State of Wisconsin
2009 – 2010 LEGISLATURE

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2009 ASSEMBLY BILL 948

April 12, 2010 – Introduced by Representatives HILGENBERG, GARTHWAITE, MOLEPSKE JR., FIELDS, ZIGMUNT, BERCEAU, VRUWINK, BROOKS, BARCA, SINICKI, PASCH, RICHARDS, SCHNEIDER, CLARK and POPE-ROBERTS, cosponsored by Senators LASSA, TAYLOR and SCHULTZ. Referred to Committee on Jobs, the Economy and Small Business.

AN ACT ***to amend*** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45 (2) (a) 10., 76.67 (2) and 77.92 (4); and ***to create*** 71.07 (5p), 71.10 (4) (ce), 71.28 (5p), 71.30 (3) (ce), 71.47 (5p), 71.49 (1) (ce), 76.634 and 560.295 of the statutes; **relating to:** an income and franchise tax credit for investments in a community development financial institution and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Under this bill, the Department of Commerce (Commerce) may certify a person who makes a qualified investment in a registered community development financial institution (CDFI) to receive a credit against state income and franchise taxes and against license fees paid by insurers. The bill defines a CDFI as an entity that is organized under the laws of this state and has been certified by the Community Development Financial Institutions Fund established under federal law (fund) as meeting certain eligibility requirements. The bill permits Commerce to register a CDFI that applies to Commerce and complies with annual reporting requirements. The bill defines a "qualified investment" as a loan or deposit that pays no interest of at least $10,000 that is made for a minimum of 60 months and over which the CDFI retains complete control for the duration of the investment period.

Commerce may revoke the registration of a CDFI that fails to comply with annual reporting requirements or that no longer meets the eligibility requirement for certification by the fund. Commerce may certify up to $500,000 in tax credits in any calendar year.

A person certified to receive tax credits may claim, in two consecutive years, five percent of the person's qualified investment, if the investment is at least $10,000, but not more than $150,000, or six percent of the person's qualified investment, if the investment is more than $150,000, but not more than $500,000. If the person withdraws the qualified investment from the CDFI before the end of the investment period and does not reinvest the qualified investment in another CDFI, the person must repay a portion of the credit amounts that the person received by adding the portion to the person's tax or fee liability in a subsequent year. However, the portion that the person must repay depends on when the person withdraws the investment during the investment period. The portion that the person must repay decreases the longer the person holds the investment during the investment period.

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:

SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a partnership, limited liability company, or tax–option corporation that has added that amount to the partnership's, company's, or tax–option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

SECTION 2. 71.07 (5p) of the statutes is created to read:

71.07 **(5p)** COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Filing claims.* Subject to the limitations provided under this subsection and the requirements under s. 560.295, a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of the tax, in each taxable year for 2 consecutive years, beginning with the taxable year in which the investment is made, an amount equal to 5 percent of the claimant's qualified investment in a community development financial institution, if the investment is at least $10,000, but not more than $150,000, or 6 percent of the claimant's qualified investment in a community development financial institution, if the investment is more than $150,000, but not more than $500,000.

(c) *Limitations.* Partnerships, limited liability companies, and tax–option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax–option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax–option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 3. 71.10 (4) (ce) of the statutes is created to read:

71.10 **(4)** (ce) Community development financial institution credit under s. 71.07 (5p).

SECTION 4. 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.21 **(4)** Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), <u>(5p),</u> and (8r) and passed through to partners shall be added to the partnership's income.

SECTION 5. 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a partnership, limited liability company, or tax–option corporation that has added that amount to the partnership's, limited liability company's, or tax–option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

SECTION 6. 71.28 (5p) of the statutes is created to read:

71.28 **(5p)** COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Filing claims.* Subject to the limitations provided under this subsection and the requirements under s. 560.295, a claimant may claim as a credit against the tax imposed under s. 71.23, up to the amount of the tax, in each taxable year for 2 consecutive years, beginning with the taxable year in which the investment is made, an amount equal to 5 percent of the claimant's qualified investment in a community development financial institution, if the investment is at least $10,000, but not more than $150,000, or 6 percent of the claimant's qualified investment in a community development financial institution, if the investment is more than $150,000, but not more than $500,000.

(c) *Limitations.* Partnerships, limited liability companies, and tax–option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax–option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax–option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 7. 71.30 (3) (ce) of the statutes is created to read:

71.30 **(3)** (ce) Community development financial institution credit under s. 71.28 (5p).

SECTION 8. 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.34 **(1k)** (g) An addition shall be made for credits computed by a tax–option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and passed through to shareholders.

SECTION 9. 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), and (8r) and not passed through by a partnership, limited liability company, or tax–option corporation that has added that amount to the partnership's, limited liability company's, or tax–option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

SECTION 10. 71.47 (5p) of the statutes is created to read:

71.47 **(5p)** COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Filing claims.* Subject to the limitations provided under this subsection and the requirements under s. 560.295, a claimant may claim as a credit against the tax imposed under s. 71.43, up to the amount of the tax, in each taxable year for 2 consecutive years, beginning with the taxable year in which the investment is made, an amount equal to 5 percent of the claimant's qualified investment in a community development financial institution, if the investment is at least $10,000, but not more than $150,000, or 6 percent of the claimant's qualified investment in a community development financial institution, if the investment is more than $150,000, but not more than $500,000.

(c) *Limitations.* Partnerships, limited liability companies, and tax–option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax–option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax–option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 11. 71.49 (1) (ce) of the statutes is created to read:

71.49 **(1)** (ce) Community development financial institution credit under s. 71.47 (5p).

SECTION 12. 76.634 of the statutes is created to read:

76.634 Community development financial institution credit. (1) FILING CLAIMS. Subject to the limitations provided under this subsection and the requirements under s. 560.295, an insurer may claim as a credit against the fees due under s. 76.60, 76.63, 76.65, 76.66, or 76.67 in each taxable year for 2 consecutive years, beginning with the taxable year in which the investment is made, an amount equal to 5 percent of the insurer's qualified investment in a community development financial institution, if the investment is at least $10,000, but not more than $150,000, or 6 percent of the insurer's qualified investment in a community development financial institution, if the investment is more than $150,000, but not more than $500,000.

(2) CARRY–FORWARD. If the credit under sub. (1) is not entirely offset against the fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance may be carried forward and credited against those fees for the following 15 years to the extent that it is not offset by those fees otherwise due in all the years between the year in which the expense was made and the year in which the carry–forward credit is claimed.

(3) LIMITATIONS. No credit may be allowed under this section unless the insurer includes with the insurer's annual return under s. 76.64 a copy of the insurer's certification for tax benefits under s. 560.295 (5) (b).

SECTION 13. 76.67 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

76.67 **(2)** If any domestic insurer is licensed to transact insurance business in another state, this state may not require similar insurers domiciled in that other state to pay taxes greater in the aggregate than the aggregate amount of taxes that a domestic insurer is required to pay to that other state for the same year less the credits under ss. <u>76.634,</u> 76.635, 76.636, 76.637, 76.638, and 76.655, except that the amount imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums, as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss. <u>76.634,</u> 76.635, 76.636, 76.637, 76.638, and 76.655 against that total, and except that the amount imposed shall not be less than the amount due under s. 601.93.

SECTION 14. 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

77.92 **(4)** "Net business income," with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), <u>(5p),</u> and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. "Net business income," with respect to a natural person, estate, or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

SECTION 15. 560.295 of the statutes is created to read:

560.295 Certification of investments in community development financial institutions. (1) DEFINITIONS. In this section:

(a) "Community development financial institution" means an entity that satisfies all of the following:

1. The entity is certified by the fund under 12 CFR 1805.201 as meeting the eligibility requirements for a community development financial institution under 12 CFR 1805.200 and 1805.201 (b).

2. The entity is organized under the laws of this state.

3. The entity uses qualified investments for which a person may be certified for tax credits under sub. (2) (a) for projects that are based in this state.

(b) "Fund" means the Community Development Financial Institutions Fund established under 12 USC 4703 (a).

(c) 1. Subject to subd. 2., "qualified investment" means a deposit or loan that pays no interest to the person who made the deposit or loan, if the deposit or loan has a value of at least $10,000 and is made for a period of at least 60 months.

2. A community development financial institution that receives an investment described under subd. 1. shall have complete control over the entire investment amount, including any interest earned on the investment, for the duration of the investment period, but the investment may be subject to any additional terms and conditions of the investment agreement between the community development financial institution and the investor which are not inconsistent with the requirements of this section.

(2) CERTIFICATION; REGISTRATION AND REPORTING REQUIRED. (a) Subject to the limits under sub. (4), the department may certify a person under this section to claim tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634 if the person applies to the department on a form prepared by the department and submits evidence satisfactory to the department that the person has made a qualified investment in a community development financial institution that is registered under par. (b).

(b) 1. The department may register a community development financial institution if the community development financial institution applies to the department on a form prepared by the department. The department may revoke the registration of a community development financial institution if the entity no longer meets the eligibility requirements for certification as a community development financial institution by the fund or fails to comply with the requirements of this paragraph.

2. A community development financial institution registered under this section shall annually, within 90 days after the last day of the preceding calendar year, submit a report containing financial statements of the community development financial institution, prepared according to generally accepted accounting principles and including all of the following information for the preceding calendar year, to the department:

a. The material events certification form required by the U.S. department of the treasury.

b. Certification, in the form and manner prescribed by the department, that the community development financial institution satisfies the criteria under sub. (1) (a) 1. to 3.

c. Any other information the department considers relevant.

(3) ELIGIBILITY. (a) Except as provided in par. (b), a person certified under sub. (2) (a) is eligible to claim tax credits under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634.

(b) 1. A person certified under sub. (2) (a) who withdraws a qualified investment from a community development financial institution prior to the date of withdrawal specified in the written notice provided to the person under sub. (5) (b) and who does not immediately reinvest the proceeds of the qualified investment as a qualified investment in another community development financial institution shall add to the person's liability for taxes imposed under s. 71.02, 71.23, or 71.43, or fees imposed under s.76.60, 76.63, 76.65, 76.66, or 76.67, one of the following percentages of the amount of the credits received under s. 71.07 (5p), 71.28 (5p), 71.47 (5p), or 76.634:

a. If the withdrawal occurs during the first year after the date on which the person made the qualified investment, 100 percent.

b. If the withdrawal occurs during the 2nd year after the date on which the person made the qualified investment, 75 percent.

c. If the withdrawal occurs during the 3rd year after the date on which the person made the qualified investment, 50 percent.

d. If the withdrawal occurs during the 4th year after the date on which the person made the qualified investment, 25 percent.

e. If the withdrawal occurs during the 5th year after the date on which the person made the qualified investment, 10 percent.

2. If the registration of a community development financial institution in which a person certified under sub. (2) (a) has made a qualified investment is revoked by the department, and not reinstated by the department within 120 days following the revocation, or if the entity fails to meet the eligibility requirements for more than 120

consecutive days for certification as a community development financial institution by the fund, the person certified under sub. (2) (a) may do any of the following:

a. Subject to subd. 1., withdraw the qualified investment.

b. Immediately reinvest the proceeds of the qualified investment as a qualified investment in another community development financial institution for the duration of the investment period.

(4) LIMITS. No more than $500,000 in tax benefits may be claimed under this section in any calendar year.

(5) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Notify the department of revenue of every certification issued under sub. (2) (a) and include the dates on which any such certification is granted and the date on which the applicant may withdraw a qualified investment made in a community development financial institution, which date shall be no earlier than the first day of the 61st month after the qualified investment was made.

(b) Provide to each applicant for certification under sub. (2) (a) a dated written notice indicating the department's decision to grant or deny certification. If certification is granted, the notice shall include the date on which the applicant may withdraw the qualified investment, which date shall be no earlier than the first day of the 61st month after the qualified investment was made.

(c) Notify the department of revenue of each community development financial institution registered under sub. (2) (b).

(d) Promulgate rules to administer this program.

SECTION 16. Initial applicability.

(1) This act first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after

July 31 this act first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(END)