

2003 ASSEMBLY BILL 524

September 18, 2003 – Introduced by Representatives McCORMICK, NISCHKE, STASKUNAS, SERATTI, HAHN, ALBERS, KRAWCZYK, FRISKE, GRONEMUS, WEBER, GIELOW and OTT, cosponsored by Senators KANAVAS, STEPP, LASSA, REYNOLDS and ROESSLER. Referred to Committee on Economic Development.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
2 (a) 10. and 77.92 (4); and *to create* 15.07 (1) (b) 23., 15.155 (5), 71.07 (2r), 71.07
3 (5d), 71.10 (4) (gc), 71.10 (4) (gx), 71.28 (2r), 71.30 (3) (eop), 71.47 (2r), 71.49 (1)
4 (eop), 73.03 (35p), 73.03 (35r) and 560.20 of the statutes; **relating to:** creating
5 an income and franchise tax credit for equity investments in a venture capital
6 fund, creating an equity investment individual income tax credit, and granting
7 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates a nonrefundable income and franchise tax credit for equity investments in venture capital funds that are certified by the Wisconsin Capital Investment Board as described below. The amount of the tax credit is equal to 6% of the taxpayer's equity investment in venture capital funds in the taxable year, up to a maximum claim of \$60,000 per claimant, but the total amount of all such credits awarded in any fiscal year may not exceed \$5,000,000. If the credit claimed by a taxpayer exceeds the taxpayer's tax liability, the state will not issue a refund, but the taxpayer may carry forward any remaining credit to subsequent taxable years.

This bill creates a Wisconsin Capital Investment Board (board), consisting of five members with expertise in venture capital and financial investments. The members are appointed by the governor, with the advice and consent of the senate.

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Under this bill, the board must promulgate rules establishing a procedure for the board to certify venture capital funds as eligible to receive equity investments that qualify for the tax credits described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and venture capital partnership or entity fund, the venture capital fund maintains a physical presence in Wisconsin, and the venture capital fund makes a commitment to consider making equity investments in businesses located in Wisconsin. The bill requires the board, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified as eligible to receive equity investments that qualify for the tax credits described above. Each such notice that indicates a venture capital fund is certified must include the following statement: “THE WISCONSIN CAPITAL INVESTMENT BOARD HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE.” The bill also requires the board, upon issuing or discontinuing a certification, to notify the Department of Revenue and give the Department of Revenue a copy of the certification or discontinuance.

This bill also creates a nonrefundable individual income tax credit that is equal to 20% of the taxpayer’s cash investment in a community-based seed capital fund or in a business that, generally, has been operating for no more than three years and has a net worth not exceeding \$3,000,000. No individual may claim a credit for more than \$50,000 in a taxable year and the total amount of all credits for all individuals who claim credits may not exceed \$3,000,000 in a state fiscal year.

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) (b) 23. of the statutes is created to read:

2 15.07 **(1)** (b) 23. Wisconsin capital investment board.

3 **SECTION 2.** 15.155 (5) of the statutes is created to read:

4 15.155 **(5)** WISCONSIN CAPITAL INVESTMENT BOARD. There is created a Wisconsin
5 capital investment board attached to the department of commerce under s. 15.03.
6 The Wisconsin capital investment board shall consist of 5 members appointed for
7 5-year terms. Each member of the Wisconsin capital investment board shall have
8 expertise concerning venture capital and financial investments. Any person having

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1 a financial interest in a venture capital fund certified under s. 560.20 (2) may not be
2 a member and any member who acquires such an interest shall thereupon vacate his
3 or her membership.

4 **SECTION 3.** 71.05 (6) (a) 15. of the statutes is amended to read:

5 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
6 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2r), (3g), and (3s) and not passed through
7 by a partnership, limited liability company, or tax–option corporation that has added
8 that amount to the partnership’s, company’s, or tax–option corporation’s income
9 under s. 71.21 (4) or 71.34 (1) (g).

10 **SECTION 4.** 71.07 (2r) of the statutes is created to read:

11 71.07 **(2r)** EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this
12 subsection:

- 13 1. “Board” means the Wisconsin capital investment board.
- 14 2. “Claimant” means a sole proprietor, a partner, a member of a limited liability
15 company, or a shareholder of a tax–option corporation who files a claim under this
16 subsection.
- 17 3. “Equity investment” means the purchase of an ownership interest.
- 18 4. “Venture capital fund” means a venture capital fund certified under s. 560.20
19 (2).

20 (b) Subject to the limitations provided under this subsection, a claimant may
21 claim as a credit against the tax imposed under s. 71.02, up to the amount of those
22 taxes, an amount equal to 6% of the claimant’s equity investment in a venture capital
23 fund in the taxable year.

24 (c) 1. The maximum credit that a claimant may claim under this subsection
25 may not exceed \$60,000 in a taxable year and the total amount of the claims for all

1 claimants under this subsection, s. 71.28 (2r), and s. 71.47 (2r) may not exceed
2 \$5,000,000 in any fiscal year.

3 2. No credit may be allowed under this subsection unless the claimant submits
4 with the claimant's return a notice issued by the board under s. 560.20 (3) indicating
5 that the board has certified the venture capital fund as eligible to receive equity
6 investments that qualify for the credit.

7 3. Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies
8 to the credit under this subsection.

9 4. Partnerships, limited liability companies, and tax-option corporations may
10 not claim the credit under par. (b), but the eligibility for, and the amount of, the credit
11 are based on their payment of an equity investment, as described in this subsection.
12 A partnership, limited liability company, or tax-option corporation shall compute
13 the amount of credit that each of its partners, members, or shareholders may claim
14 and shall provide that information to each of them. Partners, members of limited
15 liability companies, and shareholders of tax-option corporations may claim the
16 credit in proportion to their ownership interest.

17 **SECTION 5.** 71.07 (5d) of the statutes is created to read:

18 **71.07 (5d) EQUITY INVESTMENT CREDIT.** (a) *Definitions.* In this subsection:

19 1. "Claimant" means an individual who files a claim under this subsection.

20 2. "Community-based seed capital fund" means a fund certified under s. 560.20
21 (2) (b).

22 3. "Qualifying business" means a business certified under s. 560.20 (2) (c).

23 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
24 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
25 amount of those taxes, an amount equal to 20% of the claimant's cash investment in

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1 the taxable year to which the claim relates in a qualifying business or in a
2 community-based seed capital fund.

3 (c) *Limitations.* 1. The maximum credit that a claimant may claim under
4 this subsection may not exceed \$50,000 in a taxable year and the total amount of
5 the claims for all claimants under this subsection may not exceed \$3,000,000 in
6 any fiscal year.

7 2. No credit may be allowed under this subsection unless it is claimed
8 within the time period under s. 71.75 (2).

9 3. For a claimant who is a nonresident or part-year resident of this state and
10 who is a single person or a married person filing a separate return, multiply the
11 credit for which the claimant is eligible under par. (b) by a fraction, the numerator
12 of which is the individual's Wisconsin adjusted gross income and the denominator of
13 which is the individual's federal adjusted gross income. If a claimant is married and
14 files a joint return, and if the claimant or the claimant's spouse, or both, are
15 nonresidents or part-year residents of this state, multiply the credit for which the
16 claimant is eligible under par. (b) by a fraction, the numerator of which is the couple's
17 joint Wisconsin adjusted gross income and the denominator of which is the couple's
18 joint federal adjusted gross income.

19 (d) *Administration.* 1. If a credit computed under this subsection is not entirely
20 offset against income taxes otherwise due, the unused balance may be carried
21 forward and credited against income taxes otherwise due for the following 5 taxable
22 years to the extent not offset by those taxes otherwise due in all intervening years
23 between the year in which the investment under par. (b) was paid and the year in
24 which the carry-forward credit is claimed.

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1 2. Section 71.07 (9e) (d), to the extent that it applies to the credit under that
2 subsection, applies to the credit under this subsection.

3 3. Community-based seed capital funds and qualifying businesses shall
4 submit to the department any information that the department considers necessary
5 to administer this subsection.

6 **SECTION 6.** 71.10 (4) (gc) of the statutes is created to read:

7 71.10 (4) (gc) Equity investment credit under s. 71.07 (5d).

8 **SECTION 7.** 71.10 (4) (gx) of the statutes is created to read:

9 71.10 (4) (gx) Equity investment in venture capital fund credit under s. 71.07
10 (2r).

11 **SECTION 8.** 71.21 (4) of the statutes is amended to read:

12 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
13 (2dj), (2dL), (2dm), (2ds), (2dx), (2r), (3g), and (3s) and passed through to partners
14 shall be added to the partnership's income.

15 **SECTION 9.** 71.26 (2) (a) of the statutes is amended to read:

16 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
17 the gross income as computed under the Internal Revenue Code as modified under
18 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
19 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
20 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (2r), and (3g) and
21 not passed through by a partnership, limited liability company, or tax-option
22 corporation that has added that amount to the partnership's, limited liability
23 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
24 the amount of losses from the sale or other disposition of assets the gain from which
25 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or

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1 otherwise disposed of at a gain and minus deductions, as computed under the
2 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
3 amount equal to the difference between the federal basis and Wisconsin basis of any
4 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
5 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

6 **SECTION 10.** 71.28 (2r) of the statutes is created to read:

7 71.28 (2r) EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this
8 subsection:

- 9 1. “Board” means the Wisconsin capital investment board.
- 10 2. “Claimant” means a person who files a claim under this subsection.
- 11 3. “Equity investment” means the purchase of an ownership interest.
- 12 4. “Venture capital fund” means a venture capital fund certified under s. 560.20
13 (2).

14 (b) Subject to the limitations provided under this subsection, a claimant may
15 claim as a credit against the tax imposed under s. 71.23, up to the amount of those
16 taxes, an amount equal to 6% of the claimant’s equity investment in a venture capital
17 fund in the taxable year.

18 (c) 1. The maximum credit that a claimant may claim under this subsection
19 may not exceed \$60,000 in a taxable year and the total amount of the claims for all
20 claimants under this subsection, s. 71.07 (2r), and s. 71.47 (2r) may not exceed
21 \$5,000,000 in any fiscal year.

22 2. No credit may be allowed under this subsection unless the claimant submits
23 with the claimant’s return a notice issued by the board under s. 560.20 (3) indicating
24 that the board has certified the venture capital fund as eligible to receive equity
25 investments that qualify for the credit.

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1 3. Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to
2 the credit under this subsection.

3 4. Partnerships, limited liability companies, and tax–option corporations may
4 not claim the credit under par. (b), but the eligibility for, and the amount of, the credit
5 are based on their payment of an equity investment, as described in this subsection.
6 A partnership, limited liability company, or tax–option corporation shall compute
7 the amount of credit that each of its partners, members, or shareholders may claim
8 and shall provide that information to each of them. Partners, members of limited
9 liability companies, and shareholders of tax–option corporations may claim the
10 credit in proportion to their ownership interest.

11 **SECTION 11.** 71.30 (3) (eop) of the statutes is created to read:

12 71.30 **(3)** (eop) Equity investment in venture capital fund credit under s. 71.28
13 (2r).

14 **SECTION 12.** 71.34 (1) (g) of the statutes is amended to read:

15 71.34 **(1)** (g) An addition shall be made for credits computed by a tax–option
16 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (2r), (3),
17 and (3g) and passed through to shareholders.

18 **SECTION 13.** 71.45 (2) (a) 10. of the statutes is amended to read:

19 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
20 computed under s. 71.47 (1dd) to (1dx) and (2r) and not passed through by a
21 partnership, limited liability company or tax–option corporation that has added that
22 amount to the partnership’s, limited liability company’s or tax–option corporation’s
23 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
24 s. 71.47 (1), (3), (4), and (5).

25 **SECTION 14.** 71.47 (2r) of the statutes is created to read:

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1 71.47 **(2r)** EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this
2 subsection:

- 3 1. “Board” means the Wisconsin capital investment board.
- 4 2. “Claimant” means a person who files a claim under this subsection.
- 5 3. “Equity investment” means the purchase of an ownership interest.
- 6 4. “Venture capital fund” means a venture capital fund certified under s. 560.20
7 (2).

8 (b) Subject to the limitations provided under this subsection, a claimant may
9 claim as a credit against the tax imposed under s. 71.43, up to the amount of those
10 taxes, an amount equal to 6% of the claimant’s equity investment in a venture capital
11 fund in the taxable year.

12 (c) 1. The maximum credit that a claimant may claim under this subsection
13 may not exceed \$60,000 in a taxable year and the total amount of the claims for all
14 claimants under this subsection, s. 71.07 (2r), and s. 71.28 (2r) may not exceed
15 \$5,000,000 in any fiscal year.

16 2. No credit may be allowed under this subsection unless the claimant submits
17 with the claimant’s return a notice issued by the board under s. 560.20 (3) indicating
18 that the board has certified the venture capital fund as eligible to receive equity
19 investments that qualify for the credit.

20 3. Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies
21 to the credit under this subsection.

22 4. Partnerships, limited liability companies, and tax–option corporations may
23 not claim the credit under par. (b), but the eligibility for, and the amount of, the credit
24 are based on their payment of an equity investment, as described in this subsection.
25 A partnership, limited liability company, or tax–option corporation shall compute

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1 the amount of credit that each of its partners, members, or shareholders may claim
2 and shall provide that information to each of them. Partners, members of limited
3 liability companies, and shareholders of tax-option corporations may claim the
4 credit in proportion to their ownership interest.

5 **SECTION 15.** 71.49 (1) (eop) of the statutes is created to read:

6 71.49 (1) (eop) Equity investment in venture capital fund credit under s. 71.47
7 (2r).

8 **SECTION 16.** 73.03 (35p) of the statutes is created to read:

9 73.03 (35p) To deny a portion of a credit claimed under s. 71.07 (2r), 71.28 (2r),
10 or 71.47 (2r), if granting the full amount claimed would violate a requirement under
11 s. 71.07 (2r) (c) 1. by bringing the total of the credits claimed under ss. 71.07 (2r),
12 71.28 (2r), and 71.47 (2r) over \$5,000,000 in any fiscal year.

13 **SECTION 17.** 73.03 (35r) of the statutes is created to read:

14 73.03 (35r) To deny a portion of a credit claimed under s. 71.07 (5d) if granting
15 the full amount claimed would violate a requirement under s. 71.07 (5d) (c) 1. by
16 bringing the total of the credits claimed under s. 71.07 (5d) over \$3,000,000 in any
17 fiscal year.

18 **SECTION 18.** 77.92 (4) of the statutes is amended to read:

19 77.92 (4) “Net business income”, with respect to a partnership, means taxable
20 income as calculated under section 703 of the Internal Revenue Code; plus the items
21 of income and gain under section 702 of the Internal Revenue Code, including taxable
22 state and municipal bond interest and excluding nontaxable interest income or
23 dividend income from federal government obligations; minus the items of loss and
24 deduction under section 702 of the Internal Revenue Code, except items that are not
25 deductible under s. 71.21; plus guaranteed payments to partners under section 707

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1 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
2 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), and (2r), (3g), and (3s); and plus or minus,
3 as appropriate, transitional adjustments, depreciation differences, and basis
4 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
5 loss, and deductions from farming. “Net business income”, with respect to a natural
6 person, estate, or trust, means profit from a trade or business for federal income tax
7 purposes and includes net income derived as an employee as defined in section 3121
8 (d) (3) of the Internal Revenue Code.

9 **SECTION 19.** 560.20 of the statutes is created to read:

10 **560.20 Venture capital and seed capital investment program. (1)**

11 **DEFINITIONS.** In this section, “board” means the Wisconsin capital investment board.

12 **(2) CERTIFICATION.** (a) The board, in consultation with the department, shall
13 promulgate rules establishing a procedure for the board to certify venture capital
14 funds as eligible to receive equity investments that qualify for the tax credits under
15 ss. 71.07 (2r), 71.28 (2r), and 71.47 (2r). The rules shall do all of the following:

16 1. Require a venture capital fund that desires to obtain a certification to file an
17 application with the board.

18 2. Permit a venture capital fund to obtain a certification only if the venture
19 capital fund is a private seed and venture capital partnership or entity fund, the
20 venture capital fund maintains a physical presence in Wisconsin, and the venture
21 capital fund makes a commitment to consider making equity investments in
22 businesses located in Wisconsin.

23 3. Require an applicant for certification or a certified venture capital fund to
24 provide the board with any information the board determines is necessary to ensure

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1 eligibility for certification and compliance with this paragraph and rules
2 promulgated under this paragraph.

3 (b) The board, in consultation with the department, shall promulgate rules
4 establishing a procedure for the board to certify community-based seed capital funds
5 as eligible to receive investments that qualify for the applicable tax credit under s.
6 71.07 (5d). The rules shall do all of the following:

7 1. Require a community-based seed capital fund that desires to obtain a
8 certification to file an application with the board.

9 2. Permit a community-based seed capital fund to obtain a certification only
10 if the fund is a partnership or limited liability company with a total of both capital
11 commitments from investors and investments in businesses certified under par. (c)
12 of at least \$500,000 but not more than \$3,000,000.

13 3. Permit a community-based seed capital fund to obtain a certification only
14 if the fund has at least 10 individual investors who are not affiliates with each other
15 and no investor and his or her affiliates own more than 25% of the ownership
16 interests outstanding in the fund. In this subdivision, “affiliate” means a spouse,
17 child, or sibling of an investor or a corporation, partnership, limited liability
18 company, tax-option corporation, or trust in which an investor has a controlling
19 equity interest or in which an investor exercises management control.

20 4. Require an applicant for certification or a certified community-based seed
21 capital fund to provide the board with any information the board determines is
22 necessary to ensure eligibility for certification and compliance with this paragraph
23 and rules promulgated under this paragraph.

24 (c) The board, in consultation with the department, shall promulgate rules
25 establishing a procedure for the board to certify businesses as eligible to receive

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1 investments that qualify for the applicable tax credit under s. 71.07 (5d). The rules
2 shall do all of the following:

3 1. Require a business that desires to obtain a certification to file an application
4 with the board.

5 2. Permit a business to obtain a certification only if the business has been in
6 operation for no more than 3 years and if its principal business operations are located
7 in this state.

8 3. Permit a business to obtain a certification only if the owner of the business
9 has at least 3 years of relevant business experience, or any other experience that the
10 board determines is sufficient to increase the likelihood of the success of the business,
11 or has successfully completed an entrepreneurial venture development curriculum;
12 has a degree in business management, business administration, or a related field;
13 or has any other training that the board determines is sufficient to increase the
14 likelihood of the success of the business.

15 4. Permit a business to obtain a certification only if the business is not engaged
16 primarily in retail sales, real estate, or providing health care or other professional
17 services.

18 5. Permit a business to obtain a certification only if the net worth of the
19 business does not exceed \$3,000,000.

20 6. Require an applicant for certification or a certified community-based seed
21 capital fund to provide the board with any information the board determines is
22 necessary to ensure eligibility for certification and compliance with this paragraph
23 and rules promulgated under this paragraph.

24 **(3) NOTICE OF CERTIFICATION.** Upon request of any person, the board shall issue
25 a written notice indicating whether a venture capital fund, community-based seed

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1 capital fund, or business is certified under this section. Each notice under this
2 subsection that indicates a venture capital fund, community-based seed capital
3 fund, or business is certified and shall include the following statement: “THE
4 WISCONSIN CAPITAL INVESTMENT BOARD HAS NOT RECOMMENDED OR APPROVED AN
5 INVESTMENT IN THIS ENTITY OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT.
6 INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK
7 INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION
8 REGARDING INVESTMENT IN THIS ENTITY.”

9 (4) NOTICE OF DECERTIFICATION. Upon the issuance or discontinuance of a
10 certification, the board shall notify the department of revenue and provide the
11 department of revenue a copy of the certification or discontinuance.

12 (5) STAFF. The board may employ an executive director outside the classified
13 service who may employ staff within the classified service with appropriate expertise
14 to carry out this section.

SECTION 20. Nonstatutory provisions.

15 (1) RULES. The Wisconsin capital investment board shall submit in proposed
16 form the rules required under section 560.20 (2) of the statutes, as created by this
17 act, to the legislative council staff under section 227.15 (1) of the statutes no later
18 than the first day of the 6th month beginning after the effective date of this
19 subsection.
20

21 (2) STAFF. There is authorized for the Wisconsin capital investment board 1.0
22 FTE GPR executive director position and 2.0 FTE GPR other positions to be funded
23 from the appropriation under section 20.143 (1) (a) of the statutes.

SECTION 21. Initial applicability.
24

