



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 169

**Senate Substitute
Amendment 2**

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2013 SENATE BILL 169

2013 Senate Bill 169 creates a fund-of-funds venture capital investment program to facilitate investments in venture capital funds, which, in turn, must invest in Wisconsin businesses. The bill requires the Wisconsin Economic Development Corporation (WEDC) to contract with an investment manager to manage investments in venture capital funds.

Under the bill, WEDC must pay \$25 million to the investment manager for investments in venture capital funds. The investment manager must then contribute to those investments \$300,000 of its own capital and \$5 million raised from other funding sources. Each venture capital fund that receives capital under the program must invest all of the capital received in businesses that are headquartered in Wisconsin and employ at least 50% of their full-time employees in Wisconsin. At least one-half of the capital each venture capital fund receives under the program must be invested in one or more businesses that employ fewer than 150 full-time employees at the time of the initial investment.

SENATE SUBSTITUTE AMENDMENT 2

Senate Substitute Amendment 2 directs DOA to establish and administer a fund-of-funds venture capital investment program and appropriates \$25 million for the program. The substitute amendment requires DOA to contract with an investment manager to manage investments in venture capital funds.

Selection of Investment Manager

The substitute amendment directs the DOA Secretary to form a committee to select an investment manager and sets forth required components and approval procedures for the contract with the investment manager.

Selection Committee

The substitute amendment requires the selection committee formed by the DOA Secretary to select a person as investment manager who has expertise in the venture capital or private equity asset class. The selection committee must consist of the following members:

- Three representatives of the State of Wisconsin Investment Board (SWIB).
- Two representatives of the capital finance office of DOA, appointed by the DOA Secretary.

Contract Requirements

The substitute amendment requires the contract negotiated with the investment manager to establish the investment manager's compensation, including any management fee. The management fee may not exceed 1% of the total amount of the following program funds:

- The \$25 million payment from DOA.
- The capital raised by the investment manager from sources other than DOA.

The investment manager may receive the management fee for no more than four years.

In addition, the contract must require the investment manager to disclose to DOA any interest that it or an owner, stockholder, partner, officer, director, member, employee, or agent of the investment manager has in a venture capital fund that receives capital under the program or a business in which a venture capital fund invests that capital.

Review of the Contract by the Legislative Audit Bureau and the Joint Committee on Finance

The substitute amendment requires DOA to submit the proposed contract to the Legislative Audit Bureau. Within 14 days after it receives the proposed contract, the Legislative Audit Bureau must review the proposed contract and submit a letter of review to the Joint Committee on Finance and DOA that evaluates the terms of the contract and offers an opinion concerning the extent to which the proposed contract conforms to specified requirements under the bill.

The substitute amendment requires DOA to notify the Joint Committee on Finance that an investment manager has been chosen by the selection committee and submit its proposed contract with the investment manager to the Joint Committee on Finance for a 14-day passive review. The passive review period begins once the Joint Committee on Finance receives the Legislative Audit Bureau's letter of review. The review by the Joint Committee on Finance is limited to a determination whether the contract is contrary to the relevant provisions of the substitute amendment or fails to implement an applicable requirement set forth in the substitute amendment.

Investments in Venture Capital Funds

The substitute amendment requires DOA to pay \$25 million to the investment manager for the program during fiscal year 2013-14. The substitute amendment requires the investment manager to contribute an additional \$300,000 of its own capital and \$5 million raised from other sources to the \$25 million that it receives from DOA. The investment manager must commit at least 50% of the capital in venture capital funds within 12 months after the date the investment manager executes its contract with DOA and must commit all of the capital in venture capital funds within 24 months after the date the contract was executed.

In addition, the investment manager is required to invest all of the capital in at least four different venture capital funds and is prohibited from committing more than \$10 million to any single venture capital fund. The investment manager must ensure that, on average, a venture capital fund invests \$2 in a business for every \$1 the investment manager contributes to the investment in that business. Furthermore, the investment manager's profit-sharing agreement with each venture capital fund must be on terms that are substantially equivalent to the terms applicable for other funding sources of the venture capital fund.

Venture Capital Fund Responsibilities

The investment manager is required to contract with each venture capital fund that receives capital under the program. The contracts must include all of the following requirements:

- **Investment in Wisconsin businesses.** Each venture capital fund must make new investments in an amount equal to the capital it receives under the program in one or more businesses that are headquartered in Wisconsin and employ at least 50% of its full-time employees, including any subsidiary or other affiliated entity, in Wisconsin.
- **Investment in small businesses.** When it first invests venture capital funds through the program, each venture capital fund must invest at least half of the capital received through the program in businesses that employ fewer than 150 full-time employees, including any subsidiary or other affiliated entity.
- **Invest all capital received within four years.** Each venture capital fund must commit at least half of the capital it receives under the program to investments in businesses within 24 months after receiving it and must commit all of the capital it receives under the program to investments in businesses within 48 months of receiving it.
- **Invest in targeted industries.** Each venture capital fund must invest all capital it receives under the program in businesses in the agriculture, information technology, engineered products, advanced manufacturing, or medical devices and imaging industries. In addition, the venture capital fund must attempt to ensure that all capital it receives through the program is invested in businesses that are diverse with respect to industry classification and geographic location within Wisconsin.
- **Match capital received through the program.** Each venture capital fund must at least match the amount of capital the investment manager contributes to an investment in a business with an investment of capital in that business that the venture capital fund has raised from other sources.
- **Recoup funds from businesses that leave the state.** If a business relocates its headquarters outside of Wisconsin or fails to employ at least 50% of its full-time employees in the state within three years after receiving an investment of venture capital through the program, a venture capital fund must require the business to promptly pay an amount equal to the funds that had been invested. The venture capital fund must then reinvest the recouped funds in eligible businesses.
- **Provide reporting information to the investment manager.** Each venture capital fund must provide the information necessary for the investment manager to prepare reports required under the substitute amendment.

- **Disclose interests in investments to DOA and the investment manager.** Each venture capital fund must disclose to the investment manager and to DOA any interests that the venture capital fund or an owner, stockholder, partner, officer, director, member, employee, or agent of the venture capital fund holds in a business in which the venture capital fund invests or intends to invest capital under the program.

The State's Share of Proceeds from Investments

The investment manager must hold in an escrow account its gross proceeds from all investments of capital contributed to the program by DOA until the investment manager has paid a total of \$25 million to the state. In addition, the investment manager must pay, at least annually, the amount in that account to the state for deposit into the general fund. These requirements are only in effect until the investment manager has paid a total of \$25 million to the state, the amount of DOA's contribution. After that point, the investment manager must pay 90% of its gross proceeds from such investments to the state for deposit into the general fund.

Reporting Requirements

The substitute amendment requires the investment manager to submit an annual report and quarterly reports, described below, to DOA. It also requires DOA to submit two progress reports to the Legislature.

Annual Report of the Investment Manager

The investment manager must submit a report to DOA each year within 120 days after the end of the investment manager's fiscal year. The report must include all of the following:

- An audit of the investment manager's financial statements performed by an independent certified public accountant.
- The investment manager's internal rate of return from investments under the program.
- The following information for each venture capital fund that contracts with the investment manager under the program:
 - The name and address of the venture capital fund.
 - The amounts invested in the venture capital fund.
 - An accounting of any fees the venture capital fund paid to itself or any principal or manager of the venture capital fund.
 - The average internal rate of return realized by the venture capital fund on its investments through the program.
- The following information for each business in which a venture capital fund held an investment of capital contributed by the investment manager under the program:
 - The name and address of the business.
 - A description of the nature of the business.
 - An identification of the venture capital fund that made the investment in the business.

- The amount of each investment in the business and the amount invested by the venture capital fund from funding sources other than the investment manager.
- The internal rate of return realized by the venture capital fund upon the venture capital fund's exit from its investment in the business.
- A statement of the number of employees the business employed when the venture capital fund first invested in the business under the program, the number of employees the business employed on the first day of the investment manager's fiscal year, and the number of employees the business employed on the last day of the investment manager's fiscal year.

DOA must submit the investment manager's report to the Legislature within 10 days of receiving it.

Quarterly Reports of the Investment Manager

The substitute amendment requires the investment manager to submit quarterly reports to DOA. DOA must make the quarterly reports readily accessible to the public on the department's website. The quarterly reports must include the following information:

- An identification of each venture capital fund under contract with the investment manager.
- An identification of each business in which a venture capital fund held an investment of moneys the venture capital fund received through the program, and a statement of the amount of the investment in each business that separately specifies the amount of capital designated through the program that were contributed to the investment.
- A statement of the number of employees the business employed when the venture capital fund first invested capital in the business that the venture capital fund received through the program and the number of employees the business employed at the end of the quarter.

DOA Progress Reports in 2015 and 2018

The substitute amendment requires DOA to submit two progress reports to the Joint Committee on Finance, one in 2015 and one in 2018. Each report must contain the following:

- A comprehensive assessment of the performance to date of the investment program.
- Any recommendations DOA has for improving the investment program and the specific actions that DOA intends to take, or proposes to be taken, to implement those recommendations.
- Any recommendations SWIB has for improving the investment program and the specific actions that SWIB proposes to be taken to implement those recommendations.

Certain Procurement Requirements Not Applicable

The substitute amendment specifies that certain requirements governing state contracts and procurement do not apply to the provisions in the substitute amendment. Specifically, it provides that general requirements governing contracts for services and accepting the lowest responsible bids do not apply to those provisions.

BILL HISTORY

Senate Substitute Amendment 2 to Senate Bill 169 was offered on June 11, 2013, by Senator Gudex. On June 12, 2013, the Senate Committee on Economic Development and Local Government voted to recommend adoption of Senate Substitute Amendment 2 and passage of the bill, as amended, on a vote of Ayes, 5; Noes, 0.

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