



2001 SENATE BILL 284

October 18, 2001 - Introduced by Senators MOORE, PLACHE, BURKE, M. MEYER, KANAVAS, ERPENBACH, HANSEN, WIRCH, DARLING, GEORGE, SHIBILSKI, BRESKE, ROESSLER, WELCH, HUELSMAN, SCHULTZ and S. FITZGERALD, cosponsored by Representatives WARD, LIPPERT, VRAKAS, TOWNSEND, HUNDERTMARK, GRONEMUS, HAHN, SYKORA, WALKER, DUFF, LADWIG, OWENS, D. MEYER, KRAWCZYK, BOYLE, OLSEN, M. LEHMAN, MILLER, STASKUNAS, PLALE, GUNDRUM, OTT, BALOW, COLON, STARZYK, SERATTI, BERCEAU, LA FAVE, JENSEN, TURNER, YOUNG, KRUG, SHILLING, WASSERMAN, WILLIAMS, FREESE, SUDER, KEDZIE, KESTELL, PETTIS, RICHARDS, HUEBSCH, JESKEWITZ, MUSSER and RILEY. Referred to Committee on Economic Development and Corrections.

1 **AN ACT** *to renumber* 560.32 (2) (c) and 560.35 (1m); *to renumber and amend*
2 560.32 (2) (b), 560.33 (1) (b) and 560.34 (1) (d); *to amend* 560.33 (1) (c) and
3 560.35 (3); and *to create* 560.32 (2) (b) 2., 560.32 (2) (c) 2., 560.33 (1) (b) 2.,
4 560.34 (1) (d) 2. and 560.35 (1m) (b) of the statutes; **relating to:** certified capital
5 investment limitations, qualified business requirements, and reviews of
6 certified capital company financial statements.

Analysis by the Legislative Reference Bureau

Under current law, the department of commerce (department) is authorized to certify investments (certified capital investments) made by investors (certified investors) in companies that have been certified by the department (certified capital companies). A certified capital company in which a certified capital investment is made must then invest the certified capital investment, according to a specified schedule, in a business in this state that fulfills certain requirements, including having no more than 100 employees and a net worth of no more than \$5,000,000 (qualified businesses). The investment in the qualified business must satisfy certain requirements, and the qualified business must agree to comply with certain requirements as a condition of the investment.

If a certified investor is a certain type of insurer, including a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business, the certified investor may claim a tax credit for the certified capital

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investment against license fees that are based on gross premiums and that are owed to the state instead of income or franchise taxes. The credit must be claimed over a ten-year period, with 10% of the investment used to offset the license fee that is due each year.

This bill makes various changes to the certified capital company program. Current law allows the department to certify no more than \$10,000,000 in certified capital investments per certified investor and no more than \$50,000,000 in total certified capital investments. This bill authorizes the department to certify another \$100,000,000 in certified capital investments and to certify, in certified capital investments per certified investor, up to the greater of \$10,000,000 or 15% of the total certified investments that the department may certify over and above the original \$50,000,000 that the department was authorized to certify.

Currently, at least 75% of the employees of a qualified business must be employed in this state. The bill provides that, alternatively, at least 75% of the total payroll of the qualified business must be paid to employees who are employed in this state.

Currently, a qualified business must have an average annual net income, after federal income taxes and excluding any carry-over losses, of not more than \$2,000,000. The bill provides that a qualified business that is a partnership, limited liability company, or tax option corporation shall calculate its net annual income based on the net annual income, after federal income taxes and excluding any carry-over losses, of its partners, members, or shareholders that is related to the economic activity of the partnership, limited liability company, or tax option corporation.

Currently, a certified capital company must have its financial statements annually audited by a certified public accountant to ensure compliance with the statutory requirements. The bill allows the financial statements to be annually reviewed by a certified public accountant to ensure compliance, without the necessity of an actual audit.

The bill also provides that, if a qualified business violates any condition that it agreed to as a condition of a qualified investment, the qualified investment will be valued at one-half of the actual amount invested. This provision affects whether the certified capital company that made the qualified investment is in compliance with requirements to make a specified level of qualified investments, which in turn affects whether the qualified investor that made the certified capital investment in the certified capital company is entitled to the tax credit that applies to a certified investor that is a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business.

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:

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1 **SECTION 1.** 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and
2 amended to read:

3 560.32 (2) (b) 1. The Prior to the effective date of this subdivision [revisor
4 inserts date], the department may certify an investment under this subsection only
5 if, after the certification, the department will not have certified a total of more than
6 \$50,000,000 in investments under this subsection.

7 **SECTION 2.** 560.32 (2) (b) 2. of the statutes is created to read:

8 560.32 (2) (b) 2. The department may, beginning on the effective date of this
9 subdivision [revisor inserts date], certify up to \$100,000,000 in investments under
10 this subsection, excluding any investments certified under subd. 1.

11 **SECTION 3.** 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

12 **SECTION 4.** 560.32 (2) (c) 2. of the statutes is created to read:

13 560.32 (2) (c) 2. The department may not certify an investment under par. (b)
14 2. if, after the certification, the investor, together with all affiliates of the investor,
15 would have in certified capital investments under par. (b) 2. more than the greater
16 of \$10,000,000 or 15% of the total amount of investments that the department may
17 certify under par. (b) 2.

18 **SECTION 5.** 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)
19 and amended to read:

20 560.33 (1) (b) (intro.) The business has no more than 100 employees, at and any
21 of the following applies:

22 1. At least 75% of whom those employees are employed in this state.

23 **SECTION 6.** 560.33 (1) (b) 2. of the statutes is created to read:

24 560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to
25 employees who are employed in this state.

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1 **SECTION 7.** 560.33 (1) (c) of the statutes is amended to read:

2 560.33 (1) (c) During its 2 most recent fiscal years, the business had, together
3 with all of its consolidated affiliates, an average annual net income, after federal
4 income taxes and excluding any carry-over losses, of not more than \$2,000,000, as
5 determined in accordance with generally accepted accounting principles. For
6 purposes of this paragraph, a partnership, limited liability company, or tax-option
7 corporation shall calculate its net annual income based on the net annual income,
8 after federal income taxes and excluding any carry-over losses, of its partners,
9 members, or shareholders that is related to the economic activity of the partnership,
10 limited liability company, or tax-option corporation.

11 **SECTION 8.** 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)
12 and amended to read:

13 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business
14 agrees, as long as the certified capital corporation continues to hold the investment,
15 to maintain do any of the following:

16 1. Maintain at least 75% of its employees in this state.

17 **SECTION 9.** 560.34 (1) (d) 2. of the statutes is created to read:

18 560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are
19 employed in this state.

20 **SECTION 10.** 560.35 (1m) of the statutes is renumbered 560.35 (1m) (a).

21 **SECTION 11.** 560.35 (1m) (b) of the statutes is created to read:

22 560.35 (1m) (b) If a qualified business violates an agreement made under s.
23 560.34 (1) (b) to (e), for purposes of the requirements under subs. (2) (b) and (c) and
24 (3) and ss. 560.34 (1m) (a), 560.36 (3), and 560.37 (2), (3), and (3m) (a) 2. and the
25 certified capital company tax credit, the certified capital company's qualified

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1 investments with respect to that qualified business shall be valued at one-half of the
2 actual amount invested by the certified capital company.

3 **SECTION 12.** 560.35 (3) of the statutes is amended to read:

4 560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified
5 capital company's fiscal year, the certified capital company shall provide to the
6 department a copy of its annual audited financial statements, including together
7 with the opinion of an independent certified public accountant who has audited or
8 otherwise reviewed the financial statements. The audit or other review shall
9 address the methods of operation and conduct of the business of the certified capital
10 company to determine whether the certified capital company is complying with this
11 subchapter and the rules promulgated under this subchapter, including whether
12 certified capital has been invested in the manner required under s. 560.34. The
13 financial statements provided under this subsection shall be segregated by
14 investment pool and shall be separately audited or otherwise reviewed on that basis
15 to allow the department to determine whether the certified capital company is in
16 compliance with s. 560.34 (1m).

17 (END)