(608) 261-2163
eileen.schoenfeldt@wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB3864/2

FFK:.....

date

JLD

Senator Leibham:

As we discussed, this ^{e bill} ~~draft~~ corrects a technical error on page 5 of this bill by replacing a stricken comma with an underscored comma. Aside from that change, the bill is identical to LRB-3864/1.

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-03864/2
FFK:jld:jm

February 8, 2012

Senator Leibham:

As we discussed, this bill corrects a technical error on page 5 of this bill by replacing a stricken comma with an underscored comma. Aside from that change, the bill is identical to LRB-3864/1.

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov