

1999 DRAFTING REQUEST

Bill

Received: **01/26/99**

Received By: **kahlepj**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-7329**

By/Representing: **Justus**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Econ. Development - misc.**

Extra Copies:

Topic:

DOA:.....Justus - Creating a biotechnology venture capital company

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 01/28/99	gilfokm 01/28/99		_____			State
/1			ismith 01/28/99	_____	lrb_docadmin 01/28/99		

FE Sent For:

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1/	kahlepj	1-1-28-99 Kmg	IS 1/28/99	IS/KH 1/28/99			

FE Sent For:

<END>

Kahler, Pam

From: Justus, Sarah
Sent: Monday, January 25, 1999 4:40 PM
To: Kahler, Pam
Cc: Miller, Steve; LaBelle, Vicky
Subject: drafting request

WHEDA - Biotechnology capital company

Pam-

Below are some drafting instructions. I am faxing a WHEDA proposed draft which I will reference below. Several sections no longer apply so I will cross them out. The intent is to create as Subchapter IV in ch 234 (leave subchapter III as is) a biotechnology capital company. This should be established as a 501(c)(3) nonprofit. The general model should be subchapter III, except this is a nonprofit and wouldn't sell stock etc. We will also need a GPR appropriation into which we will appropriate \$1,000,000 in FY00 only. Please call me with questions, I'll fax the WHEDA draft immediately.

Sarah

Sarah Justus
State Budget Office
266-7329

Post-It® Fax Note	7671	Date	1/25/99	# of pages	10
To	Tom Kahler		From	Sarah	
Co./Dept.			Co.		
Phone #			Phone #	6-7329	
Fax #			Fax #		

To: Peter Maternowski, Sarah Just
 Bob Wood
 From: Stephen Agostini
 Re: Establishing the Wisconsin Biotechnology Venture Capital Company
 Date: January 25, 1999

Here are WHEDA's collective thoughts on creating a biotech venture capital company. Fritz Ruf, Jim Langdon, Mick Conrad, WHEDA General Counsel, and I have been working our way through this proposal today. As I mentioned on Saturday, we thought we could use existing statutory authority to create this company. After some review, it might be wiser to amend the existing statute for the purposes of creating this venture capital company. Alternatively, we could repeal the existing statutes and replace them with new language intended to create this company. I am uncomfortable with that approach, since it could create issues with the original supporters of the language we are intending to repeal.

I have attached proposed language for the amendments. Please review this.

Components of the biotech capital company initiative:

1. Create the position of Biotech Ventures Facilitator in Commerce, with responsibility for functioning as an information clearinghouse and initial "filter" for potential biotech ventures. This individual would: a) become state government's expert on international, national and Wisconsin biotech industries and markets; b) provide this information to Wisconsin residents currently involved in biotech research who are interested in potential commercial applications of their research; and c) provide information on state and private resources available for potential biotech ventures.
2. Target, and expand, Commerce's business planning loan program for potential biotech ventures. Commerce currently runs a program that provides entrepreneurs with non-interest bearing loans for the purpose of developing a business plan. The maximum amount of the loan is \$25,000. WHEDA could supplement this fund with additional dollars from its Dividends for Wisconsin program in FY 2000.
3. Create a Wisconsin Biotech Capital Company. WHEDA currently has statutory authority to create a community development finance company (Wisconsin Statutes Chapter 234, Subchapter III) for the purpose of investing in community development corporations. These statutes would be amended to



*Director? on death
1 rep of
investments
SWIB Board*

enable the creation of a state biotech capital company whose function would be to invest in biotech firms. The biotech capital company would be structured as a 501(c)3. The board would consist of representatives from Wisconsin's biotech research community, biotech industry, and venture capital industry, as well as members of WHEDA, Commerce and perhaps Forward Wisconsin. The staff to the board would be existing staff at WHEDA, Commerce, and Forward Wisconsin. *(pres or design)*

- 4. Capitalize the Wisconsin Biotech Capital Company with \$1 million in GPR and a sizable capital participation from SWIB. The initial capitalization of the biotech capital company would come from GPR. This funding would be available for direct investment in biotech startups. A portion of this funding could be used to generate a sizable capital contribution from SWIB.

For example, SWIB would invest \$2.5 million in the biotech capital company, which would in turn agree to provide SWIB with an annual return, capped at half the rate of return on 30 year U.S. Treasuries, for the first three years of SWIB's investment. This agreement would lower the available investment proceeds to \$820,000 (not taking into account interest earnings or actual returns on the investments in biotech firms), but would augment the fund by \$2.5 million. (This is just a thought; the Governor might have other ideas for fostering SWIB's participation in this venture.)

- 5. Have the board of the biotech capital company establish guidelines and criteria for investments in biotech firms. The board would be empowered to create guidelines and investment criteria, obviously subject to the limits created in the amended statutes, for the capital company in the following areas: maximum and average amounts invested in firms; time frame for the investment; rate of return on the investments; rules requiring participation from private venture capital firms; and other guidelines and criteria as are deemed appropriate for the successful operation of the fund.



1 Amend 234.03 (30) as follows:

2 (30) To provide administrative services for and use and pay for the use of the facilities and services
3 of any corporation, limited partnership or limited liability company established and maintained by the
4 authority.

5 Amend 234.03 (31) as follows:

6 (31) To purchase, sell or contribute voting stock or partnership interests from the biotechnology
7 community development finance company under s. 234.95.

8 Amend 234.03 (32) as follows:

9 (32) To accept gifts, contributions and grants made to the authority in connection with the
10 biotechnology community development finance company, as defined in s. 234.94 (3).

11 Repeal Chapter 234, Subchapter III and Recreate as follows:

12 **SUBCHAPTER III**

13 **BIOTECHNOLOGY DEVELOPMENT FINANCE COMPANY**

14 **234.94 Definitions.** In this subchapter:

15 (1) "Capital participation instrument" means:

16 (a) Any of the following or an option or other right to acquire any of the following:

17 1. Common or preferred capital stock.

18 2. Convertible securities.

19 3. Evidences of long-term or short-term indebtedness.

20 4. Warrants.

21 5. Subscriptions.

22 6. Partnership or membership interests.

23 (b) Royalties or other lawful derivations of a capital participation instrument listed under par. (a).

24 (2) "Biotechnology company" means an entity organized under ch. 179, 180 or 183 that:

Handwritten initials and scribbles

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~~(A) BIOTECHNOLOGY DESCRIPTION INSERTED HERE.~~

(b) Petitions the authority for designation as a biotechnology company.

(3) "Biotechnology development finance company" means a corporation, limited partnership or limited liability corporation organized for profit under s. 234.95.

(4) "Cost of a project" means costs associated with the design, planning and implementation of a project that, in accordance with sound business and financial practices, are appropriate charges to the project. The costs may include, but are not limited to, the costs of planning and design, options to buy land, feasibility or other studies, equipment, seed money, construction, working capital and any other costs determined by the biotechnology development finance company to be necessary to the purposes of this subchapter.

(5) "Project" means commercial, industrial or other economic activity that is undertaken by a biotechnology company.

~~234.95 Biotechnology development finance company.~~

~~(1) The biotechnology development finance company is an entity organized for profit under ch. 179, 180, or 183. The chairperson of the authority, or his or her designee, is a director of the biotechnology development finance company. The shareholders of the biotechnology development finance company shall elect no more than 6 other people to the company's board of directors. To the extent practicable, people elected to the board of directors shall have substantial business, financial and biotechnology experience. If the community development finance company is organized as a limited partnership its general partner shall, to the extent practicable, have substantial business and financial experience.~~

~~(2) The biotechnology development finance company shall issue stock, partnership or membership interests. The biotechnology finance company shall invest funds it receives from the sale of stock or partnership interests by purchasing capital participation instruments under s. 234.96.~~

1 **234.96 Biotechnology project participation.**

2 **(1) The biotechnology development finance company may purchase a capital participation instrument**
3 **of a project. The biotechnology development finance company may require that the project meet any of**
4 **the following conditions:**

5 **(a) The project is undertaken by a biotechnology company.**

6 **(b) The project plans conform to all applicable environmental, zoning, building, planning or**
7 **sanitation laws.**

8 **(c) There is a reasonable expectation that the project will be successful.**

9 **(d) Private industry has not provided sufficient capital required for the project.**

10 **(e) The purchase is necessary to the successful completion of the proposed project because funding**
11 **for the project is unavailable in the traditional capital markets, or because credit has been offered on**
12 **terms that would preclude the success of the project.**

13 **(f) Provision has been made by contract for adequate reporting of financial data by the project to the**
14 **biotechnology development finance company. Those provisions may include a requirement for an annual**
15 **or other periodic audit of the project's financial records.**

16 **(g) The biotechnology development finance company will not own more than 49% of the voting**
17 **stock or other interest in any enterprise as a result of the purchase.**

18 **(h) The proceeds of the purchase will be used solely in connection with the costs of the project.**

19 **(i) The biotechnology company is able to manage its project responsibilities.**

20 **(j) The total investment by the biotechnology development finance company in any one community**
21 **development corporation will not exceed \$200,000.**

22 **(2) The findings made by the biotechnology development finance company under this section are**
23 **conclusive.**

24 ~~234.97 Sale or purchase of stock or interest. Subject to s. 234.96 (j) (g), the authority shall do all of~~
25 ~~the following:~~

1 ~~(1) Use any funds received from the sale of biotechnology development finance company stock or~~
2 ~~partnership interest to fund projects.~~

3 ~~(2) Transfer funds received from contributions, gifts or grants under s. 234.03 (32) to the~~
4 ~~biotechnology development finance company to fund projects.~~

5 **234.98 Assets and Liabilities.** The assets and liabilities transferred to a biotechnology development
6 finance company shall be separate from all other assets and liabilities of the State, its subdivisions, and
7 the Wisconsin housing and economic development authority. The State, its subdivisions, and the
8 Wisconsin housing and economic development authority shall not guarantee and will have no obligation
9 to the biotechnology development finance company. The State, its subdivisions, and the Wisconsin
10 housing and economic development authority shall not be liable for any debts or liabilities of the
11 biotechnology development finance company.

Kahler, Pam

From: Justus, Sarah
Sent: Wednesday, January 27, 1999 9:45 AM
To: Kahler, Pam
Subject: Board members

Forward WI fills vacancies on the board by electing an interim member at the next board meeting, then electing a permanent replacement at the next annual meeting. Once the terms of the original appointees are up, lets follow this model. Also, the SWIB rep. should be the Executive Director or his/her designee.

Thanks,
Sarah

Sarah Justus
State Budget Office
266-7329

39.12 Nonstock corporation.

(1) The educational communications board may organize and maintain a nonstock nonprofit corporation under ch. 181 for the exclusive purpose of raising funds for the educational communications board to support the activities of the educational communications board. Any funds raised by the corporation shall be expended to carry out the purposes for which received. ys

(2) The educational communications board shall enter into a contract with the corporation under sub. (1). The contract shall provide that the educational communications board may make use of the services of the corporation and that the educational communications board may provide administrative services to the corporation. The type and scope of any administrative services provided by the educational communications board to the corporation and the educational communications board employees assigned to perform the services shall be determined by the educational communications board. The corporation may neither employ staff nor engage in political activities. ys

(2m) The corporation under sub. (1) shall donate any real property to the state within 5 years after acquiring the property unless holding the property for more than 5 years is consistent with sound business and financial practices and is approved by the joint committee on finance. no

(3) The educational communications board, the department of administration, the legislative fiscal bureau, the legislative audit bureau and the appropriate committee of each house of the legislature, as determined by the presiding officer, may examine all records of the corporation. no

~~as determined by the presiding officer, may examine all records of the corporation.~~

(4) The board of directors of any corporation established under this section shall consist of ~~7~~⁷ members, including the executive director of the educational communications board and 4 members of the educational communications board, elected by the educational communications board, of which one shall be a legislator. No 2 members of the board of directors may be from the same category of educational communications board members under s. 15.57 (1) to (7). ys

(5) Any corporation established under this section shall be organized so that contributions to it will be deductible from adjusted gross income under section 170 of the internal revenue code and so that the corporation will be exempt from taxation under section 501 of the internal revenue code and ss. 71.26 (1) (a) and 71.45 (1). no



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2015/1
PJK...
mg

DOA:.....Justus - creating a biotechnology venture capital company

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Very
soon
(1-28)
Today

do not
you cut

1 AN ACT relating to: authorizing the Wisconsin Housing and Economic
2 Development Authority to create a biotechnology development finance
3 company and making an appropriation.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT

nonstock

ECONOMIC DEVELOPMENT

The bill authorizes the Wisconsin Housing and Economic Development Authority (WHEDA) to organize and maintain a biotechnology development finance company as a nonprofit corporation. The purpose of the biotechnology development finance company is to invest in biotechnology companies in this state. (Biotechnology is defined as technology related to life sciences.) General purpose revenue is provided to the biotechnology development finance company for start-up capital and for its reasonable administrative expenses.

The biotechnology development finance company may invest in a biotechnology company by purchasing capital participation instruments, such as capital stock, partnership or membership interests, evidences of indebtedness and royalties, in a commercial, industrial or other economic enterprise undertaken by the biotechnology company. The biotechnology development finance company may not purchase more than 49% of the voting stock in any such enterprise and may not invest more than \$200,000 in any one biotechnology company. The statutes specify

who are initially appointed by the governor, and other

ensure that
a number of conditions that the biotechnology development finance company must ~~require~~ *meets* an enterprise of a biotechnology company ~~to meet~~ before the biotechnology development finance company makes an investment. The biotechnology development finance company annually must submit a report on its activities to the appropriate committee of each house of the legislature and to the governor.

The board of directors of the biotechnology development finance company must consist of ~~nine members~~, including the executive director of WHEDA, the secretary of commerce, the secretary of administration, the executive director of the investment board, the president of the University of Wisconsin System and the president of Forward Wisconsin, Inc., or the designee of any of them. ~~The other three members~~ include representatives of the state's biotechnology research community, biotechnology industry and venture capital industry. ~~The governor appoints the initial members~~ *and*

WHEDA and the department of commerce must assist the biotechnology development finance company ~~and~~ WHEDA must provide administrative services by assigning its own employees or by contracting with private or state agencies to provide the services.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

to the biotechnology development finance company

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.490 (7) of the statutes is created to read:
2 20.490 (7) BIOTECHNOLOGY DEVELOPMENT FINANCE COMPANY. (a) Biennially, the
3 amounts in the schedule to be transferred to the biotechnology development finance
4 company under s. 234.64 for start-up capital and for reasonable administrative
5 expenses of the biotechnology development finance company.

I Start-up capital and administrative expenses.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

1999 Wisconsin Act

6 SECTION 2. 20.490 (7) of the statutes, as created by (this act), is repealed.

***NOTE: This SECTION involves a change in an appropriation, but should not be reflected in the revised schedule in s. 20.005, stats., because of a delayed effective date.

7 SECTION 3. 234.64 of the statutes is created to read:

8 **234.64 Biotechnology development finance company.** (1) In this section:

9 (a) "Biotechnology" means technology related to life sciences.

10 (b) "Capital participation instrument" means:

all of the following

- 1 1. Any of the following or an option or other right to acquire any of the following:
- 2 a. Common or preferred capital stock.
- 3 b. Convertible securities.
- 4 c. Evidences of long-term or short-term indebtedness.
- 5 d. Warrants.
- 6 e. Subscriptions.
- 7 f. Partnership or membership interests.

8 2. Royalties or other lawful derivations of a capital participation instrument
9 listed under subd. 1.

10 (c) "Cost of a project" means costs associated with the design, planning and
11 implementation of a project that, in accordance with sound business and financial
12 practices, are appropriate charges to the project. The costs may include the costs of
13 planning and design, options to buy land, feasibility or other studies, equipment,
14 seed money, construction, working capital and any other costs determined by the
15 biotechnology development finance company to be necessary to the purposes of this
16 section.

17 (d) "Project" means commercial, industrial or other economic activity that is
18 undertaken by a biotechnology company in this state.

19 (2) (a) The authority may organize and maintain a biotechnology development
20 finance company as a nonstock nonprofit corporation under ch. 181 for the exclusive
21 purpose of investing in new or existing biotechnology companies in this state.

22 (b) Subject to par. (c), the biotechnology development finance company may
23 purchase a capital participation instrument of a project. The biotechnology
24 development finance company shall require that the project meet all of the following

25 conditions:

insert 3-24

intro. securities

Development Finance

has certified

1 1. The biotechnology company ~~shall~~ that the project plans conform to all
2 applicable environmental, zoning, building, planning or sanitation laws.

3 2. There ~~is~~ a reasonable expectation that the biotechnology company will be
4 successful. *STET*

5 3. Private industry ~~has~~ not provided sufficient capital required for the project.

6 4. The investment ~~is~~ necessary to the successful completion of the proposed
7 project because other investment in the project is ~~not~~ available in the traditional
8 capital markets, or because capital has been offered on terms that would preclude
9 the success of the project. *STET*

10 5. Provision ~~has~~ been made by contract for adequate reporting of financial data
11 by the project to the biotechnology development finance company. Those provisions
12 may include a requirement for an annual or other periodic audit of the project's
13 financial records. *STET*

14 6. The proceeds of the purchase ~~will~~ be used solely in connection with the costs
15 of the project. *STET*

16 7. The biotechnology company ~~is~~ able to manage its project responsibilities. *STET*

17 (c) 1. The biotechnology development finance company may not own more than
18 49% of the voting stock or other interest in any enterprise as a result of a purchase
19 under par. (b). *STET*

20 2. The total investment by the biotechnology development finance company in
21 any one biotechnology company may not exceed \$200,000.

22 (d) The findings made by the biotechnology development finance company
23 under par. (b) 1. to 7. are conclusive. *STET*

24 (3) The authority shall enter into a contract with the biotechnology
25 development finance company. The contract shall provide that the authority may

with respect to whether a project meets the conditions

1 make use of the services of the biotechnology development finance company and that
2 the authority shall advise, assist and provide administrative services to the
3 biotechnology development finance company. The authority shall determine the
4 type and scope of any administrative services provided by the authority to the
5 biotechnology development finance company. The authority may assign employes or
6 contract with private or state agencies to perform the administrative services. The
7 biotechnology development finance company may not engage in political activities.

8 (4) (a) The board of directors of the biotechnology development finance
9 company shall consist of ~~9 members, including~~ all of the following: ^{members}

- 10 1. The executive director of the authority, or his or her designee.
- 11 2. The secretary of commerce, or his or her designee.
- 12 3. The secretary of administration, or his or her designee.
- 13 4. The executive director of the investment board, or his or her designee.
- 14 5. The president of the University of Wisconsin System, or his or her designee.
- 15 6. The president of Forward Wisconsin, Inc., or his or her designee.
- 16 7. A representative of the state's biotechnology research community.
- 17 8. A representative of the state's biotechnology industry.
- 18 9. A representative of the state's venture capital industry.

19 (b) The members under par. (a) 7. to 9. shall serve 5-year terms and the initial
20 members under par. (a) 7. to 9. shall be appointed by the governor. The biotechnology
21 development finance company, in its bylaws, shall specify the method for electing
22 new members under par. (a) 7. to 9. and for filling vacancies.

23 (5) Annually, the biotechnology development finance company shall provide a
24 report on its activities ^f to the appropriate ^{standing} committee ^s of each house of the legislature
25 in the manner provided under s. 13.172 (3) and to the governor.

1 (6) The assets transferred to, and the assets and liabilities of, the biotechnology
2 development finance company shall be separate from all other assets and liabilities
3 of the state, of all political subdivisions of the state and of the authority. Neither the
4 state, any political subdivision of the state nor the authority guarantees any
5 obligation of or has any obligation to the biotechnology development finance
6 company. Neither the state, any political subdivision of the state nor the authority
7 is liable for any debt or liability of the biotechnology development finance company.

8 **SECTION 4.** 560.01 (2) (a) of the statutes is amended to read:

9 560.01 (2) (a) *State economic policy.* The department shall develop a state
10 economic policy. The department shall promote and provide technical assistance,
11 consultative services and other assistance to commercial, industrial and recreational
12 development and expansion; facilitate the establishment and retention of business
13 enterprises in this state, including small and minority business enterprises;
14 encourage cooperation between financial institutions and business persons to
15 encourage commercial, industrial and recreational business expansion in this state;
16 encourage creation of jobs throughout the state and especially in urban and rural
17 economically depressed areas; develop and coordinate state public and private
18 economic development plans and federal economic development assistance
19 programs affecting local governments and business and industry; advise, assist and
20 cooperate with the biotechnology development finance company under s. 234.64;
21 encourage the growth of tourism in the state; promote state products and industries
22 in both foreign and domestic markets; provide informational clearinghouses for
23 businesses and communities in their dealings with other state and federal agencies;
24 advise the governor and legislature on the role of the state in state-local affairs;
25 study the problems affecting local government relations as they impact on economic

1 development and make recommendations for relieving these problems; develop a
2 state-local relations policy to facilitate closer coordination and cooperation between
3 state and local governments; advise the governor and the legislature regarding
4 problems faced by local governments; develop an improved pattern of state-local
5 relations; and develop recommendations for legislative or administrative action as
6 may appear necessary.

7 History: 1971 c. 321; 1977 c. 29; 1979 c. 361; 1983 a. 27; 1993 a. 399; 1995 a. 27.

7 **SECTION 9425. Effective dates; Housing and Economic Development**

8 **Authority.**

9 (1) BIOTECHNOLOGY DEVELOPMENT FINANCE COMPANY. The repeal of section 20.490
10 (7) of the statutes takes effect on July 1, 2001.

11

(END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2015/?ins
PJK.....

INSERT 3-24 ✓

ensure that all of the following apply with respect to a project before any investment is made in the project:

(END OF INSERT 3-24)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2015/1
PJK:kmg:ijs

DOA:.....Justus - Creating a biotechnology venture capital company
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** authorizing the Wisconsin Housing and Economic
2 Development Authority to create a biotechnology development finance
3 company and making an appropriation.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

The bill authorizes the Wisconsin Housing and Economic Development Authority (WHEDA) to organize and maintain a biotechnology development finance company as a nonstock, nonprofit corporation. The purpose of the biotechnology development finance company is to invest in biotechnology companies in this state. (Biotechnology is defined as technology related to life sciences.) General purpose revenue is provided to the biotechnology development finance company for start-up capital and for its reasonable administrative expenses.

The biotechnology development finance company may invest in a biotechnology company by purchasing capital participation instruments, such as capital stock, partnership or membership interests, evidences of indebtedness and royalties, in a commercial, industrial or other economic enterprise undertaken by the biotechnology company. The biotechnology development finance company may not purchase more than 49% of the voting stock in any such enterprise and may not invest more than \$200,000 in any one biotechnology company. The statutes specify

a number of conditions that the biotechnology development finance company must ensure that an enterprise of a biotechnology company meets before the biotechnology development finance company makes an investment. The biotechnology development finance company annually must submit a report on its activities to the appropriate committee of each house of the legislature and to the governor.

The board of directors of the biotechnology development finance company must consist of the executive director of WHEDA, the secretary of commerce, the secretary of administration, the executive director of the investment board, the president of the University of Wisconsin System and the president of Forward Wisconsin, Inc., or the designee of any of them and three other members, which are initially appointed by the governor, and which include representatives of the state's biotechnology research community, biotechnology industry and venture capital industry.

WHEDA and the department of commerce must assist the biotechnology development finance company. WHEDA must provide administrative services to the biotechnology development finance company by assigning its own employees or by contracting with private or state agencies to provide the services.

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.** 20.490 (7) of the statutes is created to read:

2 20.490 (7) BIOTECHNOLOGY DEVELOPMENT FINANCE COMPANY. (a) *Start-up capital*
3 *and administrative expenses.* Biennially, the amounts in the schedule to be
4 transferred to the biotechnology development finance company under s. 234.64 for
5 start-up capital and for reasonable administrative expenses of the biotechnology
6 development finance company.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 20.490 (7) of the statutes, as created by 1999 Wisconsin Act (this
8 act), is repealed.

 ****NOTE: This SECTION involves a change in an appropriation, but should not be reflected in the revised schedule in s. 20.005, stats., because of a delayed effective date.

9 **SECTION 3.** 234.64 of the statutes is created to read:

10 **234.64 Biotechnology development finance company.** (1) In this section:

1 (a) “Biotechnology” means technology related to life sciences.

2 (b) “Capital participation instrument” means all of the following:

3 1. Any of the following or an option or other right to acquire any of the following:

4 a. Common or preferred capital stock.

5 b. Convertible securities.

6 c. Evidences of long-term or short-term indebtedness.

7 d. Warrants.

8 e. Subscriptions.

9 f. Partnership or membership interests.

10 2. Royalties or other lawful derivations of a capital participation instrument
11 listed under subd. 1.

12 (c) “Cost of a project” means costs associated with the design, planning and
13 implementation of a project that, in accordance with sound business and financial
14 practices, are appropriate charges to the project. The costs may include the costs of
15 planning and design, options to buy land, feasibility or other studies, equipment,
16 seed money, construction, working capital and any other costs determined by the
17 biotechnology development finance company to be necessary to the purposes of this
18 section.

19 (d) “Project” means commercial, industrial or other economic activity that is
20 undertaken by a biotechnology company in this state.

21 (2) (a) The authority may organize and maintain a biotechnology development
22 finance company as a nonstock, nonprofit corporation under ch. 181 for the exclusive
23 purpose of investing in new or existing biotechnology companies in this state.

24 (b) Subject to par. (c), the biotechnology development finance company may
25 purchase a capital participation instrument of a project. The biotechnology

1 development finance company shall ensure that all of the following apply with
2 respect to a project before any investment is made in the project:

3 1. The biotechnology company has certified that the project plans conform to
4 all applicable environmental, zoning, building, planning or sanitation laws.

5 2. There is a reasonable expectation that the biotechnology company will be
6 successful.

7 3. Private industry has not provided sufficient capital required for the project.

8 4. The investment is necessary to the successful completion of the proposed
9 project because other investment in the project is unavailable in the traditional
10 capital markets, or because capital has been offered on terms that would preclude
11 the success of the project.

12 5. Provision has been made by contract for adequate reporting of financial data
13 by the project to the biotechnology development finance company. Those provisions
14 may include a requirement for an annual or other periodic audit of the project's
15 financial records.

16 6. The proceeds of the purchase will be used solely in connection with the costs
17 of the project.

18 7. The biotechnology company is able to manage its project responsibilities.

19 (c) 1. The biotechnology development finance company may not own more than
20 49% of the voting stock or other interest in any enterprise as a result of a purchase
21 under par. (b).

22 2. The total investment by the biotechnology development finance company in
23 any one biotechnology company may not exceed \$200,000.

24 (d) The findings made by the biotechnology development finance company with
25 respect to whether a project meets the conditions under par. (b) 1. to 7. are conclusive.

1 **(3)** The authority shall enter into a contract with the biotechnology
2 development finance company. The contract shall provide that the authority may
3 make use of the services of the biotechnology development finance company and that
4 the authority shall advise, assist and provide administrative services to the
5 biotechnology development finance company. The authority shall determine the
6 type and scope of any administrative services provided by the authority to the
7 biotechnology development finance company. The authority may assign employees or
8 contract with private or state agencies to perform the administrative services. The
9 biotechnology development finance company may not engage in political activities.

10 **(4) (a)** The board of directors of the biotechnology development finance
11 company shall consist of all of the following members:

- 12 1. The executive director of the authority, or his or her designee.
- 13 2. The secretary of commerce, or his or her designee.
- 14 3. The secretary of administration, or his or her designee.
- 15 4. The executive director of the investment board, or his or her designee.
- 16 5. The president of the University of Wisconsin System, or his or her designee.
- 17 6. The president of Forward Wisconsin, Inc., or his or her designee.
- 18 7. A representative of the state's biotechnology research community.
- 19 8. A representative of the state's biotechnology industry.
- 20 9. A representative of the state's venture capital industry.

21 **(b)** The members under par. (a) 7. to 9. shall serve 5-year terms and the initial
22 members under par. (a) 7. to 9. shall be appointed by the governor. The biotechnology
23 development finance company, in its bylaws, shall specify the method for electing
24 new members under par. (a) 7. to 9. and for filling vacancies.

1 (5) Annually, the biotechnology development finance company shall provide a
2 report on its activities to the appropriate standing committees of each house of the
3 legislature in the manner provided under s. 13.172 (3) and to the governor.

4 (6) The assets transferred to, and the assets and liabilities of, the biotechnology
5 development finance company shall be separate from all other assets and liabilities
6 of the state, of all political subdivisions of the state and of the authority. Neither the
7 state, any political subdivision of the state nor the authority guarantees any
8 obligation of or has any obligation to the biotechnology development finance
9 company. Neither the state, any political subdivision of the state nor the authority
10 is liable for any debt or liability of the biotechnology development finance company.

11 **SECTION 4.** 560.01 (2) (a) of the statutes is amended to read:

12 560.01 (2) (a) *State economic policy.* The department shall develop a state
13 economic policy. The department shall promote and provide technical assistance,
14 consultative services and other assistance to commercial, industrial and recreational
15 development and expansion; facilitate the establishment and retention of business
16 enterprises in this state, including small and minority business enterprises;
17 encourage cooperation between financial institutions and business persons to
18 encourage commercial, industrial and recreational business expansion in this state;
19 encourage creation of jobs throughout the state and especially in urban and rural
20 economically depressed areas; develop and coordinate state public and private
21 economic development plans and federal economic development assistance
22 programs affecting local governments and business and industry; advise, assist and
23 cooperate with the biotechnology development finance company under s. 234.64;
24 encourage the growth of tourism in the state; promote state products and industries
25 in both foreign and domestic markets; provide informational clearinghouses for

1 businesses and communities in their dealings with other state and federal agencies;
2 advise the governor and legislature on the role of the state in state-local affairs;
3 study the problems affecting local government relations as they impact on economic
4 development and make recommendations for relieving these problems; develop a
5 state-local relations policy to facilitate closer coordination and cooperation between
6 state and local governments; advise the governor and the legislature regarding
7 problems faced by local governments; develop an improved pattern of state-local
8 relations; and develop recommendations for legislative or administrative action as
9 may appear necessary.

10 **SECTION 9425. Effective dates; Housing and Economic Development**

11 **Authority.**

12 (1) BIOTECHNOLOGY DEVELOPMENT FINANCE COMPANY. The repeal of section 20.490
13 (7) of the statutes takes effect on July 1, 2001.

14 (END)