



State of Wisconsin
2011 – 2012 LEGISLATURE



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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 463**

March 15, 2012 – Offered by Representatives BARCA, SEIDEL, PASCH, DANOU, SINICKI, TURNER, HEBL, VRUWINK, CLARK, BERNARD SCHABER, MILROY, MOLEPSKE JR and JORGENSEN.

1 **AN ACT** *to repeal* 71.07 (5d) (c) 1.; *to amend* 16.413 (1) (b), 16.413 (1) (d), 16.413
2 (3) (a) (intro.), 71.07 (5b) (d) 1., 71.07 (5b) (d) 3., 71.07 (5d) (d) 1., 71.07 (5d) (d)
3 2., 71.10 (4) (gwb), 71.10 (4) (gx), 71.10 (4) (i), 71.28 (5b) (d) 1., 71.28 (5b) (d) 3.,
4 71.30 (3) (eop), 71.30 (3) (f), 71.47 (5b) (d) 1., 71.47 (5b) (d) 3., 71.49 (1) (eop),
5 71.49 (1) (f), 73.03 (63), 238.15 (1) (intro.), 238.15 (1) (h), 238.15 (1) (j), 238.15
6 (1) (km) and 238.15 (3) (d) (intro.); and *to create* 16.413 (3) (a) 6. and 7., 16.413
7 (3) (c), (d) and (e), 20.835 (2) (ba), 71.07 (5b) (d) 1m., 71.07 (5b) (d) 4., 71.07 (5d)
8 (d) 2m., 71.07 (5d) (d) 5., 71.28 (5b) (d) 1m., 71.28 (5b) (d) 4., 71.47 (5b) (d) 1m.,
9 71.47 (5b) (d) 4. and 238.15 (1) (m) of the statutes; **relating to:** the angel
10 investment and early stage seed investment tax credit programs, making
11 changes to disclosure requirements regarding state agency expenditures
12 concerning economic development programs, requiring the exercise of
13 rule-making authority, making an appropriation, and providing a penalty.

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

1 **SECTION 1.** 16.413 (1) (b) of the statutes, as created by 2011 Wisconsin Act 32,
2 is amended to read:

3 16.413 (1) (b) “Grant” means a payment made to ~~a person, other than aids to~~
4 ~~individuals and organizations and local assistance and the payment of salaries and~~
5 ~~fringe benefits for state employees~~ an entity, including a public utility as defined in
6 s. 196.01 (5) or a sewerage system operator as defined in s. 196.04 (4) (a). “Grant”
7 includes a loan and any tax credit, whether refundable or nonrefundable, that is
8 issued to an entity.

9 **SECTION 2.** 16.413 (1) (d) of the statutes, as created by 2011 Wisconsin Act 32,
10 is amended to read:

11 16.413 (1) (d) “State agency” ~~has the meaning given in s. 20.001 (1)~~ means an
12 office, department, independent agency, institution of higher education, association,
13 society, or other body in state government created or authorized to be created by the
14 constitution or any law, which is entitled to expend moneys appropriated by law,
15 including the legislature and the courts and including an authority created in subch.
16 II of ch. 114 or subch. III of ch. 149 or in ch. 231, 232, 233, 234, 235, 237, 238, or 279.
17 “State agency” includes a local governmental unit, as defined in s. 16.97 (7).

18 **SECTION 3.** 16.413 (3) (a) (intro.) of the statutes, as created by 2011 Wisconsin
19 Act 32, is amended to read:

20 16.413 (3) (a) (intro.) The department shall ensure that all of the following
21 information relating to each grant that exceeds \$100 made by a state agency or
22 contract entered into by a state agency is available for inspection on a searchable
23 Internet Web site maintained by the department:

1 **SECTION 4.** 16.413 (3) (a) 6. and 7. of the statutes are created to read:

2 16.413 **(3)** (a) 6. With respect to any grant that is related to an economic
3 development program, as defined in s. 238.01 (3), an accounting by job classification
4 of the compensation, including benefits and bonuses or other incentive pay, that the
5 grant recipient paid to each of its employees in the immediately preceding fiscal year;
6 and an accounting of the percentage and dollar amount of increase in compensation,
7 including benefits and bonuses or other incentive pay, for each employee in the
8 immediately preceding fiscal year relative to the fiscal year prior to that year.

9 7. With respect to any grant that is related to an economic development
10 program, as defined in s. 238.01 (3), once a grant recipient has spent a grant from a
11 state agency, a verified statement describing the recipient's expenditures of grant
12 funds, signed by both an independent certified public accountant and the director or
13 principal officer of the recipient that attests to the accuracy of the verified statement.

14 **SECTION 5.** 16.413 (3) (c), (d) and (e) of the statutes are created to read:

15 16.413 **(3)** (c) 1. Each state agency that makes a grant for which a verified
16 statement is required under par. (a) 7. shall make that verified statement available
17 for inspection on an Internet Web site maintained by the state agency.

18 2. Each grant recipient for which a verified statement is required under par.
19 (a) 7. and that maintained an Internet Web site at any time during the 12 months
20 preceding the recipient's receipt of that grant, shall, for a period of at least 5 years,
21 make the verified statement signed by the grant recipient under par. (a) 7. available
22 on an Internet Web site maintained by the grant recipient.

23 3. The department shall attempt to ensure coordination between the
24 department, the Wisconsin Economic Development Corporation, any other state
25 agency that administers economic development programs, as defined in s. 238.01 (3),

1 and the federal government concerning the award of grants under those economic
2 development programs and the disclosures required under this subsection with
3 respect to those economic development programs.

4 (d) Each state agency shall be responsible for, and shall establish by rule
5 policies and procedures for, the detection and investigation of misuse of grants, and
6 the use of fraud or deceit to obtain grants, from the state agency. If a state agency
7 detects any misuse of a state grant or fraud, the state agency shall report that misuse
8 or fraud to the department of justice for investigation, including criminal
9 investigation.

10 (e) If, after investigation and an opportunity for hearing, a state agency
11 determines that a grant recipient has misused the grant or obtained or attempted
12 to obtain the grant through fraud or deceit, the state agency may do any of the
13 following:

- 14 1. Recover payments made to the recipient.
- 15 2. Withhold payments to be made to the recipient.
- 16 3. Assess a forfeiture against the recipient.

17 **SECTION 6.** 20.835 (2) (ba) of the statutes is created to read:

18 20.835 (2) (ba) *Early stage seed and angel investment credits.* A sum sufficient
19 to make the payments under ss. 71.07 (5b) (d) 4. and (5d) (d) 5., 71.28 (5b) (d) 4., and
20 71.47 (5b) (d) 4.

21 **SECTION 7.** 71.07 (5b) (d) 1. of the statutes is amended to read:

22 71.07 (5b) (d) 1. ~~Section~~ For taxable years beginning before January 1, 2012,
23 s. 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit
24 under this subsection.

25 **SECTION 8.** 71.07 (5b) (d) 1m. of the statutes is created to read:

1 71.07 **(5b)** (d) 1m. For taxable years beginning after December 31, 2011, s.
2 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the
3 credit under this subsection.

4 **SECTION 9.** 71.07 (5b) (d) 3. of the statutes, as affected by 2011 Wisconsin Act
5 32, is amended to read:

6 71.07 **(5b)** (d) 3. For Except as provided under s. 238.15 (3) (d) (intro.), for
7 investments made after December 31, 2007, if an investment for which a claimant
8 claims a credit under par. (b) is held by the claimant for less than 3 years, the
9 claimant shall pay to the department, in the manner prescribed by the department,
10 the amount of the credit that the claimant received related to the investment.

11 **SECTION 10.** 71.07 (5b) (d) 4. of the statutes is created to read:

12 71.07 **(5b)** (d) 4. For taxable years beginning after December 31, 2011, if the
13 allowable amount of the claim under par. (b) exceeds the tax otherwise due under s.
14 71.02 or 71.08, the amount of the claim not used to offset the tax due shall be certified
15 by the department of revenue to the department of administration for payment by
16 check, share draft, or other draft drawn from the appropriation account under s.
17 20.835 (2) (ba).

18 **SECTION 11.** 71.07 (5d) (c) 1. of the statutes is repealed.

19 **SECTION 12.** 71.07 (5d) (d) 1. of the statutes, as affected by 2011 Wisconsin Act
20 32, is amended to read:

21 71.07 **(5d)** (d) 1. For Except as provided under s. 238.15 (3) (d) (intro.), for
22 investments made after December 31, 2007, if an investment for which a claimant
23 claims a credit under par. (b) is held by the claimant for less than 3 years, the
24 claimant shall pay to the department, in the manner prescribed by the department,
25 the amount of the credit that the claimant received related to the investment.

1 **SECTION 13.** 71.07 (5d) (d) 2. of the statutes is amended to read:

2 71.07 **(5d)** (d) 2. ~~Section~~ For taxable years beginning before January 1, 2012,
3 s. 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit
4 under this subsection.

5 **SECTION 14.** 71.07 (5d) (d) 2m. of the statutes is created to read:

6 71.07 **(5d)** (d) 2m. For taxable years beginning after December 31, 2011, s.
7 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the
8 credit under this subsection.

9 **SECTION 15.** 71.07 (5d) (d) 5. of the statutes is created to read:

10 71.07 **(5d)** (d) 5. For taxable years beginning after December 31, 2011, if the
11 allowable amount of the claim under par. (b) exceeds the tax otherwise due under s.
12 71.02 or 71.08, the amount of the claim not used to offset the tax due shall be certified
13 by the department of revenue to the department of administration for payment by
14 check, share draft, or other draft drawn from the appropriation account under s.
15 20.835 (2) (ba).

16 **SECTION 16.** 71.10 (4) (gwb) of the statutes is amended to read:

17 71.10 **(4)** (gwb) Early stage seed investment credit under s. 71.07 (5b), except
18 as provided under par. (i).

19 **SECTION 17.** 71.10 (4) (gx) of the statutes is amended to read:

20 71.10 **(4)** (gx) Angel investment credit under s. 71.07 (5d), except as provided
21 under par. (i).

22 **SECTION 18.** 71.10 (4) (i) of the statutes is amended to read:

23 71.10 **(4)** (i) The total of claim of right credit under s. 71.07 (1), farmland
24 preservation credit under ss. 71.57 to 71.61, farmland preservation credit, 2010 and
25 beyond under s. 71.613, homestead credit under subch. VIII, farmland tax relief

1 credit under s. 71.07 (3m), dairy manufacturing facility investment credit under s.
2 71.07 (3p), jobs tax credit under s. 71.07 (3q), meat processing facility investment
3 credit under s. 71.07 (3r), woody biomass harvesting and processing credit under s.
4 71.07 (3rm), food processing plant and food warehouse investment credit under s.
5 71.07 (3rn), early stage seed investment credit under s. 71.07 (5b) (d) 4., angel
6 investment credit under s. 71.07 (5d) (d) 5., film production services credit under s.
7 71.07 (5f), film production company investment credit under s. 71.07 (5h), veterans
8 and surviving spouses property tax credit under s. 71.07 (6e), enterprise zone jobs
9 credit under s. 71.07 (3w), beginning farmer and farm asset owner tax credit under
10 s. 71.07 (8r), earned income tax credit under s. 71.07 (9e), estimated tax payments
11 under s. 71.09, and taxes withheld under subch. X.

12 **SECTION 19.** 71.28 (5b) (d) 1. of the statutes is amended to read:

13 71.28 (5b) (d) 1. ~~Subsection~~ For taxable years beginning before January 1,
14 2012, sub. (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit
15 under this subsection.

16 **SECTION 20.** 71.28 (5b) (d) 1m. of the statutes is created to read:

17 71.28 (5b) (d) 1m. For taxable years beginning after December 31, 2011, sub.
18 (4) (e), (g), and (h), as it applies to the credit under sub. (4), applies to the credit under
19 this subsection.

20 **SECTION 21.** 71.28 (5b) (d) 3. of the statutes, as affected by 2011 Wisconsin Act
21 32, is amended to read:

22 71.28 (5b) (d) 3. ~~For~~ Except as provided under s. 238.15 (3) (d) (intro.), for
23 investments made after December 31, 2007, if an investment for which a claimant
24 claims a credit under par. (b) is held by the claimant for less than 3 years, the

1 claimant shall pay to the department, in the manner prescribed by the department,
2 the amount of the credit that the claimant received related to the investment.

3 **SECTION 22.** 71.28 (5b) (d) 4. of the statutes is created to read:

4 71.28 (5b) (d) 4. For taxable years beginning after December 31, 2011, if the
5 allowable amount of the claim under par. (b) exceeds the tax otherwise due under s.
6 71.23, the amount of the claim not used to offset the tax due shall be certified by the
7 department of revenue to the department of administration for payment by check,
8 share draft, or other draft drawn from the appropriation account under s. 20.835 (2)
9 (ba).

10 **SECTION 23.** 71.30 (3) (eop) of the statutes is amended to read:

11 71.30 (3) (eop) Early stage seed investment credit under s. 71.28 (5b), except
12 as provided under par. (f).

13 **SECTION 24.** 71.30 (3) (f) of the statutes is amended to read:

14 71.30 (3) (f) The total of farmland preservation credit under subch. IX,
15 farmland tax relief credit under s. 71.28 (2m), dairy manufacturing facility
16 investment credit under s. 71.28 (3p), jobs credit under s. 71.28 (3q), meat processing
17 facility investment credit under s. 71.28 (3r), woody biomass harvesting and
18 processing credit under s. 71.28 (3rm), food processing plant and food warehouse
19 investment credit under s. 71.28 (3rn), enterprise zone jobs credit under s. 71.28
20 (3w), early stage seed investment credit under s. 71.28 (5b) (d) 4., film production
21 services credit under s. 71.28 (5f), film production company investment credit under
22 s. 71.28 (5h), beginning farmer and farm asset owner tax credit under s. 71.28 (8r),
23 and estimated tax payments under s. 71.29.

24 **SECTION 25.** 71.47 (5b) (d) 1. of the statutes is amended to read:

1 71.47 (5b) (d) 1. ~~Section~~ For taxable years beginning before January 1, 2012,
2 s. 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit
3 under this subsection.

4 **SECTION 26.** 71.47 (5b) (d) 1m. of the statutes is created to read:

5 71.47 (5b) (d) 1m. For taxable years beginning after December 31, 2011, s.
6 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the
7 credit under this subsection.

8 **SECTION 27.** 71.47 (5b) (d) 3. of the statutes, as affected by 2011 Wisconsin Act
9 32, is amended to read:

10 71.47 (5b) (d) 3. ~~For~~ Except as provided under s. 238.15 (3) (d) (intro.), for
11 investments made after December 31, 2007, if an investment for which a claimant
12 claims a credit under par. (b) is held by the claimant for less than 3 years, the
13 claimant shall pay to the department, in the manner prescribed by the department,
14 the amount of the credit that the claimant received related to the investment.

15 **SECTION 28.** 71.47 (5b) (d) 4. of the statutes is created to read:

16 71.47 (5b) (d) 4. For taxable years beginning after December 31, 2011, if the
17 allowable amount of the claim under par. (b) exceeds the tax otherwise due under s.
18 71.43, the amount of the claim not used to offset the tax due shall be certified by the
19 department of revenue to the department of administration for payment by check,
20 share draft, or other draft drawn from the appropriation account under s. 20.835 (2)
21 (ba).

22 **SECTION 29.** 71.49 (1) (eop) of the statutes is amended to read:

23 71.49 (1) (eop) Early stage seed investment credit under s. 71.47 (5b), except
24 as provided under par. (f).

25 **SECTION 30.** 71.49 (1) (f) of the statutes is amended to read:

1 71.49 (1) (f) The total of farmland preservation credit under subch. IX,
2 farmland tax relief credit under s. 71.47 (2m), dairy manufacturing facility
3 investment credit under s. 71.47 (3p), jobs credit under s. 71.47 (3q), meat processing
4 facility investment credit under s. 71.47 (3r), woody biomass harvesting and
5 processing credit under s. 71.47 (3rm), food processing plant and food warehouse
6 investment credit under s. 71.47 (3rn), enterprise zone jobs credit under s. 71.47
7 (3w), early stage seed investment credit under s. 71.47 (5b) (d) 4., film production
8 services credit under s. 71.47 (5f), film production company investment credit under
9 s. 71.47 (5h), beginning farmer and farm asset owner tax credit under s. 71.47 (8r),
10 and estimated tax payments under s. 71.48.

11 **SECTION 31.** 73.03 (63) of the statutes, as affected by 2011 Wisconsin Act 32,
12 is amended to read:

13 73.03 (63) Notwithstanding the amount limitations specified under s. ~~71.07~~
14 ~~(5d) (e) 1.~~ and s. 238.15 (3) (d) or s. 560.205 (3) (d), 2009 stats., in consultation with
15 the department of commerce or the Wisconsin Economic Development Corporation,
16 to carry forward to subsequent taxable years unclaimed credit amounts of the early
17 stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638
18 and the angel investment credit under s. 71.07 (5d). Annually, no later than July 1,
19 the department of commerce or the Wisconsin Economic Development Corporation
20 shall submit to the department of revenue its recommendations for the carry forward
21 of credit amounts as provided under this subsection.

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

24 238.15 (1) ANGEL INVESTMENT TAX CREDITS. (intro.) The corporation shall
25 implement a program to certify businesses for purposes of s. 71.07 (5d). A business

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 33.** 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 34.** 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 35.** 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 36.** 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

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 37.** 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

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, 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:

25

(END)