

2003 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB249)

Received: 11/13/2003

Received By: **rmarchan**

Wanted: **Today**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **jeremy**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Econ. Development - bus. dev.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

SA (CAPCO changes) to SSA-1 (CAPCO changes) to SB-249 (CAPCO changes)

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>
/?	rmarchan 11/13/2003	wjackson 11/13/2003		_____			
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FE Sent For:

<END>

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/?	rmarchan						
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AWJ 11/13

Handwritten marks: large scribbles over 'Typed' and 'Proofed' columns, and numbers '11', '3', '3' below.

<END>

FE Sent For:

Marchant, Robert

From: Rodriguez, Charlene
Sent: Wednesday, November 12, 2003 6:50 PM
To: Olver, Aaron; Helgerson, Jason; Casper, Tim - Office of Governor Jim Doyle; 'tkearney@commerce.state.wi.us'; Gates-Hendrix, Sherrie
Cc: Shepherd, Jeremy; Marchant, Robert; Shanovich, Ron; Kremer, Joe; Mcginnis, Cindy; Kostelic, Jeff; Kostelic2, Jeff
Subject: Requested changes to AB 531/SB 249
Importance: High

Friends,

Attached are requested changes from the CAPCO's. These would be made on the floor of the Senate in one amendment, which would include Revenue's changes as well. The document is a little lengthy because they offer an explanation after every request. The only substantive change is the limit on the return to the insurance company (275 basis points). I had a discussion Todd earlier this morning on that issue (the basis points change) and he said it was ok to go ahead with including it. The balance of the changes are either minor technical amendments, changes that benefit the intent of the law, statutory references, and minor typos.

For your information, it appears the Senate will be holding a hearing on either this bill or SB 261 in committee tomorrow and then it will be on the Senate floor on Friday. Jeremy is trying to find out what is exactly going on, as we speak. At this time, the Speaker in the Assembly will NOT be scheduling the bill on the floor until he and we have another meeting with some of our concerned members. We will keep you updated as events occur.

I reiterated to Aaron that we do not want, by any means, to jeopardize our good faith bipartisan efforts by continually asking for changes. As a result, I am not going to send any of these to the LRB until every agency and legislator involved are ok with some or all of these. [Revenue's changes are over at the LRB being drafted.] Again, we do NOT want to strain or jeopardize our successful relationship.

Should you have any questions, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,

Char

Charlene Rodriguez
Research Assistant
State Representative David Ward
37th Assembly District
State Capitol, Room 321E
Madison, WI 53703
tell: 608-266-3791 (direct)
fax: 608-282-3637
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Wisconsin
Requested Changes 1:

Wisconsin Suggested Changes to Bill that went to Joint Finance Committee

Page 11, delete lines 12 and 13 and replace with the following: 76.635 (2)(a) An insurer that makes a certified capital investment prior to the effective date of this subdivision [revisor inserts date] may credit against the fees due under s.

Page 11, delete lines 20 and 21 and replace with the following: 76.635 (2)(b) An insurer that makes a certified capital investment after the effective date of this subdivision [revisor inserts date] may credit against the fees due under s. 76.60,

Reason for Change: The two changes suggested above are mainly for clarity. The sections dealing with the credits are, for obvious reasons, extremely critical to the investors, and clarity is a must. It is unclear where the June 30, 2005 date came from, since a few lines down, the language says the credit can first be used in the "year of investment." If a delay in the initial usage is needed, other language will be needed not only in these sections, but in all of the new tax sections that were added.

Page 14, after line 11, insert the following:

560.30(9)(e) of the statutes is created to read:

560.30(9)(e) The debt instrument may not result in a yield to the certified investor that is, when the amount and timing of the receipt of the certified capital company credits by such certified investor is taken into account, greater than 275 basis points above the yield at the time of the qualified debt instrument's issuance on the U.S. treasury security with a modified duration closest to the modified duration of the qualified debt instrument.

Reason for Change: In funding its investment, an insurance company can purchase either an equity security, a qualified debt instrument or both. Since a CAPCO's payments on its debt securities are not restricted, but distributions to its equity holders cannot be made until 100% of the funds raised from insurance companies has been invested in qualified Wisconsin businesses, it is important that the state be able to prevent a CAPCO from in any way providing its investors with equity returns under the guise of payments on a debt instrument, prior to meeting the 100% investment requirement. These objectives are served by the specifics of the qualified debt instrument definition. A qualified debt instrument must have a maturity date at least five years after the date of its issuance, a repayment schedule no faster than a level principal amortization over five years, no equity features and an interest rate no higher than 2.75% over the then current yield on a U.S. treasury security with a similar duration. These limitations are designed to work in tandem to ensure that the debt can still provide a market rate return without having what are in reality equity features. For example, a debt instrument could be issued with a 50% annual interest rate. This instrument, although structured as a debt instrument, would provide what is in reality an equity-type return to the investor.

Page 14, line 17, insert "per investment pool" at the end of the line

Reason for Change: This change is needed to insure that the limitation on the expenses of forming and syndicating a CAPCO is applied on an investment pool by investment pool basis. For example, if a CAPCO that raised certified capital in the first Wisconsin allocation paid \$500,000 for such costs, it would be limited to \$250,000 in connection with the next allocation. We believe the intent was for the limitation to apply to each round of fund raising.

Page 14, delete lines 20 and 21 and replace with "certified capital company's total certified capital."

Reason for Change: The management fee is capped at 2.5% of certified capital. There should be no ambiguity with this. Ambiguity makes compliance with the requirement harder to establish. For instance, under the new language a CAPCO will be forced to justify what their costs and expenses are. The 2.5% number is standard in the venture capital industry and should not need further justification.

Page 15, delete lines 3-5

Reason for Change: This new bill reflects a policy determination that qualified distributions are strictly limited. Any CAPCO that wishes to pursue other programs can do so using its maximum 2.5% management fee.

Page 15, after line 5 add the following: 560.30(10)(e) of the statutes is created to read:

560.30 (10) (f) Any costs and expenses authorized by Section 560.34(1e) that are incurred by the certified capital company in establishing defeasance portfolios or purchasing a guaranty, indemnity, bond, insurance policy or other payment obligation or combination thereof for the benefit of its certified investors.

Reason for Change: This new section is needed to tie the limitations of Section 560.34(1e) to the definition of "qualified distribution." This is needed as a result of the new limitation on organizational and syndication costs of \$750,000.

Page 16, delete lines 1-4

Reason for Change: The amendment proposed in these lines risks turning the certification process into a RFP process. While the department should be encouraged to perform an extensive due diligence check on the backgrounds, experience and investment strategy of all applicants, if an applicant satisfies all of the statutory criteria, it should be certified. If the department is given total discretion not to certify applicants who meet the criteria, the process could be turned into a political football, which would eliminate the free market aspect of the program that is so attractive.

Page 16, line 11, add "of its" after "until all"

Reason for Change: Simple clarification to ensure that the requirement only applies to investment pools managed by the particular CAPCO.

✓ Page 16, line 18, add "or similar foreign laws" after "15 USC 78o(d)"

Reason for Change: In today's global marketplace, there could be companies involved in the process that are publicly-traded on a foreign market or exchange but not a US exchange. These types of entities deserve the same latitude in reporting their ownership.

Page 17, delete lines 22-24 and replace with the following:

560.32(2)(c)2. No person, on an aggregate basis with all of its affiliates, shall be allowed to request that the department certify an investment under par. (b) in excess of the greater

Reason for Change: The rationale for the per investor limitation is to prohibit the larger insurance companies from seeking such large allocations so as to monopolize the allocation process. The rule currently says that an investor cannot be allocated more than a certain amount. If the investor cannot be legally allocated more than a certain amount, is it logical that the investor could ask for a larger amount to be certified? This doesn't seem too logical. This change would prohibit an investor from asking for more than the maximum amount.

Page 18, lines 6-12, restore deleted language; delete "prorate" in line 6 and delete phrase "among eligible applicants" in line 12

Reason for Change: We don't understand why the allocation process was deleted. Basically, the process works on a first come, first serve basis. The department sets a first date for allocations, and all requests received on a certain date are treated as having been received simultaneously. We suggest that this process be continued.

✓ Page 25, line 4, insert "Capital" after "Certified"

Reason for Change: Conforming the title to defined terms used in the statute.

✓ Page 25, line 10, add an "s" to the word affiliate so that it reads... "or affiliates of such a certified investor..."

Page 25, line 13: change "25" to "30" and add "the certified capital investments in" immediately prior to "any particular"

Done
for
revisions

Reason for Change: We suggest that the amount that can be spent on defeasance and insurance be increased to 30% of certified capital. The smaller the number, the harder it will be for the program to actually attract investors. Additionally, setting the number too low risks eliminating all but the best-capitalized operators. This would hurt new and smaller entrants to the program.

Page 25, line 14, add at the end of the line the following: "This provision shall in no way prevent a certified capital company from expending non-certified capital that has been invested into the certified capital company on any of the items set forth in par. (a). In addition, this provision shall in no way limit the amount of non-cash compensation, including the grant of equity securities or equity participations to any person, including the providers of any of the items set forth in par. (a), subject, in each case, to the limitations set forth in Section 560.32(3)(a)."

Reason for Change: In order to meet the demands of its investors and the new limitations on how certified capital may be spent, a CAPCO is likely to need additional, non-certified equity capital. It must be crystal clear that these non-certified capital funds may be used for any purposes, including defeasance and insurance costs. Additionally, the CAPCO should be allowed to make non-cash payments (equity grants, etc.) to insurance providers; provided the limitations on insurance company ownership set forth elsewhere in the statute are not breached.

Page 28, delete lines 9 and 10 and replace with the following: "of an insurance company any such entity."

Reason for Change: The change currently proposed would limit to the ownership and control section only to investors. It is our opinion that the limitation should remain to all persons who are potential users of the tax credits. Since the credits are transferable, there could be situations where a control entity is not an actual investor, but receives the full benefits of the credits generated by someone else's investment. We see no reason to dilute the self-dealing protections currently embedded in the statute.

Page 32, line 4: delete and replace with the following: "investment pool and, with respect to investment pools created with certified capital investments certified after [insert date of bill], at least 60 percent of the total amount of such investments"

Reason for Change: This is to make it clear that the 60% equity requirement only applies to new funds raised after the date of these amendments and not to funds raised under the earlier allocation.

Page 32, line 14 add "or an affiliate thereof" after "certified capital company"

Reason for Change: Most side-by-side funds will be raised in a newly-formed partnerships or LLCs that are managed by the same manager as the CAPCO. Since the department will have approval over what qualifies, it will have the ability to ensure that the fund is actually a co-managed fund.

Unnecessary
(a) Does not apply to non-cert. cap.

(a) only applies to approved money



✓
w/ dept. approval
see p 8 32

Page 33, line 10: delete and insert: "a certified capital company or any investment pool only"

Reason for Change: These two suggestions just make it clear (as is mentioned elsewhere in the law) that a CAPCO may voluntarily decertify an investment pool on a stand-alone basis as well as an entire CAPCO.

Page 33, line 13: add at the end: "or investment pool, as applicable."

**Page 35, delete lines 1-3: This would delay the credit usage to 2005, and worse yet, only those credits taken under Section 76.635. If that is the intent of the bill, there needs to be additional language changes in the earlier sections of the bill, because as currently drafted, they are inconsistent.

W/line.
Sub 200 (1)

We suggest deleting these and going with immediate implementation, however, if another intent is desired, we can suggest additional language.

+ Change 10 to 15



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa1818/1
RJM:.....

Now

WJ
PARK

DRAFT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE AMENDMENT,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 249

1 At the locations indicated, amend the substitute amendment as follows:

2 [✓]1. Page 14, line 11: after that line insert:

3 "SECTION 22m. 560.30 (9) (e) [✓]of the statutes is created to read:

4 560.30 (9) (e) The debt instrument does not result in a yield to the certified
5 investor that is, when the amount and timing of the receipt of a certified capital
6 company tax credit by the certified investor is taken into account, greater than 2.75 percent
7 above the yield at the time of the qualified debt instrument's issuance on the U.S.
8 treasury security with a modified duration closest to the modified duration of the
9 qualified debt instrument."

10 [✓]2. Page 15, line 5: after that line insert:

11 "SECTION 28m. 560.30 (10) (f) of the statutes is created to read:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1818/?dn

RJM:|:....

WJ

Senator Kanavas:

Attached is the requested amendment to the substitute amendment to SB-249. I did not change the word "affiliate" to the word "affiliates" on page 25, line 10, because to do so would have been ungrammatical. The current wording accomplishes what I understand to be your intent. Please feel free to call if you have any questions.

Robert J. Marchant
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1818/1dn
RJM:wlj:rs

November 13, 2003

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