

2003 DRAFTING REQUEST

Senate Amendment (SA-SB44)

Received: **04/25/2003**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Shanovich (DH)**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us** ✓

Pre Topic:

LFB:.....Shanovich (DH) -

Topic:

CAPCO administration lapse

Instructions:

LFB paper 219, alternative 1.

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 04/28/2003	csicilia 04/28/2003		_____			
/1	rmarchan 05/19/2003	jdyer 05/20/2003	chaskett 04/28/2003	_____	mbarman 04/28/2003		
/2	rmarchan	csicilia	jfrantze	_____	sbasford		

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	06/09/2003	06/09/2003	05/20/2003	_____	05/20/2003		
/3			pgreensl	_____	mbarman		
			06/09/2003	_____	06/09/2003		

FE Sent For:

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/2			jfrantze	<u>P8713</u>	sbasford		

13 cis 6/9 03 6/9 PG

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/1		25/19 JLD	chaskett 04/28/2003		mbarman 04/28/2003		
			5/20	Self 5/20			

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/?	rmarchan	1 cjs 4/28 03	1 cph 4/26	set 4/26			

FE Sent For:

<END>



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 24, 2003

Joint Committee on Finance

Paper #219

Certified Capital Companies Administration Lapse (Commerce)

CURRENT LAW

The Certified Capital Companies (CAPCO) program was created by 1997 Wisconsin Act 215. Under the program, an insurance premiums tax credit is provided for insurance company investments in certified capital companies. The certified capital companies are required to use these funds to provide capital to certain small businesses. If the certified capital companies fail to make the required investments in these small businesses, the insurance companies must repay all or part of the premiums tax credits. Commerce administers the CAPCO program and certified capital companies must pay an application fee of \$7,500 and annual certification fee of \$5,000 to the Department. Fees are placed in a program revenue appropriation for administrative expenses.

GOVERNOR

No provision.

DISCUSSION POINTS

1. The CAPCO program provides a credit against insurance premiums taxes due equal to the lesser of 10% of a certified capital investment or the amount by which the sum of the claimant's certified capital investments and qualified investments exceeds the claimant's qualified investments in the tax year prior to the year in which the credit was first claimed. The credit can be claimed for 10 years, beginning with the year of investment. Unused credit amounts can be carried forward to offset future premiums tax liabilities until the unused credit amounts are entirely offset against premiums tax liabilities. An insurer may sell credits to another insurer if the seller notifies the Office of the Commissioner of Insurance (OCI) with a copy of the transfer papers.

2. The maximum amount of total certified capital investments that can be made is \$50 million. Therefore, the maximum amount of insurance premiums tax credits that can be claimed in

one year is \$5 million, and the maximum amount of total credits that can be claimed over 10 years is \$50 million.

3. In October, 1999, Commerce certified \$50 million in certified capital investments in three venture capital firms. A total of thirty-three insurance companies made the \$50 million in capital investments in these certified capital companies. The three certified firms and their allocations of certified investments are as follows: (a) Advantage Capital Wisconsin Partners I, Limited Partnership, Madison, \$16.6 million; (b) Banc One Stonehenge Capital Fund Wisconsin, LLC, Milwaukee, \$16.6 million; and (c) Wilshire Investors, LLC, Mequon, \$16.6 million. As of December, 2002, the three certified capital companies had made total qualified investments as follows: (a) Advantage Capital Wisconsin Partners I, Limited Partnership - \$7.6 million in six investments; (b) Banc One Stonehenge Capital Fund Wisconsin, LLC - \$5.1 million in six investments; and (c) Wilshire Investors, LLC - \$5.2 million in four investments. The sixteen qualified investments were made in 14 qualified businesses. Two businesses received investments from two CAPCOs.

4. Act 215 provided Commerce with a continuing, program revenue, appropriation and 2.0 PR positions to administer the CAPCO program. It was estimated that funding for the positions and related expenses would be \$100,700. The Department indicated that the positions would have a number of responsibilities related to the program including: (a) certifying capital companies; (b) certifying capital investments; (c) certifying qualified businesses; (d) reviewing annual reports and financial statements; (e) making written determinations; (f) conducting compliance reviews; and (g) producing certain written notices.

5. The administrative positions were to be funded with registration and annual certification fees. However, the fee revenues were not sufficient to fund either position. As a result, the positions remained vacant between 1998 and 2001. Since there are three certified capital companies authorized to make certified capital investments, total annual revenues for the appropriation are the three annual certification fees, or \$15,000. This is not sufficient ongoing revenue to fund either position. Consequently, the two vacant positions funded from the CAPCO administration appropriation were eliminated in the 2001-03 budget (2001 Wisconsin Act 16).

6. The CAPCO program is currently administered through the Bureau of Business Finance and is absorbed by approximately 0.33 position which is funded with GPR. Current administrative activities include: (a) certifying certified capital companies; (b) certifying certified capital investments; (c) issuing business determinations; (d) receiving and reviewing annual reports; (d) making written determinations regarding distributions from certified capital companies; (f) determining and providing written notice of disqualification of an investment; (g) conducting compliance reviews of CAPCOS; (h) ensuring investment schedules have been met; and (i) responding to inquiries.

7. The CAPCO administration appropriation does not have expenditure authority but, since it is a continuing appropriation, such authority is not technically necessary for Commerce to spend the appropriation monies on CAPCO-related expenses. Historically, the Department has

charged some expenses to the appropriation. Expenditures by fiscal year are: (a) 1999 -- \$4,100; (b) 2000 -- \$2,000; (c) 2001 -- \$12,100; and (d) 2002 -- \$0. Through February 2003, less than \$200 in expenditures had been charged to the appropriation. Based on current estimates of future expenditures and revenues, the CAPCO administration appropriation is projected to have a June 30, 2005, balance of \$113,400.

8. Since it was enacted in 1998, the CAPCO program has been administered primarily through existing positions and funding. The positions originally provided for administration were deleted and the year-end balance in the administration appropriation has increased each year. Effectively, the state is administering the program primarily with general fund revenues and positions. Since the funding in the CAPCO administration appropriation is directly intended for this purpose it is justifiable to transfer the year-end balance in the appropriation to the general fund to offset GPR expenditures incurred by Commerce for administering the program. This would increase GPR-Earned by \$98,400 in 2003-04 and \$15,000 in 2004-05. If the Department determined that funding or positions supported by the appropriation were necessary to meet future workloads, Commerce could request additional resources under s. 16.515/16.505 of the statutes.

9. The Department has used CAPCO fees to fund related administrative costs and additional costs could be incurred in future years. Commerce indicates that additional expenditures could result from future program changes. In addition, it might be necessary to design and develop a new database to enable the Department to provide more accurate and timely accounting of CAPCO investments and accounting requirements. As a result, it is argued, funding should remain available to offset potential future expenditures.

10. As passed by the Legislature, the 2001-03 budget included a provision that would have required the year-end balance in the CAPCO administration appropriation to lapse to the general fund. The Governor item-vetoed this provision. In his veto message, the Governor indicated that the lapse would limit the Department's resources for administering the CAPCO program

ALTERNATIVES

1. Require that the year-end balance in the CAPCO administration appropriation lapse to the general fund as GPR-Earned.

<u>Alternative 1</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	\$113,400

2. Maintain current law.

end of '04?
end of '05?

Prepared by: Ron Shanovich



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBb0103/7

RJM:.....

PMNR

DLR

LFB:.....Shanovich – CAPCO administration lapse

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 44

1 At the locations indicated, amend the bill as follows:

2 1. Page 1115, line 15: after that line insert:

3 “~~(c)~~ *Additional lapse; certified capital companies.* Subject to par (b), on June
4 30, 2005, the secretary of administration shall lapse to the general fund the
5 unencumbered balance in the appropriation account under section 20.143 (1) (hm)
6 of the statutes.”

paragraph

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0103/?dn
RJM:.....

Ron Shanovich:

Generally, the state's authority to regulate a particular occupation or business includes the authority to charge regulated individuals or entities a reasonable fee to defray the cost of regulation, but only to the extent necessary for that purpose, and does not include the authority to impose a fee or tax for the purpose of raising revenue. See *Wis. Tel. Co. v. Public Service Comm.*, 206 Wis. 589 (1932). In determining the validity of such a fee imposed by a state, the burden is on the state to demonstrate that the fee is necessary to cover the reasonable costs of the regulatory system and that the fee is used for no other purpose than to meet those costs. *Milw. Mobilization for Survival v. Milw. County Park Comm.*, 477 F. Supp. 1210, 1220 (D.C. Wis., 1979). Although the Wisconsin Supreme Court has recently expressed great deference to the legislature's decisions regarding taxing and spending, see *Flynn v. Department of Administration*, 216 Wis. 2d 521 (1998) (upholding lapse of court automation fees to the general fund), this draft may be susceptible to constitutional challenge because it lapses regulatory fees (e.g., the certification fee charged under s. 560.35 (4), stats.) to the general fund. Obviously, the governor also included similar lapses of program revenue in the budget bill. ✓

← apos.

Please feel free to call if you have any questions regarding this issue.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0103/1dn
RJM:cjs:cph

April 28, 2003

Ron Shanovich:

Generally, the state's authority to regulate a particular occupation or business includes the authority to charge regulated individuals or entities a reasonable fee to defray the cost of regulation, but only to the extent necessary for that purpose, and does not include the authority to impose a fee or tax for the purpose of raising revenue. See *Wis. Tel. Co. v. Public Service Comm.*, 206 Wis. 589 (1932). In determining the validity of such a fee imposed by a state, the burden is on the state to demonstrate that the fee is necessary to cover the reasonable costs of the regulatory system and that the fee is used for no other purpose than to meet those costs. *Milw. Mobilization for Survival v. Milw. County Park Comm.*, 477 F. Supp. 1210, 1220 (D.C. Wis., 1979). Although the Wisconsin Supreme Court has recently expressed great deference to the legislature's decisions regarding taxing and spending, see *Flynn v. Department of Administration*, 216 Wis. 2d 521 (1998) (upholding lapse of court automation fees to the general fund), this draft may be susceptible to constitutional challenge because it lapses regulatory fees (e.g., the certification fee charged under s. 560.35 (4), stats.) to the general fund. Obviously, the governor also included similar lapses of program revenue in the budget bill.

Please feel free to call if you have any questions regarding this issue.

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Pme NR

LFB:.....Shanovich (DH) - CAPCO administration lapse

FOR 2003-05 BUDGET -- NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 44

2004[✓] and June 30,

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1115, line 15: after that line insert:

3 "(cq) *Additional lapse; certified capital companies.* Subject to paragraph (b),
4 on June 30, 2005, the secretary of administration shall lapse to the general fund the
5 unencumbered balance in the appropriation account under section 20.143 (1) (hm)
6 of the statutes."

7 (END)

Stays

(Handwritten signature)

LFB:.....Shanovich (DH) - CAPCO administration lapse

FOR 2003-05 BUDGET -- NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 44

*IWS424
1-2*

1 At the locations indicated, amend the bill as follows:

2

1. Page ~~115~~³³⁵, line ~~17~~¹⁴: after that line insert:

3

4

5

6

7

(Handwritten box around text)
“(cq) *Additional lapse; certified capital companies.* Subject to paragraph (b), on June 30, 2004, and June 30, 2005, the secretary of administration shall lapse to the general fund the unencumbered balance in the appropriation account under section 20.143 (1) (hm) of the statutes.”.

(END)

292m



Section 20.143 (1) (hm) of the statutes is amended to read:

20.143 (1) (hm) *Certified capital companies.* All moneys received under subch. II of ch. 560 for the cost of administering subch. II of ch. 560.

History: 1979 c. 361; 1981 c. 20, 21, 349; 1983 a. 27, 83, 192, 381; 1985 a. 29 ss. 169 to 204, 3202 (14); 1985 a. 120, 332, 334; 1987 a. 27, 109, 317, 318, 399, 403; 1989 a. 31, 185, 237, 317, 325, 335, 336, 342, 359; 1991 a. 39, 259, 261, 269, 315; 1993 a. 5, 16, 75, 110, 232, 437; 1995 a. 27 ss. 483, 505 to 517, 608s, 609g, 609j, 964, 965, 977, 987, 988, 990 to 993, 1080b, 1085b, 1086b, 9116 (5); 1995 a. 116, 119, 216, 227; 1997 a. 9, 27, 35, 215, 237, 252, 310; 1999 a. 9, 84, 106, 185, 186; 2001 a. 16, 109.

Notwithstanding s. 20.001 (3)(c),
at the end of each fiscal year the
unencumbered balance in this appropriation
account shall lapse to the general fund.

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plan

scored



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBb0103/3
RJM:cjs&jld:pg

LFB:.....Shanovich (DH) – CAPCO administration lapse

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION
SENATE AMENDMENT ,
TO 2003 SENATE BILL 44

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 335, line 14: after that line insert:

3 “SECTION 292m. 20.143 (1) (hm) of the statutes is amended to read:

4 20.143 (1) (hm) *Certified capital companies*. All moneys received under subch.
5 II of ch. 560 for the cost of administering subch. II of ch. 560. Notwithstanding s.
6 20.001 (3) (c), at the end of each fiscal year the unencumbered balance in this
7 appropriation account shall lapse to the general fund.”.

8 (END)