

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

LRB-3439/P3dn  
TKK:kjf:rs

December 3, 2009

Representative Barca:

This draft incorporates changes proposed by Wayman Lawrence in an e-mail to your office, with an attached memorandum, dated November 6, 2009. The requested changes, together with any deviations from the proposed language, are discussed below.

1. Certification process. At the request of Mr. Lawrence, I modified the certification process in proposed s. 560.2065 (2) to eliminate the language requiring a person to annually apply for certification with the Department of Commerce (Commerce).

Mr. Lawrence also suggested on page 3 of his memorandum that the language in proposed s. 560.2065 (2) be modified to grant to Commerce the authority to:

“issue certifications to *qualified community development entities* specifying the amount of qualified equity investments...that are eligible for...tax credit under this section and [proposed] sections 71.07 (5n), 71.28 (5n) and 71.47 (5n).”  
(emphasis supplied by drafter)

This proposed language would require Commerce to certify the entities in which a person who seeks to receive tax credits may invest. It is not clear from the drafting instructions why Commerce should be involved in certifying a qualified community development entity. Whether an entity in which a person seeks to make a “qualified equity investment” in a “qualified community development entity” is strictly a function of how those terms are defined by federal law and, by incorporation by reference, in proposed s. 560.2005 (1) (d) and (c), respectively.

The certification process established in this bill requires Commerce to determine whether a person has made a qualified equity investment and whether that person is then eligible to receive tax credits under Chapters 71 and 76. Commerce makes similar determinations in other tax credit programs established under Chapter 560. (See, for example, ss. 560.2055 (2), 560.701, and 560.797 (4), stats.). In the absence of a certification process for the person seeking to claim a tax credit from the Department of Revenue, neither Commerce nor the Department of Revenue would have a way to determine whether in fact the person has made a qualified equity investment such that the person may legitimately claim the tax credit.

The bill, as drafted, does require Commerce to determine whether the person has made a “qualified equity investment” in a “qualified community development entity.” The

bill also requires Commerce to determine the amount of tax credits a person who has made a “qualified equity investment” may claim in each taxable year in which a credit allowance date occurs, and to annually report that amount to the Department of Revenue. Finally, Commerce must annually determine whether the person claiming the tax credit is a holder of a “qualified equity investment” in the tax year in which the person is claiming the tax credit.

Please confirm that this certification structure accomplishes your intent.

2. Limit on Tax Benefits. Mr. Lawrence requested that I eliminate the annual \$15,000,000 limit on tax credits available under proposed s. 560.2056 (3).

Note that, at this point, there is a placeholder for a limit, but no limit on the absolute value of tax credits available to all persons certified by Commerce under the bill. Nor is there a limit on the amount of tax credits that any one person may claim under the program. Although it is not essential that you impose such limits, whether limits are established and the value of any such limits will need to be resolved before we can prepare an introducible draft.

3. Modify the duties of the department in proposed s. 560.2065 (4).

*a. Administrative rule-making.*

Among other instructions, Mr. Lawrence requested that Commerce promulgate rules to administer the new markets tax credit program no later than 60 days after the effective date of the bill. This is an extremely expedited time period; generally, the rule-making process, including drafting of the rule, review by Legislative Council staff, public hearing on the proposed rule, any revisions to the rule, and approval by the legislature, takes at least eight months.

This bill does expedite the rule-making process by requiring the department to submit proposed rules to the Legislative Council staff by the first day of the fourth month after the effective date of the bill, and to promulgate emergency rules to go into effect before the rules required under the bill have been completed. Okay?

*b. Revocation of certification.*

Because Commerce is not required in this draft to certify the “qualified community development entity” and, by extension, the “qualified equity investments” made in that entity, I did not include in this draft the language on page 4 of Mr. Lawrence’s memorandum governing the conditions under which Commerce would revoke “a certification with respect to a qualified equity investment” (proposed s. 560.2065 (4) (b) 5. a. and b.).

Please contact me with any questions or if you wish to make any changes to the draft. I look forward to working with you on the next draft.

Tracy K. Kuczenski  
Legislative Attorney  
Phone: (608) 266-9867  
E-mail: [tracy.kuczenski@legis.wisconsin.gov](mailto:tracy.kuczenski@legis.wisconsin.gov)