

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3054/P1 *ns*
RJM:.....

INSERT 2-1

SECTION 1. 15.155 (5) of the statutes is created to read:

^{no} 15.155 (5) WISCONSIN CAPITAL INVESTMENT BOARD. There is created a Wisconsin capital investment board attached to the department of commerce under s. 15.03. The Wisconsin capital investment board shall consist of ⁵ ~~five~~ members appointed for 5-year terms. Each member of the Wisconsin capital investment board shall have expertise concerning venture capital and financial investments. Any person having a financial interest in a venture capital fund certified under s. 560.20 (2) may not be a member and any member who acquires such an interest shall thereupon vacate his or her membership.

INSERT 8-18

and seed capital

SECTION 2, 560.20 of the statutes is created to read:

560.20 Venture capital investment program. (1) DEFINITIONS. In this section, "board" means the Wisconsin capital investment board.

INSERT 9-11

(b) The board, in consultation with the department, shall promulgate rules establishing a procedure for the board to certify community-based seed capital funds as eligible to receive investments that qualify for the ^{applicable} tax credit under s. 71.07 (5d).

The rules shall do all of the following:

1. Require a community-based seed capital fund that desires to obtain a certification to file an application with the board.
2. Permit a community-based seed capital fund to obtain a certification only if the fund is a partnership or limited liability company with a total of both capital

commitments from investors and investments in businesses certified under par. (c) of at least \$500,000 but not more than \$3,000,000.

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

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

(c) The board, in consultation with the department, shall promulgate rules establishing a procedure for the board to certify businesses as eligible to receive investments that qualify for the ^{applicable} tax credit under s. 71.07 (5d). The rules shall do all of the following:

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

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

3. Permit a business to obtain a certification only if the owner of the business has at least 3 years of relevant business experience, or any other experience that the board determines is sufficient to increase the likelihood of the success of the business,

or has successfully completed an entrepreneurial venture development curriculum;
a degree in business management, business administration, or a related field; or any
other training that the board determines is sufficient to increase the likelihood of the
success of the business.

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

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

6. Permit a business to obtain a certification only if, in the taxable year in which cash investments are first made in the business, it secures total equity financing, debt that may be converted to equity at the option of the debt holder, or royalty agreements equal to at least \$250,000.

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

mem

end insert
9-11

has

has

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3054/?insMES
RJM&MES&JK.....

INS 8-2

~~SECTION 1~~ 73.03 (35p) of the statutes is created to read:

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

~~SECTION 2~~ 73.03 (35r) of the statutes is created to read:

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

end insert
8-2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERTS

1 AN ACT to create 71.07 (5d) and 71.10 (4) (gc) of the statutes relating to:
2 creating an equity investment tax credit.

INSERT ANALYSIS

also

Analysis by the Legislative Reference Bureau

¶ This bill 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 \$10,000,000 in a state fiscal year. *WD ins*

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

3

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

INSERT 3-23

3 SECTION 71.07 (5d) of the statutes is created to read:

4 71.07 (5d) EQUITY INVESTMENT CREDIT. (a) *Definitions*. In this subsection:

5 1. "Affiliate" means a spouse, child, or sibling of a claimant or a corporation,
6 partnership, limited liability company, tax-option corporation, or trust in which a

claimant has a controlling equity interest or in which a claimant exercises management control.

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

2. "Community-based seed capital fund" means a fund that satisfies all of the following conditions: *certified* *written under s. 560.20 (2)(b)*.

- a. It is a partnership or limited liability company.
- b. It has a total of both capital commitments from investors and investments in qualifying businesses of at least \$500,000 but not more than \$3,000,000.
- c. It has no fewer than 10 individual investors who are not affiliates with each other and no investor and his or her affiliates own more than 25% of the ownership interests outstanding in the fund.

4. "Near equity" means debt that may be converted to equity at the option of the debt holder and royalty agreements.

3. "Qualifying business" means a business that satisfies all of the following conditions: *certified* *certified under s. 560.20 (2)(c)*.

- a. It's principal business operations are located in this state.
- b. It has been in operation for no more than 3 years.
- c. It's owner has at least 3 years of relevant business experience, or any other experience that the department determines is sufficient to increase the likelihood of the success of the business, or it's owner has successfully completed an entrepreneurial venture development curriculum; a degree in business management, business administration, or a related field; or any other training that the department determines is sufficient to increase the likelihood of the success of the business.

- d. It is not a business engaged primarily in retail sales, real estate, or providing health care or other professional services.
- e. Its net worth does not exceed \$3,000,000.
- f. In the taxable year in which cash investments are first made in the business, it secures total equity financing or near equity financing equal to at least \$250,000.

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of ~~such~~ ^{those} taxes, an amount equal to 20% of the claimant's cash investment in the taxable year ^{to which the claim relates} in a qualifying business or in a community-based seed capital fund.

(c) *Limitations.* 1. The ^{maximum credit that a claimant may claim} amount of the ~~credits~~ ^{may} under this subsection shall not exceed \$50,000 in a taxable year ^{for each claimant} and the total amount of the ^{claims} ~~credits~~ for all claimants under this subsection ^{may} shall not exceed \$3,000,000 in ^{any} ~~state~~ fiscal year.

2. No credit may be allowed under this subsection unless ~~the claimant files~~ an application with the department, at the time and in the manner prescribed by ~~the department~~ ^{it is claimed within the time period under s. 71.75(2)}

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

1 joint Wisconsin adjusted gross income and the denominator of which is the couple's
2 joint federal adjusted gross income.

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

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

9 ~~2~~ Community-based seed capital funds and qualifying businesses shall
10 submit to the department any information that the department considers necessary
11 to administer this subsection.

12 SECTION ~~2~~ 71.10 (4) (gc) of the statutes is created to read:

13 71.10 (4) (gc) Equity investment credit under s. 71.07 (5d). *end ms*

14 SECTION 3. Initial applicability.

15 (1) This act first applies to taxable years beginning on January 1 of the year
16 in which this subsection takes effect, except that if this subsection takes effect after
17 July 31 this act first applies to taxable years beginning on January 1 of the year
18 following the year in which this subsection takes effect.

19 (END)

end inserts

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3054/P1dn

RJM: *[Signature]*

Date

Community-based seed capital funds, and businesses

Representative McCormick:

Attached is a preliminary draft establishing a Wisconsin capital investment board (WCIB). Per my discussions with Jennifer, this draft is based on the current Iowa capital investment board. It was unclear to me, though, how closely you intended to copy the Iowa law. Please review the draft to ensure that it satisfies your intent. In particular, please note the following issues:

1. The primary difference between this draft and the draft you initially requested is that the WCIB under this draft will certify venture capital funds, ~~(mutual funds)~~ that satisfy specified criteria. Investments in these ~~certified funds~~ would qualify for an income tax credit. Under this draft, the WCIB does not manage any money; rather, it investigates ~~venture capital funds~~ and certifies them. The provision of your initial request concerning guaranteed investments was inapplicable to the Iowa model.

2. The WCIB is attached to the Department of Commerce under the draft, meaning that the Department of Commerce will provide budgeting, program coordination, and related management functions for the WCIB. The bill also requires the WCIB to consult with the Department of Commerce when the WCIB promulgates rules to implement the program established under the draft. In all other respects, though, the WCIB may act independently of the Department of Commerce under the draft.

3. The draft does not provide a method of funding the operations of the WCIB. Options include a GPR appropriation funded by a specified amount of tax dollars or a PR appropriation funded by some fee imposed by the WCIB. Absent such a new appropriation, the operations of the WCIB arguably may be funded out of the GPR, general program operations appropriation to the Department of Commerce under s. 20.143 (1)(a), stats.

Also, although the draft permits the WCIB to employ an executive director outside the classified service and authorizes the executive director to hire staff within the classified service, the draft does not specify the number and type of positions authorized for these purposes. Please let me know how you intend to fund the operations of the WCIB and the number and type of positions you would like to provide. If you have any questions concerning this issue, please feel free to contact me or an analyst at the LFB.

and businesses

entirely

Please feel free to call if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

The tax credits in created ~~ss.~~ 71.07 (2r) ^{(c) 1.} ~~71.28 (2r)~~
and 71.47 (2r) (c) 1. contain a maximum
~~amount~~ ~~amounts~~ for the total ^{amount of} credits that
may be claimed in a year, but there is
no maximum ~~claim~~ claim that an individual
claimant is limited to. Do you want to
specify such a limit? Compare ~~to~~
to the individual and total claim amount
limits in created s. 71.07 (5d) (c) 1.

RMZ

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3054/P1dn
RJM:kjf:jf

August 14, 2003

Representative McCormick:

Attached is a preliminary draft establishing a Wisconsin Capital Investment Board (WCIB). Per my discussions with Jennifer, this draft is based on the current Iowa Capital Investment Board. It was unclear to me, though, how closely you intended to copy the Iowa law. Please review the draft to ensure that it satisfies your intent. In particular, please note the following issues:

1. The primary difference between this draft and the draft you initially requested is that the WCIB under this draft will certify venture capital funds, community-based seed capital funds, and businesses that satisfy specified criteria. Investments in these entities would qualify for an income tax credit. Under this draft, the WCIB does not manage any money; rather, it investigates funds and businesses and certifies them. The provision of your initial request concerning guaranteed investments was inapplicable to the Iowa model.
2. The WCIB is attached to the Department of Commerce under the draft, meaning that the Department of Commerce will provide budgeting, program coordination, and related management functions for the WCIB. The bill also requires the WCIB to consult with the Department of Commerce when the WCIB promulgates rules to implement the program established under the draft. In all other respects, though, the WCIB may act independently of the Department of Commerce under the draft.
3. The draft does not provide a method of funding the operations of the WCIB. Options include a GPR appropriation funded by a specified amount of tax dollars or a PR appropriation funded by some fee imposed by the WCIB. Absent such a new appropriation, the operations of the WCIB arguably may be funded out of the GPR, general program operations appropriation to the Department of Commerce under s. 20.143 (1) (a), stats.

Also, although the draft permits the WCIB to employ an executive director outside the classified service and authorizes the executive director to hire staff within the classified service, the draft does not specify the number and type of positions authorized for these purposes. Please let me know how you intend to fund the operations of the WCIB and the number and type of positions you would like to provide. If you have any questions concerning this issue, please feel free to contact me or an analyst at the LFB.

Please feel free to call if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

The tax credits in created ss. 71.07 (2r) (c) 1., 71.28 (2r) (c) 1., and 71.47 (2r) (c) 1. contain a maximum for the total amount of credits that may be claimed in a year, but there is no maximum claim that an individual claimant is limited to. Do you want to specify such a limit? Compare to the individual and total claim amount limits in created s. 71.07 (5d) (c) 1.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3054/P1dn
RJM:kjf:jf

August 14, 2003

Representative McCormick:

Attached is a preliminary draft establishing a Wisconsin Capital Investment Board (WCIB). Per my discussions with Jennifer, this draft is based on the current Iowa Capital Investment Board. It was unclear to me, though, how closely you intended to copy the Iowa law. Please review the draft to ensure that it satisfies your intent. In particular, please note the following issues:

1. The primary difference between this draft and the draft you initially requested is that the WCIB under this draft will certify venture capital funds, community-based seed capital funds, and businesses that satisfy specified criteria. Investments in these entities would qualify for an income tax credit. Under this draft, the WCIB does not manage any money; rather, it investigates funds and businesses and certifies them. The provision of your initial request concerning guaranteed investments was inapplicable to the Iowa model.
2. The WCIB is attached to the Department of Commerce under the draft, meaning that the Department of Commerce will provide budgeting, program coordination, and related management functions for the WCIB. The bill also requires the WCIB to consult with the Department of Commerce when the WCIB promulgates rules to implement the program established under the draft. In all other respects, though, the WCIB may act independently of the Department of Commerce under the draft.
3. The draft does not provide a method of funding the operations of the WCIB. Options include a GPR appropriation funded by a specified amount of tax dollars or a PR appropriation funded by some fee imposed by the WCIB. Absent such a new appropriation, the operations of the WCIB arguably may be funded out of the GPR, general program operations appropriation to the Department of Commerce under s. 20.143 (1) (a), stats.

Also, although the draft permits the WCIB to employ an executive director outside the classified service and authorizes the executive director to hire staff within the classified service, the draft does not specify the number and type of positions authorized for these purposes. Please let me know how you intend to fund the operations of the WCIB and the number and type of positions you would like to provide. If you have any questions concerning this issue, please feel free to contact me or an analyst at the LFB.

MES:

P3, 23-24 Max = \$60,000 / year

RPM

① CR 15.07(1)(a) R3. to have advice + consent of senate

② P. 13, line 16-19 delete

③ 2 staff (in addition to S.D.)

Please feel free to call if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

The tax credits in created ss. 71.07 (2r) (c) 1., 71.28 (2r) (c) 1., and 71.47 (2r) (c) 1. contain a maximum for the total amount of credits that may be claimed in a year, but there is no maximum claim that an individual claimant is limited to. Do you want to specify such a limit? Compare to the individual and total claim amount limits in created s. 71.07 (5d) (c) 1.



Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

Page 3, lines 23-24 Max = \$60,000

9-8-03

PRELIMINARY DRAFT NOT READY FOR INTRODUCTION

[Handwritten signature]

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* 15.155 (5), 71.07 (2r), 71.07 (5d), 71.10 (4)
3 (gc), 71.10 (4) (gx), 71.28 (2r), 71.30 (3) (eop), 71.47 (2r), 71.49 (1) (eop), 73.03
4 (35p), 73.03 (35r) and 560.20 of the statutes; **relating to:** creating an income
5 and franchise tax credit for equity investments in a venture capital fund,
6 creating an equity investment individual income tax credit, and granting
7 rule-making authority.

up to a maximum claim of \$60,000 per claimant,

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, 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. Under this bill, the board must promulgate rules establishing a procedure for the board to

The members are appointed by the governor, with the advice and consent of the senate.

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 ~~#~~ 15.155 (5) of the statutes is created to read:
 2 15.155 (5) WISCONSIN CAPITAL INVESTMENT BOARD. There is created a Wisconsin
 3 capital investment board attached to the department of commerce under s. 15.03.
 4 The Wisconsin capital investment board shall consist of 5 members appointed for
 5 5-year terms. Each member of the Wisconsin capital investment board shall have
 6 expertise concerning venture capital and financial investments. Any person having
 7 a financial interest in a venture capital fund certified under s. 560.20 (2) may not be

Sec# CR, 15.07 (1) (b) 23. = (P) 15.07 (1) (b) 23. Wisconsin Capital Investment Board.
 =

1 a member and any member who acquires such an interest shall thereupon vacate his
2 or her membership.

3 SECTION ~~2~~ 71.05 (6) (a) 15. of the statutes is amended to read:

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

9 SECTION ~~3~~ 71.07 (2r) of the statutes is created to read:

10 71.07 (2r) EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this
11 subsection:

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

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

23 (c) 1. The total amount of the claims for all claimants under this subsection, s.
24 71.28 (2r), and s. 71.47 (2r) may not exceed \$5,000,000 in any fiscal year.

*maximum credit that a claimant may claim
under this subsection may not exceed \$60,000 in a
taxable
year
and
the*

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

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

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

15 SECTION ~~71~~ 71.07 (5d) [✓] of the statutes is created to read:

16 71.07 (5d) EQUITY INVESTMENT CREDIT. (a) *Definitions*. In this subsection:

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

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

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

21 (b) *Filing claims*. Subject to the limitations provided in this subsection, a
22 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
23 amount of those taxes, an amount equal to 20% of the claimant's cash investment in
24 the taxable year to which the claim relates in a qualifying business or in a
25 community-based seed capital fund.

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

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

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

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

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

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

4 SECTION ~~§~~ 71.10 (4) (gc) [✓] of the statutes is created to read:

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

6 SECTION ~~§~~ 71.10 (4) (gx) [✓] of the statutes is created to read:

7 71.10 (4) (gx) Equity investment in venture capital fund credit under s. 71.07
8 (2r).

9 SECTION ~~§~~ 71.21 (4) [✓] of the statutes is amended to read:

10 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
11 (2dj), (2dL), (2dm), (2ds), (2dx), (2r), (3g), and (3s) and passed through to partners
12 shall be added to the partnership's income.

13 SECTION ~~§~~ 71.26 (2) [✓] (a) of the statutes is amended to read:

14 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
15 the gross income as computed under the Internal Revenue Code as modified under
16 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
17 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
18 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (2r), and (3g) and
19 not passed through by a partnership, limited liability company, or tax-option
20 corporation that has added that amount to the partnership's, limited liability
21 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
22 the amount of losses from the sale or other disposition of assets the gain from which
23 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
24 otherwise disposed of at a gain and minus deductions, as computed under the
25 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an

1 amount equal to the difference between the federal basis and Wisconsin basis of any
2 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
3 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

4 SECTION ~~9~~ 71.28 (2r) of the statutes is created to read:

5 71.28 (2r) EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this
6 subsection:

- 7 1. "Board" means the Wisconsin capital investment board.
- 8 2. "Claimant" means a person who files a claim under this subsection.
- 9 3. "Equity investment" means the purchase of an ownership interest.
- 10 4. "Venture capital fund" means a venture capital fund certified under s. 560.20

11 (2).

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

16 (c) 1. The *total amount of the claims for all claimants under this subsection, s. and the*
17 71.07 (2r), and s. 71.47 (2r) may not exceed \$5,000,000 in any fiscal year.

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

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

24 4. Partnerships, limited liability companies, and tax-option corporations may
25 not claim the credit under par. (b), but the eligibility for, and the amount of, the credit

1 are based on their payment of an equity investment, as described in this subsection.
2 A partnership, limited liability company, or tax-option corporation shall compute
3 the amount of credit that each of its partners, members, or shareholders may claim
4 and shall provide that information to each of them. Partners, members of limited
5 liability companies, and shareholders of tax-option corporations may claim the
6 credit in proportion to their ownership interest.

7 SECTION ~~10.~~ 71.30 (3) (eop) of the statutes is created to read:

8 71.30 (3) (eop) Equity investment in venture capital fund credit under s. 71.28
9 (2r).

10 SECTION ~~11.~~ 71.34 (1) (g) of the statutes is amended to read:

11 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
12 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (2r), (3),
13 and (3g) and passed through to shareholders.

14 SECTION ~~12.~~ 71.45 (2) (a) 10. of the statutes is amended to read:

15 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
16 computed under s. 71.47 (1dd) to (1dx) and (2r) and not passed through by a
17 partnership, limited liability company or tax-option corporation that has added that
18 amount to the partnership's, limited liability company's or tax-option corporation's
19 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
20 s. 71.47 (1), (3), (4), and (5).

21 SECTION ~~13.~~ 71.47 (2r) of the statutes is created to read:

22 71.47 (2r) EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this
23 subsection:

- 24 1. "Board" means the Wisconsin capital investment board.
25 2. "Claimant" means a person who files a claim under this subsection.

1 3. "Equity investment" means the purchase of an ownership interest.

2 4. "Venture capital fund" means a venture capital fund certified under s. 560.20
3 (2).

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

8 (c) 1. The total amount of the claims for all claimants under this subsection, s.
9 71.07 (2r), and s. 71.28 (2r) may not exceed \$5,000,000 in any fiscal year.

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

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

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

24 SECTION ~~14~~ 71.49 (1) (eop) of the statutes is created to read:

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

3 SECTION ~~15~~[#] 73.03 (35p) [✓] of the statutes is created to read:

4 73.03 (35p) To deny a portion of a credit claimed under s. 71.07 (2r), 71.28 (2r),
5 or 71.47 (2r), if granting the full amount claimed would violate a requirement under
6 s. 71.07 (2r) (c) 1. by bringing the total of the credits claimed under ss. 71.07 (2r),
7 71.28 (2r), and 71.47 (2r) over \$5,000,000 in any fiscal year.

8 SECTION ~~16~~[#] 73.03 (35r) [✓] of the statutes is created to read:

9 73.03 (35r) To deny a portion of a credit claimed under s. 71.07 (5d) if granting
10 the full amount claimed would violate a requirement under s. 71.07 (5d) (c) 1. by
11 bringing the total of the credits claimed under s. 71.07 (5d) over \$3,000,000 in any
12 fiscal year.

13 SECTION ~~17~~[#] 77.92 (4) [✓] of the statutes is amended to read:

14 77.92 (4) "Net business income", with respect to a partnership, means taxable
15 income as calculated under section 703 of the Internal Revenue Code; plus the items
16 of income and gain under section 702 of the Internal Revenue Code, including taxable
17 state and municipal bond interest and excluding nontaxable interest income or
18 dividend income from federal government obligations; minus the items of loss and
19 deduction under section 702 of the Internal Revenue Code, except items that are not
20 deductible under s. 71.21; plus guaranteed payments to partners under section 707
21 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
22 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (2r)~~, (3g), and (3s); and plus or minus,
23 as appropriate, transitional adjustments, depreciation differences, and basis
24 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
25 loss, and deductions from farming. "Net business income", with respect to a natural

1 person, estate, or trust, means profit from a trade or business for federal income tax
2 purposes and includes net income derived as an employee as defined in section 3121
3 (d) (3) of the Internal Revenue Code.

4 SECTION ~~18~~¹⁷ 560.20¹ of the statutes is created to read:

5 **560.20 Venture capital and seed capital investment program. (1)**

6 DEFINITIONS. In this section, "board" means the Wisconsin capital investment board.

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

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

13 2. Permit a venture capital fund to obtain a certification only if the venture
14 capital fund is a private seed and venture capital partnership or entity fund, the
15 venture capital fund maintains a physical presence in Wisconsin, and the venture
16 capital fund makes a commitment to consider making equity investments in
17 businesses located in Wisconsin.

18 3. Require an applicant for certification or a certified venture capital fund to
19 provide the board with any information the board determines is necessary to ensure
20 eligibility for certification and compliance with this paragraph and rules
21 promulgated under this paragraph.

22 (b) The board, in consultation with the department, shall promulgate rules
23 establishing a procedure for the board to certify community-based seed capital funds
24 as eligible to receive investments that qualify for the applicable tax credit under s.
25 71.07 (5d). The rules shall do all of the following:

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

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

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

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

18 (c) The board, in consultation with the department, shall promulgate rules
19 establishing a procedure for the board to certify businesses as eligible to receive
20 investments that qualify for the applicable tax credit under s. 71.07 (5d). The rules
21 shall do all of the following:

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

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

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

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

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

16 6. Permit a business to obtain a certification only if, in the taxable year in which
17 cash investments are first made in the business, it secures total equity financing,
18 debt that may be converted to equity at the option of the debt holder, or royalty
19 agreements equal to at least \$250,000.

20 6 7. 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

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.

15 **SECTION ~~19~~ Nonstatutory provisions.**

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

21 **SECTION ~~20~~ Initial applicability.**

22 (1) This act first applies to taxable years beginning on January 1 of the year
 23 in which this subsection takes effect, except that if this subsection takes effect after
 24 July 31 this act first applies to taxable years beginning on January 1 of the year
 25 following the year in which this subsection takes effect.

Create
auto
ref a

Create
auto
ref b

20

INSERT 14-20

1
2
3
4

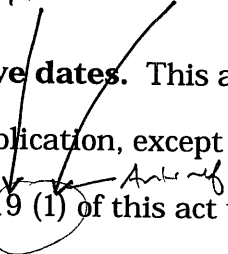
~~SECTION 21~~ **Effective dates.** This act takes effect on the first day of the 8th month beginning after publication, except as follows:

(1) RULES. SECTION 19 (1) of this act takes effect on the day after publication.

(END)

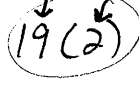
(2) STAFF, SECTION 19 (2) of this act takes effect on the day after publication.

A.R. a A.R. b



Autoref
E

A.R. a



INSERT 14-20

create auto
ref 6

↓ (CS)

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

Emery, Lynn

From: Komassa, Jennifer
Sent: Thursday, September 11, 2003 1:56 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3054/1 Topic: Wisconsin capital investment board

It has been requested by <Komassa, Jennifer> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3054/1 Topic: Wisconsin capital investment board

LRB



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

September 29, 2003

MEMORANDUM

To: Representative McCormick

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129

Robert J. Marchant, Legislative Attorney, (608) 261-4454

Subject: Technical Memorandum to **2003 AB 524** (LRB-3054/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

September 26, 2003

TO: Joseph Kreye
Marc Shovers
Robert Marchant
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on AB 524: Wisconsin Capital Investment Board

Both credits in the bill contain yearly caps on the amount of credit that may be claimed, but the bill does not provide guidance as to how that limit should be enforced. If the credit is given to the first claimants that file, then taxpayers with earlier fiscal years or who file returns earlier will receive the credit. If it is prorated, no taxpayer will receive the full credit and all claimants will have to wait until all claims are filed to know how much credit they will receive. One solution may be to have the proposed Wisconsin Capital Investment Board allocate a share of the credits to each of the funds or businesses it certifies and to require that the credits for any fund or business be allocated to investors in proportion to their ownership interests.

With both credits, the order of computation allows them to be offset against the alternative minimum tax. However, other language provides that the credit may be "claimed against taxes due under s. 71.02." This should be changed to allow the credit against either "taxes due under s.71.02 and 71.08" or taxes due under Chapter 71. Similarly, because the credits are claimed after the alternative minimum tax, they should be included in the list of credits in sec. 71.08(1)(a). If the credits are not listed, the alternative minimum tax cannot be computed until the amount of the credit is known, and the amount of the credit that can be claimed cannot be determined until the minimum tax is known.

To clarify that a taxpayer may be only one claimant for all ownership interests under the Equity Investment in Venture Capital Fund Credit, the Department recommends that the definition of claimant be changed to state that it means "an individual who is one or more of the following: a sole proprietor, a partner, a member of a limited liability company, or a shareholder of a tax-option corporation."

It is unclear when the tax credits first apply. The act takes effect on the first day of the 8th month beginning after publication, it is unclear if the credits are intended to first apply to the taxable year in which the first day of the 8th month after publication occurs.

If you have questions regarding this technical memorandum, please contact Pam Walgren at 266-7817.