

1           (6) Establish the annual budget of the authority and monitor its fiscal  
2 management.

3           (7) Execute contracts and other instruments required for the operation of the  
4 authority.

      \*\*\*\*NOTE: Both the Wisconsin Venture Capital Authority (authority) and the  
Wisconsin Economic Development Corporation (WEDC) have the ability to enter into  
contracts with each other or others. Also, the authority can contract with the fund  
manager for management of the on Wisconsin fund. Therefore, a provision stating that  
the authority may contract with the WEDC and the on Wisconsin fund manager, as  
requested in the revised drafting instructions, is unnecessary, and we have not included  
such a provision. Okay?

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

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

8           (10) Make loans and provide grants.

9           (11) Incur debt.

10          (12) Procure liability insurance.

11          **239.04 Liability limited.** Neither the state nor any political subdivision of  
12 the state, nor any officer, employee, or agent of the state or a political subdivision of  
13 the state who is acting within the scope of employment or agency, is liable for any  
14 debt, obligation, act, or omission of the authority.

15          **239.05 Annual report.** Annually, the authority shall submit to the chief clerk  
16 of each house of the legislature, for distribution to the legislature under s. 13.172 (2),  
17 a report on the programs administered by the authority that includes all of the  
18 following:

19           (1) GENERAL REPORTING REQUIREMENTS. For each program administered by the  
20 authority, the report shall include all of the following:

21           (a) An assessment of the program's success to date.

1 (b) An accounting of the financial status of the program, including the opinion  
2 of an independent certified public accountant.

3 (c) Any recommendations the authority has for improvement of the program.

4 (2) ON WISCONSIN FUND. In addition to the information provided under sub. (1),  
5 the authority's annual report shall include all of the following for the on Wisconsin  
6 fund administered by the authority under subch. II:

7 (a) The current investment policy of the on Wisconsin fund.

8 (b) The on Wisconsin fund's internal rate of return on its investments in  
9 certified investors.

10 (c) An accounting of the revenue received by the authority under s. 73.033 (1)

11 (b).

12 (d) An accounting of any compensation, including a management fee, paid to  
13 the fund manager during the preceding year.

14 (e) An accounting of the value of each tax credit awarded to a creditor of the on  
15 Wisconsin fund under s. 239.14 during the preceding year, including a description  
16 of the circumstances leading to the award of the credit and the likelihood that the  
17 authority will award additional tax credits to that creditor or other on Wisconsin  
18 fund creditors in the future.

19 (f) For each certified investor in whom the on Wisconsin fund invested capital  
20 under s. 239.12 (2) during the preceding year, the name and address of the investor  
21 and the amount of each investment.

22 (g) The internal rate of return realized by each certified investor.

23 (h) An accounting of any fee each certified investor paid to itself or any principal  
24 or manager of the certified investor during the preceding year.

1 (i) For each business in which a certified investor made an investment of capital  
2 from the on Wisconsin fund during the preceding year, the name and address of the  
3 business and a description of the nature of the business, the amount of each  
4 investment in the business, and an identification of the certified investor who made  
5 the investment.

6 (3) CERTIFIED RAPID GROWTH FUND PROGRAM. In addition to the information  
7 provided under sub. (1), the authority's annual report shall include all of the  
8 following for the certified rapid growth fund program under subch. III:

9 (a) The information required under s. 239.25 (2).

10 (b) An accounting of the value of each tax credit the authority awarded under  
11 s. 239.22 (2) during the preceding year.

12 (c) An accounting of the revenue received by the authority under s. 73.033 (2)

13 (b).

14 (d) An accounting of each profit sharing fee paid to the authority under s.  
15 239.24 (2) during the preceding year.

16 (e) A list of certified rapid growth funds that the authority decertified under  
17 s. 239.26 (2) during the preceding year and a description of the circumstances leading  
18 to each decertification.

19 SUBCHAPTER II

20 ON WISCONSIN FUND

21 **239.10 Definitions.** In this subchapter:

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

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

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

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

5           **239.11 Creation of fund; management.** (1) FUND PURPOSE. The authority  
6 shall establish a fund to be known as the "on Wisconsin fund" for the investment of  
7 capital in certified investors. The legislature finds that the fund will provide capital  
8 for business growth and job creation in this state that is currently not sufficiently  
9 available in private financial markets and that the fund will result in increased tax  
10 revenues to the state and serve a public purpose.

11           (2) FUND CAPITAL; DEBT SERVICE. (a) The authority may issue, by resolution, up  
12 to \$200,000,000 in negotiable notes or bonds of any kind to finance the fund.

13           (b) The state is not liable for a debt service obligation of the authority. The  
14 authority's debt is not a debt of the state, and the authority may not create a debt of  
15 the state. Each note or bond of the authority shall contain on its face a statement  
16 to that effect.

17           (c) Recognizing its moral obligation to do so, the legislature hereby expresses  
18 its expectation and aspiration that, if ever called upon to do so, it shall make an  
19 appropriation to pay a fund creditor the amount the authority fails to pay or  
20 otherwise satisfy under its debt service obligation to that creditor.

21           (d) Neither the members of the board nor any person executing the notes or  
22 bonds is liable personally on the notes or bonds or subject to any personal liability  
23 or accountability by reason of the issuance of the notes or bonds, unless the personal  
24 liability or accountability is the result of willful misconduct.

1           **(3) FUND MANAGER.** The authority shall hire a fund manager who has expertise  
2           in the venture capital or private equity industry to manage the fund's investment of  
3           capital in certified investors. In reviewing candidates for fund manager, the  
4           authority shall consider a candidate's venture capital or private equity experience,  
5           investment philosophy, and the performance of any venture capital funds managed  
6           by the candidate, as well as any other criteria the authority considers relevant. The  
7           fund manager may not be a certified investor.

8           **239.12 Investment of capital in certified investors; requirements. (1)**

9           **INVESTMENT POLICY.** The fund manager shall establish, and amend as appropriate,  
10          a fund investment policy. The authority shall review and approve the investment  
11          policy prior to the policy's implementation and shall review the policy and any  
12          amendments at least annually thereafter.

13          **(2) FUND INVESTMENTS.** The authority may invest capital under this subchapter  
14          only in certified investors. The authority may not invest more than 15 percent of the  
15          total capital that the fund holds at the time of investment, including invested capital,  
16          in a single certified investor.

17          **(3) CONTRACTS.** Before the authority invests any capital in a certified investor,  
18          the authority shall contract with the certified investor, and in addition to any other  
19          terms required or negotiated by the authority, that contract shall include the  
20          following requirements:

21                 (a) The certified investor shall commit to maintaining a significant presence  
22                 in this state.

23                 (b) The certified investor shall invest the amount of capital the certified  
24                 investor receives from the fund in a business that meets all of the following

1 conditions at the time the certified investor first invests in the business under this  
2 section:

3 1. Is headquartered in this state.

4 2. Employs at least 50 percent of its employees, including any subsidiary or  
5 other affiliated entity, in this state.

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

9 (c) The certified investor may not receive capital from the fund that exceeds 25  
10 percent the total capital the investor has raised from other sources.

\*\*\*\*NOTE: Is the intent here to have the certified investor contribute capital equal to 3 times the amount of on Wisconsin fund capital received in each investment; or is the intent to require that a certified investor may not receive on Wisconsin fund capital in an amount that would exceed 25 percent of the investor's total capital on hand from all sources?

11 (d) The certified investor may not apply the amount of capital it receives from  
12 the fund toward certification under s. 560.205 (1) or (2).

13 (e) The certified investor may not invest capital received from the fund in a  
14 business that is primarily engaged in real estate development or sales, insurance,  
15 banking, lending, lobbying, political consulting, professional services, or retail sales,  
16 other than direct sales of products the business itself manufactures.

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

19 **239.13 Investor certification. (1) APPLICATION.** Any person may apply to the  
20 authority on a form prescribed by the authority for certification under this section.  
21 The application shall include the name, address, and tax identification number of the  
22 person and any other information the authority requires.

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

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

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

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

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

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

12           (f) Any other factors the authority considers relevant that are consistent with  
13 the authority's responsibility under this subchapter.

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

16           **239.14 Tax credits to fund creditors.** (1) In lieu of payment of its debt  
17 service obligation to a fund creditor, the authority may contract with a fund creditor  
18 to award a tax credit under s. 71.07 (8s), 71.28 (8s), <sup>8v</sup>71.47 (8s), or 76.634 to the fund  
19 creditor up to an amount equal to the amount the authority is unable to pay the  
20 creditor under the authority's debt service obligation to the creditor in a taxable year.

21           (2) A contract under sub. (1) shall set forth the terms and conditions under  
22 which the fund creditor may claim a tax credit under this section. A fund creditor  
23 may not claim a tax credit that exceeds the amount the authority fails to pay under  
24 the authority's debt service obligation to the fund creditor. The authority shall certify

1 to the department of revenue the amount of the tax credit a creditor of the fund may  
2 claim under this section.

3 (3) The authority may not award a tax credit under this section before January  
4 1, 2016. The authority may not award tax credits under this section that total more  
5 than \$300,000,000.

### 6 SUBCHAPTER III

#### 7 RAPID GROWTH FUNDS

8 **239.20 Definitions.** In this subchapter:

9 (1) "Affiliate" means any of the following:

10 (a) A person who owns, controls, or holds power to vote 15 percent or more of  
11 the outstanding voting securities or other voting interests of a certified rapid growth  
12 fund or an insurance company or other person subject to premium tax liability.

13 (b) A business, 15 percent of whose outstanding voting securities or other  
14 voting ownership interests are owned, controlled, or held with power to vote by a  
15 certified rapid growth fund or an insurance company or other person subject to  
16 premium tax liability.

17 (c) A person who controls, is controlled by, or is under common control with a  
18 certified rapid growth fund or an insurance company or other person subject to  
19 premium tax liability.

20 (d) A business in which a certified rapid growth fund or an insurance company  
21 or other person subject to premium tax liability is a partner, managing member, or  
22 other principal.

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



1           (2) “Allocation date” means the date stated in the authority’s notice under s.  
2           239.22 (2) (b) that approves a specific amount of designated capital and awards a  
3           corresponding premium tax credit to a participating investor.

4           (3) “Certified rapid growth fund” or “fund” means an entity that is certified  
5           under s. 239.21.

6           (4) “Designated capital” means an investment of cash by a participating  
7           investor in a certified rapid growth fund that is approved by the authority under s.  
8           239.22 and that fully funds either the participating investor’s equity interest in a  
9           certified rapid growth fund, a qualified debt instrument that a certified rapid growth  
10          fund issues, or both. In this subsection, “qualified debt instrument” means a bond,  
11          note, or other obligation that a certified rapid growth fund issues at par value or at  
12          a premium or discount from par value that meets all of the following conditions:

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

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

17           (c) Does not allow the prepayment of interest.

18           (d) Has payment and interest features that are not related to the fund’s  
19          profitability or the performance of the fund’s investment portfolio.

20          (5) “Early stage business” means a qualified business that received, including  
21          any affiliate, gross revenue of \$2,000,000 or less in the fiscal year immediately  
22          preceding that date, and that meets any other conditions established by the  
23          authority.

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

4           (7) “Premium tax credit” means a tax credit under s. 76.634.

5           (8) “Premium tax liability” means the fees imposed under s. 76.60, 76.63, 76.65,  
6 76.66, or 76.67.

7           (9) “Qualified business” means a business that, as of the time a certified rapid  
8 growth fund or its affiliate first invests in the business under this subchapter, meets  
9 all of the following conditions:

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

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

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

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

20           (10) “Qualified investment” means a certified rapid growth fund’s investment  
21 of designated capital in a qualified business.

22           **239.21 Certification of rapid growth funds.** (1) APPLICATION. Any person  
23 may apply to the authority on a form prescribed by the authority for certification  
24 under this section. The application shall include all of the following:

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

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

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

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

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

13 1. The primary activity of the applicant is the investment of cash in qualified  
14 businesses.

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

17 3. At least 2 principals or persons employed to manage the applicant's  
18 investments have at least 5 years of experience in the venture capital or private  
19 equity industry.

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

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

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

3           **239.22 Participating investors; premium tax credits. (1) APPLICATION.**

4           (a) Any insurance company or other person subject to premium tax liability may  
5 submit notice to the authority that the person seeks to make an investment of  
6 designated capital in a certified rapid growth fund and receive a premium tax credit  
7 for that investment. The person's notice shall include all of the following:

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

9                 2. The name and address of the certified rapid growth fund in which the person  
10 proposes to invest.

11                3. The amount of the proposed investment.

12                4. An undertaking by the person to make an investment of designated capital  
13 in the amount approved by the authority within 5 business days after the allocation  
14 date established by the authority under sub. (2) (b).

15           **(2) AWARD.** (a) The authority shall approve an investment of designated capital  
16 in a certified rapid growth fund and, subject to sub. (4) (b), award a premium tax  
17 credit to a person who provides notice under sub. (1) in an amount equal to 80 percent  
18 of the person's proposed investment of designated capital.

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

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

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

10           **(4) LIMITS ON PREMIUM TAX CREDITS.** (a) The authority may not award more than  
11 \$200,000,000 in premium tax credits under this subchapter.

12           (b) If, as a result of the limitations under par. (a), the authority may not award  
13 the full premium tax credit based on an applicant's proposed capital investment, the  
14 authority shall award the amount available for a premium tax credit in order of  
15 priority based on the date the application was filed with the authority; except that  
16 if the amount of available premium tax credits is insufficient for approval of the full  
17 amount of all applications for capital investments that are received by the authority  
18 on the same day, the authority shall prorate the awardable amount based on the  
19 amount the applicant has committed to invest in the certified rapid growth fund.

20           **239.23 Operation of a certified rapid growth fund. (1) REQUIRED**  
21 **DISCLOSURES IN SECURITIES OFFERINGS.** Any offering material involving the sale of  
22 securities of a certified rapid growth fund shall include all of the following  
23 statements:

24           (a) "By authorizing the formation of a certified rapid growth fund, the  
25 Wisconsin Venture Capital Authority does not endorse the quality of management

1 or explicitly or implicitly guarantee or otherwise assure the economic performance  
2 of the fund and is not liable for damages or losses to a participating investor in the  
3 fund. Use of the word "certified" in an offering is not a recommendation,  
4 endorsement, or guarantee of the investment by the Wisconsin Venture Capital  
5 Authority or the state."

6 (b) "Investments in a prospective certified rapid growth fund prior to the time  
7 the fund is certified are not eligible for a premium tax credit under section 76.634 of  
8 the Wisconsin Statutes. Investments in a certified rapid growth fund are not eligible  
9 for a premium tax credit under section 76.634 of the Wisconsin Statutes unless the  
10 proposed investment is approved by the Wisconsin Venture Capital Authority under  
11 section 239.22 of the Wisconsin Statutes before the investment is made. In the event  
12 that certain statutory provisions are violated, the state may require forfeiture of  
13 unused premium tax credits and repayment of used premium tax credits."

14 (c) "In addition to any other applicable law, the certified rapid growth fund is  
15 subject to applicable provisions of subchapter III of chapter 239 of the Wisconsin  
16 Statutes and any requirements of the Wisconsin Venture Capital Authority."

17 (2) **QUALIFIED INVESTMENTS.** A certified rapid growth fund may invest  
18 designated capital only in a qualified business. A qualified investment shall meet  
19 all of the following requirements:

20 (a) The investment is a cash investment in a qualified business for the purchase  
21 of debt, debt participation, equity, or hybrid security of any kind, including a debt  
22 instrument or security that has the characteristics of debt that provides for  
23 conversion into equity or an equity participation instrument such as an option or  
24 warrant.

1 (b) If the investment is for the purchase of any debt or debt participation, no  
2 more than 10 percent of that debt or debt participation may be used for the  
3 refinancing of other debt or the buy-out of other shareholders or owners of the  
4 qualified business.

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

8 (d) As a condition of the investment, the qualified business agrees to maintain  
9 at least 75 percent of its employees, including the employees of any subsidiary or  
10 other affiliated entity, in this state as long as the certified rapid growth fund  
11 continues to hold the investment.

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

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

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

1           (b) Within 4 years after an allocation date, at least 50 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           (c) Notwithstanding s. 239.24 (1) (c) and (e), if, within 5 years after an allocation  
5 date, the certified rapid growth fund has not placed at least 80 percent of the  
6 designated capital approved by the authority on that date in qualified investments,  
7 of which at least 50 percent is invested in early stage businesses, the certified rapid  
8 growth fund may not pay any management or similar fee until it has made those  
9 investments.

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

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



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 of a similar credit quality and risk as those in subs.

18 1. to 5. that are approved in advance in writing by the authority.

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

23           **239.24 Distributions; profit sharing fee. (1) PERMISSIBLE DISTRIBUTIONS.**

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

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

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

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

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

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

14 (f) A distribution of any kind from the investment of designated capital by the  
15 authority on an allocation date approved after the fund has placed in qualified  
16 investments an amount equal to 100 percent of that designated capital approved on  
17 that allocation date, at least 50 percent of which is invested in early stage businesses.

18 **(2) PROFIT SHARING FEE.** (a) In this subsection, "net profits realized" means the  
19 amount of money returned to a certified rapid growth fund on a qualified investment  
20 that exceeds the amount of that qualified investment.

21 (b) When a certified rapid growth fund makes a distribution under sub. (1) (f),  
22 the fund shall pay the authority a fee equal to 20 percent of the net profits realized  
23 on all qualified investments from which a distribution is made. The authority shall  
24 pay that fee to the secretary of administration who shall deposit the fee in the general  
25 fund as general purpose revenue—earned.

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

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

7           (b) The amount of designated capital.

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

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

11           (a) For each qualified investment made during the preceding year, the amount  
12 of designated capital invested, the allocation date of the designated capital, the date  
13 of the qualified investment, and the name and address of the business in which the  
14 qualified investment was made.

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

19           (c) A statement whether the certified rapid growth fund has invested more than  
20 15 percent of its total designated capital in any one business.

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

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

25           (f) Any other information the authority requires.

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

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

9           **239.26 Compliance reviews; decertification. (1) ANNUAL COMPLIANCE**  
10 REVIEW. The authority shall review annually each certified rapid growth fund to  
11 ensure that the fund continues to satisfy the requirements of this subchapter, to  
12 ensure that the fund has not made any investment in violation of this subchapter,  
13 and to determine the status of the fund's qualified investments with respect to the  
14 schedule of investments required under s. 239.23 (4).

15           **(2) DECERTIFICATION.** (a) If the authority determines that a certified rapid  
16 growth fund is not in compliance with any provision of this subchapter, or any  
17 requirement of the authority, the authority shall notify the officers of the fund in  
18 writing that the fund may be subject to decertification or a monetary penalty, or both,  
19 if the fund is not brought into compliance within 120 days after the fund's receipt of  
20 the notice.

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

1           **(3) EFFECT OF DECERTIFICATION.** Decertification of a certified rapid growth fund  
2 has the effects specified under s. 76.634 (4) with respect to a participating investor.  
3 A certified rapid growth fund may agree to indemnify, or purchase insurance for the  
4 benefit of, a participating investor for the participating investor's losses under s.  
5 76.634 (4) due to the fund's decertification.

6           **(4) NOTICE OF RECAPTURE.** The authority shall give written notice to each  
7 qualified investor whose premium tax credit becomes subject to recapture or  
8 forfeiture under s. 76.634 (4), or when a premium tax credit is no longer subject to  
9 recapture.

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

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

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

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

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

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

19           **SECTION 59.** 281.75 (4) (b) 3. of the statutes, as affected by 2011 Wisconsin Act  
20 10, is amended to read:

21           281.75 (4) (b) 3. An authority created under subch. II of ch. 114 or ch. 231, 233,  
22 234, 237, ~~or 238,~~ or 239.

23           **SECTION 60.** 285.59 (1) (b) of the statutes, as affected by 2011 Wisconsin Act 10,  
24 is amended to read:

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

11           **SECTION 61. Nonstatutory provisions.**

12           (1) INITIAL APPOINTMENTS.

13           (a) Notwithstanding the requirement of advice and consent of the senate under  
14 section 239.02 (1) (c) and (4) of the statutes, as created by this act, the initial members  
15 of the board of directors and the initial chairperson of the board of the Wisconsin  
16 Venture Capital Authority nominated by the governor under that section may be  
17 provisionally appointed by the governor, subject to later senate confirmation. Any  
18 provisional appointment shall be in full force until withdrawn by the governor or  
19 acted upon by the senate, and if confirmed by the senate shall continue for the  
20 remainder of the unexpired term of the member and until a successor is chosen and  
21 qualifies. A provisional appointee may exercise all the powers and duties of board  
22 membership to which the person is appointed during the time in which the appointee  
23 qualifies.

24           (b) A provisional appointment made under paragraph (a) that is withdrawn by  
25 the governor shall, upon withdrawal, lapse and create a vacancy for provisional

1 appointment of another initial member of the board of directors or chairperson of the  
2 board of the Wisconsin Venture Capital Authority. Any provisional appointment  
3 made under paragraph (a) that is rejected by the senate shall upon rejection lapse  
4 and create a vacancy for nomination and appointment of another initial board  
5 member or chairperson of the board under paragraph (a).

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

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

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

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

17 **SECTION 62. Effective dates.** This act takes effect on the day after publication,  
18 or on the 2nd day after publication of the 2011-13 biennial budget act, whichever is  
19 later, except as follows:

20 (1) The treatment of section 16.417 (1) (b) (by SECTION 18) of the statutes takes  
21 effect on January 1, 2012.

22 (END)

**Amendments to LRB 1556/P3**

For each reference of the Rapid Growth Fund(s), change to "Jobs Now Fund(s)" ✓

For each reference of the On Wisconsin Fund, change to Badger Jobs Fund ✓

Page 25, lines 5-6, strike "no later than 4 years after the insurer's allocation date,"; ✓

Page 25, Insert on line 7 after "(b)" the following: "within 4 years of the insurers allocation date." ✓

Page 31, line 4: Insert language stating that the WVCA shall consider WEDC for contracting these services or language to that effect. ✓

Page 31, line 16: "...of each house of the legislature and the governor, for distribution..." ✓

Page 32, lines 14-18: "An accounting of the total value of tax credits awarded to creditors of the on Wisconsin fund under s. 239.14 during the preceding year, including a description of the circumstances leading to the award of the credits and the likelihood that the authority will award additional credits to fund creditors in the future." ✓

Page 35, lines 21-22. The certified investor shall commit to maintaining a significant physical presence in this state, including locating an office in this state and staffing the office with at least 1.0 full-time equivalent employee (2080 hour definition). → the investor need to have an office with staffed full time by at least 1 person; please wordsmith this. ✓

Page 36, line 10: "...percent of the total capital the investor has raised." ✓

Page 36, between points (c) and (d): Add language specifying that, for each investment that a certified investor makes in a Wisconsin based business, 50 percent or more of the capital committed to that business has to be from capital raised from sources other than the On Wisconsin Fund. ✓

Page 39, At the end of line 3 insert "; provided that such initial allocation date shall be no later than 120 days after the effective date of this act." ✓

Page 39, After line 3 insert a new definition: ""Authority" means, for the purposes of this subchapter III, the Department of Commerce or the Wisconsin Economic Development Corporation until such time as the Wisconsin Venture Capital Authority shall fully formed with adequate staff to administer this Subchapter." ✓

**Comment [h1]:** COM won't exist after 6/30/11.

Page 39, lines 22-23, delete "and that meets any other conditions established by the authority." ✓

Page 41, line 10, delete "may" and insert "shall". ✓

Page 42, line 7, insert after "investment" the following: "prior to 30 days before the allocation date". ✓

Page 43, line 18, after "day" insert "or any day prior to 15 days before the allocation date". ✓

Page 45, line 9: "at least 75 percent of its employees or payroll..." ✓

Page 48, lines 18 and 20, "... money returned to a certified rapid growth fund on a qualified investments that exceeds the amount of qualified investments." ✓

Page 53, lines 17-19: Change effective date of act to day of publication. ✓



**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Friday, April 15, 2011 2:01 PM  
**To:** Gallagher, Michael  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** Final drafting changes v2.0  
**Attachments:** WVCA Changes 4-15-11 - Final Edits v2.0.docx

Mike,

Find the attached file for the final changes. This list of changes is in place of the changes sent over on Wednesday.

---

Brian Quinn  
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brian.quinn@wisconsin.gov

**Amendments to LRB 1556/P3**

Page 25, lines 5-6, strike "no later than 4 years after the insurer's allocation date,"; SK

Page 25, Insert on line 7 after "(b)" the following: "within 4 years of the insurers allocation date." SK

Page 29, line 12: "...investment banking, financial investment or substantial entrepreneurial..." ✓

Page 29, line 15: "...investment banking, financial investment or substantial entrepreneurial..." ✓

Page 29, line 17: "...investment banking, financial investment or substantial entrepreneurial..." ✓

Comment [h1]: Pending approval from Jason

Page 31, line 16: "...of each house of the legislature and the governor, for distribution..." ✓

Page 32, lines 14-18: "An accounting of the total value of tax credits awarded to creditors of the on Wisconsin fund under s. 239.14 during the preceding year, including a description of the circumstances leading to the award of the credits and the likelihood that the authority will award additional credits to fund creditors in the future." ✓

Page 35, line 2: "...in the venture capital, private equity industry, finance business or investment business to manage the fund's..." ✓

Comment [h2]: Pending approval from Jason

Page 35, lines 21-22. The certified investor shall commit to maintaining a significant physical presence in this state, including locating an office in this state and staffing the office with at least 1.0 full-time equivalent employee (2080 hour definition). → the investor need to have an office with staffed full time by at least 1 person; please wordsmith this. ✓

Page 36, line 10: "...percent of the total capital..." ✓

Page 39, At the end of line 3 insert "provided that such initial allocation date shall be no later than 120 days after the effective date of this act." [THIS DATE CAN BE BETWEEN 90 AND 180, BUT NEEDS TO BE CERTAIN] ✓

Comment [h3]: Pending timeframe from Jason

Page 39, After line 3 insert a new definition: "Authority means, for the purposes of this subchapter III, the Department of Commerce or the Wisconsin Economic Development Corporation until such time as the Wisconsin Venture Capital Authority shall fully formed with adequate staff to administer this Subchapter." ✓

Comment [h4]: COM won't exist after 6/30/11.

Page 39, lines 22-23, delete "and that meets any other conditions established by the authority." ✓

Page 41, line 10, delete "may" and insert "shall". ✓

Page 42, line 7, insert after "investment" the following: "prior to 30 days before the allocation date." ✓

30 days before allocation

Page 43, line 18, after "day" insert "or any day prior to 15 days before the allocation date." ✓

Page 45, line 9: "at least 75 percent of its employees or payroll..." ✓

Page 48, lines 19 and 20, "...money returned to a certified rapid growth fund on a qualified investments that exceeds the amount of qualified investments." ✓

Page 49, line 25: delete (f) Any other info the authority requires. ✓

Comment [h5]: Pending approval from Jason

Page 53, lines 17-19: Change effective date of act to day of publication. ✓

? Raise Ethics Reporting issue?

Authority to establish ✓

**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Wednesday, April 13, 2011 3:13 PM  
**To:** Gallagher, Michael  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** Additional Edits  
**Attachments:** WVCA Changes 4-13-11 - Final Edits.docx

Mike,

Here are what should be the final edits in addition to the ones from yesterday. Just to confirm, the sunset date will not change.

The highlighted changes are still awaiting final approval.

---

Brian Quinn  
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**Gallagher, Michael**

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**From:** Hoechst, Jonathan S - DOA [Jonathan.Hoechst@wisconsin.gov]  
**Sent:** Tuesday, April 19, 2011 7:37 AM  
**To:** Gallagher, Michael  
**Subject:** 30 days/120 days

Mike,

They would like the language on the 30-day period (pg 42) and the 120-day period (pg 39) to remain the same.

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

**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Monday, April 18, 2011 4:31 PM  
**To:** Gallagher, Michael; Hoechst, Jonathan S - DOA  
**Subject:** RE: -1556

I think that might be more appropriate.

---

**From:** Gallagher, Michael [<mailto:Michael.Gallagher@legis.wisconsin.gov>]  
**Sent:** Monday, April 18, 2011 4:27 PM  
**To:** Hoechst, Jonathan S - DOA  
**Cc:** Quinn, Brian D - DOA  
**Subject:** -1556

Jonathan: On page 38 of the draft, we have: "The authority may not award a tax credit under this section before January 1, 2016...". Should that instead say that an investor cannot claim the credit until that time?

Thanks.

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

**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Tuesday, April 12, 2011 1:00 PM  
**To:** Gallagher, Michael  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** FW: Drafter's Note

Mike,

This is one change, but a few more are coming.

-Brian

---

**From:** Culotta, Jason - DOA  
**Sent:** Tuesday, April 12, 2011 10:13 AM  
**To:** Quinn, Brian D - DOA  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** RE: Drafter's Note

Yes.

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**From:** Quinn, Brian D - DOA  
**Sent:** Tuesday, April 12, 2011 9:24 AM  
**To:** Culotta, Jason - DOA  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** Drafter's Note

Jason,

I realized that we neglected to address the drafter's note on page 36 regarding the matching requirement. I believe that the intention is that the fund capital can comprise no more than 25% of the capital raised by the venture capital fund from all sources, not just other sources. This would be consistent with the 3:1 matching requirement. ✓

Is this the correct intent?

---

Brian Quinn  
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**Gallagher, Michael**

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**From:** Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]  
**Sent:** Tuesday, April 12, 2011 3:17 PM  
**To:** Gallagher, Michael; Kreye, Joseph  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** FW: Re: Capital Calls and Other Changes  
 Two additional changes. A few more might be coming.

---

**From:** Quinn, Brian D - DOA  
**Sent:** Tuesday, April 12, 2011 10:32 AM  
**To:** Culotta, Jason - DOA  
**Cc:** Hoechst, Jonathan S - DOA  
**Subject:** Re: Capital Calls and Other Changes

Jason,

The other term that is synonymous with capital calls is "draw down". Basically, if I am an investor in a venture capital fund, I make a commitment to invest \$20 million. The venture capital fund does not actually get the \$20 million straight away, but rather draws on that commitment as needed. As the investor, I am now legally obligated to invest the amount of the draw requested by the venture capital fund.

**On this point, the term "invest" on page 36, line 17 should be changed to "commit" because it could well be that the venture funds will not draw down on the commitments of the limited partners until after the December 31, 2015 date. As a result, we could have substantial amounts caught in limbo.** ✓

One change that should be made for the RGFs is listed below:

**"Page 43, lines 5-9. The intent is that participating investors can claim up to 25 percent of their allocation of tax credits in 2015. The current language doesn't necessarily delineate whether investors may claim up to 25 percent of \$200 million or 25 percent of their allocation."** ✓

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