

## 2011 DRAFTING REQUEST

### Bill

Received: 03/01/2011

Received By: mgallagh

Wanted: As time permits

Companion to LRB:

For: Governor 266-7329

By/Representing: Jonathan Hoechst

May Contact:

Drafter: mgallagh

Subject: Econ. Development - bus. dev.

Addl. Drafters: jkreye

Extra Copies:

Submit via email: YES

Requester's email: brian.quinn@wisconsin.gov

Carbon copy (CC:) to: michael.gallagher@legis.wisconsin.gov  
jonathan.hoechst@wisconsin.gov

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### Pre Topic:

No specific pre topic given

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### Topic:

Creation of rapid growth fund certification program

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### Instructions:

See attached

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### Drafting History:

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/P2			mduchek	_____	lparisi		State

sent to  
Senator Hopper's  
office per  
Brian Quinn

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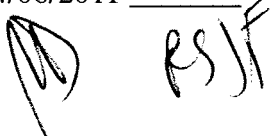
See attached

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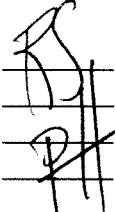
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## **Creation**

Create under WEDC the Wisconsin Venture Capital Authority (WVCA)

The WVCA will have joint oversight of the Rapid Growth Fund Program as well as the fund of funds program enumerated below.

## **Organization**

A seven member board that would be comprised of:

WEDC CEO

WHEDA Executive Director

Appointee of the Assembly Speaker

Appointee of the Senate Majority Leader

3 citizen appointees by the Governor (at least 2 should have venture capital or investment banking experience)

Appointees would have staggered terms.

The Governor would appoint the chairman of the board.

Within WVCA, create the On Wisconsin Fund (OWF), a venture capital fund of funds. The board would hire an investment manager with demonstrated expertise in the venture capital industry to manage the OWF. The board would consider, among other criteria, the manager's experience, quality of management performance, investment philosophy and process, and prior investment fund results. The board will also hire an executive director.

## **Authorization**

Authorize WVCA to borrow up to \$200 million in funds from lenders for the OWF.

Payments will be secured by the assets of WVCA. WVCA may authorize refundable tax credits that may be claimed by lenders for the difference between scheduled debt service payments and what WVCA is financially able to pay. In order to claim a credit, the lenders must certify their losses with WVCA. WVCA must provide a listing of those eligible for the credits to the Department of Revenue as provide information about the use of the contingent credits in its annual report stating the amount of the credits authorized as well as the likelihood of their continued use. (See <http://codes.ohio.gov/orc/150> for similar language)

Borrowing and investing by WVCA must be structured so as to insure that no contingent tax credits would be utilized in the first four years and that principal, interest, or interest equivalent payments due in any fiscal year will not exceed \$20 million

## **Investment Criteria**

OWF shall establish, within ninety days of its creation, a written investment policy that would include the following components. The investment policy would be reviewed by the board of WVCA.

OWF would be obligated to invest its available funds within its first four years.

OWF would be allowed to invest only in venture capital firms certified by WVCA as being qualified eligible for investment.

Eligibility would be determined by:

- The firm's experience in venture capital investing or other experience that would make them qualified for venture capital investment.
- The investment management performance of the firm.
- The firm's commitment to Wisconsin-based investments.
- The firm's commitment to seed and early-stage investments.
- Special consideration would be given to firms located in Wisconsin or firms from out of state that would commit to locating and maintaining an office in Wisconsin as a condition of their location.

Not more than 20% of the funds of OWF may be committed to a single firm at the time of investment.

Venture capital firms receiving OWF funds would be obligated to commit an amount equal to the amount received from OWF to qualified Wisconsin businesses. Investments in any venture capital firm may not exceed 50% of the total capital raised by that venture capital firm.

Businesses receiving investment from recipient venture capital funds must:

- Be headquartered in Wisconsin
- Have at least 50% of their employee count located in Wisconsin
- Investments in businesses must be used for research and development, market launch and other activities that are expected to grow the business and employment in Wisconsin.

No investments may be made directly in individual qualifying Wisconsin businesses.

WVCA may negotiate any and all terms and conditions for its investments, including the "clawback" of management fees and other provisions to insure the proper use of its funds.

### **Incremental Withholding Tax Payments**

In this section, "base year taxation" means the level of withholding tax revenue paid by the recipient firm in the year prior to receiving investment.

WVCA, in consultation with the Department of Revenue, shall establish the base year taxation for all businesses receiving investment from venture capital funds that are recipients of funds distributed by OWF.

For a period of 15 years from the base year, the department of revenue shall transfer 50 percent of all withholding taxes received above the base year taxation to WVCA. The other 50 percent would remain in the general fund. Create a sum sufficient appropriation in Miscellaneous Appropriations for the transfer of these funds, as certified by the Department of Revenue, to WVCA.

Estimated payments would be made by the Department of Revenue on quarterly basis with reconciliation to occur annually.

All incremental withholding taxes received by WVCA must be used to either meet obligations of WVCA or to make additional investments.

**Note:** It is possible that other modifications will need to be made to this provision to insure that it does not violate full faith and credit provisions relating to general obligation bonds.

### **Annual Reporting Requirements**

Beginning with the year after the creation of WVCA, require the submission of an annual report that would detail:

1. The investment policy of OWF
2. An assessment of the program's achievement including detailed information on the internal rate of return of the fund
3. The value of tax credits certified
4. The aggregate tax increments received
5. The financial status of the OWF
6. The names of venture capital firms receiving investment, the locations of those firms, the amount received by each fund, the enterprises in which those funds have invested, and the locations of the recipient enterprises' principal offices
7. Any recommendation by the board of WVCA on how to improve the program
8. The opinion of an independent auditor

## Gallagher, Michael

---

**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Monday, March 07, 2011 9:46 AM  
**To:** Gallagher, Michael  
**Subject:** RE: Fund of Funds Drafting Instructions  
**Attachments:** Drafting Instructions for Fund of Funds 3-7-2011.doc  
Mike,

Here are some slightly revised drafting instructions.

The principal changes are that the Governor would be able to appoint the chairman of the board, the WCA would have oversight of both this fund of funds as well as the RGF program, and the fund of funds would be able to commit up to 20% of its funds to a single firm.

-Brian

---

**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Friday, March 04, 2011 2:42 PM  
**To:** Quinn, Brian D - DOA  
**Subject:** RE: Fund of Funds Drafting Instructions

Thanks Brian. I will certainly let you know if I have any questions.

Mike

**Michael P. Gallagher**  
Legislative Attorney  
Legislative Reference Bureau  
(608) 267-7511  
michael.gallagher@legis.wisconsin.gov

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**From:** Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]  
**Sent:** Friday, March 04, 2011 2:03 PM  
**To:** Gallagher, Michael  
**Subject:** Fund of Funds Drafting Instructions

Michael,

See the attached drafting instructions for the creation of a fund of funds and venture capital authority. Let me know what questions you have. It is possible that this proposal as well as the Rapid Growth Fund proposal submitted separately will be combined into a single draft in the future.

Thanks.

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Brian Quinn  
Executive Policy & Budget Analyst  
Department of Administration  
Division of Executive Budget and Finance  
(608)-266-1923  
brian.quinn@wisconsin.gov

3/10/2011

**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Friday, March 04, 2011 2:03 PM  
**To:** Gallagher, Michael  
**Subject:** Fund of Funds Drafting Instructions  
**Attachments:** Drafting Instructions for Fund of Funds 3-4-2011.doc

Michael,

See the attached drafting instructions for the creation of a fund of funds and venture capital authority. Let me know what questions you have. It is possible that this proposal as well as the Rapid Growth Fund proposal submitted separately will be combined into a single draft in the future.

Thanks.

---

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## **Creation**

Create under WEDC the Wisconsin Venture Capital Authority (WVCA)

## **Organization**

A seven member board that would be comprised of:

WEDC CEO

WHEDA Executive Director

Appointee of the Assembly Speaker

Appointee of the Senate Majority Leader

3 citizen appointees by the Governor (at least 2 should have venture capital or investment banking experience)

Appointees would have staggered terms.

Within WVCA, create the On Wisconsin Fund (OWF), a venture capital fund of funds. The board would hire an investment manager with demonstrated expertise in the venture capital industry to manage the OWF. The board would consider, among other criteria, the manager's experience, quality of management performance, investment philosophy and process, and prior investment fund results.

## **Authorization**

Authorize WVCA to borrow up to \$200 million in funds from lenders for the OWF.

Payments will be secured by the assets of WVCA. WVCA may authorize refundable tax credits that may be claimed by lenders for the difference between scheduled debt service payments and what WVCA is financially able to pay. In order to claim a credit, the lenders must certify their losses with WVCA. WVCA must provide a listing of those eligible for the credits to the Department of Revenue as provide information about the use of the contingent credits in its annual report stating the amount of the credits authorized as well as the likelihood of their continued use. (See <http://codes.ohio.gov/orc/150> for similar language)

Borrowing and investing by WVCA must be structured so as to insure that no contingent tax credits would be utilized in the first four years and that principal, interest, or interest equivalent payments due in any fiscal year will not exceed \$20 million

## **Investment Criteria**

OWF shall establish, within ninety days of its creation, a written investment policy that would include the following components. The investment policy would be reviewed by the board of WVCA.

OWF would be obligated to invest its available funds within its first four years.

OWF would be allowed to invest only in venture capital firms certified by WVCA as being qualified eligible for investment.

Eligibility would be determined by:

- The firm's experience in venture capital investing or other experience that would make them qualified for venture capital investment.
- The investment management performance of the firm.

- The firm's commitment to Wisconsin-based investments.
- The firm's commitment to seed and early-stage investments.
- Special consideration would be given to firms located in Wisconsin or firms from out of state that would commit to locating and maintaining an office in Wisconsin as a condition of their location.

Not more than 15% of the funds of OWF may be committed to a single firm at the time of investment.

Venture capital firms receiving OWF funds would be obligated to commit an amount equal to the amount received from OWF to qualified Wisconsin businesses. Investments in any venture capital firm may not exceed 50% of the total capital raised by that venture capital firm.

Businesses receiving investment from recipient venture capital funds must:

- Be headquartered in Wisconsin
- Have at least 50% of their employee count located in Wisconsin
- Investments in businesses must be used for research and development, market launch and other activities that are expected to grow the business and employment in Wisconsin.

No investments may be made directly in individual qualifying Wisconsin businesses.

WVCA may negotiate any and all terms and conditions for its investments, including the "clawback" of management fees and other provisions to insure the proper use of its funds.

### **Incremental Withholding Tax Payments**

In this section, "base year taxation" means the level of withholding tax revenue paid by the recipient firm in the year prior to receiving investment.

WVCA, in consultation with the Department of Revenue, shall establish the base year taxation for all businesses receiving investment from venture capital funds that are recipients of funds distributed by OWF.

For a period of 15 years from the base year, the department of revenue shall transfer 50 percent of all withholding taxes received above the base year taxation to WVCA. The other 50 percent would remain in the general fund. Create a sum sufficient appropriation in Miscellaneous Appropriations for the transfer of these funds, as certified by the Department of Revenue, to WVCA.

Estimated payments would be made by the Department of Revenue on quarterly basis with reconciliation to occur annually.

All incremental withholding taxes received by WVCA must be used to either meet obligations of WVCA or to make additional investments.

**Note:** It is possible that other modifications will need to be made to this provision to insure that it does not violate full faith and credit provisions relating to general obligation bonds.

### **Annual Reporting Requirements**

Beginning with the year after the creation of WVCA, require the submission of an annual report that would detail:

1. The investment policy of OWF

2. An assessment of the program's achievement including detailed information on the internal rate of return of the fund
3. The value of tax credits certified
4. The aggregate tax increments received
5. The financial status of the OWF
6. The names of venture capital firms receiving investment, the locations of those firms, the amount received by each fund, the enterprises in which those funds have invested, and the locations of the recipient enterprises' principal offices
7. Any recommendation by the board of WVCA on how to improve the program
8. The opinion of an independent auditor

## Gallagher, Michael

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**From:** Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]  
**Sent:** Friday, March 04, 2011 7:36 AM  
**To:** Gallagher, Michael  
**Subject:** FW: RGF question

Mike,

Looks like they want \$200M in total tax credits.

Jonathan

---

**From:** Culotta, Jason - DOA  
**Sent:** Thursday, March 03, 2011 5:20 PM  
**To:** Hoechst, Jonathan S - DOA  
**Subject:** RE: RGF question

Jonathan,  
The first, the \$200 million in total tax credits, is what we're looking for.  
Thanks,  
--Jason

---

**From:** Hoechst, Jonathan S - DOA  
**Sent:** Thursday, March 03, 2011 3:34 PM  
**To:** Culotta, Jason - DOA  
**Subject:** RGF question

Jason,

Quick question on the RGF proposal. You mentioned the RGF should be a \$200 million program. Is the \$200 million the total tax credits that should be made available by Wisconsin, or is \$200 million the total amount of investment that should be allowed (thereby capping the tax credits at \$160 million total, since they are issued at 80% to the dollar)?

Thanks,  
Jonathan Hoechst  
Budget Analyst  
State Budget Office  
Wisconsin Department of Administration  
T: (608) 266-7329  
F: (608) 267-0372  
[jonathan.hoechst@wi.gov](mailto:jonathan.hoechst@wi.gov)

**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Monday, March 07, 2011 1:36 PM  
**To:** Gallagher, Michael  
**Subject:** FW: Fund of Funds Drafting Instructions

Mike,

See Jason's answers below.

Let me know if you have additional questions.

-Brian

---

**From:** Culotta, Jason - DOA  
**Sent:** Monday, March 07, 2011 1:33 PM  
**To:** Quinn, Brian D - DOA  
**Subject:** RE: Fund of Funds Drafting Instructions

Brian,

1. Let's allow the WVCA to be an independent authority. It is likely that IT support and other functions would be conducted by the WEDC, but that would be a function of the WVCA Board adopting bylaws or policies to that effect.

2. Joint oversight refers to the WVCA governing both the Rapid Growth Fund program and the fund of funds program. This is not to be a joint WEDC-WVCA effort.

--Jason

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**From:** Quinn, Brian D - DOA  
**Sent:** Monday, March 07, 2011 1:29 PM  
**To:** Culotta, Jason - DOA  
**Subject:** FW: Fund of Funds Drafting Instructions

Jason,

What are your thoughts on Mike's questions below?

Thanks.

-Brian

---

**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Monday, March 07, 2011 1:26 PM  
**To:** Quinn, Brian D - DOA  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** RE: Fund of Funds Drafting Instructions

Brian:

It appears to me that the intent is to create the WVCA as an independent authority. However, the instructions state that the WVCA should be created "under WEDC." Other than the WEDC CEO being on the WVCA board, what specific additional role, if any, is the WEDC envisioned as having with regard to the WVCA?

A related question: What is meant by giving the WVCA "joint oversight" of the rapid growth fund program

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and the fund of funds program? With the WVCA in the picture, what specific role is the WEDC intended to have in those programs?

Let me know if you need further clarification of my questions.

Thanks.

Mike

**Gallagher, Michael**

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**From:** Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]  
**Sent:** Wednesday, March 09, 2011 3:13 PM  
**To:** Gallagher, Michael  
**Subject:** FW: LRB-1556

Mike,

Here are the answers to your questions. Any update on the time frame?

Jonathan

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**From:** Culotta, Jason - DOA  
**Sent:** Wednesday, March 09, 2011 10:28 AM  
**To:** Hoechst, Jonathan S - DOA  
**Subject:** RE: LRB-1556

Jonathan,

Here are some answers for these questions:

1. As determined by the authority.
  2. A business could not move and receive funds.
- 

**From:** Hoechst, Jonathan S - DOA  
**Sent:** Wednesday, March 09, 2011 7:39 AM  
**To:** Culotta, Jason - DOA  
**Subject:** FW: LRB-1556

Jason,

See questions below - any interest in including any of the requirements?

Jonathan

---

**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Tuesday, March 08, 2011 4:23 PM  
**To:** Hoechst, Jonathan S - DOA  
**Subject:** RE: LRB-1556

Hi Jonathan:

A couple of more questions on the RGF portion of this draft (I may have more later, of course):

1. These kinds of programs often include a requirement that the qualified business that is the ultimate subject of a capital investment is not otherwise able to obtain conventional financing. Do you want to include that requirement here? It would be "as determined by the authority" in any case.
2. Do we want to place in-state restrictions on investments in qualified businesses by certified rapid growth funds? The former CAPCO program on the books in Wisconsin included, for example, the following provisions: that a qualified business must agree not to use proceeds from an investment for the purpose of relocating its operations; that a qualified business not relocate out of state during

the time a certified capital company (rapid growth fund under the current draft) continues to hold a qualified investment in the qualified business; and that a qualified business agree to maintain at least 75 percent of its employees in this state, again during the time a certified capital company continues to hold a qualified investment in the qualified business.

Thanks.



**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]

**Sent:** Friday, March 18, 2011 4:48 PM

**To:** Gallagher, Michael; Kreye, Joseph

**Subject:** Revised Drafting Instructions for WVCA Draft

Mike and Joe,

The contingent tax credits should be changed from being refundable to being non-refundable. It is our understanding that if the contingent tax credits are refundable that would create an unconstitutional extension of the state's credit as it would represent a full guarantee of these bonds. Additionally, unused credit amounts may be carried forward into future years until such time as the value of the credits is fully expended.

---

Brian Quinn  
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(608)-266-1923  
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**From:** Hoechst, Jonathan S - DOA [mailto:Jonathan.Hoechst@wisconsin.gov]  
**Sent:** Fri 2/25/2011 3:54 PM  
**To:** Kreye, Joseph  
**Cc:** Kraus, Jennifer - DOA  
**Subject:** draft request

Joe,

Can you please compose a draft creating a rapid growth fund program in Wisconsin. The program is essentially a CAPCO program, but the term CAPCO isn't used to refer to the certified capital companies, they are instead referred to as Rapid Growth Fund. Please see the attachments to explain more about the program. Don't feel like you need to do anything on this in the next couple days - early- to mid-next week is more than fine. I can call you to explain more about the program/intent on Monday, but we have received no direction from the Governor's office besides the one attachment.

I'm not certain if you are the correct drafter to send this to - please forward it along to all necessary parties.

Thanks,  
Jonathan Hoechst  
Budget Analyst  
State Budget Office  
Wisconsin Department of Administration  
T: (608) 266-7329  
F: (608) 267-0372  
[jonathan.hoechst@wi.gov](mailto:jonathan.hoechst@wi.gov)

**Gallagher, Michael**

---

**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Monday, March 21, 2011 5:13 PM  
**To:** Gallagher, Michael; Kreye, Joseph  
**Subject:** RE: Revised Drafting Instructions for WVCA Draft

I meant to reply earlier, but I got side-tracked. At this point, there has been no decision to include the moral obligation pledge.

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**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Sunday, March 20, 2011 9:31 AM  
**To:** Quinn, Brian D - DOA; Kreye, Joseph - LEGIS  
**Subject:** RE: Revised Drafting Instructions for WVCA Draft

Thanks Brian. Do you want the moral obligation pledge in or out?

Mike

**Michael P. Gallagher**  
Legislative Attorney  
Legislative Reference Bureau  
(608) 267-7511  
michael.gallagher@legis.wisconsin.gov

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**Gallagher, Michael**

---

**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Monday, March 07, 2011 9:46 AM  
**To:** Gallagher, Michael  
**Subject:** RE: Fund of Funds Drafting Instructions  
**Attachments:** Drafting Instructions for Fund of Funds 3-7-2011.doc

Mike,

Here are some slightly revised drafting instructions.

The principal changes are that the Governor would be able to appoint the chairman of the board, the WVCA would have oversight of both this fund of funds as well as the RGF program, and the fund of funds would be able to commit up to 20% of its funds to a single firm.

-Brian

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**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Friday, March 04, 2011 2:42 PM  
**To:** Quinn, Brian D - DOA  
**Subject:** RE: Fund of Funds Drafting Instructions

Thanks Brian. I will certainly let you know if I have any questions.

Mike

**Michael P. Gallagher**  
Legislative Attorney  
Legislative Reference Bureau  
(608) 267-7511  
michael.gallagher@legis.wisconsin.gov

---

**From:** Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]  
**Sent:** Friday, March 04, 2011 2:03 PM  
**To:** Gallagher, Michael  
**Subject:** Fund of Funds Drafting Instructions

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3/7/2011

## **Creation**

Create under WEDC the Wisconsin Venture Capital Authority (WVCA)

The WVCA will have joint oversight of the Rapid Growth Fund Program as well as the fund of funds program enumerated below.

## **Organization**

A seven member board that would be comprised of:

WEDC CEO

WHEDA Executive Director

Appointee of the Assembly Speaker

Appointee of the Senate Majority Leader

3 citizen appointees by the Governor (at least 2 should have venture capital or investment banking experience)

Appointees would have staggered terms.

The Governor would appoint the chairman of the board.

Within WVCA, create the On Wisconsin Fund (OWF), a venture capital fund of funds. The board would hire an investment manager with demonstrated expertise in the venture capital industry to manage the OWF. The board would consider, among other criteria, the manager's experience, quality of management performance, investment philosophy and process, and prior investment fund results. The board will also hire an executive director.

## **Authorization**

Authorize WVCA to borrow up to \$200 million in funds from lenders for the OWF.

Payments will be secured by the assets of WVCA. WVCA may authorize refundable tax credits that may be claimed by lenders for the difference between scheduled debt service payments and what WVCA is financially able to pay. In order to claim a credit, the lenders must certify their losses with WVCA. WVCA must provide a listing of those eligible for the credits to the Department of Revenue as provide information about the use of the contingent credits in its annual report stating the amount of the credits authorized as well as the likelihood of their continued use. (See <http://codes.ohio.gov/orc/150> for similar language)

Borrowing and investing by WVCA must be structured so as to insure that no contingent tax credits would be utilized in the first four years and that principal, interest, or interest equivalent payments due in any fiscal year will not exceed \$20 million

## **Investment Criteria**

OWF shall establish, within ninety days of its creation, a written investment policy that would include the following components. The investment policy would be reviewed by the board of WVCA.

OWF would be obligated to invest its available funds within its first four years.

OWF would be allowed to invest only in venture capital firms certified by WVCA as being qualified eligible for investment.

Eligibility would be determined by:

- The firm's experience in venture capital investing or other experience that would make them qualified for venture capital investment.
- The investment management performance of the firm.
- The firm's commitment to Wisconsin-based investments.
- The firm's commitment to seed and early-stage investments.
- Special consideration would be given to firms located in Wisconsin or firms from out of state that would commit to locating and maintaining an office in Wisconsin as a condition of their location.

Not more than 45% 20% of the funds of OWF may be committed to a single firm at the time of investment.

Venture capital firms receiving OWF funds would be obligated to commit an amount equal to the amount received from OWF to qualified Wisconsin businesses. Investments in any venture capital firm may not exceed 50% of the total capital raised by that venture capital firm.

Businesses receiving investment from recipient venture capital funds must:

- Be headquartered in Wisconsin
- Have at least 50% of their employee count located in Wisconsin
- Investments in businesses must be used for research and development, market launch and other activities that are expected to grow the business and employment in Wisconsin.

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WVCA may negotiate any and all terms and conditions for its investments, including the "clawback" of management fees and other provisions to insure the proper use of its funds.

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In this section, "base year taxation" means the level of withholding tax revenue paid by the recipient firm in the year prior to receiving investment.

WVCA, in consultation with the Department of Revenue, shall establish the base year taxation for all businesses receiving investment from venture capital funds that are recipients of funds distributed by OWF.

For a period of 15 years from the base year, the department of revenue shall transfer 50 percent of all withholding taxes received above the base year taxation to WVCA. The other 50 percent would remain in the general fund. Create a sum sufficient appropriation in Miscellaneous Appropriations for the transfer of these funds, as certified by the Department of Revenue, to WVCA.

Estimated payments would be made by the Department of Revenue on quarterly basis with reconciliation to occur annually.

All incremental withholding taxes received by WVCA must be used to either meet obligations of WVCA or to make additional investments.

**Note:** It is possible that other modifications will need to be made to this provision to insure that it does not violate full faith and credit provisions relating to general obligation bonds.

### **Annual Reporting Requirements**

Beginning with the year after the creation of WVCA, require the submission of an annual report that would detail:

1. The investment policy of OWF
2. An assessment of the program's achievement including detailed information on the internal rate of return of the fund
3. The value of tax credits certified
4. The aggregate tax increments received
5. The financial status of the OWF
6. The names of venture capital firms receiving investment, the locations of those firms, the amount received by each fund, the enterprises in which those funds have invested, and the locations of the recipient enterprises' principal offices
7. Any recommendation by the board of WVCA on how to improve the program
8. The opinion of an independent auditor

## **RAPID GROWTH FUND PROPOSAL**

The proposal allows the Wisconsin Economic Development Corporation (WEDC) to certify capital companies (Rapid Growth Funds, RGFs). RGFs receive capital from Wisconsin insurance companies which they invest in qualified businesses:

- Headquartered in Wisconsin; intending to maintain headquarters in Wisconsin
- Principal business operations located in Wisconsin; intending to maintain operations in Wisconsin
- Has fewer than 100 employees
  - 80 percent of which are employed in Wisconsin, OR
  - Pays at least 80 percent of its payroll to employees in Wisconsin
- Is primarily engaged in manufacturing, processing, assembly, research and development, or providing services
- Is not primarily engaged in retail sales, real estate development, insurance, banking, lending, or provision of professional services provided by accountants, attorneys, or physicians

The RGFs will raise capital from the insurance companies in the form of bonds that the insurance companies will purchase. In exchange for their capital, insurers (and any other person with a state premium tax liability) are then allocated vested tax credits equal to 80 percent of their capital given to the RGF. The tax credits cannot be claimed until January 1, 2014, and only 25% of the total credits allocated to an insurer may be claimed per tax year.

The total available tax credits are \$200 million, of which \$40 million can be claimed annually beginning in 2014. (We should probably clarify that these can be claimed for the 2014 tax year, but cannot be applied against quarterly payments. The effect of this is that these credits would be applied in 2015 for taxes payable from the 2014 tax year. In terms of why this provision exists, I think it is so that the insurance companies cannot obtain the benefit prior to the passage of the four years.) No single insurer or person may claim more than 25 percent of the total tax credits (\$50 million). Credits can be transferred and sold by investors 180 days after initial investment of capital.)

### **Rapid Investment Criteria**

To maintain certification, RGFs will be required to invest moneys in coherence with the following timetable:

- 35 percent of capital invested by the end of year two, 50 percent of which is in early stage businesses
- 50 percent of capital invested by the end of year four, 50 percent of which is in early stage businesses

Additionally, the RGF cannot pay management fees if:

- After five years, the RGF has not invested 80 percent of the capital, 50 percent of which is in early stage businesses
- After seven years, the RGF has not invested 100 percent of the capital, 50 percent of which is in early stage businesses

The RGF shall not invest more than 15 percent of its total capital in any single business or corporation.

### **Decertification of Rapid Growth Fund**

If an RGF is decertified by WEDC within four years of its allocation date, premium tax credits claimed by insurers are recaptured and unused tax credits are forfeited. However, if an RGF



invests 50 percent of its capital (50 thereof in early stage businesses) by the end of its four year of existence, decertification of the RGF does not have any penalties for holders of tax credits. 8

### **Distributions and Repayment of Debt**

Distributions can only be made once 100 percent of the RGF's designated capital is invested, with at least 50 percent invested in early stage businesses. When distributions are made, the RGF pays Wisconsin any profit share fee (20% of profits from qualified investments) directly into the general revenue fund.

### **Annual Reviews and Reports**

The CEO of the WEDC will conduct annual reviews of each RGF to insure they are satisfying the requirements created by this legislation and can decertify noncompliant RGFs. Additionally, RGFs are required to report names of investors as well as the amounts each investor provided to the fund. By January 31 of each year, each RGF must report to the director the amounts invested by the RGF in the preceding year as well as whether the RGF has greater than 15 percent of its total capital invested in one business. The report must also include the number of employees the qualified business (recipient of investment funds) currently has and the number of employees the business had on December 31 the previous year. Finally, each RGF is required to provide an audited financial statement that includes the opinion of an independent certified public accountant by June 1.

### **Additional Definitions**

#### Early stage business

- Qualified business developing initial product or service offerings
- In existence for less than two years
- Gross revenues of less than \$2 million in previous year

#### Profit share fee

- Fee equal to 20 percent of net profits realized on qualified investments

#### Qualified investments

- Cash invested by RGF in qualified business for purchase of debt, debt participation, equity, or hybrid security

CAPCO

**A BILL to amend the Code of Wisconsin by adding in Chapter XXX, relating to tax credits against the state premium tax on certain insurance companies.**

**Be it enacted by the General Assembly of Wisconsin:**

1. That the Code of Wisconsin is amended by adding in Chapter XXX, as follows:

Rapid Growth Fund ("RGF")

§ 1. Definitions.

As used in this article, unless the context requires a different meaning:

"Affiliate" of another person means:

1. A person who directly or indirectly:

a. Beneficially owns 15 percent or more of the outstanding voting securities or other voting interests of the other person, whether through rights, options, convertible interests, or otherwise; or

b. Controls or holds power to vote 15 percent or more of the outstanding voting securities or other voting interests of the other person;

2. A person with 15 percent or more of the outstanding voting securities or other voting interests of which are directly or indirectly:

a. Beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

b. Controlled or held with power to vote by the other person;

3. A partnership in which the other person is a general partner; or

4. An officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent.

"Allocation date" means the date on which the participating investors in a RGF are allocated premium tax credits by the Director under this article.

"Application Date" means final date on which the Director shall accept applications for allocations of premium tax credits under this article. This date shall not be less than 60 or more than 90 days after the effective date of this act.

"Designated capital" means an investment of cash by a participating investor in a RGF that fully funds the purchase price of an equity interest in the RGF or a qualified debt instrument issued by the RGF or a combination thereof.

"Director" means the Director of the Department of Commerce.

"Early stage business" means a qualified business that:

1. Is involved, at the time of a RGF's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

2. Was initially organized less than two years before the date of the RGF's first investment;

3. During the fiscal year immediately preceding the year of the RGF's first investment had, on a consolidated basis with the business's affiliates, gross revenues of not more than \$2 million as determined in accordance with generally accepted accounting principles; or

4. Is deemed to be an early stage business by any additional means determined by the director.

"Net profits realized on qualified investments" means the amount of money returned to the RGF in repayment of or exchange for the RGF's qualified investments in excess of the amount of the RGF's total amount of qualified investments.

"Participating investor" means an insurance company or other person that has state premium tax liability that contributes designated capital pursuant to an allocation of premium tax credits under this article.

"Premium tax credit allocation claim" means a claim for allocation of premium tax credits.

"Person" means a natural person or entity, including a corporation, general or limited partnership, or trust or limited liability company.

"Profit share fee" means a fee in an amount equal to 20 percent of the net profits realized on qualified investments.

"Qualified business" means a business that, at the time of a RGF's first investment in the business:

1. Is headquartered in the State and intends to remain in the State after receipt of the investment by the RGF;

2. Has its principal business operations located in the State and intends to maintain business operations in the State after receipt of the investment by the RGF;

3. Has agreed to use the qualified investment primarily to:

a. Support business operations in the State, other than advertising, promotion, and sales operations that may be conducted outside of the State; or

b. In the case of a start-up company, establish and support business operations in the State, other than advertising, promotion, and sales operations that may be conducted outside of the State;

4. Has not more than 100 employees and:

a. Employs at least 80 percent of its employees in the State; or

b. Pays at least 80 percent of its payroll to employees in the State;

5. Is primarily engaged in: manufacturing, processing, or assembling products; conducting research and development; or providing services;

~~6. Is not primarily engaged in: retail sales (other than direct sales of products manufactured by such business); real estate development; the business of insurance, banking, or lending; or the provision of professional services provided by accountants, attorneys, or physicians~~

7. Is not a franchise of, and has no financial relationship with, a RGF or any affiliate of a RGF prior to a RGF's first qualified investment in the business.

8. A business classified as a qualified business at the time of the first qualified investment in the business will remain classified as a qualified business and may receive continuing qualified investments from any RGF. Continuing investments will constitute qualified investments even though the business may not meet the definition of a qualified business at the time of such continuing investments.

*Non-def. - no reg. events*

"Qualified debt instrument" means a debt instrument issued by a RGF, at par value or a premium, that:

- 1. Has an original maturity date of at least four years after the date of issuance;
- 2. Has a repayment schedule that is not faster than a level principal amortization over four years; and
- ~~3. Has no interest or payment features that allow for the prepayment of interest or are tied to the profitability of the RGF or the success of its investments.~~

"Qualified distribution" means any distribution or payment by a RGF in connection with:

1. The reasonable costs and expenses of forming, syndicating, managing, and operating the RGF, provided that the distribution or payment is not made directly or indirectly to a participating investor, including:

- a. Reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the RGF; and
- b. ~~An annual management fee in an amount that does not exceed two percent of the designated capital of the RGF; and~~
- c. ~~An accrued management fee of one percent per year of the designated capital of the RGF, that shall not be distributed until such time as the RGF has invested 100 percent of its certified capital~~

*Add RGF's share of interest*

2. Any projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, or to the equity owners of the RGF resulting from the earnings or other tax liability of the RGF to the extent that the increase is related to the ownership, management, or operation of the RGF.

"Qualified investment" means the investment of cash by a RGF in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description,

*profit share fee = 20% of net π*

including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants; provided that no more than 50 percent of such debt or debt participation may be used for the refinancing of other debt or the buyout of other shareholders or owners of the qualified business.

"RGF" means a partnership, corporation, trust or limited liability company, whether organized on a profit or not-for-profit basis, that: (i) has its principal office located or is headquartered in Wisconsin; and (ii) has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this article.

"State premium tax liability" means any liability incurred by any person under Article [ALL FROMS OF PREMIUM TAX].

## § 2. Certification.

A. The Director shall establish the application procedures for RGFs.

→ B. An applicant RGF must file an application on the form prescribed by the Director accompanied by a nonrefundable application fee of \$7,500. The application must include an audited balance sheet of the applicant, with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of the application.

C. To qualify as a RGF:

1. The applicant must have, at the time of application, an equity capitalization of at least \$500,000 in the form of unencumbered cash or cash equivalents;

2. At least two principals or persons employed to manage the funds of the applicant must have at least five years of experience in the venture capital or private equity industry; and

3. The applicant must submit a revenue impact assessment demonstrating that the applicant's strategic investment plan has a revenue-positive impact on the state. Such impact assessment shall be completed by an economist or econometric analysis company, at the expense of the applicant. The director shall approve such economists and companies prior to preparing an impact assessment. No fewer than seven economists and/or companies shall be approved by the director (or suggested by the director if insufficient applications for approval have been requested by applicants) 30 days prior to the application date, at least four of which shall not be affiliated with the state or any public universities.

D. The Director shall review the application, organizational documents, and business history of each applicant and shall ensure that the applicant satisfies the requirements of this article.

E. Not later than the thirtieth day after the date an application is filed, the Director shall:

1. Issue the certification; or

*Revised  
Investment  
Bonds*

2. Refuse to issue the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

§ 3. Renewal.

A. Not later than January 31 of each year, each RGF shall pay a nonrefundable renewal fee of \$5,000 to the Director. If a RGF fails to pay its renewal fee on or before that date, the RGF must pay, in addition to the renewal fee, a late fee of \$5,000 to continue its certification.

B. Notwithstanding subsection A, a renewal fee is not required within six months of the date on which the RGF's certification is issued under § 2.

§ 4. Annual review; decertification.

A. The Director shall conduct an annual review of each RGF to:

1. Ensure that the RGF continues to satisfy the requirements of this article and that the RGF has not made any investment in violation of this article; and

2. Determine the eligibility status of its qualified investments.

B. The cost of the annual review shall be paid by each RGF according to a reasonable fee schedule adopted by the Director.

C. If the Director determines that a RGF is not in compliance with subsection A of § 12 the Director shall notify the officers of the RGF in writing that the RGF may be subject to decertification after the one-hundred-twentieth day after the date of mailing of the notice, unless the deficiencies are corrected and the RGF returns to compliance.

D. The Director may decertify a RGF, after opportunity for hearing, if the Director finds that the RGF is not in compliance with subsection A of § 12, at the end of the period established by subsection C of this section. Decertification under this subsection is effective on receipt of notice of decertification by the RGF. The Director shall notify any appropriate state agency of the decertification.

§ 5. Recapture and forfeiture of premium tax credits; decertification of RGF.

~~A. Decertification of a RGF may cause the recapture of premium tax credits previously claimed and the forfeiture of future premium tax credits to be claimed by participating investors with respect to the RGF, as follows:~~

~~1. Decertification of a RGF on or before the fourth anniversary of its allocation date causes the recapture of any premium tax credit previously claimed and the forfeiture of any future premium tax credit to be claimed by a participating investor with respect to the RGF;~~

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2. For a RGF that has met the requirements for continued certification under subdivisions A(1) and A(2) of § 12 and is subsequently decertified, any premium tax credit that has been or will be taken by a participating investor is not subject to recapture or forfeiture under this section.

B. The Director shall send written notice to the address of each participating investor whose premium tax credit is subject to recapture or forfeiture, using the address shown on the last premium tax filing

§ 6. Premium tax credit allocation claim form.

A. A premium tax credit allocation claim must be prepared and executed by a participating investor on a form provided by the Director. The RGF must file the claim with the Director. The premium tax credit allocation claim form must include an affidavit of the participating investor under which the participating investor becomes legally bound and irrevocably committed to make an investment of designated capital in a RGF in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under § 7.

B. A participating investor may not claim a premium tax credit under § 8 for an investment that has not been funded, even if the participating investor has committed to fund the investment.

§ 7. Pro rata allocation of credits.

A. The Director shall begin accepting premium tax credit allocation claims on the application date. All applications received on or prior to the allocation date shall be deemed to have been received simultaneously on the application date.

B. If the total premium tax credits deemed claimed by all participating investors on the application date, or another date, exceeds the amount of premium tax credits then available under subsection A of § 9, the Director shall allocate the total amount of premium tax credits allowed under this article to participating investors in RGFs on a pro rata basis in accordance with this section.

C. The pro rata allocation for each participating investor shall be the product of:

1. A fraction, the numerator of which is the amount of the premium tax credit allocation claim filed on behalf of the participating investor and the denominator of which is the total amount of all premium tax credit allocation claims filed on behalf of all participating investors on such date; and

2. The total amount of remaining designated capital for which premium tax credits may be allowed under this article.

D. Not later than fifteen days after accepting premium tax credit allocation claims, the Director shall notify each RGF of the amount of tax credits allocated to each participating investor. Each RGF shall notify each participating investor of their premium tax credit allocation.

E. If a RGF does not receive an investment of designated capital equaling the amount of premium tax credits allocated to a participating investor for which it filed a premium tax credit allocation claim before the end of the tenth business day after the date of receipt of notice of allocation, the RGF shall notify the Director by overnight common carrier delivery service and that portion of capital allocated to the participating investor shall be forfeited. Within 30 days of receipt of such notice by the Director, the Director shall reallocate the forfeited capital among the participating investors in the other RGFs that originally received an allocation so that the result after reallocation is the same as if the initial allocation under this section had been performed without considering the premium tax credit allocation claims that were subsequently forfeited.

F. ~~The maximum amount of premium tax credit allocation claims that may be filed on behalf of any one participating investor and its affiliates, whether by one or more RGFs, may not exceed 25 percent of the maximum aggregate amount available under subsection A of § 9.~~

#### § 8. Premium tax credit.

A. A participating investor who makes an investment of designated capital shall, in the year of investment, ~~earn a vested credit against state premium tax liability equal to 80 percent of the participating investor's investment of designated capital, subject to the limits imposed by this article. A participating investor may redeem up to 25 percent of such vested premium tax credit in any taxable year beginning on or after January 1, 2014, including quarterly payments, but excluding quarterly payments due during the 2014 taxable year.~~

B. ~~The credit to be applied against state premium tax liability in any one year may not exceed the state premium tax liability of the participating investor for the taxable year. Any unused credit against state premium tax liability may be carried forward indefinitely until the premium tax credits are used.~~

C. A participating investor claiming a credit against state premium tax liability earned through an investment in a RGF is not required to pay any additional retaliatory tax levied under Chapter [RETALIATORY TAX CHAPTER] as a result of claiming that credit.

#### § 9. Total limit on credits.

A. ~~The total amount of designated capital for which premium tax credits may be allowed under this article for all years in which premium tax credits are allowed is \$200 million.~~

B. The total amount of designated capital for which premium tax credits may be allowed for all participating investors under this article may not exceed the amount that would entitle all participating investors in RGFs to take total credits of \$40 million in a year.



C. A RGF and its affiliates may not file premium tax credit allocation claims in excess of the maximum amount of designated capital for which premium tax credits may be allowed as provided in this section. 2

§ 10. Transferability of credit.

A. The Director shall adopt regulations to facilitate the transfer or assignment of premium tax credits by participating investors.

B. A participating investor shall not transfer or assign, agree to transfer, or agree to sell or assign premium tax credits until 180 days from the date on which the participating investor invested designated capital. After 180 days from the date of investment, a participating investor, or subsequent transferee, may transfer credits based upon rules adopted by the Director to facilitate such transfers.

C. Any tax credits recaptured under this article remain the liability of the participating investor that actually applied the credit towards its tax liability.

D. The transfer or assignment of a premium tax credit does not affect the schedule for taking the premium tax credit under this article.

§ 11. Evaluation of business by Director.

A. A RGF may, before making an investment in a business, request from the Director a written opinion as to whether the business in which it proposes to invest is a qualified business and would be considered an early stage business, if applicable.

B. The Director shall, not later than the fifteenth business day after the date of the receipt of a request pursuant to subsection A, determine whether the business meets the definition of a qualified business or if it would be considered an early stage business, if applicable, and notify the RGF of the determination and an explanation of its determination or notify the RGF that an additional 15 days will be needed to review and make the determination.

C. If the Director fails to notify the RGF with respect to the proposed investment within the period specified by subsection B, the business in which the RGF proposes to invest shall be considered to be a qualified business and an early stage business, if applicable.

§ 12. Rapid Investment Criteria.

A. To continue to be certified, a RGF shall make qualified investments according to the following schedule:

1. ~~Before the second anniversary of an allocation date, a RGF must have made qualified investments in an amount cumulatively equal to at least 35 percent of the designated~~

~~capital allocated on such date of which at least 50 percent shall be in early stage businesses; and~~

~~2. Before the fourth anniversary of an allocation date, a RGF must have made qualified investments in an amount cumulatively equal to at least 50 percent of the designated capital on such date of which at least 50 percent shall be in early stage businesses.~~

~~B.~~ If, within five years after an allocation date, a RGF has not invested at least 80 percent of the designated capital allocated on such date in qualified investments, of which at least 50 percent shall be in early stage businesses, the RGF shall not be permitted to pay management fees until such time as it has made such qualified investments.

~~C.~~ If, within seven years after an allocation date, a RGF has not invested at least 100 percent of the designated capital allocated on such date in qualified investments, of which at least 50 percent shall be in early stage businesses, the RGF shall not be permitted to pay management fees until such time as it has made such qualified investments

D. The aggregate cumulative amount of all qualified investments made by the RGF after its allocation date shall be considered in the computation of the percentage requirements under this section. Any proceeds received from a qualified investment may be invested in another qualified investment and count toward any requirement in this article with respect to investments of designated capital.

~~E. A qualified investment may not be made at a cost to a RGF greater than 15 percent of the total designated capital of the RGF at the time of investment.~~

F. If, before the ninetieth day after the date that a RGF makes an investment in a qualified business, the qualified business moves its principal business operations from the State, the investment may not be considered a qualified investment for purposes of the percentage requirements under this section. } 7

~~G. A RGF shall invest any designated capital not invested in qualified investments only in the following:~~

- ~~1~~ Cash deposited with a federally insured financial institution;
- ~~2~~ Certificates of deposit in a federally insured financial institution;
- ~~3~~ Investment securities that are obligations of the United States or its agencies or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;
- ~~4~~ Debt instruments rated at least "A" or its equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization, and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor;
- ~~5~~ Obligations of the State or any political subdivision of the State; or

6. Any other investments approved in advance and in writing by the Director.

§ 13. Reports to Director; audited financial statement.

A. Each RGF shall report to the Director as soon as practicable after the receipt of designated capital:

1. The name of each participating investor from whom the designated capital was received, including the participating investor's insurance premium tax identification number;

2. The amount of each participating investor's investment of designated capital and premium tax credits; and

3. The date on which the designated capital was received;

B. Not later than January 31 of each year, each RGF shall report to the Director:

1. The amount of the RGF's designated capital invested in qualified investments and early stage businesses at the end of the preceding year;

2. Whether or not the RGF has invested more than 15 percent of its total designated capital in any one business;

3. Each qualified investment that the RGF made during the preceding year and, with respect to each qualified investment, the number of employees of the qualified business at the time the qualified investment was made and employee growth as of December 31 of the prior year; and

4. Any other information required by the Director.

C. Not later than June 1 of each year, the RGF shall provide to the Director an annual audited financial statement that includes the opinion of an independent certified public accountant.

§ 14. Distributions; repayment of debt

A. A RGF may make a qualified distribution at any time. To make a distribution or payment, other than a qualified distribution, a RGF must have made qualified investments in an amount cumulatively equal to 100 percent of its designated capital of which at least 50 percent shall have been invested in early stage businesses.

1. At any time that a RGF makes distributions, other than qualified distributions or distributions representing repayments of capital contributions to its equity investors who are not participating investors, the RGF shall pay the State any profit share fee then due for deposit in the general revenue fund.

B. A RGF may make repayments of principal and interest on its indebtedness without any restriction, including repayments of indebtedness of the RGF on which participating investors earned premium tax credits.

C. If, within 24 months of the date a qualified investment in a qualified business is made, the business relocates its principal business operations to another state and the RGF still holds such investment in the business, the cumulative amount of qualified investments made by the RGF for purposes of satisfying the requirements of subsection A of this section only shall be reduced by the amount of such Wisconsin qualified investment in the business that has relocated. This shall not apply if the business demonstrates that it has returned its principal business operations to the State not later than the ninetieth day after the date of its relocation.

§ 15. Management by certain entities prohibited.

*How much bearing about what can be invested in?*

A. An insurance company, group of insurance companies, or other persons who may have state premium tax liability or the affiliates of the insurance companies or such other persons may not, directly or indirectly:

1. Manage the operations of a RGF;
2. Beneficially own, whether through rights, options, convertible interests, or otherwise, more than 10 percent of the outstanding voting securities of a RGF; or
3. Control the direction of investments for a RGF.

B. Subsection A applies without regard to whether the insurance company or other person or the affiliate of the insurance company or other person is licensed by or transacts business in the State.

C. This section does not preclude a participating investor, insurance company, or any other party from exercising its legal rights and remedies, including interim management of a RGF with respect to a RGF that is in default of its statutory or contractual obligations to the participating investor, insurance company, or other party.

D. Nothing in this article shall limit an insurance company's ownership of nonvoting equity interests in a RGF.

§ 16. Administrative penalty.

A. The Director may impose an administrative penalty on a RGF that violates this article.

B. The amount of the penalty may not exceed \$25,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

2. The economic harm caused by the violation;
3. The history of previous violations;
4. The amount necessary to deter a future violation; and
5. Efforts to correct the violation.

§ 17. Impact of tax credits claimed by a participating investor on insurance rates.

A participating investor is not required to reduce the amount of premium tax included by the investor in connection with ratemaking for any insurance contract written in the State because of a reduction in the investor's premium tax derived from the credit granted under this Act.

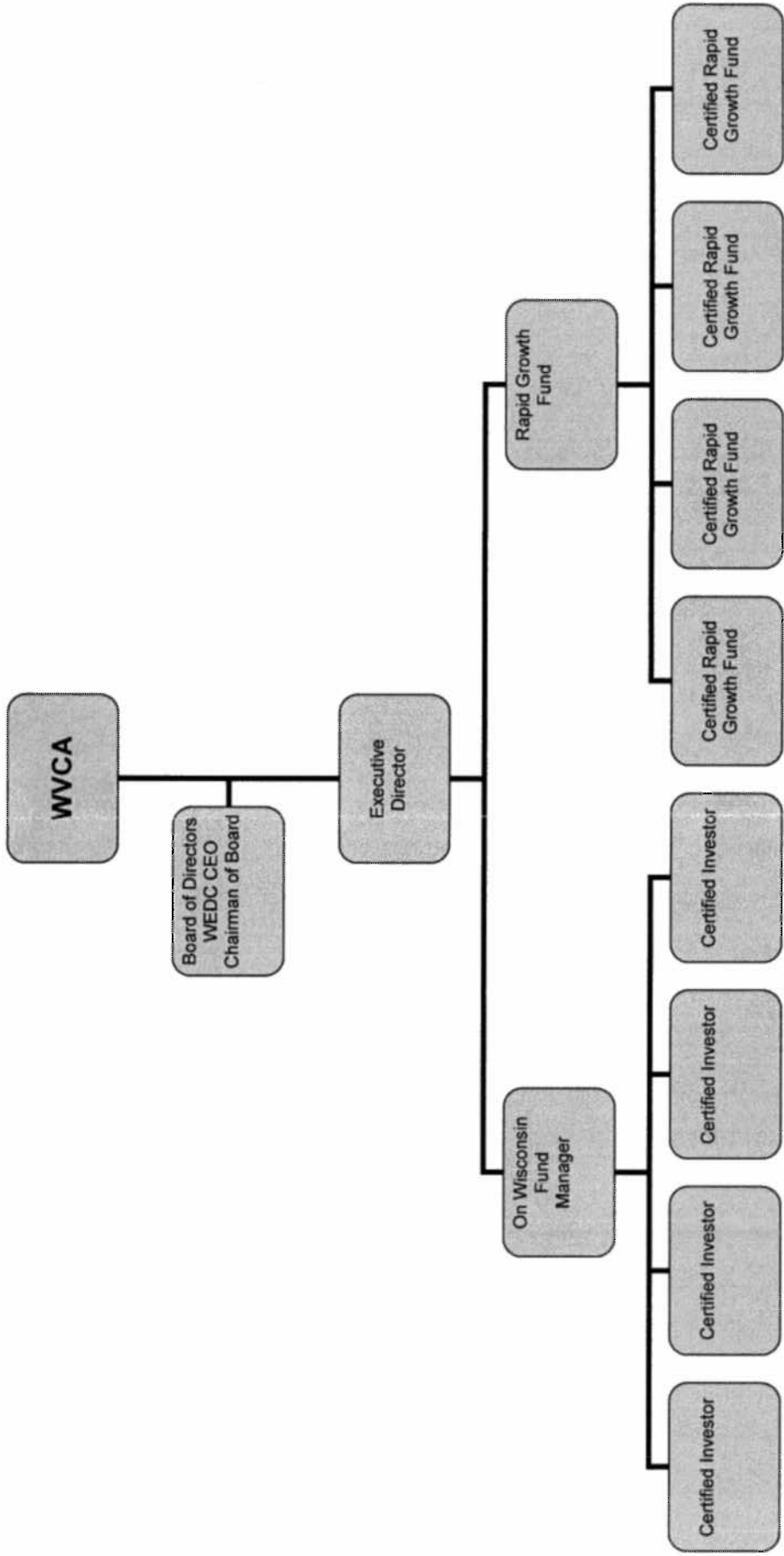
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§ 18. Indemnity agreements and insurance authorized.

A RGF may agree to indemnify, or purchase insurance for the benefit of, an investor for losses resulting from the recapture or forfeiture of premium tax credits under § 5.

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2. That the provisions of this act shall become effective upon [EFFECTIVE DATE].



**TAX CREDITS (OWF)**  
 (1) Income & franchise tax credits  
 (2) Transferrable, not sellable

**TAX CREDIT (RGF)**  
 (1) Premium tax credits  
 (2) Transferrable & sellable

**WITHHOLDING TAX DETERMINATIONS (OWF and RGF)**  
 (1) 50 percent of incremental withholding taxes to 20.195(1)(g) for OWF admin (includes debt service)  
 (2) 50 percent of increased tax revenue to general fund