State of Wisconsin
2011 - 2012 LEGISLATURE

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2011 SENATE BILL 291

November 15, 2011 - Introduced by Senators WANGGAARD and HOLPERIN, cosponsored by Representatives KNILANS, WYNN, KERKMAN, RINGHAND, TURNER, BIES, JACQUE, STROEBEL, BALLWEG and LOUDENBECK. Referred to Committee on Economic Development and Veterans and Military Affairs.

AN ACT ***to create*** 238.137 of the statutes; **relating to:** authorizing the sale or transfer of tax credits in counties experiencing high rates of unemployment.

Analysis by the Legislative Reference Bureau

Under current law, a tax credit awarded by the Wisconsin Economic Development Corporation (corporation) may normally only be claimed by the person certified by the corporation to claim that credit; the credit may not be sold or transferred to another person.

The bill directs the corporation to create a program for the sale or transfer of tax credits awarded by either the corporation or, beginning on January 1, 2011, by the former Department of Commerce (Commerce). Under the bill, the corporation may authorize the sale or transfer of a portion of a tax credit if the corporation determines that the activity for which the corporation or Commerce awarded the tax credit is substantially related to economic development in counties experiencing persistent high rates of unemployment, called "qualifying counties" under the bill, and the person meets at least one of the following additional conditions:

1. The person is headquartered in a qualifying county.
2. The person intends to relocate its headquarters to a qualifying county.
3. The person intends to expand its operations in a qualifying county, and that expansion will increase by at least 10 percent the number of full-time jobs the person maintains in that county.
4. The person intends to expand its operations in a qualifying county, and the person will make a significant capital investment in property in that county as a result of that expansion.

Once the corporation authorizes a person to sell or transfer a tax credit, that person may sell or transfer up to 85 percent of the tax credit to another person who has Wisconsin tax liability. The person selling or transferring the credit must notify the corporation and either the Department of Revenue or, if appropriate, the commissioner of insurance of that sale or transfer. The person to whom a credit is sold or transferred may carry forward any unused amount of the transferred value of that credit for up to 15 years until fully claimed. Also, the corporation may prevent that person from claiming the tax credit for up to three years after the credit is sold or transferred.

The bill also authorizes the corporation to waive or modify a requirement of a certification for a tax credit issued by the corporation or Commerce if a person who may sell or transfer the tax credit applies to the corporation for that waiver or modification and the corporation determines that the requested waiver or modification will support economic development in qualifying counties. If the corporation revokes a person's certification for a tax credit and that person has already sold or transferred a portion of the tax credit, that person, not the person to whom the credit was transferred, must repay the full amount of the tax credit to the state.

Under the bill, the corporation may authorize the sale or transfer of up to $10,000,000 in partial tax credits over five years. However, if after reaching that 5–year limit, the corporation determines that an extension of the program will support economic development in qualifying counties, the corporation may continue the program for up to an additional five years and authorize sale or transfer of up to an additional $10,000,000 in partial tax credits. However, any such extension of the program is subject to passive review by the Joint Committee on Finance.

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. 238.137 of the statutes is created to read:

238.137 Pilot program for the sale or transfer of tax credits earned for economic development in counties with high unemployment rates. (1) DEFINITION. In this section, "qualifying county" means a geographic area designated by the corporation under sub. (6).

(2) APPLICATION AND CORPORATION AUTHORIZATION. (a) A person who is certified or otherwise authorized by the corporation or, beginning on January 1, 2011, by the department of commerce under ch. 560, 2009 stats., to claim a tax credit may apply to the corporation on a form prescribed by the corporation for authorization to sell or transfer that tax credit under this section. The corporation shall notify the person of the corporation's determination within 10 business days after the corporation receives the application.

(b) The corporation shall authorize the sale or transfer of a tax credit if a person applies for an authorization under par. (a) and the corporation finds that the activity under which that person was certified to receive that credit is substantially related to economic development in a qualifying county and that the person meets at least one of the following conditions:

1. The person is headquartered in the qualifying county.

2. The person intends to relocate its headquarters to the qualifying county.

3. The person intends to expand its operations in the qualifying county, and that expansion will result in an increase in the number of full–time employees employed by the person in an amount equal to at least 10 percent of the person's full–time workforce at the time of application.

4. The person intends to expand its operations in the qualifying county, and that expansion will result in the person making a significant capital investment in property located in that county, as determined by the corporation.

(c) Subject to sub. (3), a person may sell or otherwise transfer a tax credit to another person who is subject to taxation under ch. 71 or subch. III of ch. 76 if the corporation authorizes that sale or transfer and if the person who is certified to claim the credit notifies the department of revenue, with regard to taxes imposed under ch. 71, or the commissioner of insurance, with regard to taxes imposed under subch. III of ch. 76, and the corporation of the sale or transfer in the manner prescribed by the corporation. The person to whom a tax credit is sold or transferred may carry forward any unused amount of the sold or transferred value of that credit as provided under the appropriate provision in ch. 71 or subch. III of ch. 76.

(d) The corporation may, as a condition of an authorization under this subsection, prohibit a person to whom the tax credit is sold or transferred from claiming that credit for a period not to exceed 3 years after the date on which the credit is sold or transferred.

(3) LIMITATIONS ON THE SALE OR TRANSFER OF TAX CREDITS. A person may not sell or transfer more than 85 percent of the total value of a tax credit. Once a portion of a tax credit is sold or transferred under this section, the remaining portion of that credit may not be sold or transferred and may not be claimed against tax liability by any person.

(4) CORPORATION WAIVER OF CERTIFICATION REQUIREMENTS. Notwithstanding s. 238.303 (2) or any other provision of this chapter or of ch. 71 or 76, the corporation may modify or waive any requirement of a certification or other authorization to claim a tax credit that was issued by the corporation or, beginning on January 1, 2011, by the department of commerce under ch. 560, 2009 stats., if all of the following conditions are met:

(a) The person subject to the requirement applies to the corporation for a modification or waiver of that requirement in the manner prescribed by the corporation.

(b) The corporation authorizes the person to sell or transfer the tax credit under this section, and the person does sell or otherwise transfer the credit, as authorized.

(c) The corporation determines that the requested modification or waiver will support economic development in a qualifying county.

(5) (a) REPAYMENT. If the corporation revokes a person's certification or other authorization to claim a tax credit issued by the corporation or, beginning on January 1, 2011, by the department of commerce under ch. 560, 2009 stats., and at the time of revocation that person has sold or otherwise transferred a portion of that credit under this section, that person shall repay the full amount of the credit to the corporation notwithstanding that sale or transfer.

(b) The corporation shall pay any amounts it receives under par. (a) to the secretary of administration for deposit in the general fund.

(6) QUALIFYING COUNTIES. (a) The corporation shall designate a county as a qualifying county if the corporation determines that the county is a metropolitan statistical area in this state, as determined by the federal office of management and budget, that had an average rate of total unemployment, as determined by the U.S. secretary of labor, each year for the 5 years preceding the effective date of this paragraph .... [LRB inserts date], that was higher than the average rate of total unemployment in the United States for those years, as determined by the U.S. secretary of labor, and that had a 10 percent or higher unemployment rate for at least 2 of those years.

(b) The corporation may designate a county that does not satisfy the conditions under par. (a) as a qualifying county if the corporation notifies the joint committee on finance in writing that the corporation intends to designate the county as a qualifying county for purposes of this section. That notice shall state the reasons supporting the corporation's decision to designate the county as a qualifying county. The notice shall include evidence that the county has had an average rate of total unemployment, as determined by the U.S. secretary of labor, that was persistently higher than the average rate of total unemployment in the United States, as determined by the U.S. secretary of labor. If, within 14 working days after the date of that notice, the cochairpersons of the committee do not notify the corporation that the committee has scheduled a meeting to review the corporation's proposed designation of the county as a qualifying county, the corporation may proceed to designate the county as a qualifying county for purposes of this section. If, within 14 working days after the date of that notice, the cochairpersons of the committee notify the corporation that the committee has scheduled a meeting to review the designation the county as a qualifying county, the corporation may designate the county as a qualifying county only upon approval of the committee.

(7) PROGRAM LIMITS AND TERMINATION. (a) Except as provided in par. (b), the corporation may not authorize the sale or transfer of portions of tax credits under this section that total more than $10,000,000, and the corporation may not authorize the sale or transfer of a tax credit after 60 months after the effective date of this paragraph .... [LRB inserts date].

(b) Upon expiration of the 60–month period under par. (a), the corporation may continue to authorize the sale or transfer of tax credits under this section for up to an additional 60 months, and the corporation may authorize the sale or transfer of up to an additional $10,000,000 in partial tax credits, if the corporation determines that a continuation of the program under this section will promote significant economic development in qualifying counties. Before the corporation authorizes the sale or transfer of a tax credit under this paragraph, the chief executive officer of the corporation shall notify the joint committee on finance in writing that the corporation intends to continue authorizing the sale or transfer of tax credits under this section. That notice shall state the reasons supporting the corporation's determination that the transfer or sale of additional tax credits will promote significant economic development within a qualifying county. If, within 14 working days after the date of that notice, the cochairpersons of the committee do not notify the corporation that the committee has scheduled a meeting to review the corporation's proposed continuation of the program, the corporation may proceed to authorize the sale or transfer of additional tax credits under this section. If, within 14 working days after the date of that notice, the cochairpersons of the committee notify the corporation that the committee has scheduled a meeting to review the proposed continuation of the program, the corporation may proceed to authorize the sale or transfer of partial tax credits only upon approval of the committee.

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