



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



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ASSEMBLY BILL 21

October 18, 2011 – Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Scott Walker, Representatives Marklein, Molepske, Kooyenga, and Senator Wanggaard. Referred to Committee on Financial Institutions.

1 **AN ACT to amend** 15.07 (4), 20.536 (1) (k) and 25.14 (1) (a) (intro.); and **to create**
2 15.07 (1) (a) 7., 15.07 (5) (am), 15.77, 19.42 (10) (Lm), 19.42 (13) (km), 20.195,
3 25.17 (72), 25.17 (73), 25.90, 73.16, 230.08 (2) (yo) and chapter 555 of the
4 statutes; **relating to:** creation of the Wisconsin Next Generation Reserve
5 Board and Wisconsin next generation reserve fund, authorizing the State of
6 Wisconsin Investment Board to provide certain advice, services, and facilities
7 to state agencies and others, requiring the exercise of rule-making authority,
8 and making appropriations.

Analysis by the Legislative Reference Bureau

This bill creates the Wisconsin Next Generation Reserve Board (Reserve Board). The Reserve Board is an independent agency in the executive branch of state government. The primary functions of the Reserve Board are to make grants and loans to, and make direct investments in, Wisconsin bioscience companies.

Wisconsin Next Generation Reserve Board

The Reserve Board is composed of 12 members as follows:

1. One member, appointed by the governor for a four-year term, who has expertise in agriculture and who is recognized for outstanding knowledge and leadership in bioscience or bioscience research.

2. Three members, appointed by the governor for four-year terms, who serve in senior management positions at Wisconsin bioscience companies and have responsibilities related to the financing of their respective companies, two of whom are from companies that employ less than 50 employees, and one of whom is from a company that employs 50 or more employees.

3. Two members, appointed by the governor for four-year terms, who serve in senior management positions at Wisconsin companies that develop or manufacture medical devices and have responsibilities related to the financing of their respective companies, one of whom is from a company that employs less than 50 employees, and one of whom is from a company that employs 50 or more employees.

4. One member, appointed by the governor for a four-year term, who either has at least five years of experience directly investing in bioscience companies in Wisconsin, or represents a group of individual investors that has that experience as a group.

5. One member, appointed by the governor for a four-year term, who has at least three years of experience in the merger and acquisition of bioscience companies.

6. One member who is appointed by BioForward, Inc., a private bioscience association in Wisconsin, for a four-year term.

7. Two nonvoting members who have expertise in bioscience or bioscience research, one of whom is appointed by the Board of Regents of the University of Wisconsin System and serves at the pleasure of the Board of Regents, and one of whom is appointed by the Wisconsin Association of Independent Colleges and Universities and serves at the pleasure of the association.

8. The executive director of the Investment Board, or his or her designee, who serves as a nonvoting member.

The bill requires that the Reserve Board hire an executive director who has expertise in private equity investment. The executive director and all of the members of the Reserve Board are subject to state ethics laws.

The bill authorizes the Reserve Board to execute any contract necessary or convenient to the Reserve Board's exercise of its powers and duties, including a contract with the Investment Board for the Investment Board's advice and services related to the Reserve Board's grants, loans, and investments, discussed below, and for facilities provided by the Investment Board. Under the bill, the Investment Board may also make a loan to the Reserve Board for the Reserve Board's initial operations and administrative expenses.

Additional contracting authority for the Investment Board

The bill further authorizes the Investment Board to provide advice, services, and facilities to any state agency or authority or a business entity owned by an agency or authority. Under the bill, the Investment Board may provide advice or services related to the management or administration, for any purpose, including economic development, of money or property that an agency, authority, or eligible business entity controls. The agency, authority, or eligible business entity must contract with the Investment Board and pay the Investment Board for any advice, services, or facilities the Investment Board provides.

Wisconsin Next Generation Reserve Fund

The bill creates a nonlapsable fund to be known as the “Wisconsin next generation reserve fund” (fund). From the fund, the Reserve Board may make grants, loans, and investments, as set forth below. For short-term management, the fund is included in the state investment fund managed by the Investment Board.

In addition to any donations, gifts, or bequests made to the fund, any moneys transferred to the fund, any moneys deposited in the fund by the Reserve Board, and any income or interest earned by the fund, the fund consists of moneys generated from tax revenue collected from a specific class of companies, referred to in the bill as “qualifying companies.” Under the bill, a qualifying company is identified by the company’s principal business activity code under the North American Industry Classification System (NAICS). The bill directs the Department of Revenue (DOR) to determine in July 2012 the total amount of withholding taxes due and payable from qualifying companies for the period July 1, 2011 to June 30, 2012. Then, in each fiscal year, beginning with the fiscal year that begins on July 1, 2012, DOR must deposit in the fund an amount equal to 95 percent of the withholding taxes due and payable from qualifying companies that exceeds that total amount for that period. DOR may not make any deposits into the fund on or after December 31, 2026. In addition, DOR may not deposit more than \$50,000,000 into the fund in any fiscal year and may not deposit more than \$500,000,000 in total into the fund.

Grants, loans, and investments

Under the bill, the Reserve Board may make, from the fund, grants and loans to, and direct investments in, bioscience companies certified by the Reserve Board. The Reserve Board may certify a bioscience company if the Reserve Board determines that the company meets all of the following conditions, in addition to any further conditions established by the Reserve Board:

1. The company is a qualifying company that does not operate a hospital.
2. The company’s headquarters and principal business operations are located in Wisconsin.
3. The company, including any affiliate, employs at least 75 percent of its employees in Wisconsin.
4. The company is in need of capital.
5. The company is developing biotechnology or bioscience or bioscience research methods, as determined by the Reserve Board by rule, and demonstrates to the Reserve Board that the company has the potential to generate high levels of successful investment performance and increase employment in this state.

Before providing any moneys from the fund to a certified bioscience company in the form of a grant, loan, or investment, the Reserve Board must enter into a contract with the company that includes all of the following requirements:

1. The certified bioscience company must use a grant, loan, or investment from the fund for research and development related to biotechnology or bioscience or bioscience research methods.
2. The certified bioscience company must match the amount of any grant, loan, or investment from the fund with moneys the company has raised from other sources.

3. During the term of the contract, the certified bioscience company may not relocate its headquarters outside of Wisconsin without the Reserve Board's approval.

Under the bill, any moneys paid to the Reserve Board by a certified bioscience company must be deposited in the fund and may be re-used by the Reserve Board for continued grants, loans, and investments subject to the provisions of the bill.

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:

1 **SECTION 1.** 15.07 (1) (a) 7. of the statutes is created to read:

2 15.07 (1) (a) 7. The members of the Wisconsin next generation reserve board
3 appointed under s. 15.77 (1) (h) to (j) shall be appointed as provided in that section.

4 **SECTION 2.** 15.07 (4) of the statutes, as affected by 2011 Wisconsin Act 10, is
5 amended to read:

6 15.07 (4) QUORUM. A majority of the membership of a board constitutes a
7 quorum to do business and, unless a more restrictive provision is adopted by the
8 board, a majority of a quorum may act in any matter within the jurisdiction of the
9 board. This subsection does not apply to actions of the government accountability
10 board or the school district boundary appeal board as provided in ss. 5.05 (1e) and
11 117.05 (2) (a) or the Wisconsin next generation reserve board as provided in s. 15.77
12 (3).

13 **SECTION 3.** 15.07 (5) (am) of the statutes is created to read:

14 15.07 (5) (am) Members of the Wisconsin next generation reserve board, \$50
15 per day.

16 **SECTION 4.** 15.77 of the statutes is created to read:

1 **15.77 Wisconsin next generation reserve board; creation.** (1) There is
2 created a Wisconsin next generation reserve board. The board shall consist of the
3 following members:

4 (a) One member who has expertise in agriculture and is recognized for
5 outstanding knowledge and leadership in bioscience or bioscience research.

6 (b) Two members who, at the time of appointment, serve in senior management
7 positions at bioscience companies headquartered in this state that employ fewer
8 than 50 employees, including any affiliate, and who, in addition to any other
9 responsibilities, have responsibilities related to the financing of the companies.

10 (c) One member who, at the time of appointment, serves in a senior
11 management position at a bioscience company headquartered in this state that
12 employs at least 50 employees, including any affiliate, and who, in addition to any
13 other responsibilities, has responsibilities related to the financing of the company.

14 (d) One member who, at the time of appointment, serves in a senior
15 management position at a company headquartered in this state that develops or
16 manufactures medical devices and employs fewer than 50 employees, including any
17 affiliate, and who, in addition to any other responsibilities, has responsibilities
18 related to the financing of the company.

19 (e) One member who, at the time of appointment, serves in a senior
20 management position at a company headquartered in this state that develops or
21 manufactures medical devices and employs at least 50 employees, including any
22 affiliate, and who, in addition to any other responsibilities, has responsibilities
23 related to the financing of the company.

24 (f) One member who, at the time of appointment, either has at least 5 years of
25 experience directly investing in bioscience companies in this state, or represents a

1 group of individual investors that has at least 5 years of experience directly investing
2 in bioscience companies in this state.

3 (g) One member who, at the time of appointment, has at least 3 years of
4 experience in the merger and acquisition of bioscience companies.

5 (h) One member appointed by BioForward, Inc.

6 (i) One member who has expertise in bioscience or bioscience research, who
7 shall be appointed by the Board of Regents of the University of Wisconsin System and
8 who shall serve as a nonvoting member at the pleasure of the Board of Regents.

9 (j) One member who has expertise in bioscience or bioscience research, who
10 shall be appointed by the Wisconsin Association of Independent Colleges and
11 Universities and who shall serve as a nonvoting member at the pleasure of the
12 association.

13 (k) The executive director of the investment board, or his or her designee, who
14 shall serve as a nonvoting member.

15 **(2)** The members of the board identified in sub. (1) (a) to (h) shall be appointed
16 for 4-year terms.

17 **(3)** A majority of the voting members of the board constitutes a quorum for the
18 purpose of conducting its business and exercising its powers and for all other
19 purposes. Action may be taken by the board upon a vote of a majority of a quorum.

20 **SECTION 5.** 19.42 (10) (Lm) of the statutes is created to read:

21 19.42 **(10)** (Lm) The members of the Wisconsin next generation reserve board
22 who are appointed by BioForward, Inc., by the Board of Regents of the University of
23 Wisconsin System, and by the Wisconsin Association of Independent Colleges and
24 Universities and the executive director of the Wisconsin next generation reserve
25 board.

1 **SECTION 6.** 19.42 (13) (km) of the statutes is created to read:

2 19.42 (13) (km) The members of the Wisconsin next generation reserve board
3 who are appointed by BioForward, Inc., by the Board of Regents of the University of
4 Wisconsin System, and by the Wisconsin Association of Independent Colleges and
5 Universities and the executive director of the Wisconsin next generation reserve
6 board.

7 **SECTION 7.** 20.195 of the statutes is created to read:

8 **20.195 Wisconsin next generation reserve board.** There is appropriated
9 to the Wisconsin next generation reserve board for the following program:

10 **(1) ASSISTANCE TO CERTIFIED BIOSCIENCE COMPANIES.** (q) *General program*
11 *operations and loans, grants, and investments.* From the Wisconsin next generation
12 reserve fund, a sum sufficient to make loans and provide grants to, and make
13 investments in, certified bioscience companies as provided in ch. 555 and for general
14 program operations and administrative expenses. Not more than the following
15 amounts may be expended under this paragraph for general program operations and
16 administrative expenses:

17 1. In fiscal year 2012-13, 5 percent of the moneys in the Wisconsin next
18 generation reserve fund.

19 2. In fiscal year 2013-14, 5 percent of the moneys in the Wisconsin next
20 generation reserve fund.

21 3. In fiscal year 2014-15, 2 percent of the moneys in the Wisconsin next
22 generation reserve fund.

23 4. In fiscal year 2015-16 and in each fiscal year thereafter, 0.5 percent of the
24 moneys in the Wisconsin next generation reserve fund.

25 **SECTION 8.** 20.536 (1) (k) of the statutes is amended to read:

1 20.536 (1) (k) *General program operations.* All moneys received from
2 assessments made under s. 25.187 (2) ~~and~~, from charges made under s. 25.17 (9), and
3 from assessments or charges made under s. 25.17 (72) or (73), for the purpose of
4 conducting general program operations.

5 **SECTION 9.** 25.14 (1) (a) (intro.) of the statutes is amended to read:

6 25.14 (1) (a) (intro.) There is created a state investment fund under the
7 jurisdiction and management of the board to be operated as an investment trust for
8 the purpose of managing the securities of all funds that are required by law to be
9 invested in the state investment fund, the Wisconsin next generation reserve fund,
10 and all of the state's funds specified in s. 25.17 (1), except all of the following:

11 **SECTION 10.** 25.17 (72) of the statutes is created to read:

12 25.17 (72) Have authority to provide advice and services requested by a state
13 agency, as defined in s. 20.001 (1), or authority, as defined in s. 16.417 (1) (b), or
14 business entity owned or controlled by a state agency or authority, relating to
15 managing or administering money and property controlled by the agency, authority,
16 or business entity for any purpose, including economic development in this state.
17 The scope of any advice or services provided to a state agency, authority, or business
18 entity under this subsection shall be defined by agreement between the board and
19 the agency, authority, or business entity. This agreement shall require the cost of any
20 advice or services provided by the board to be paid by the agency, authority, or
21 business entity and the agreement may authorize the board to make assessments
22 against the money and property controlled by the agency, authority, or business
23 entity or to charge the agency, authority, or business entity for the cost of any advice
24 or services provided. All moneys received by the board under this subsection shall
25 be credited to the appropriation account under s. 20.536 (1) (k).

1 **SECTION 11.** 25.17 (73) of the statutes is created to read:

2 25.17 (73) Have authority to provide facilities to any state agency, as defined
3 in s. 20.001 (1), or authority, as defined in s. 16.417 (1) (b), or business entity owned
4 or controlled by a state agency or authority, in accordance with any agreement
5 between the board and the agency, authority, or business entity. This agreement
6 shall require the cost of facilities provided by the board to be paid by the agency,
7 authority, or business entity. All moneys received by the board under this subsection
8 shall be credited to the appropriation account under s. 20.536 (1) (k).

9 **SECTION 12.** 25.90 of the statutes is created to read:

10 **25.90 Wisconsin next generation reserve fund.** There is established a
11 separate nonlapsible trust fund designated as the Wisconsin next generation reserve
12 fund. The fund shall consist of all moneys deposited in the fund under ss. 73.16,
13 555.02 (2) (c) and 555.03 (3), together with all donations, gifts, or bequests made to
14 the fund, all moneys transferred to the fund from other funds, and all income or
15 interest earned by the fund.

16 **SECTION 13.** 73.16 of the statutes is created to read:

17 **73.16 Wisconsin next generation reserve fund.** (1) In this section,
18 “qualifying company” means a person whose principal business activity code in the
19 North American Industry Classification System, 2007 edition, published by the
20 federal office of management and budget, is one of the following: 311221, 311222,
21 311223, 325193, 325199, 325221, 325311, 325312, 325314, 325320, 325411, 325412,
22 325413, 325414, 334510, 334516, 334517, 339112, 339113, 339114, 339115, 339116,
23 541380, 541711, 541712, 621491, 621493, 621511, 621512, or 622110.

24 (2) (a) In July 2012, the department of revenue shall determine the total
25 amount of withholding taxes due and payable under subch. X of ch. 71 from

1 qualifying companies during the period beginning on July 1, 2011, and ending on
2 June 30, 2012.

3 (b) Subject to par. (d), in each fiscal year, beginning with the fiscal year that
4 begins on July 1, 2012, the department of revenue shall deposit into the Wisconsin
5 next generation reserve fund an amount equal to 95 percent of the amount of
6 withholding taxes due and payable under subch. X of ch. 71 from qualifying
7 companies in that fiscal year that exceeds the amount determined under par. (a). The
8 department may make such deposits on a quarterly basis based on the department's
9 estimate of the withholding taxes due and payable by qualifying companies.

10 (c) A person who is subject to withholding taxes under subch. X of ch. 71 shall
11 indicate to the department of revenue whether it is a qualifying company for
12 purposes of this section in the manner determined by the department.

13 (d) The department of revenue shall not deposit into the Wisconsin next
14 generation reserve fund more than \$50,000,000 in any fiscal year, and the total
15 amount deposited may not exceed \$500,000,000. The department shall not make
16 deposits under this section on or after December 31, 2026.

17 **SECTION 14.** 230.08 (2) (yo) of the statutes is created to read:

18 230.08 (2) (yo) The executive director and administrative assistant of the
19 Wisconsin next generation reserve board.

20 **SECTION 15.** Chapter 555 of the statutes is created to read:

21 **CHAPTER 555**

22 **WISCONSIN NEXT GENERATION**

23 **RESERVE BOARD**

24 **555.01 Definitions.** In this chapter:

25 (1) "Board" means the Wisconsin next generation reserve board.

1 (2) “Certified bioscience company” means a person certified by the board under
2 s. 555.03 (2).

3 (3) “Qualifying company” has the meaning given in s. 73.16, except that
4 “qualifying company” does not include a business that has as its principal business
5 activity the operation of a hospital as defined in s. 50.33 (2).

6 (4) “Fund” means the Wisconsin next generation reserve fund established
7 under s. 25.90.

8 **555.02 Wisconsin next generation reserve fund. (1) EXECUTIVE DIRECTOR.**

9 The board shall employ an executive director who has expertise in private equity
10 investment. In reviewing candidates for executive director, the board shall consider
11 all of the following:

12 (a) The extent of the candidate’s experience and expertise in private equity
13 investment.

14 (b) The candidate’s investment experience related to start-up bioscience
15 companies.

16 (c) The candidate’s experience related to seed or early stage business
17 investments.

18 (d) Any other criteria the board considers relevant.

19 (2) GRANTS, LOANS, AND INVESTMENTS. (a) From the appropriation under s.
20 20.195 (1) (q), the board may make a grant or loan to a certified bioscience company,
21 or the board may make an investment directly in a certified bioscience company.

22 (b) Before the board makes a grant, loan, or investment under par. (a), the
23 board shall contract with the certified bioscience company. In addition to any other
24 terms required or negotiated by the board, that contract shall include all of the
25 following conditions:

1 1. The certified bioscience company shall use a grant, loan, or investment
2 provided by the board for research and development related to biotechnology or
3 bioscience or bioscience research methods, as determined by the board by rule.

4 2. The certified bioscience company shall match the amount of the board's,
5 grant, loan, or investment with moneys the company has raised from other sources.

6 3. Unless approved by the board, the certified bioscience company may not
7 relocate its headquarters outside of this state during the term of the contract under
8 this paragraph.

9 (c) Any moneys paid to the board by a certified bioscience company shall be
10 deposited in the fund.

11 **555.03 Certified bioscience companies. (1) APPLICATION.** Any person may
12 apply to the board on a form prescribed by the board for certification under this
13 section. The application shall include all of the following:

14 (a) The name, address, and tax identification number of the person.

15 (b) A description of the principal business activities of the person and the
16 locations at which those activities are conducted.

17 (c) The person's principal business activity code under the North American
18 Industry Classification System, 2007 edition, published by the federal office of
19 management and budget.

20 (d) Any other information the board requires.

21 **(2) CERTIFICATION.** The board may certify a person that submits an application
22 under sub. (1) to be eligible to receive a grant, loan, or investment under s. 555.02
23 if the board determines after conducting an investigation that the person meets all
24 of the following conditions:

25 (a) The person is a qualifying company.

1 (b) The person is headquartered in, and has its principal business operations
2 located in, this state.

3 (c) The person, including any affiliate, employs at least 75 percent of its
4 employees in this state.

5 (d) The person is in need of capital.

6 (e) The person is developing biotechnology or bioscience or bioscience research
7 methods, as determined by the board by rule and the person demonstrates to the
8 board's satisfaction that the person has the potential to generate high levels of
9 successful investment performance and to increase employment in this state.

10 (h) The person meets any other conditions established by the board.

11 **(3) APPLICATION FEE.** The board may charge a fee to an applicant for certification
12 under this section. The fee shall be deposited in the fund.

13 **555.04 Contracting authority.** Notwithstanding ss. 16.70 to 16.78, the
14 board may enter into any contract with the investment board as provided in s. 25.17
15 (72) and (73), including any contract relating to the furnishing of personnel or office
16 space, to be paid as provided in s. 25.17 (72) and (73), may procure insurance, and
17 may execute any other contract necessary or convenient to the performance of the
18 board's powers and duties under this chapter.

19 **SECTION 16. Nonstatutory provisions.**

20 (1) **DEFINITION.** In subsections (2) and (3), "board" means the Wisconsin next
21 generation reserve board.

22 (2) **INITIAL APPOINTMENTS.**

23 (a) Notwithstanding the requirement of advice and consent of the senate under
24 section 15.07 (1) (a) of the statutes, the initial members of the board nominated by
25 the governor may be provisionally appointed by the governor, subject to later senate

1 confirmation. Any provisional appointment shall be in full force until withdrawn by
2 the governor or acted upon by the senate, and if confirmed by the senate shall
3 continue for the remainder of the unexpired term of the member and until a successor
4 is appointed and qualifies. A provisional appointee may exercise all the powers and
5 duties of board membership to which the person is appointed during the time in
6 which the appointee qualifies.

7 (b) A provisional appointment made under paragraph (a) that is withdrawn by
8 the governor shall, upon withdrawal, lapse and create a vacancy for provisional
9 appointment of another initial member of the board. Any provisional appointment
10 made under paragraph (a) that is rejected by the senate shall, upon rejection, lapse
11 and create a vacancy for provisional appointment of another initial board member.

12 (c) Notwithstanding the lengths of terms specified in section 15.77 (2) of the
13 statutes, as created by this act, the initial members of the board shall be appointed
14 for the following terms:

15 1. The member appointed by the governor under section 15.77 (1) (a) of the
16 statutes, as created by this act, and one member appointed by the governor under
17 section 15.77 (1) (b) of the statutes, as created by this act, for terms expiring on July
18 1, 2014.

19 2. One member appointed by the governor under section 15.77 (1) (b) of the
20 statutes, as created by this act, and the member appointed by the governor under
21 section 15.77 (1) (c) of the statutes, as created by this act, for terms expiring on July
22 1, 2015.

23 3. The members appointed by the governor under section 15.77 (1) (d) and (e)
24 of the statutes, as created by this act, for terms expiring on July 1, 2016.

