

Drafting file for
LRB-1556**Gallagher, Michael**

From: Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]
Sent: Thursday, April 07, 2011 1:30 PM
To: Gallagher, Michael
Cc: Quinn, Brian D - DOA; Kreye, Joseph
Subject: FW: WVCA changes

Mike,

Please see the responses below regarding 2 additional items for the WVCA draft.

Jonathan

From: Culotta, Jason - DOA
Sent: Thursday, April 07, 2011 12:58 PM
To: Hoechst, Jonathan S - DOA
Cc: Quinn, Brian D - DOA
Subject: RE: WVCA changes

Jonathan,
Regarding #1, let's include the standard language.
On #2, we should keep it at reimbursement for now and exclude compensation beyond that.
Thanks,
--Jason

From: Hoechst, Jonathan S - DOA
Sent: Thursday, April 07, 2011 11:15 AM
To: Culotta, Jason - DOA
Cc: Quinn, Brian D - DOA
Subject: FW: WVCA changes

Jason,

Thoughts on Mike Gallagher's comments?

Jonathan

From: Quinn, Brian D - DOA
Sent: Thursday, April 07, 2011 11:14 AM
To: Hoechst, Jonathan S - DOA
Subject: RE: WVCA changes

Jonathan,

Mike Gallagher brought up two items:

1. Protection from liability except for willful misconduct. This is pretty standard in most authorities, but the draft doesn't speak to this.
2. Whether board members would be paid. Alternatively, whether board members would at least be reimbursed for traveling expenses and so forth. As of right now, he says that he will include

4/7/2011

language about reimbursement, but not on compensation generally.

You can go ahead and send these questions to Jason if you don't have any thoughts to add to them.

-Brian

From: Hoechst, Jonathan S - DOA
Sent: Thursday, April 07, 2011 11:10 AM
To: Gallagher, Michael - LEGIS
Cc: Kreye, Joseph - LEGIS; Quinn, Brian D - DOA
Subject: WVCA changes

Mike,

Here are the latest round of changes for the WVCA draft. We have one outstanding decision that is referenced in the document (WEDC CEO as Chairman of the Board). I will get you an answer on how to handle this when we receive a final decision.

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

Gallagher, Michael

From: Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]
Sent: Thursday, April 07, 2011 1:35 PM
To: Gallagher, Michael
Cc: Kreye, Joseph; Quinn, Brian D - DOA
Subject: WVCA CEO

Mike,

The WEDC CEO will be the Chairman of the Board. He does not need to be appointed by the Governor [239.02(4)]. The board will consist of the same 7 members as in the current draft. Let me know if there are any questions.

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

Gallagher, Michael

From: Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]
Sent: Thursday, April 07, 2011 11:10 AM
To: Gallagher, Michael
Cc: Kreye, Joseph; Quinn, Brian D - DOA
Subject: WVCA changes
Attachments: LRB 1556 Changes 4-7-11 v2.doc

Mike,

Here are the latest round of changes for the WVCA draft. We have one outstanding decision that is referenced in the document (WEDC CEO as Chairman of the Board). I will get you an answer on how to handle this when we receive a final decision.

Thanks,
Jonathan Hoechst
Budget Analyst
State Budget Office
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Additional Changes to LRB-1556 (Wisconsin Venture Capital Authority)

April 7, 2011

✓ Change in structure: the RGF should be subject to the same withholding tax distribution as the OWF – 50 percent of the increase in withholding tax paid by qualified businesses should go to the WCA under 20.195(1)(g), and 50 percent should go to the state's general fund. This is laid out for the OWF in 73.033. JK

✓ Page 17, Line 11 – The base year withholding should be determined as the year prior to the year in which the firm receives investment instead of the year that the firm receives investment (investment year is year "t", base year withholding is year "t-1"). JK

Page 22, WEDC CEO/Chairman changes – more to come on this, there is discussion of making the WEDC CEO the Chairman of the Board. I will follow-up when we have a final answer. MFB

Page 26, Lines 12-15, 239.13(3) – APPLICATION FEE. An applicant for certification under subd. 1 shall pay to the authority a fee of \$7,500. Intent: Both RGF and OWF applicants will pay \$7,500 application fees to authority. MFB

Page 28, Lines 23-24, 239.20(1)(d) – "...or other person subject to premium tax liability is a partner, managing member, or other principal." ✓

Page 29, Line 4, 239.20(2) – "~~Allocation date~~" means the initial date stated..." ✓

Page 31, Line 14, 239.21(1)(e) – Delete this provision. ✓

Page 32, Line 21, 239.22(1)(a)5 – Delete this provision. ✓

Page 33, Lines 18-19, 239.22(4)(b) and (c) – Delete both of these provisions; there will no longer be an annual limit on premium tax credits awarded or requirements on distributing the tax credits (currently an RGF is limited to \$40,000,000 in tax credits). Rewrite 239.22(4)(b) – A fund and its affiliates may not file premium tax credit allocation claims in excess of the maximum amount of designated capital for which the premium tax credits may be allowed as provided in subd. (a). ✓
see
sub(3)

Page 35, Lines 13-15, 239.23(2)(d) – "...fund continues to hold the investment, except as allowed pursuant to subsection (5) of this section." ✓

Gallagher, Michael

From: Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]
Sent: Thursday, April 07, 2011 11:34 AM
To: Gallagher, Michael
Cc: Kreye, Joseph; Quinn, Brian D - DOA
Subject: FW: one more amendment to the bill draft

Mike,

This was just sent along to us. Yet another change to the draft.

Jonathan

-----Original Message-----

From: Culotta, Jason - DOA
Sent: Thursday, April 07, 2011 11:29 AM
To: Hoechst, Jonathan S - DOA
Subject: one more amendment to the bill draft

Jonathan,

Please apologize to the drafters for this, but this language should be added.

One more change on the draft, but it's significant. The profit sharing fee depends on the term "net profits realized". The original draft had this definition in it but the bill does not. Very simply, they need to reinsert a the definition that was provided.

"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.



Changes to Preliminary Draft

On Wisconsin Fund Items – Changes

Page 17, Line 7 – This should be changed to indicate that the increment will only result from firms receiving investments from the On Wisconsin Fund and that firms receiving investments from the Rapid Growth Funds are not part of this calculation. ✓ SJR

Page 17, Lines 11, 14, and 17 – References to 239.23(2) should probably be replaced with 239.12(3) so that only those firms receiving investments from the On Wisconsin Fund are generating the increment. ✓ SJR

Page 24, Line 20 – The intention is to have the On Wisconsin Fund issue an amount of not more than \$200 million in bonds in order to limit the state's exposure. ✓

Page 25, Line 23 – Change to "The certified investor shall invest an amount equal to or greater than the amount of fund capital received in a business or businesses that:" or similar language. The intent is essentially the same, but the mechanism is clearer. ✓

Page 26, Line 6 – Change from "match the fund's capital" to "match or exceed the fund's capital". ✓

Page 27, Line 7 – Reference here is only to gross premium taxes when it should include all tax liabilities. The intent is that all investors with Wisconsin tax liability would be eligible for these contingent tax credits. Presumably, eligible investors in the WVCA bonds for the OWF could include insurance companies, but other investors would likely make up the bulk of investors. ✓ JK

Rapid Growth Fund Items – Changes

Page 19, Lines 5-6 – any resale of the tax credits can only occur after the holder has been in possession of the credits for 180 days. The current language only speaks to the *initial* sale/transfer of tax credits, not additional sales/transfer. Each separate transaction should be a minimum of 180 days apart, that is, any holder of tax credits must maintain the credits for at least 180 days before selling/transferring the credits (i.e. if the same tax credits are sold/transferred multiple times). ✓ JK

Page 32, Lines 24-25 – Tax credits should be "in an amount equal to 80 percent," not "in an amount equal to 80 percent *or less*." ✓

Page 33, Lines 20-21 – An authority may not award more than \$40,000,000 in premium tax credits to a single investor (§ 9, B, page 7 of drafting instructions gives details). The draft specifies \$50,000,000. ✓

Drafter's Note Changes

Page 22, Board composition – do not want to specify whether assembly speaker/senate leader's appointees are from public/private sector. 3-years staggered terms is OK. No non-voting members at this point. ✓

Page 23, Note Regarding WVCA Executive Director – This should be modified so that the WVCA has an executive director which oversees both the OWF and RGF programs. The board of the WVCA will select a fund manager for the OWF program that will actually select the funds and make investments. No similar position for the RGF program is needed. ✓

Page 37, Note Regarding Investment as Share of RGF Capital – It is correct not to include this provision. ✓

Page 38, Note on distribution payments – the second of the two options, that a fund can make distribution payments from a particular investment or group of investments once all the designated capital assigned on a particular allocation date is invested (50 percent in early stage bus). ✓

Page 40, Note on Annual Reporting Requirements – The intent is to have a single annual report for both programs with similar criteria (though the RGF program will have different aspects that will not relate to the increment or contingent tax credits that exist for the OWF program). ✓

Page 41, Note on Voluntary Decertification – Do not include voluntary decertification. ✓

Gallagher, Michael

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]
Sent: Tuesday, April 05, 2011 10:39 AM
To: Gallagher, Michael; Kreye, Joseph
Cc: Hoechst, Jonathan S - DOA
Subject: Additional Changes to WVCA Draft
Attachments: 4-5-2011 Edits to Venture Capital Draft.doc

Mike and Joe,

Here are the additional revisions I spoke of earlier today. In a couple places, these edits will conflict with those revisions sent yesterday. Where such conflicts occur, these instructions supersede the instructions from yesterday.

Let me know if you have any questions.

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

Additional Edits to Wisconsin Venture Capital Authority Draft

- ✓ Page 16 – Add an appropriation for start-up capital.
- ✓ Page 22 – Lines 5-9
 - ✓ 239.02 (c) – "...at least 2 of whom shall have venture capital, investment banking, or substantial entrepreneurial experience."
 - ✓ 239.02 (d) – "One member appointed by the speaker of the assembly whom shall have venture capital, investment banking, or substantial entrepreneurial experience."
 - ✓ 239.02 (e) – "One member appointed by the senate majority leader whom shall have venture capital, investment banking, or substantial entrepreneurial experience."
- ✓ Page 22 – Lines 19 and 20 – Change "shall" to "may" and specify that the authority may contract with the On Wisconsin Fund manager or with WEDC. ?
- ✓ Page 24, Line 17 – "...that is currently not sufficiently available in private financial markets, the fund will result in increased tax revenues to the state, and..."
- ✓ Page 24, Lines 21-23 – Delete provision. Retain \$200 million limitation on bonding enumerated in revisions submitted 4-4-2011.
- ✓ Page 25 – Add that the state recognizes a moral obligation to pay the authority's debt and obligations should the authority fail to do so.
- Page 25, Lines 6-12 – Specify that the authority shall determine reasonable management fees for the OWF fund manager.
- ✓ Page 25, Line 14 – "The fund manager shall establish a fund investment policy and amend the same as circumstances may require. The board shall review and approve the investment policy and any amendments thereto prior to the policy's implementation and at least annually thereafter."
- ✓ Page 25, Lines 18 and 19 – "The authority may not invest more than 15 percent of the fund's total capital raised and committed in a single certified investor." or similar language.
- ✓ Page 25, Line 23 – Replace language with "(a) The certified investor shall commit to a significant presence in this state, as determined by the board. (b) The certified investor shall invest in an amount equal to fund capital received in a business or businesses that:" or similar language. Further specify that the conditions specified afterward need only apply at the time of the initial investment.
- ✓ Page 25, Line 25 – "(2) Employs at least 50 percent of its employees, whether directly or through subsidiaries or affiliates, in this state."
- ✓ Page 26, Line 5 – Investments used to meet the minimum requirements for the angel and early stage investment tax credits do not qualify.
- ✓ Page 26, Lines 5-7 – Delete this provision.
- ✓ Page 26, Line 8 – "The certified investor may not receive capital from the fund that exceeds 25 percent of the total capital raised by the certified investor." or similar language to require, at a minimum, a 3:1 match of funds other than those invested by the authority.
- ✓ Page 26 – Add same industry restrictions to OWF investments as exist in the Rapid Growth Funds as defined in 239.20 (9) (d).

NO NEED

- ✓ Page 27, Line 3 – "(f) Such other factors as the authority deems appropriate which are consistent with its responsibilities."

Page 27, Lines 5-11 – Limit the claimants to those with income and franchise tax liabilities only. JK
Add that these tax credits may be transferrable. Additionally, cap the total credits that may be authorized at \$300,000,000. Further specify that the income and franchise tax credits be authorized by a written contract between the authority and the lender. The contract will specify terms under which the lender may claim the credit, including the amount of loss, if any, the lender must incur before the lender may claim the credit, and specify that the credit shall not exceed the amount of the loss; specify that the lender may claim the credit only for a loss certified by the authority. The intention is that these contingent tax credits would be authorized at or approximately near the time of investment, but could not be claimed until such time as the investor would incur a loss due to a debt service shortfall and that the credits could not be claimed in an amount exceeding the shortfall. These credits would not be refundable and could be carried forward until such time as the credits are exhausted. } mfb JK

- ✓ Page 28, Line 3 – Add to the reporting requirements the internal rate of return of fund capital by each certified investor and fees taken by the certified investor to date.
- ✓ Page 28 – Add a reporting requirement for the fees taken by the On Wisconsin Fund manager for the year of the report.

Page 29 – Line 24
✓ 239.20 (5) – Delete the 2 year requirement in definition of early stage business; keep the part of the definition referencing gross revenue of \$2M or less.

✓ Page 30 – Lines 21-22
239.20 (9) (e) – Delete this provision.

✓ Page 32 – Line 22
239.22 (2) (a) – The authority shall approve...

Page 34 – Lines 9-14
✓ 239.23 (1) (a) – "By authorizing the formation of a certified rapid growth fund, the Wisconsin Venture Capital Authority does not necessarily endorse the quality of management or explicitly or implicitly guarantee or otherwise assure the economic performance the potential for earnings of the fund and is not liable for damages or losses to a participating investor in the fund. Use of the word "certified" in an offering is not a recommendation, endorsement, or guarantee ..."

Line 22
✓ Create 239.23 (1) (c) – The certified growth fund is subject to the applicable requirements of chapter 239, Wisconsin Statutes, and any requirements imposed by the Wisconsin Venture Capital Authority.

Page 35 – Lines 7, 14
✓ 239.23 (2) (b) – "...no more than 10 percent..."
239.23 (2) (d) – "...to maintain at least 75 percent of its employees, whether directly employed or employed by a subsidiary or affiliate, in this state..."
(includes subsidiary (see definition))

✓ Page 36 – Line 11, 16
239.23 (4) (c) – "...not pay any management or similar fee until it has made those investment."
239.23 (4) (d) – "...not pay any management or similar fee until it has made those investment."

Page 37 – Line 17

✓ 239.23 (6) (b) 6 – “Any other investments of similar credit quality and risk, as approved in advance in writing by the authority.

✓ Page 38 – Lines 14-17
239.24 (1) (e) – Delete this provision.

Page 40 – Line 23
✓ 239.26 (2) (a) – “...is not in compliance with any provision of this subchapter or any requirement of the authority, the authority shall notify...”

Gallagher, Michael

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]
Sent: Tuesday, April 05, 2011 4:47 PM
To: Gallagher, Michael; Kreye, Joseph
Cc: Hoechst, Jonathan S - DOA
Subject: A couple additional edits
Mike and Joe,

A couple of additional clarifying edits on page 17:

Line 13 – Insert “Each year” before “For”

JK

Line 15 – Delete “annual”

JK

The basic intention here is to make sure that the increment is calculated as the withholding in year “t” minus the base year withholding in each year. When the current language says that the increment is based off the annual increase, it leaves it open to the interpretation that the increment is calculated as the withholding in year “t” minus the withholding in year “t-1” each year. The effect of this would be a severe narrowing of the increment.

Let me know if you have questions on this.

Thanks.

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

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

LRB-1556/P1dn
MPG:nwn:jf

March 29, 2011

Jonathan Hoechst and Brian Quinn:

Please review this draft carefully to ensure that it is consistent with your intent. Also, please see the notes, including questions, imbedded in the draft.

As we discussed, you should run this draft by the capital finance office.

The draft, in part, creates a new appropriation under s. 20.195 (1) (g) in the draft for the administration of the on Wisconsin fund. The Wisconsin Constitution, under article VIII, sections 4, 7 (2) (a), and 10, provides that public debt may be incurred only for certain purposes, primarily certain kinds of capital projects, and none of those purposes authorizes a venture capital investment program for the stimulation of start-up businesses in the state. However, those restrictions do not apply to authorities. Also, while it is impossible to predict how a court will rule in a given case, based on current case law, the new appropriation should not create a debt of the state because it does not create an absolute legal obligation on the part of the state to pay the debts of the Wisconsin Venture Capital Authority (the authority). *See State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 427-29, 208 N.W.2d 780 (Wis. 1973). Instead, the draft explicitly states that the authority's debt is not a debt of the state, and the authority cannot create a debt of the state. The courts tend to honor those kinds of legislative statements. *See, e.g., Nusbaum*, 59 Wis. 2d at 428-32.

While the draft does not create a legal obligation on the part of the state with respect to the authority's debts, we could, if you choose, include a "moral obligation pledge" that the legislature recognizes a moral obligation to pay the authority's debts should the authority fail to do so. While investors tend to look with favor on that kind of pledge, the Wisconsin Supreme Court has held that a moral obligation pledge does not create a legally enforceable debt of the state. *See id.; Wisconsin Solid Waste Recycling Authority v. Earl*, 70 Wis. 2d 464, 482, 235 N.W.2d 648 (Wis. 1975) (construing *Nusbaum*). Please let us know if you would like to include such a pledge.

Finally, while we do not usually include statements of legislative intent, purpose, or findings in the statutes, an exception to that general rule applies when there may be some question regarding the public purpose doctrine. Specifically, the courts have held that it is a fundamental constitutional requirement that the state's appropriations must be for a public purpose. *See Libertarian Party of Wisconsin v. State*, 199 Wis. 2d 790, 809-10, 546 N.W. 2d 424 (Wis. 1996). Because it is possible that some may

question whether the authority's investment in venture capital firms serves a public purpose, we have included a statement that the legislature finds the on Wisconsin fund is necessary and serves a public purpose. That kind of statement is also generally honored by the courts. *See Libertarian Party of Wisconsin v. State*, 199 Wis. 2d at 810.

Please let us know if you have any questions.

Michael Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1556/P1
MPG&JK:nwn:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to amend** 1.12 (1) (b), 13.172 (1), 13.48 (13) (a), 13.62 (2), 13.94 (1) (mm),
2 13.94 (4) (a) 1., 13.95 (intro.), 16.002 (2), 16.004 (4), 16.004 (5), 16.004 (12) (a),
3 16.045 (1) (a), 16.15 (1) (ab), 16.41 (4), 16.417 (1) (b), 16.52 (7), 16.528 (1) (a),
4 16.53 (2), 16.54 (9) (a) 1., 16.765 (1), 16.765 (2), 16.765 (5), 16.765 (6), 16.765 (7)
5 (intro.), 16.765 (7) (d), 16.765 (8), 16.85 (2), 16.865 (8), 71.26 (1) (be), 76.67 (2),
6 77.54 (9a) (a), 100.45 (1) (dm), 101.177 (1) (d), 230.03 (3), 281.75 (4) (b) 3. and
7 285.59 (1) (b); **to repeal and recreate** 16.417 (1) (b); and **to create** 13.94 (1)
8 (dx), 13.94 (1s) (c) 6., 19.42 (10) (t), 19.42 (13) (p), 20.195, 40.02 (54) (n), 70.11
9 (38v), 73.033, 76.634 and chapter 239 of the statutes; **relating to:** creation of
10 the Wisconsin Venture Capital Authority, creation of the on Wisconsin fund and
11 the rapid growth fund certification program, both of which are to be

1 administered by the Wisconsin Venture Capital Authority, making an
2 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

3 **SECTION 1.** 1.12 (1) (b) of the statutes, as affected by 2011 Wisconsin Act 7, is
4 amended to read:

5 1.12 (1) (b) "State agency" means an office, department, agency, institution of
6 higher education, the legislature, a legislative service agency, the courts, a judicial
7 branch agency, an association, society, or other body in state government that is
8 created or authorized to be created by the constitution or by law, for which
9 appropriations are made by law, excluding the Health Insurance Risk-Sharing Plan
10 Authority, the Wisconsin Venture Capital Authority, and the Wisconsin Economic
11 Development Corporation.

12 **SECTION 2.** 13.172 (1) of the statutes, as affected by 2011 Wisconsin Act 10, is
13 amended to read:

14 13.172 (1) In this section, "agency" means an office, department, agency,
15 institution of higher education, association, society, or other body in state
16 government created or authorized to be created by the constitution or any law, that
17 is entitled to expend moneys appropriated by law, including the legislature and the

1 courts, and any authority created in subch. II of ch. 114 or subch. III of ch. 149 or in
2 ch. 231, 233, 234, 238, 239, or 279.

3 **SECTION 3.** 13.48 (13) (a) of the statutes, as affected by 2011 Wisconsin Act 10,
4 is amended to read:

5 13.48 (13) (a) Except as provided in par. (b) or (c), every building, structure or
6 facility that is constructed for the benefit of or use of the state, any state agency,
7 board, commission or department, the University of Wisconsin Hospitals and Clinics
8 Authority, the Fox River Navigational System Authority, the Wisconsin Venture
9 Capital Authority, the Wisconsin Economic Development Corporation, or any local
10 professional baseball park district created under subch. III of ch. 229 if the
11 construction is undertaken by the department of administration on behalf of the
12 district, shall be in compliance with all applicable state laws, rules, codes and
13 regulations but the construction is not subject to the ordinances or regulations of the
14 municipality in which the construction takes place except zoning, including without
15 limitation because of enumeration ordinances or regulations relating to materials
16 used, permits, supervision of construction or installation, payment of permit fees, or
17 other restrictions.

18 **SECTION 4.** 13.62 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is
19 amended to read:

20 13.62 (2) "Agency" means any board, commission, department, office, society,
21 institution of higher education, council, or committee in the state government, or any
22 authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 232, 233,
23 234, 237, 238, 239, or 279, except that the term does not include a council or
24 committee of the legislature.

25 **SECTION 5.** 13.94 (1) (dx) of the statutes is created to read:

1 13.94 (1) (dx) Biennially, beginning in 2013, conduct a financial audit of the
2 Wisconsin Venture Capital Authority and a program evaluation audit of the
3 programs administered by the Wisconsin Venture Capital Authority under ch. 239.
4 The legislative audit bureau shall file a copy of each audit report under this
5 paragraph with the distributees specified in par. (b).

6 **SECTION 6.** 13.94 (1) (mm) of the statutes, as affected by 2011 Wisconsin Act 7,
7 is amended to read:

8 13.94 (1) (mm) No later than July 1, 2012, prepare a financial and performance
9 evaluation audit of the economic development programs administered by the
10 department of commerce, the University of Wisconsin System, the department of
11 agriculture, trade and consumer protection, the department of natural resources, the
12 Wisconsin Housing and Economic Development Authority, the Wisconsin Venture
13 Capital Authority, the Wisconsin Economic Development Corporation, the
14 department of tourism, the technical college system, and the department of
15 transportation. In this paragraph, economic development program has the meaning
16 given in s. 560.001 (1m). The legislative audit bureau shall file a copy of the report
17 of the audit under this paragraph with the distributees specified in par. (b).

18 **SECTION 7.** 13.94 (1s) (c) 6. of the statutes is created to read:

19 13.94 (1s) (c) 6. The Wisconsin Venture Capital Authority for the cost of the
20 audit required to be performed under sub. (1) (dx).

21 **SECTION 8.** 13.94 (4) (a) 1. of the statutes, as affected by 2011 Wisconsin Act 10,
22 is amended to read:

23 13.94 (4) (a) 1. Every state department, board, examining board, affiliated
24 credentialing board, commission, independent agency, council or office in the
25 executive branch of state government; all bodies created by the legislature in the

1 legislative or judicial branch of state government; any public body corporate and
2 politic created by the legislature including specifically the Fox River Navigational
3 System Authority, the Lower Fox River Remediation Authority, the Wisconsin
4 Aerospace Authority, the Wisconsin Venture Capital Authority, and the Wisconsin
5 Economic Development Corporation, a professional baseball park district, a local
6 professional football stadium district, a local cultural arts district, and a long-term
7 care district under s. 46.2895; every Wisconsin works agency under subch. III of ch.
8 49; every provider of medical assistance under subch. IV of ch. 49; technical college
9 district boards; every county department under s. 51.42 or 51.437; every nonprofit
10 corporation or cooperative or unincorporated cooperative association to which
11 moneys are specifically appropriated by state law; and every corporation, institution,
12 association or other organization which receives more than 50% of its annual budget
13 from appropriations made by state law, including subgrantee or subcontractor
14 recipients of such funds.

15 **SECTION 9.** 13.95 (intro.) of the statutes, as affected by 2011 Wisconsin Act 10,
16 is amended to read:

17 **13.95 Legislative fiscal bureau.** (intro.) There is created a bureau to be
18 known as the "Legislative Fiscal Bureau" headed by a director. The fiscal bureau
19 shall be strictly nonpartisan and shall at all times observe the confidential nature
20 of the research requests received by it; however, with the prior approval of the
21 requester in each instance, the bureau may duplicate the results of its research for
22 distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director's
23 designated employees shall at all times, with or without notice, have access to all
24 state agencies, the University of Wisconsin Hospitals and Clinics Authority, the
25 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,

1 the Lower Fox River Remediation Authority, the Wisconsin Venture Capital
2 Authority, the Wisconsin Economic Development Corporation, and the Fox River
3 Navigational System Authority, and to any books, records, or other documents
4 maintained by such agencies or authorities and relating to their expenditures,
5 revenues, operations, and structure.

6 **SECTION 10.** 16.002 (2) of the statutes, as affected by 2011 Wisconsin Act 10,
7 is amended to read:

8 16.002 (2) "Departments" means constitutional offices, departments, and
9 independent agencies and includes all societies, associations, and other agencies of
10 state government for which appropriations are made by law, but not including
11 authorities created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 232,
12 233, 234, 235, 237, 238, 239, or 279.

13 **SECTION 11.** 16.004 (4) of the statutes, as affected by 2011 Wisconsin Act 10,
14 is amended to read:

15 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the
16 department as the secretary designates may enter into the offices of state agencies
17 and authorities created under subch. II of ch. 114 and subch. III of ch. 149 and under
18 chs. 231, 233, 234, 237, 238, 239, and 279, and may examine their books and accounts
19 and any other matter that in the secretary's judgment should be examined and may
20 interrogate the agency's employees publicly or privately relative thereto.

21 **SECTION 12.** 16.004 (5) of the statutes, as affected by 2011 Wisconsin Act 10,
22 is amended to read:

23 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and
24 authorities created under subch. II of ch. 114 and subch. III of ch. 149 and under chs.
25 231, 233, 234, 237, 238, 239, and 279, and their officers and employees, shall

1 cooperate with the secretary and shall comply with every request of the secretary
2 relating to his or her functions.

3 **SECTION 13.** 16.004 (12) (a) of the statutes, as affected by 2011 Wisconsin Act
4 10, is amended to read:

5 16.004 (12) (a) In this subsection, "state agency" means an association,
6 authority, board, department, commission, independent agency, institution, office,
7 society, or other body in state government created or authorized to be created by the
8 constitution or any law, including the legislature, the office of the governor, and the
9 courts, but excluding the University of Wisconsin Hospitals and Clinics Authority,
10 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
11 Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic
12 Development Corporation, the Wisconsin Venture Capital Authority, and the Fox
13 River Navigational System Authority.

14 **SECTION 14.** 16.045 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 10,
15 is amended to read:

16 16.045 (1) (a) "Agency" means an office, department, independent agency,
17 institution of higher education, association, society, or other body in state
18 government created or authorized to be created by the constitution or any law, that
19 is entitled to expend moneys appropriated by law, including the legislature and the
20 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
21 ch. 149 or in ch. 231, 232, 233, 234, 235, 237, 238, 239, or 279.

22 **SECTION 15.** 16.15 (1) (ab) of the statutes, as affected by 2011 Wisconsin Act 10,
23 is amended to read:

24 16.15 (1) (ab) "Authority" has the meaning given under s. 16.70 (2), but
25 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox

1 River Remediation Authority, the Wisconsin Economic Development Corporation,
2 the Wisconsin Venture Capital Authority, and the Health Insurance Risk-Sharing
3 Plan Authority.

4 **SECTION 16.** 16.41 (4) of the statutes, as affected by 2011 Wisconsin Act 10, is
5 amended to read:

6 16.41 (4) In this section, "authority" means a body created under subch. II of
7 ch. 114 or subch. III of ch. 149 or under ch. 231, 233, 234, 237, 238, 239, or 279.

8 **SECTION 17.** 16.417 (1) (b) of the statutes, as affected by 2011 Wisconsin Acts
9 7 and 10, is repealed and recreated to read:

10 16.417 (1) (b) "Authority" means a body created under subch. II of ch. 114 or
11 ch. 231, 232, 233, 234, 235, 237, 239, or 279.

12 **SECTION 18.** 16.417 (1) (b) of the statutes, as affected by 2011 Wisconsin Act
13 (this act), is amended to read:

14 16.417 (1) (b) "Authority" means a body created under subch. II of ch. 114 or
15 ch. 231, 232, 233, 234, 235, 237, 238, 239, or 279.

16 **SECTION 19.** 16.52 (7) of the statutes, as affected by 2011 Wisconsin Act 10, is
17 amended to read:

18 16.52 (7) PETTY CASH ACCOUNT. With the approval of the secretary, each agency
19 that is authorized to maintain a contingent fund under s. 20.920 may establish a
20 petty cash account from its contingent fund. The procedure for operation and
21 maintenance of petty cash accounts and the character of expenditures therefrom
22 shall be prescribed by the secretary. In this subsection, "agency" means an office,
23 department, independent agency, institution of higher education, association,
24 society, or other body in state government created or authorized to be created by the
25 constitution or any law, that is entitled to expend moneys appropriated by law,

1 including the legislature and the courts, but not including an authority created in
2 subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 233, 234, 237, 238, 239, or
3 279.

4 **SECTION 20.** 16.528 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 10,
5 is amended to read:

6 16.528 (1) (a) "Agency" means an office, department, independent agency,
7 institution of higher education, association, society, or other body in state
8 government created or authorized to be created by the constitution or any law, that
9 is entitled to expend moneys appropriated by law, including the legislature and the
10 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
11 ch. 149 or in ch. 231, 233, 234, 237, 238, 239, or 279.

12 **SECTION 21.** 16.53 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is
13 amended to read:

14 16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed
15 invoice, the agency shall notify the sender of the invoice within 10 working days after
16 it receives the invoice of the reason it is improperly completed. In this subsection,
17 "agency" means an office, department, independent agency, institution of higher
18 education, association, society, or other body in state government created or
19 authorized to be created by the constitution or any law, that is entitled to expend
20 moneys appropriated by law, including the legislature and the courts, but not
21 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
22 231, 233, 234, 237, 238, 239, or 279.

23 **SECTION 22.** 16.54 (9) (a) 1. of the statutes, as affected by 2011 Wisconsin Act
24 10, is amended to read:

1 16.54 (9) (a) 1. "Agency" means an office, department, independent agency,
2 institution of higher education, association, society or other body in state
3 government created or authorized to be created by the constitution or any law, which
4 is entitled to expend moneys appropriated by law, including the legislature and the
5 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
6 ch. 149 or in ch. 231, 233, 234, 237, 238, 239, or 279.

7 **SECTION 23.** 16.765 (1) of the statutes, as affected by 2011 Wisconsin Act 10,
8 is amended to read:

9 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and
10 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
11 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
12 Fox River Remediation Authority, the Wisconsin Venture Capital Authority, the
13 Wisconsin Economic Development Corporation, and the Bradley Center Sports and
14 Entertainment Corporation shall include in all contracts executed by them a
15 provision obligating the contractor not to discriminate against any employee or
16 applicant for employment because of age, race, religion, color, handicap, sex, physical
17 condition, developmental disability as defined in s. 51.01 (5), sexual orientation as
18 defined in s. 111.32 (13m), or national origin and, except with respect to sexual
19 orientation, obligating the contractor to take affirmative action to ensure equal
20 employment opportunities.

21 **SECTION 24.** 16.765 (2) of the statutes, as affected by 2011 Wisconsin Act 10,
22 is amended to read:

23 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and
24 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
25 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower

1 Fox River Remediation Authority, the Wisconsin Venture Capital Authority, the
2 Wisconsin Economic Development Corporation, and the Bradley Center Sports and
3 Entertainment Corporation shall include the following provision in every contract
4 executed by them: "In connection with the performance of work under this contract,
5 the contractor agrees not to discriminate against any employee or applicant for
6 employment because of age, race, religion, color, handicap, sex, physical condition,
7 developmental disability as defined in s. 51.01 (5), sexual orientation or national
8 origin. This provision shall include, but not be limited to, the following: employment,
9 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
10 termination; rates of pay or other forms of compensation; and selection for training,
11 including apprenticeship. Except with respect to sexual orientation, the contractor
12 further agrees to take affirmative action to ensure equal employment opportunities.
13 The contractor agrees to post in conspicuous places, available for employees and
14 applicants for employment, notices to be provided by the contracting officer setting
15 forth the provisions of the nondiscrimination clause".

16 **SECTION 25.** 16.765 (5) of the statutes, as affected by 2011 Wisconsin Act 10,
17 is amended to read:

18 16.765 (5) The head of each contracting agency and the boards of directors of
19 the University of Wisconsin Hospitals and Clinics Authority, the Fox River
20 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
21 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
22 Authority, the Wisconsin Venture Capital Authority, the Wisconsin Economic
23 Development Corporation, and the Bradley Center Sports and Entertainment
24 Corporation shall be primarily responsible for obtaining compliance by any
25 contractor with the nondiscrimination and affirmative action provisions prescribed

1 by this section, according to procedures recommended by the department. The
2 department shall make recommendations to the contracting agencies and the boards
3 of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox
4 River Navigational System Authority, the Wisconsin Aerospace Authority, the
5 Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
6 Authority, the Wisconsin Venture Capital Authority, the Wisconsin Economic
7 Development Corporation, and the Bradley Center Sports and Entertainment
8 Corporation for improving and making more effective the nondiscrimination and
9 affirmative action provisions of contracts. The department shall promulgate such
10 rules as may be necessary for the performance of its functions under this section.

11 **SECTION 26.** 16.765 (6) of the statutes, as affected by 2011 Wisconsin Act 10,
12 is amended to read:

13 16.765 (6) The department may receive complaints of alleged violations of the
14 nondiscrimination provisions of such contracts. The department shall investigate
15 and determine whether a violation of this section has occurred. The department may
16 delegate this authority to the contracting agency, the University of Wisconsin
17 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
18 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
19 the Lower Fox River Remediation Authority, the Wisconsin Venture Capital
20 Authority, the Wisconsin Economic Development Corporation, or the Bradley Center
21 Sports and Entertainment Corporation for processing in accordance with the
22 department's procedures.

23 **SECTION 27.** 16.765 (7) (intro.) of the statutes, as affected by 2011 Wisconsin
24 Act 10, is amended to read:

1 16.765 (7) (intro.) When a violation of this section has been determined by the
2 department, the contracting agency, the University of Wisconsin Hospitals and
3 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
4 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
5 Fox River Remediation Authority, the Wisconsin Venture Capital Authority, the
6 Wisconsin Economic Development Corporation, or the Bradley Center Sports and
7 Entertainment Corporation, the contracting agency, the University of Wisconsin
8 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
9 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
10 the Lower Fox River Remediation Authority, the Wisconsin Venture Capital
11 Authority, the Wisconsin Economic Development Corporation, or the Bradley Center
12 Sports and Entertainment Corporation shall:

13 **SECTION 28.** 16.765 (7) (d) of the statutes, as affected by 2011 Wisconsin Act 10,
14 is amended to read:

15 16.765 (7) (d) Direct the violating party to take immediate steps to prevent
16 further violations of this section and to report its corrective action to the contracting
17 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River
18 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
19 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
20 Authority, the Wisconsin Venture Capital Authority, the Wisconsin Economic
21 Development Corporation, or the Bradley Center Sports and Entertainment
22 Corporation.

23 **SECTION 29.** 16.765 (8) of the statutes, as affected by 2011 Wisconsin Act 10,
24 is amended to read:

1 16.765 (8) If further violations of this section are committed during the term
2 of the contract, the contracting agency, the Fox River Navigational System Authority,
3 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
4 Authority, the Lower Fox River Remediation Authority, the Wisconsin Venture
5 Capital Authority, the Wisconsin Economic Development Corporation, or the
6 Bradley Center Sports and Entertainment Corporation may permit the violating
7 party to complete the contract, after complying with this section, but thereafter the
8 contracting agency, the Fox River Navigational System Authority, the Wisconsin
9 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
10 Fox River Remediation Authority, the Wisconsin Venture Capital Authority, the
11 Wisconsin Economic Development Corporation, or the Bradley Center Sports and
12 Entertainment Corporation shall request the department to place the name of the
13 party on the ineligible list for state contracts, or the contracting agency, the Fox River
14 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
15 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
16 Authority, the Wisconsin Venture Capital Authority, the Wisconsin Economic
17 Development Corporation, or the Bradley Center Sports and Entertainment
18 Corporation may terminate the contract without liability for the uncompleted
19 portion or any materials or services purchased or paid for by the contracting party
20 for use in completing the contract.

21 **SECTION 30.** 16.85 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is
22 amended to read:

23 16.85 (2) To furnish engineering, architectural, project management, and other
24 building construction services whenever requisitions therefor are presented to the
25 department by any agency. The department may deposit moneys received from the

1 provision of these services in the account under s. 20.505 (1) (kc) or in the general
2 fund as general purpose revenue — earned. In this subsection, “agency” means an
3 office, department, independent agency, institution of higher education, association,
4 society, or other body in state government created or authorized to be created by the
5 constitution or any law, which is entitled to expend moneys appropriated by law,
6 including the legislature and the courts, but not including an authority created in
7 subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 233, 234, 237, 238, 239, or
8 279.

9 **SECTION 31.** 16.865 (8) of the statutes, as affected by 2011 Wisconsin Act 10,
10 is amended to read:

11 16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a
12 proportionate share of the estimated costs attributable to programs administered by
13 the agency to be paid from the appropriation under s. 20.505 (2) (k). The department
14 may charge premiums to agencies to finance costs under this subsection and pay the
15 costs from the appropriation on an actual basis. The department shall deposit all
16 collections under this subsection in the appropriation account under s. 20.505 (2) (k).
17 Costs assessed under this subsection may include judgments, investigative and
18 adjustment fees, data processing and staff support costs, program administration
19 costs, litigation costs, and the cost of insurance contracts under sub. (5). In this
20 subsection, “agency” means an office, department, independent agency, institution
21 of higher education, association, society, or other body in state government created
22 or authorized to be created by the constitution or any law, that is entitled to expend
23 moneys appropriated by law, including the legislature and the courts, but not
24 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
25 231, 232, 233, 234, 235, 237, 238, 239, or 279.

1 **SECTION 32.** 19.42 (10) (t) of the statutes is created to read:

2 19.42 (10) (t) The executive director of the Wisconsin Venture Capital
3 Authority and the members of the authority's board of directors who are appointed
4 by the speaker of the assembly and the majority leader of the senate.

5 **SECTION 33.** 19.42 (13) (p) of the statutes is created to read:

6 19.42 (13) (p) The executive director of the Wisconsin Venture Capital
7 Authority and the members of the authority's board of directors who are appointed
8 by the speaker of the assembly and the majority leader of the senate.

9 **SECTION 34.** 20.195 of the statutes is created to read:

10 **20.195 Wisconsin Venture Capital Authority.** There is appropriated to the
11 Wisconsin Venture Capital Authority for the following program:

12 **(1) ON WISCONSIN FUND.** (g) *Administration of the on Wisconsin fund.* All
13 moneys received under s. 73.033 (2), for administration of the on Wisconsin fund
14 under subch. II of ch. 239.

 ***NOTE: Do you also want to create an appropriation to cover the initial or
operating costs, or both, of the authority?

15 **SECTION 35.** 40.02 (54) (n) of the statutes is created to read:

16 40.02 (54) (n) The Wisconsin Venture Capital Authority.

17 **SECTION 36.** 70.11 (38v) of the statutes is created to read:

18 70.11 (38v) WISCONSIN VENTURE CAPITAL AUTHORITY. All property owned by the
19 Wisconsin Venture Capital Authority, provided that use of the property is primarily
20 related to the purposes of the Wisconsin Venture Capital Authority.

21 **SECTION 37.** 71.26 (1) (be) of the statutes, as affected by 2011 Wisconsin Act 10,
22 is amended to read:

1 71.26 (1) (be) *Certain authorities.* Income of the University of Wisconsin
2 Hospitals and Clinics Authority, of the Health Insurance Risk-Sharing Plan
3 Authority, of the Fox River Navigational System Authority, of the Wisconsin
4 Economic Development Corporation, of the Wisconsin Venture Capital Authority,
5 and of the Wisconsin Aerospace Authority.

6 **SECTION 38.** 73.033 of the statutes is created to read:

7 **73.033 Rapid growth fund investments; withholding tax**
8 **determinations.** (1) The department of revenue, in consultation with the
9 Wisconsin Venture Capital Authority created under ch. 239, shall determine the
10 amount of the withholding taxes under subch. X of ch. 71 paid by each business that
11 receives an investment under s. 239.23 (2) for the first year in which each business
12 receives the investment.

13 (2) For 15 years following the first year in which a business receives an
14 investment under s. 239.23 (2), the department shall credit to the appropriation
15 account under s. 20.195 (1) (g) an amount equal to 50 percent of the annual increase,
16 if any, in withholding taxes under subch. X of ch. 71 paid by all businesses that
17 receive investments under s. 239.23 (2) over the amount determined for all such
18 businesses under sub. (1). The department shall credit the amounts determined
19 under this subsection on a quarterly basis based on its estimate of the total annual
20 increase in the withholding taxes described in this subsection.

21 **SECTION 39.** 76.634 of the statutes is created to read:

22 **76.634 Credit for rapid growth fund investments.** (1) **DEFINITIONS.** In this
23 section:

24 (a) "Allocation date" has the meaning given in s. 239.20 (2).

25 (b) "Certified rapid growth fund" has the meaning given in s. 239.20 (3).

1 (c) "Designated capital" has the meaning given in s. 239.20 (4).

2 (2) CREDIT. Subject to the limitations provided in this section and s. 239.22, for
3 taxable years beginning after December 31, 2013, an insurer who makes an
4 investment of designated capital and who has been awarded a credit under s. 239.22
5 (2) (a), may claim as a credit against the fees imposed under s. 76.60, 76.63, 76.65,
6 76.66, or 76.67, up to the amount of such fees, the amount determined under s. 239.22
7 (2) (b).

8 (3) CARRY-FORWARD. If the credit under sub. (2) is not entirely offset against the
9 fees under s. 76.60, 76.63, 76.65, 76.66 or 76.67 otherwise due, the unused balance
10 may be carried forward and credited against those fees in the following years to the
11 extent that it is not offset by those fees otherwise due in all the years between the
12 year in which the initial credit is claimed and the year in which the carry-forward
13 credit is claimed.

14 (4) RECAPTURE. If a certified rapid growth fund in which the insurer's
15 designated capital has been invested is decertified under s. 239.26 (2) (b) no later
16 than 4 years after the insurer's allocation date, and the rapid growth fund has not
17 made the investments required under s. 239.23 (4) (a) and (b), any insurer that has
18 received a credit under this section with respect to such decertified rapid growth fund
19 shall repay the credit amount to the commissioner of insurance, for deposit into the
20 general fund, and may not claim any more credits under this section with respect to
21 the decertified rapid growth fund.

22 (5) SALE OF CREDIT. An insurer who is awarded a credit under s. 239.22 (2) (a),
23 and who may claim the credit under this section, may sell or otherwise transfer the
24 credit to another insurer who is subject the fees imposed under s. 76.60, 76.63, 76.65,
25 76.66, or 76.67 if the insurer notifies the commissioner of insurance and the

1 Wisconsin Venture Capital Authority created under ch. 239 of the sale or transfer
2 and includes with the notification a copy of the sale or transfer documents. If a credit
3 that has been sold or transferred under this subsection is subject to recapture under
4 sub. (4), the person who claimed the credit is liable for the repayment provided under
5 sub. (4). No credit may be sold or transferred under this subsection until 180 days
6 after the insurer's allocation date.

7 **SECTION 40.** 76.67 (2) of the statutes is amended to read:

8 76.67 (2) If any domestic insurer is licensed to transact insurance business in
9 another state, this state may not require similar insurers domiciled in that other
10 state to pay taxes greater in the aggregate than the aggregate amount of taxes that
11 a domestic insurer is required to pay to that other state for the same year less the
12 credits under ss. 76.634, 76.635, 76.636, 76.637, 76.638, and 76.655, except that the
13 amount imposed shall not be less than the total of the amounts due under ss. 76.65
14 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375% of its gross premiums,
15 as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss.
16 76.634, 76.635, 76.636, 76.637, 76.638, and 76.655 against that total, and except that
17 the amount imposed shall not be less than the amount due under s. 601.93.

18 **SECTION 41.** 77.54 (9a) (a) of the statutes, as affected by 2011 Wisconsin Act 10,
19 is amended to read:

20 77.54 (9a) (a) This state or any agency thereof, the University of Wisconsin
21 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health
22 Insurance Risk-Sharing Plan Authority, the Wisconsin Economic Development
23 Corporation, the Wisconsin Venture Capital Authority, and the Fox River
24 Navigational System Authority.

1 **SECTION 42.** 100.45 (1) (dm) of the statutes, as affected by 2011 Wisconsin Act
2 10, is amended to read:

3 100.45 (1) (dm) "State agency" means any office, department, agency,
4 institution of higher education, association, society, or other body in state
5 government created or authorized to be created by the constitution or any law which
6 is entitled to expend moneys appropriated by law, including the legislature and the
7 courts, the Wisconsin Housing and Economic Development Authority, the Bradley
8 Center Sports and Entertainment Corporation, the University of Wisconsin
9 Hospitals and Clinics Authority, the Wisconsin Health and Educational Facilities
10 Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic
11 Development Corporation, the Wisconsin Venture Capital Authority, and the Fox
12 River Navigational System Authority.

13 **SECTION 43.** 101.177 (1) (d) of the statutes, as affected by 2011 Wisconsin Act
14 10, is amended to read:

15 101.177 (1) (d) "State agency" means any office, department, agency,
16 institution of higher education, association, society, or other body in state
17 government created or authorized to be created by the constitution or any law, that
18 is entitled to expend moneys appropriated by law, including the legislature and the
19 courts, the Wisconsin Housing and Economic Development Authority, the Bradley
20 Center Sports and Entertainment Corporation, the University of Wisconsin
21 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin
22 Economic Development Corporation, the Wisconsin Venture Capital Authority, and
23 the Wisconsin Health and Educational Facilities Authority, but excluding the Health
24 Insurance Risk-Sharing Plan Authority and the Lower Fox River Remediation
25 Authority.

1 **SECTION 44.** 230.03 (3) of the statutes, as affected by 2011 Wisconsin Act 10,
2 is amended to read:

3 230.03 (3) “Agency” means any board, commission, committee, council, or
4 department in state government or a unit thereof created by the constitution or
5 statutes if such board, commission, committee, council, department, unit, or the
6 head thereof, is authorized to appoint subordinate staff by the constitution or
7 statute, except a legislative or judicial board, commission, committee, council,
8 department, or unit thereof or an authority created under subch. II of ch. 114 or
9 subch. III of ch. 149 or under ch. 231, 232, 233, 234, 235, 237, 238, 239, or 279.
10 “Agency” does not mean any local unit of government or body within one or more local
11 units of government that is created by law or by action of one or more local units of
12 government.

13 **SECTION 45.** Chapter 239 of the statutes is created to read:

14 **CHAPTER 239**

15 **WISCONSIN VENTURE CAPITAL**

16 **AUTHORITY**

17 **SUBCHAPTER I**

18 **GENERAL PROVISIONS**

19 **239.01 Definitions.** In this chapter, except as otherwise provided:

20 (1) “Board” means the board of directors of the authority.

21 (2) “Authority” means the Wisconsin Venture Capital Authority.

22 **239.02 Creation and organization of authority.** (1) There is created an
23 authority, that is a public body corporate and politic, to be known as the “Wisconsin
24 Venture Capital Authority.” The members of the board shall consist of the following:

1 (a) The chief executive officer of the Wisconsin Economic Development
2 Corporation.

3 (b) The executive director of the Wisconsin Housing and Economic
4 Development Authority.

5 (c) Three persons from the private sector, at least 2 of whom shall have venture
6 capital or venture banking experience, nominated by the governor and appointed
7 with the advice and consent of the senate.

8 (d) One member appointed by the speaker of the assembly.

9 (e) One member appointed by the senate majority leader.

10 (2) The members of the board appointed by the governor, the speaker of the
11 assembly, and the senate majority leader shall serve staggered 3-year terms.

****NOTE: Do you want to specify whether the members appointed by the assembly speaker and senate majority leader are to be members from the legislature or members from the private sector? Also, note that the staggered terms are for 3 years. No length of time is specified in the drafting instructions. Please let us know if you want the terms longer. You may want to consider having those members serve at the pleasure of those legislators in any case. Finally, do you want the board to have any nonvoting members, like the secretary of administration?

12 (3) A majority of the members of the board constitutes a quorum for the purpose
13 of conducting its business and exercising its powers and for all other purposes,
14 notwithstanding the existence of any vacancies. Action may be taken by the board
15 upon a vote of a majority of the members present.

16 (4) A chairperson of the board shall be nominated by the governor, and with
17 the advice and consent of the senate appointed, to serve at the pleasure of the
18 governor.

19 (5) The board shall hire an executive director. The board may delegate to the
20 executive director any powers and duties the board considers proper.

.....NOTE: The drafting instructions indicate the hiring of an executive director for the on Wisconsin fund in addition to the executive director for the authority. Is this the intent?

1 **239.03 Powers of board.** The board shall have all the powers necessary or
2 convenient to carry out the purposes and provisions of this chapter. In addition to
3 all other powers granted the board under this chapter, the board may specifically:

4 (1) Adopt, amend, and repeal any bylaws, policies, and procedures for the
5 regulation of its affairs and the conduct of its business.

6 (2) Have a seal and alter the seal at pleasure.

7 (3) Maintain an office.

8 (4) Sue and be sued.

9 (5) Accept gifts, grants, loans, or other contributions from private or public
10 sources.

11 (6) Establish the annual budget of the authority and monitor its fiscal
12 management.

13 (7) Execute contracts and other instruments required for the operation of the
14 authority.

15 (8) Employ any officers, agents, and employees that it may require and
16 determine their qualifications, duties, and compensation.

17 (9) Issue notes, bonds, and any other obligations.

18 (10) Make loans and provide grants.

19 (11) Incur debt.

20 (12) Procure liability insurance.

21 **239.04 Liability limited.** Neither the state nor any political subdivision of
22 the state, nor any officer, employee, or agent of the state or a political subdivision of

1 the state who is acting within the scope of employment or agency, is liable for any
2 debt, obligation, act, or omission of the corporation.

3 SUBCHAPTER II

4 ON WISCONSIN FUND

5 **239.10 Definitions.** In this subchapter:

6 (1) "Certified investor" means a venture capital firm certified under s. 239.13.

7 (2) "Fund creditor" means any holder of a note or bond of the authority under
8 this subchapter.

9 (3) "Debt service obligation" means the authority's obligation, including any
10 payment schedule, to pay principal and interest or other financing costs to a creditor
11 on a note or bond the board issues under this subchapter.

12 (4) "Fund" means the on Wisconsin fund.

13 **239.11 Creation of fund; management.** (1) FUND PURPOSE. The board shall
14 establish ~~the fund~~ ^{to be known as "the Wisconsin Fund"} for the investment of capital in certified investors. All moneys
15 appropriated under s. 20.195 (1) (g) shall be credited to the fund. The legislature
16 finds that the fund will provide capital for business growth and job creation in this
17 state that is currently not sufficiently available in private financial markets and that
18 the fund will serve a public purpose.

19 (2) FUND CAPITAL; DEBT SERVICE. (a) The board may issue, by resolution,
20 negotiable notes or bonds of any kind to finance the fund.

21 (b) The authority may not, and shall plan its debt service obligations to ensure
22 that it does not, pay more than \$20,000,000 in debt service obligations in a calendar
23 year.

24 (c) The state is not liable for a debt service obligation of the authority. The
25 authority's debt is not a debt of the state, and the authority may not create a debt of

1 the state. Each note or bond of the authority shall contain on its face a statement
2 to that effect.

3 (3) EXECUTIVE DIRECTOR. The board shall hire an executive director for the fund.
4 The board may delegate to the fund's executive director any powers and duties the
5 board considers proper.

6 (4) FUND MANAGER. The board shall hire a fund manager who has expertise in
7 the venture capital or private equity industry to manage the fund's investment of
8 capital in certified investors. In reviewing candidates for fund manager, the board
9 shall consider a candidate's venture capital or private equity experience, investment
10 philosophy, and the performance of any venture capital funds managed by the
11 candidate, as well as any other relevant criteria established by the board. The board
12 may delegate to the fund manager any powers and duties the board considers proper.

13 **239.12 Investment of capital in certified investors; requirements. (1)**
14 INVESTMENT POLICY. The fund manager shall establish a fund investment policy. The
15 board shall review and approve the investment policy prior to the policy's
16 implementation and at least annually thereafter.

17 (2) FUND INVESTMENTS. The authority may invest capital under this subchapter
18 only in certified investors. The authority may not invest more than 20 percent of the
19 fund's current assets in a single certified investor.

20 (3) CONTRACTS. Before the authority invests any capital in a certified investor,
21 the board shall contract with the certified investor, and in addition to any other terms
22 negotiated by the board, that contract shall include the following requirements:

- 23 (a) The certified investor may invest a fund capital only in a business that:
 - 24 1. Is headquartered in this state.
 - 25 2. Employs at least 50 percent of its employees in this state.

Interpretation of
the following
condition

1 3. Agrees to use fund capital only for research and development, the
2 introduction of a new product in the market, the business's entry into a new market,
3 or other activities that are expected to grow the business and create jobs in this state.

4 4. Meets any other conditions required by the authority.

5 (b) When a certified investor makes an investment of fund capital in a business,
6 the certified investor shall match the fund's capital contribution to that investment
7 with capital the certified investor has raised from other sources.

8 (c) The certified investor may not receive capital from the fund that exceeds the
9 total capital the investor has raised from other sources.

10 (4) SUNSET. The authority may not invest capital in a certified investor under
11 this subchapter after December 31, 2015.

12 **239.13 Investor certification. (1) APPLICATION.** Any person may apply to the
13 authority on a form prescribed by the authority for certification under this section.
14 The application shall include the name, address, and tax identification number of the
15 person and any other information the authority requires.

16 (2) CERTIFICATION. The authority may certify an applicant who submits an
17 application under sub. (1) to receive fund capital for investment. In determining
18 whether to certify an applicant, the authority shall consider:

19 (a) The applicant's venture capital experience or other experience that qualifies
20 the applicant to receive fund capital.

21 (b) The past performance of investments managed by the applicant.

22 (c) The applicant's commitment to investing in businesses within this state.

23 (d) The applicant's commitment to making seed or early stage business
24 investments.

1 (e) Whether the applicant is located in this state or will locate and maintain an
2 office in this state as a condition of the applicant's certification under this section.

3 (3) APPLICATION FEE. The authority may charge a fee to an applicant for
4 certification under this section.

5 **239.14 Tax credits to fund creditors.** In lieu of payment of its debt service
6 obligation to a fund creditor, and subject to the terms of any agreement between the
7 board and a fund creditor, the authority may award a tax credit under s. 76.634 to
8 a fund creditor up to an amount equal to the amount the authority is unable to pay
9 the creditor under the authority's debt service obligation to the creditor in a taxable
10 year. The authority may not award a tax credit under this section before January
11 1, 2016.

12 **239.15 Annual report.** Annually, the board shall submit to the chief clerk of
13 each house of the legislature, for distribution to the legislature under s. 13.172 (2),
14 a report on the fund's performance that includes *any of the following*

15 (1) The current investment policy of the fund.

16 (2) An assessment of the fund's success to date, including the fund's internal
17 rate of return on its investments in certified investors.

18 (3) An accounting of the total value of tax credits awarded to fund creditors
19 under s. 239.14, including a description of the circumstances leading to the award
20 of those credits and the likelihood that the authority will award additional credits
21 to fund creditors in the future.

22 (4) An accounting of the tax increment revenue received by the authority to
23 date under s. 73.033 (2).

24 (5) An accounting of the fund's financial status, including the opinion of an
25 independent certified public accountant.

1 (e) An officer, director, employee, or agent of a certified rapid growth fund or
2 an insurance company or other person subject to premium tax liability, or an
3 immediate family member of the officer, director, employee, or agent.

4 (2) "Allocation date" means the date stated in the authority's notice under s.
5 239.22 (2) (b) that approves a specific amount of designated capital and awards a
6 corresponding premium tax credit to a participating investor.

7 (3) "Certified rapid growth fund" or "fund" means an entity that is certified
8 under s. 239.21.

9 (4) "Designated capital" means an investment of cash by a participating
10 investor in a certified rapid growth fund that is approved by the authority under s.
11 239.22 and that fully funds either the participating investor's equity interest in a
12 certified rapid growth fund, a qualified debt instrument that a certified rapid growth
13 fund issues, or both. In this subsection, "qualified debt instrument" means a bond,
14 note, or other obligation that a certified rapid growth fund issues at par value or at
15 a premium or discount from par value that meets all of the following conditions:

16 (a) Has an original maturity date of at least 4 years from the date on which it
17 is issued.

18 (b) Has a repayment schedule that is no faster than a level principal
19 amortization over 4 years.

20 (c) Does not allow for the prepayment of interest.

21 (d) Has payment and interest features that are not related to the fund's
22 profitability or the performance of the fund's investment portfolio.

23 (5) "Early stage business" means a qualified business that was organized
24 within 2 years prior to the date a certified rapid growth fund first invests in that
25 business, that received, including any affiliate, gross revenue of \$2,000,000 or less

1 in the fiscal year immediately preceding that date, and that meets any other
2 conditions established by the authority.

3 (6) "Participating investor" means an insurance company or other person
4 subject to premium tax liability who the authority approves to invest designated
5 capital in a certified rapid growth fund under s. 239.22.

6 (7) "Premium tax credit" means a tax credit under s. 76.634.

7 (8) "Premium tax liability" means the fees imposed under s. 76.60, 76.63, 76.65,
8 76.66, or 76.67.

9 (9) "Qualified business" means a business that, as of the time a certified rapid
10 growth fund or its affiliate first invests in the business under this subchapter:

11 (a) Is headquartered in, and has its principal business operations located in,
12 this state.

13 (b) Is in need of venture capital and is unable to obtain conventional financing,
14 as determined by the authority.

15 (c) Employs 100 or fewer employees, and at least 80 percent of those employees
16 are employed in this state or at least 80 percent of its payroll is paid to employees
17 employed in this state.

18 (d) Is not primarily engaged in real estate development or sales, insurance,
19 banking, lending, lobbying, political consulting, professional services, or retail sales,
20 other than direct sales of products the business itself manufactures.

21 (e) Has no prior financial relationship with, and is not an affiliate of, a certified
22 rapid growth fund or its affiliate.

23 (10) "Qualified investment" means a certified rapid growth fund's investment
24 of designated capital in a qualified business.

1 **239.21 Certification of rapid growth funds. (1) APPLICATION.** Any person
2 may apply to the authority on a form prescribed by the authority for certification
3 under this section. The application shall include all of the following:

4 (a) The name, address, and tax identification number of the applicant.

5 (b) A description of the business activities conducted by the applicant and the
6 locations at which those activities are conducted.

7 (c) An audited balance sheet and the audit report, rendered within 35 days
8 prior to the date the applicant files its application with the authority, of an
9 independent auditor approved by the authority.

10 (d) The strategic investment plan of the applicant, and an analysis completed
11 by an economist or econometric analysis company approved by the authority that
12 shows the projected impact that investment plan is expected to have on the economy
13 of this state.

14 (e) Any other information the authority requires.

15 **(2) CERTIFICATION.** (a) The authority may certify an applicant under sub. (1)
16 if the applicant pays the fee specified under sub. (3) and the authority determines
17 after conducting an investigation that all of the following conditions are met:

18 1. The primary activity of the applicant is the investment of cash in qualified
19 businesses.

20 2. The applicant owns at least \$500,000 in unencumbered cash or cash
21 equivalents.

22 3. At least 2 principals or persons employed to manage the funds of the
23 applicant ^{is investments} have at least 5 years of experience in the venture capital or private equity
24 industry.

1 4. The strategic investment plan of the applicant will have a beneficial impact
2 on the economy of this state.

3 (b) Within 30 days after the date an applicant files an application under sub.
4 (1), the authority shall either issue a certification to the applicant or deny the
5 application and provide written notice to the applicant that states the grounds for
6 denial and includes the authority's suggestions, if any, to remove those grounds.

7 (3) APPLICATION FEE. An applicant for certification under sub. (1) shall pay to
8 the authority a fee of \$7,500.

9 **239.22 Participating investors; premium tax benefits.** (1) APPLICATION.

10 (a) Any insurance company or other person subject to premium tax liability may
11 submit notice that the person seeks to make an investment of designated capital in
12 a certified rapid growth fund and receive premium tax credits for that investment.
13 The person's notice shall include all of the following:

14 1. The person's name, address, and tax identification number.

15 2. The name and address of the certified rapid growth fund in which the person
16 proposes to make an investment of designated capital.

17 3. The amount of the proposed investment.

18 4. An undertaking by the person to make an investment of designated capital
19 in the amount approved by the authority within 5 business days after the person
20 receives notice of approval from the authority.

21 5. Any other information the authority requires.

22 (2) AWARD. (a) The authority may approve an investment of designated capital
23 in a certified rapid growth fund and award a premium tax credit to a person who
24 provides notice under sub. (1) in an amount equal to 80 percent or less of the person's
25 proposed investment of designated capital.

in the certified rapid growth fund

Revised

1 (b) If the authority approves a person's proposed investment of designated
2 capital under par. (a), the authority shall notify the person and the certified rapid
3 growth fund of that approval in writing, stating the amount of the investment
4 approved by the authority, the amount of the premium tax credit the person may
5 claim, the requirements, including those under sub. (3), for making that claim, and
6 the allocation date.

7 (3) CLAIM ELIGIBILITY AND REQUIREMENTS. (a) A participating investor may claim
8 a premium tax credit in the amount the authority awards only after the participating
9 investor makes an investment of designated capital in the certified rapid growth
10 fund in the amount approved by the authority under sub. (2).

11 (b) A participating investor may claim up to 25 percent of the available
12 premium tax credit in a taxable year, except that a participating investor may not
13 claim any premium tax credit under this subchapter for a taxable year beginning
14 before January 1, 2014, and a premium tax credit may not be applied to quarterly
15 tax payments due during the 2014 taxable year.

16 (4) LIMITS ON PREMIUM TAX BENEFITS. (a) The authority may not award more
17 than \$200,000,000 in premium tax credits under this subchapter.

18 (b) The authority may not award more than \$50,000,000 in premium tax credits
19 in a calendar year.

20 (c) The authority may not award more than \$50,000,000 in premium tax credits
21 to a single participating investor, including its successor and any affiliate.

22 (d) If, as a result of the limitations under par. (a) or (b), the authority may not
23 award the full premium tax credit based on an applicant's proposed capital
24 investment, the authority shall award the amount available for a premium tax credit
25 in order of priority based on the date the application was filed with the authority.

except that

1 If the amount of available premium tax credits is insufficient for approval of the full
2 amount of all applications for capital investments that are received by the authority
3 on the same day, the authority shall prorate the awardable amount ^{base} on the basis of
4 the amount the applicant has committed to invest in the certified rapid growth fund.

5 **239.23 Operation of a certified rapid growth fund. (1) REQUIRED**
6 **DISCLOSURES IN SECURITIES OFFERINGS.** Any offering material involving the sale of
7 securities of a certified rapid growth fund shall include all of the following
8 statements:

9 (a) "By authorizing the formation of a certified rapid growth fund, the
10 Wisconsin Venture Capital Authority does not necessarily endorse the quality of
11 management or the potential for earnings of the fund and is not liable for damages
12 or losses to a participating investor in the fund. Use of the word "certified" in an
13 offering is not a recommendation or endorsement of the investment by the Wisconsin
14 Venture Capital Authority or the state."

15 (b) "Investments in a prospective certified rapid growth fund prior to the time
16 the fund is certified are not eligible for a premium tax credit under section 76.634 of
17 the Wisconsin Statutes. Investments in a certified rapid growth fund are not eligible
18 for a premium tax credit under section 76.634 of the Wisconsin Statutes unless the
19 proposed investment is approved by the Wisconsin Venture Capital Authority under
20 section 239.22 of the Wisconsin Statutes before the investment is made. In the event
21 that certain statutory provisions are violated, the state may require forfeiture of
22 unused premium tax credits and repayment of used premium tax credits."

23 (2) **QUALIFIED INVESTMENTS.** A certified rapid growth fund's qualified
24 investment shall meet all of the following requirements:

1 (a) The investment is a cash investment in a qualified business for the purchase
2 of debt, debt participation, equity, or hybrid security of any kind, including a debt
3 instrument or security that has the characteristics of debt that provides for
4 conversion into equity or an equity participation instrument such as an option or
5 warrant.

6 (b) If the investment is for the purchase of any debt or debt participation, no
7 more than 50 percent of that debt or debt participation may be used for the
8 refinancing of other debt or the buy-out of other shareholders or owners of the
9 qualified business.

10 (c) As a condition of the investment, the qualified business agrees not to
11 relocate its headquarters outside of this state as long as the certified rapid growth
12 fund continues to hold the investment.

13 (d) As a condition of the investment, the qualified business agrees to maintain
14 at least 75 percent of its employees in this state as long as the certified rapid growth
15 fund continues to hold the investment.

16 (3) AUTHORITY DETERMINATIONS REGARDING QUALIFIED BUSINESSES. A certified
17 rapid growth fund may request a determination from the authority that a business
18 in which the fund proposes to invest is a qualified business or an early stage business.
19 The authority shall issue its determination in writing to the fund within a reasonable
20 time after the fund's request.

21 (4) SCHEDULE OF INVESTMENTS. A certified rapid growth fund shall make
22 qualified investments according to the following schedule, except that a certified
23 rapid growth fund may reinvest proceeds it receives from one qualified investment
24 in another qualified investment and apply the amount of that reinvestment toward
25 the following requirements for that other qualified investment:

1 (a) Within 2 years after an allocation date, at least 35 percent of the designated
2 capital approved by the authority on that date is placed in qualified investments, of
3 which at least 50 percent is invested in early stage businesses.

4 (b) Within 4 years after an allocation date, at least 50 percent of the designated
5 capital approved by the authority on that date is placed in qualified investments, of
6 which at least 50 percent is invested in early stage businesses.

7 (c) Notwithstanding s. 239.24 (1) (c) and (e), if, within 5 years after an allocation
8 date, the certified rapid growth fund has not placed at least 80 percent of the
9 designated capital approved by the authority on that date in qualified investments,
10 of which at least 50 percent is invested in early stage businesses, the certified rapid
11 growth fund may not pay any management fee until it has made those investments.

12 (d) Notwithstanding s. 239.24 (1) (c) and (e), if, within 7 years after an
13 allocation date, the certified rapid growth fund has not placed 100 percent of the
14 designated capital approved on that date in qualified investments, of which at least
15 50 percent is invested in early stage businesses, the certified rapid growth fund may
16 not pay any management fee until it has made those investments.

17 (5) QUALIFIED BUSINESS RELOCATION OUT OF STATE. If within 24 months after the
18 date a qualified investment is made, the qualified business relocates its principal
19 business operations to another state and the certified rapid growth fund still holds
20 ^{or} the qualified investment in the business, the amount of the fund's total designated
21 capital and qualified investments may be reduced by the amount of the qualified
22 investment in the relocated business for the purpose only of satisfying the
23 investment schedule under sub. (4). This subsection does not apply if the relocated
24 business returns its principal business operations to this state within 90 days after
25 its initial relocation.

9/20/11

1 (6) OTHER LIMITATIONS ON INVESTMENTS. (a) A certified rapid growth fund may
2 not invest more than 15 percent of its total designated capital in any one qualified
3 business.

4 (b) A certified rapid growth fund may invest any designated capital not
5 invested in qualified investments only in the following:

- 6 1. Cash deposited in a federally insured financial institution.
- 7 2. Certificates of deposit in a federally insured financial institution.
- 8 3. Investment securities that are obligations of the United States or its
9 agencies, or obligations that the United States fully guarantees as to principal and
10 interest.
- 11 4. Debt instruments rated at least "A" or its equivalent by a nationally
12 recognized credit rating organization, or issued or guaranteed by a business whose
13 unsecured debt is rated at least "A" or its equivalent by a nationally recognized credit
14 rating organization if that debt is not subordinated to other unsecured debt of the
15 issuer or the guarantor.
- 16 5. Obligations of the state or any political subdivision of the state.
- 17 6. Any other investments approved in advance in writing by the authority.

 ****NOTE: The drafting instructions we were given, on page 9, include the following
additional investment limitation: "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." We have not included that provision. The provision would mean that a
certified rapid growth fund could never invest all of its designated capital, which does not
appear to be the intent. Please let us know what is meant by including this provision, and
we will attempt to achieve your intent in the draft.

18 (7) RESTRICTIONS ON MANAGEMENT. No certified rapid growth fund or its affiliate
19 may be managed or controlled by, or have a partner, member, or other principal that
20 is, an insurance company or other person subject to premium tax liability or an
21 affiliate of that person or insurance company.

1 **239.24 Distributions; profit sharing fee. (1) PERMISSIBLE DISTRIBUTIONS.**

2 A certified rapid growth fund may make only the following distributions:

3 (a) A distribution for the repayment of a capital contribution to an equity
4 investor in the fund who was not a participating investor when that capital
5 contribution was made.

Allow designated capital?

6 (b) A distribution for the cost of forming, syndicating, managing, or operating
7 the certified rapid growth fund, including a reasonable and necessary fee paid for
8 professional services.

9 (c) A distribution that is an annual management fee in an amount that does
10 not exceed 2 percent of the fund's total designated capital.

11 (d) A distribution to cover a projected increase in state or federal taxes,
12 including penalties and interest, for the certified rapid growth fund's equity owners
13 if that increase is related to the fund's ownership, management, or operation.

14 (e) A distribution that represents an accrued management fee equal to or less
15 than 1 percent per year of the fund's total designated capital. A fund may not make
16 a distribution under this paragraph until the fund has invested all of its designated
17 capital.

18 (f) A distribution for the repayment of principal or interest owed to a debt
19 holder of the fund, including a participating investor who is a debt holder.

20 (g) A distribution of any kind after the fund has placed in qualified investments
21 an amount equal to 100 percent of its designated capital, at least 50 percent of which
22 is invested in early stage businesses.

****NOTE: Is the intent that a distribution under par. (g) may only be made once all of a certified rapid growth fund's designated capital is invested, or is it the intent that a fund may make a distribution from a particular investment or group of investments once all of the designated capital assigned by the authority on a particular allocation date is invested (and the 50 percent rule is met as well)?

1 (2) PROFIT SHARING FEE. When a certified rapid growth fund makes a
2 distribution under sub. (1) (g), the fund shall pay the authority a fee equal to 20
3 percent of the net profits realized on all qualified investments from which a
4 distribution is made. The authority shall pay that fee to the secretary of
5 administration who shall deposit the fee in the general fund as general purpose
6 revenue—earned.

7 **239.25 Certified rapid growth fund reporting requirements. (1) REPORT**
8 **UPON RECEIPT OF DESIGNATED CAPITAL.** As soon as practicable after it receives
9 designated capital, a certified rapid growth fund shall submit a report to the
10 authority that includes:

11 (a) The name of the participating investor from whom the designated capital
12 was received.

13 (b) The amount of designated capital.

14 (c) The date on which the fund received the designated capital.

15 (2) ANNUAL REPORT. By January 31 of each year, a certified rapid growth fund
16 shall submit a report to the authority that includes:

17 (a) For each qualified investment made during the preceding year, the amount
18 of designated capital invested, the allocation date of the designated capital, the date
19 of the qualified investment, and the name and address of the business in which the
20 qualified investment was made.

21 (b) For each qualified business in which the fund invested during the preceding
22 year, a description of the business, including the number of employees the business
23 employed when the qualified investment was made and the number of employees the
24 business employed on December 31 of that year.

1 (c) A statement whether the certified rapid growth fund has invested more than
2 15 percent of its total designated capital in any one business.

3 (d) A detailed accounting of the certified rapid growth fund's investment
4 progress according to the schedule of investments required under s. 239.23 (4).

5 (e) An accounting of all distributions the certified rapid growth fund made
6 during the year.

7 (f) Any other information the authority requires.

8 (3) FINANCIAL STATEMENT. Within 90 days after the end of a certified rapid
9 growth fund's fiscal year, the fund shall file with the authority a copy of its annual
10 audited financial statement, including the opinion of an independent certified public
11 accountant.

12 (4) RENEWAL FEE. By January 31 of each year, a certified rapid growth fund shall
13 pay to the authority a certification renewal fee of \$5,000, unless January 31 falls
14 within 6 months after the date on which the certified rapid growth fund was first
15 certified under s. 239.21.

***NOTE: Do you want to include a requirement that the board report to the
legislature regarding the certified rapid growth fund program, similar to the reporting
requirement for the on Wisconsin fund?

16 **239.26 Compliance reviews; decertification.** (1) ANNUAL COMPLIANCE
17 REVIEW. The authority shall review annually each certified rapid growth fund to
18 ensure that the fund continues to satisfy the requirements of this subchapter, to
19 ensure that the fund has not made any investment in violation of this subchapter,
20 and to determine the status of the fund's qualified investments with respect to the
21 schedule of investments required under s. 239.23 (4).

22 (2) DECERTIFICATION. (a) If the authority determines that a certified rapid
23 growth fund is not in compliance with any provision of this subchapter, the authority

1 shall notify the officers of the fund in writing that the fund may be subject to
2 decertification or a monetary penalty, or both, if the fund is not brought into
3 compliance within 120 days after the fund's receipt of the notice.

4 (b) The authority may decertify a certified rapid growth fund if, after
5 opportunity for hearing, the authority determines that the fund is in violation of this
6 subchapter and that the fund's violation has not been corrected to the authority's
7 satisfaction within the period under par. (a). The authority shall notify any
8 appropriate state agency of the decertification.

the participating investor

9 (3) EFFECT OF DECERTIFICATION. Decertification of a certified rapid growth fund
10 has the effects specified under s. 76.634 (4) with respect to a participating investor.
11 A certified rapid growth fund may agree to indemnify, or purchase insurance for the
12 benefit of, a participating investor for the participating investor's losses under s. 76.634 (4)
13 due to the fund's decertification.

14 (4) NOTICE OF RECAPTURE. The authority shall give written notice to each
15 qualified investor whose premium tax credit becomes subject to recapture or
16 forfeiture under s. 76.634 (4), or when a premium tax credit is no longer subject to
17 recapture.

***NOTE: Do you want to include a provision for a fund's voluntary decertification?

18 (5) PENALTIES. The authority may fine a person who violates this subchapter
19 in an amount determined by the authority not to exceed \$25,000. In determining the
20 amount of a fine under this subsection, the authority shall consider:

21 (a) The seriousness of the violation, including the nature, circumstances,
22 extent, and gravity of the violation.

23 (b) The economic harm caused by the violation.

24 (c) The person's history of previous violations.

1 (d) The amount necessary to deter future violations.

2 (e) The person's efforts to mitigate or correct the violation.

3 **SECTION 46.** 281.75 (4) (b) 3. of the statutes, as affected by 2011 Wisconsin Act
4 10, is amended to read:

5 281.75 (4) (b) 3. An authority created under subch. II of ch. 114 or ch. 231, 233,
6 234, 237, ~~or 238, or 239.~~

7 **SECTION 47.** 285.59 (1) (b) of the statutes, as affected by 2011 Wisconsin Act 10,
8 is amended to read:

9 285.59 (1) (b) "State agency" means any office, department, agency, institution
10 of higher education, association, society, or other body in state government created
11 or authorized to be created by the constitution or any law which is entitled to expend
12 moneys appropriated by law, including the legislature and the courts, the Wisconsin
13 Housing and Economic Development Authority, the Bradley Center Sports and
14 Entertainment Corporation, the University of Wisconsin Hospitals and Clinics
15 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace
16 Authority, the Wisconsin Economic Development Corporation, the Wisconsin
17 Venture Capital Authority, and the Wisconsin Health and Educational Facilities
18 Authority.

19 **SECTION 48. Nonstatutory provisions.**

20 (1) INITIAL APPOINTMENTS.

21 (a) Notwithstanding the requirement of advice and consent of the senate under
22 section 239.02 (1) (c) and (4) of the statutes, as created by this act, the initial members
23 of the board of directors and the initial chairperson of the board of the Wisconsin
24 Venture Capital Authority nominated by the governor under that section may be
25 provisionally appointed by the governor, subject to later senate confirmation. Any

1 provisional appointment shall be in full force until withdrawn by the governor or
2 acted upon by the senate, and if confirmed by the senate shall continue for the
3 remainder of the unexpired term of the member and until a successor is chosen and
4 qualifies. A provisional appointee may exercise all the powers and duties of board
5 membership to which the person is appointed during the time in which the appointee
6 qualifies.

7 (b) A provisional appointment made under paragraph (a) that is withdrawn by
8 the governor shall, upon withdrawal, lapse and create a vacancy for provisional
9 appointment of another initial member of board of directors or chairperson of the
10 board of the Wisconsin Venture Capital Authority. Any provisional appointment
11 made under paragraph (a) that is rejected by the senate shall upon rejection lapse
12 and create a vacancy for nomination and appointment of another initial board
13 member or chairperson of the board under paragraph (a).

14 (c) Notwithstanding the lengths of terms specified in section 239.02 (2) of the
15 statutes, as created by this act, the initial members of the board of directors of the
16 Wisconsin Venture Capital Authority shall be appointed for the following terms:

17 1. One member appointed by the governor under section 239.02 (1) (c) of the
18 statutes, as created by this act, for a term expiring on June 30, 2014.

19 2. One member appointed by the governor under section 239.02 (1) (c) of the
20 statutes, as created by this act, and the member appointed by the speaker of the
21 assembly, for terms expiring on June 30, 2015.

22 3. One member appointed by the governor under section 239.02 (1) (c) of the
23 statutes, as created by this act, and the member appointed by the majority leader of
24 the senate, for terms expiring on July 1, 2016.

25 **SECTION 49. Effective date.**

