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1 **SECTION 65.** 101.177 (1) (d) of the statutes, as affected by 2011 Wisconsin Act
2 10, is amended to read:

3 101.177 (1) (d) “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, that
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 Aerospace Authority, the Wisconsin
10 Economic Development Corporation, the Wisconsin Venture Capital Authority, and
11 the Wisconsin Health and Educational Facilities Authority, but excluding the Health
12 Insurance Risk-Sharing Plan Authority and the Lower Fox River Remediation
13 Authority.

14 **SECTION 66.** 230.03 (3) of the statutes, as affected by 2011 Wisconsin Act 10,
15 is amended to read:

16 230.03 (3) “Agency” means any board, commission, committee, council, or
17 department in state government or a unit thereof created by the constitution or
18 statutes if such board, commission, committee, council, department, unit, or the
19 head thereof, is authorized to appoint subordinate staff by the constitution or
20 statute, except a legislative or judicial board, commission, committee, council,
21 department, or unit thereof or an authority created under subch. II of ch. 114 or
22 subch. III of ch. 149 or under ch. 231, 232, 233, 234, 235, 237, 238, 239, or 279.
23 “Agency” does not mean any local unit of government or body within one or more local
24 units of government that is created by law or by action of one or more local units of
25 government.

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1 **SECTION 67.** Chapter 239 of the statutes is created to read:

2 **CHAPTER 239**

3 **WISCONSIN VENTURE CAPITAL**

4 **AUTHORITY**

5 **SUBCHAPTER I**

6 **GENERAL PROVISIONS**

7 **239.01 Definitions.** In this chapter, except as otherwise provided:

8 (1) "Authority" means the Wisconsin Venture Capital Authority.

9 (2) "Board" means the board of directors of the authority.

10 **239.02 Creation and organization of authority.** (1) There is created a
11 public body corporate and politic to be known as the "Wisconsin Venture Capital
12 Authority." The members of the board shall consist of the following:

13 (a) The chief executive officer of the Wisconsin Economic Development
14 Corporation.

15 (b) Four persons from the private sector, at least 3 of whom shall have venture
16 capital, investment banking, or substantial entrepreneurial experience, nominated
17 by the governor and appointed with the advice and consent of the senate.

18 (c) One member appointed by the speaker of the assembly who shall have
19 venture capital, investment banking, or substantial entrepreneurial experience.

20 (d) One member appointed by the senate majority leader who shall have
21 venture capital, investment banking, or substantial entrepreneurial experience.

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

24 (3) A majority of the members of the board constitutes a quorum for the purpose
25 of conducting its business and exercising its powers and for all other purposes,

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1 notwithstanding the existence of any vacancies. Action may be taken by the board
2 upon a vote of a majority of the members present.

3 (4) A vacancy on the board shall be filled in the same manner as the original
4 appointment to the board for the remainder of the unexpired term, if any.

5 (5) A member of the board may not be compensated for the member's services
6 but shall be reimbursed for actual and necessary expenses, including travel
7 expenses, incurred in the performance of the member's duties.

8 (6) No cause of action may arise against and no civil liability may be imposed
9 upon a member of the board for any act or omission in the performance of the
10 member's powers and duties under this chapter, unless the person asserting liability
11 proves that the act or omission constitutes willful misconduct.

12 (7) Annually, the governor shall appoint one member as chairperson of the
13 board.

14 (8) The board may hire an executive director. The board may delegate to the
15 executive director or any other employee of the authority any powers or duties the
16 board considers proper. All powers and duties assigned to the authority under this
17 chapter shall be exercised or carried out by the board, unless the board delegates the
18 power or duty to an employee of the authority.

19 **239.03 Powers of authority.** The authority shall have all the powers
20 necessary or convenient to carry out the purposes and provisions of this chapter. In
21 addition to all other powers granted the authority under this chapter, the authority
22 may specifically:

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

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

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1 (3) Maintain an office.

2 (4) Sue and be sued.

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

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

7 (7) Execute contracts and other instruments required for the operation of the
8 authority, including contracts with the Wisconsin Economic Development
9 Corporation.

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

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

13 (10) Make loans and provide grants.

14 (11) Incur debt.

15 (12) Procure liability insurance.

16 **239.04 Liability limited.** Neither the state nor any political subdivision of
17 the state, nor any officer, employee, or agent of the state or a political subdivision of
18 the state who is acting within the scope of employment or agency, is liable for any
19 debt, obligation, act, or omission of the authority.

20 **239.05 Annual report.** Annually, the authority shall submit to the chief clerk
21 of each house of the legislature, for distribution to the legislature under s. 13.172 (2),
22 and to the governor, a report on the programs administered by the authority that
23 includes all of the following:

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

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

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

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

5 **(2) BADGER JOBS FUND.** In addition to the information provided under sub. (1),
6 the authority's annual report shall include all of the following for the badger jobs
7 fund administered by the authority under subch. II:

8 (a) The current investment policy of the badger jobs fund.

9 (b) The badger jobs fund's internal rate of return from its investments in
10 certified investors.

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

12 (b).

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

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

19 (f) For each certified investor in whom the badger jobs fund invested capital
20 under s. 239.13 (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.

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1 (i) For each business in which a certified investor held an investment of capital
2 from the badger jobs 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; an identification of the certified investor who made the
5 investment; and a statement of the number of employees the business employed
6 when the certified investor first invested in the business and the number of
7 employees the business employed on December 31 of the preceding year.

8 (3) CERTIFIED JOBS NOW FUND PROGRAM. In addition to the information provided
9 under sub. (1), the authority's annual report shall include all of the following for the
10 certified jobs now fund program under subch. III:

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

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

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

15 (b).

16 (d) An accounting of each profit sharing fee paid to the authority under s.
17 239.24 (2) during the preceding year.

18 (e) A list of certified jobs now funds that the authority decertified under s.
19 239.26 (2) during the preceding year and a description of the circumstances leading
20 to each decertification.

21 SUBCHAPTER II

22 BADGER JOBS FUND

23 **239.10 Definitions.** In this subchapter:

24 (1) "Certified investor" means a person certified under s. 239.12.

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

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

6 (4) "Fund" means the badger jobs fund.

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

13 (2) BONDING; DEBT SERVICE. (a) The authority may issue, by resolution, up to
14 \$200,000,000 in negotiable bonds or notes of any kind to finance the fund.

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

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

23 (d) Neither the members of the board nor any person executing the notes or
24 bonds is liable personally on the notes or bonds or subject to any personal liability

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1 or accountability by reason of the issuance of the notes or bonds, unless the personal
2 liability or accountability is the result of willful misconduct.

3 (3) NOTICE REGARDING BOND LIMIT; DISSOLUTION OF THE FUND. (a) The chairperson
4 of the board shall promptly notify the joint committee on finance in writing when the
5 authority has reached its bond limit under sub. (2) (a) and has satisfied 90 percent
6 of its total debt service obligation to fund creditors. Once the authority satisfies 100
7 percent of its total debt service obligation to fund creditors, the chairperson of the
8 board shall promptly provide a 2nd notice to the joint committee on finance stating
9 that the authority has satisfied 100 percent of its total debt service obligation to fund
10 creditors and that the authority intends to dissolve the fund. If, within 14 working
11 days after the date of that 2nd notice, the cochairpersons of the committee do not
12 notify the authority that the committee has scheduled a meeting to review
13 dissolution of the fund, the authority shall dissolve the fund and liquidate all of the
14 fund's assets and pay the proceeds of that liquidation to the secretary of
15 administration for deposit in the general fund. If, within 14 working days after the
16 date of that 2nd notice, the cochairpersons of the committee notify the authority that
17 the committee has scheduled a meeting to review dissolution of the fund, the
18 authority may dissolve the fund only upon approval of the committee.

19 (b) The authority may reinvest amounts that it receives as returns from its
20 investments in certified investors only if the authority has reached the bond limit
21 under sub. (2) (a), the authority has satisfied 100 percent of its total debt service
22 obligation to fund creditors, and the joint committee on finance schedules a meeting
23 to consider dissolution of the fund under par. (a) but does not approve dissolution of
24 the fund. Any reinvestment by the authority under this paragraph shall meet the

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1 requirements under this subchapter with respect to the authority's investments in
2 certified investors.

3 (c) If the authority dissolves the fund under par. (a), the authority shall pay to
4 the secretary of administration for deposit in the general fund any additional
5 amounts the authority receives from certified investors after the fund is dissolved.

6 (4) FUND MANAGER. (a) The authority shall hire a fund manager who has
7 expertise in the venture capital or private equity asset class to manage the fund's
8 investment of capital in certified investors. In reviewing candidates for fund
9 manager, the authority shall consider a candidate's venture capital or private equity
10 asset class experience, investment philosophy, and the performance of any
11 investments in the venture capital asset class managed by the candidate, as well as
12 any other criteria the authority considers relevant. The fund manager may not be
13 a certified investor.

14 (b) The authority may pay the fund manager an annual management fee. That
15 management fee may not equal more than 0.5 percent of the ^{fund's} total amount of capital
16 that the authority has ^{invested in} committed to, or invested in ^{including} certified investors.

17 **239.12 Investor certification.** (1) APPLICATION. Any person may apply to the
18 authority on a form prescribed by the authority for certification under this section.
19 The application shall include the name, address, and tax identification number of the
20 person and any other information the authority requires.

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

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

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

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

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

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

7 (f) Any other factors the authority considers relevant that are consistent with
8 the authorities responsibilities under this subchapter.

9 **(3) APPLICATION FEE.** An applicant for certification under sub. (1) shall pay to
10 the authority a fee in the amount determined by the authority.

11 **239.13 Investment of capital in certified investors; requirements. (1)**
12 **INVESTMENT POLICY.** The fund manager shall establish, and amend as appropriate,
13 a fund investment policy. The authority shall review and approve the investment
14 policy prior to the policy's implementation and shall review the policy and any
15 amendments at least annually thereafter.

16 **(2) FUND INVESTMENTS.** The authority may invest capital under this subchapter
17 only in certified investors. The authority may not commit more than 15 percent of
18 the total capital that the authority is authorized to raise under s. 239.11 (2) (a) to a
19 single certified investor.

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

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1 (a) The certified investor shall commit to maintaining a significant physical
2 presence in this state, including locating an office in this state that is staffed with
3 at least one full-time employee of the certified investor.

4 (b) The certified investor shall invest at least 50 percent of the amount of capital
5 the certified investor receives from the fund in a business that meets all of the
6 following conditions at the time the certified investor first invests in the business
7 under this section:

8 1. Is headquartered in this state.

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

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

14 4. Is not 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 (c) The certified investor may not receive capital from the fund that exceeds 25
18 percent of the total capital the investor has raised from all sources.

19 (d) When a certified investor makes an investment of fund capital in a business,
20 the certified investor shall at least match the fund's capital contribution to that
21 investment with capital the certified investor has raised from other sources.

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

24 (4) SUNSET. The authority may not make a commitment to invest capital in a
25 certified investor under this subchapter after December 31, 2015.

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1 **239.14 Tax credits to fund creditors.** (1) In lieu of payment of its debt
2 service obligation to a fund creditor, the authority may contract with a fund creditor
3 to award a tax credit under s. 71.07 (8s), 71.28 (8s), or 71.47 (8s) to the fund creditor
4 up to an amount equal to the amount the authority is unable to pay the creditor under
5 the authority's debt service obligation to the creditor in a taxable year.

6 (2) A contract under sub. (1) shall set forth the terms and conditions under
7 which the fund creditor may claim a tax credit under this section. A fund creditor
8 may not claim a tax credit that exceeds the amount the authority fails to pay under
9 the authority's debt service obligation to the fund creditor. The authority shall certify
10 to the department of revenue the amount of the tax credit a creditor of the fund may
11 claim under this section.

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

SUBCHAPTER III**CERTIFIED JOBS NOW FUNDS**

15
16
17 **239.20 Definitions.** In this subchapter:

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

19 (a) A person who owns, controls, or holds power to vote 15 percent or more of
20 the outstanding voting securities or other voting interests of a certified jobs now fund
21 or an insurance company or other person subject to premium tax liability.

22 (b) A business, 15 percent of whose outstanding voting securities or other
23 voting ownership interests are owned, controlled, or held with power to vote by a
24 certified jobs now fund or an insurance company or other person subject to premium
25 tax liability.

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1 (c) A person who controls, is controlled by, or is under common control with a
2 certified jobs now fund or an insurance company or other person subject to premium
3 tax liability.

4 (d) A business in which a certified jobs now fund or an insurance company or
5 other person subject to premium tax liability is a partner, managing member, or
6 other principal.

7 (e) An officer, director, employee, or agent of a certified jobs now fund or an
8 insurance company or other person subject to premium tax liability, or an immediate
9 family member of the officer, director, employee, or agent.

10 (2) "Allocation date" means the date stated in the authority's notice under s.
11 239.22 (2) (b) that approves a specific amount of designated capital and awards a
12 corresponding premium tax credit to a participating investor.

13 (3) "Certified jobs now fund" or "fund" means an entity that is certified under
14 s. 239.21.

15 (4) "Designated capital" means an investment of cash by a participating
16 investor in a certified jobs now fund that is approved by the authority under s. 239.22
17 and that fully funds either the participating investor's equity interest in a certified
18 jobs now fund, a qualified debt instrument that a certified jobs now fund issues, or
19 both. In this subsection, "qualified debt instrument" means a bond, note, or other
20 obligation that a certified jobs now fund issues at par value or at a premium or
21 discount from par value that meets all of the following conditions:

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

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

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

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

4 (5) "Early stage business" means a qualified business that received, including
5 any affiliate, gross revenue of \$2,000,000 or less in the fiscal year immediately
6 preceding that date.

7 (6) "Participating investor" means an insurance company or other person
8 subject to premium tax liability who the authority approves to invest designated
9 capital in a certified jobs now fund under s. 239.22.

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

11 (8) "Premium tax liability" means the fees imposed under s. 76.60, 76.63, 76.65,
12 76.66, or 76.67.

13 (9) "Qualified business" means a business that, as of the time a certified jobs
14 now fund or its affiliate first invests in the business under this subchapter, meets all
15 of the following conditions:

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

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

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

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

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1 (10) "Qualified investment" means a certified jobs now fund's investment of
2 designated capital in a qualified business.

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

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

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

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

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

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

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

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

23 3. At least 2 principals or persons employed to manage the applicant's
24 investments have at least 5 years of experience in the venture capital or private
25 equity industry in this state.

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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 in the amount determined by the authority.

9 **239.22 Participating investors; premium tax credits. (1) APPLICATION.**
10 (a) Any insurance company or other person subject to premium tax liability may
11 apply to the authority to make an investment of designated capital in a certified jobs
12 now fund and receive a premium tax credit for that investment. The person's
13 application 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 jobs now fund in which the person
16 proposes to invest.
- 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 allocation
20 date established by the authority under sub. (2) (b).

21 (b) The authority shall establish a single 15-day period in which applications
22 under par. (a) may be submitted to the authority. The authority shall provide a notice
23 regarding that application period and the investment program under this
24 subchapter that is reasonably calculated to reach all insurance companies or other
25 persons subject to premium tax liability within this state.

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1 (c) The authority may establish additional rules consistent with this
2 subchapter regarding the requirements for an application under par. (a).

3 (2) AWARD. (a) The authority shall approve an investment of designated capital
4 in a certified jobs now fund and, subject to sub. (4) (b), award a premium tax credit
5 to a person who satisfies the application requirements under sub. (1) in an amount
6 equal to 80 percent of the person's proposed investment of designated capital.

7 (b) If the authority approves a person's proposed investment of designated
8 capital under par. (a), the authority shall notify the person and the certified jobs now
9 fund of that approval in writing, stating the amount of the investment approved by
10 the authority, the amount of the premium tax credit the person may claim, the
11 requirements, including those under sub. (3), for making that claim, and the
12 allocation date.

13 (c) The authority may not set an allocation date that is earlier than 30 days
14 after the date of the authority's notice of approval of an investment under par. (b).
15 The first allocation date set by the authority for any participating investor may not
16 be later than 120 days after the effective date of this paragraph [LRB inserts date].

17 (3) CLAIM ELIGIBILITY AND REQUIREMENTS. (a) A participating investor may claim
18 a premium tax credit in the amount the authority awards only after the participating
19 investor makes an investment of designated capital in the certified jobs now fund in
20 the amount approved by the authority under sub. (2).

21 (b) A participating investor may claim up to 25 percent of the premium tax
22 credit approved under sub. (2) in a taxable year, except that a participating investor
23 may not claim any premium tax credit under this subchapter for a taxable year
24 beginning before January 1, 2014, and a premium tax credit may not be applied to
25 quarterly tax payments due during the 2014 taxable year.

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1 (4) LIMITS ON PREMIUM TAX CREDITS. (a) The authority may not award more than
2 \$200,000,000 in premium tax credits under this subchapter.

3 (b) If, as a result of the limitations under par. (a), the amount of available
4 premium tax credits is insufficient for approval of the full amount of all applications
5 for capital investments that are received by the authority within the 15-day period
6 established by the authority under sub. (1) (b), the authority shall prorate the
7 awardable amount among the applicants based on the amount the applicant has
8 committed to invest in the certified jobs now fund.

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

11 **239.23 Operation of a certified jobs now fund. (1) REQUIRED DISCLOSURES**

12 IN SECURITIES OFFERINGS. Any offering material involving the sale of securities of a
13 certified jobs now fund shall include all of the following statements:

14 (a) "By authorizing the formation of a certified jobs now fund, the Wisconsin
15 Venture Capital Authority does not endorse the quality of management or explicitly
16 or implicitly guarantee or otherwise assure the economic performance of the fund
17 and is not liable for damages or losses to a participating investor in the fund. Use
18 of the word "certified" in an offering is not a recommendation, endorsement, or
19 guarantee of the investment by the Wisconsin Venture Capital Authority or the
20 state."

21 (b) "Investments in a prospective certified jobs now fund prior to the time the
22 fund is certified are not eligible for a premium tax credit under section 76.634 of the
23 Wisconsin Statutes. Investments in a certified jobs now fund are not eligible for a
24 premium tax credit under section 76.634 of the Wisconsin Statutes unless the
25 proposed investment is approved by the Wisconsin Venture Capital Authority under

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on a particular allocation date

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1 section 239.22 of the Wisconsin Statutes before the investment is made. In the event
2 that certain statutory provisions are violated, the state may require forfeiture of
3 unused premium tax credits and repayment of used premium tax credits.”

4 (c) “In addition to any other applicable law, the certified jobs now fund is subject
5 to applicable provisions of subchapter III of chapter 239 of the Wisconsin Statutes
6 and any requirements of the Wisconsin Venture Capital Authority.”

7 **(2) QUALIFIED INVESTMENTS.** A certified jobs now fund may invest designated
8 capital only in a qualified business. A qualified investment shall meet all of the
9 following requirements:

10 (a) The investment is a cash investment in a qualified business for the purchase
11 of debt, debt participation, equity, or hybrid security of any kind, including a debt
12 instrument or security that has the characteristics of debt that provides for
13 conversion into equity or an equity participation instrument such as an option or
14 warrant.

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

19 (c) As a condition of the investment, the qualified business agrees not to
20 relocate its headquarters outside of this state as long as the certified jobs now fund
21 continues to hold the investment.

22 (d) As a condition of the investment, the qualified business agrees to maintain
23 at least 75 percent of its employees, or pay at least 75 percent of its payroll to
24 employees, including the employees or payroll of any subsidiary or other affiliated

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1 entity, in this state as long as the certified jobs now fund continues to hold the
2 investment.

3 (3) AUTHORITY DETERMINATIONS REGARDING QUALIFIED BUSINESSES. A certified
4 jobs now fund may request a determination from the authority that a business in
5 which the fund proposes to invest is a qualified business or an early stage business.
6 The authority shall issue its determination in writing to the fund within a reasonable
7 time after the fund's request.

8 (4) SCHEDULE OF INVESTMENTS. A certified jobs now fund shall make qualified
9 investments according to the following schedule, except that a certified jobs now fund
10 may reinvest proceeds it receives from one qualified investment in another qualified
11 investment and apply the amount of that reinvestment toward the following
12 requirements for that other qualified investment:

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

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

19 (c) Notwithstanding s. 239.24 (1) (c) and (e), if, within 5 years after an allocation
20 date, the certified jobs now fund has not placed at least 80 percent of the designated
21 capital approved by the authority on that date in qualified investments, of which at
22 least 50 percent is invested in early stage businesses, the certified jobs now fund may
23 not pay any management or similar fee until it has made those investments.

24 (d) Notwithstanding s. 239.24 (1) (c) and (e), if, within 7 years after an
25 allocation date, the certified jobs now fund has not placed 100 percent of the

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1 designated capital approved on that date in qualified investments, of which at least
2 50 percent is invested in early stage businesses, the certified jobs now fund may not
3 pay any management or similar fee until it has made those investments.

4 (5) QUALIFIED BUSINESS RELOCATION OUT OF STATE. If within 24 months after the
5 date a qualified investment is made, the qualified business relocates its principal
6 business operations to another state and the certified jobs now fund still holds a
7 qualified investment in the business, the amount of the fund's total designated
8 capital and qualified investments may be reduced by the amount of the qualified
9 investment in the relocated business for the purpose only of satisfying the
10 investment schedule under sub. (4). This subsection does not apply if the relocated
11 business returns its principal business operations to this state within 90 days after
12 its initial relocation.

13 (6) OTHER LIMITATIONS ON INVESTMENTS. (a) A certified jobs now fund may not
14 invest more than 15 percent of its total designated capital in any one qualified
15 business.

16 (b) A certified jobs now fund may invest any designated capital not invested in
17 qualified investments only in the following:

- 18 1. Cash deposited in a federally insured financial institution.
- 19 2. Certificates of deposit in a federally insured financial institution.
- 20 3. Investment securities that are obligations of the United States or its
21 agencies, or obligations that the United States fully guarantees as to principal and
22 interest.
- 23 4. Debt instruments rated at least "A" or its equivalent by a nationally
24 recognized credit rating organization, or issued or guaranteed by a business whose
25 unsecured debt is rated at least "A" or its equivalent by a nationally recognized credit

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1 rating organization if that debt is not subordinated to other unsecured debt of the
2 issuer or the guarantor.

3 5. Obligations of the state or any political subdivision of the state.

4 6. Any other investments of a similar credit quality and risk as those in subs.
5 1. to 5. that are approved in advance in writing by the authority.

6 **(7) RESTRICTIONS ON MANAGEMENT.** No certified jobs now fund or its affiliate may
7 be managed or controlled by, or have a partner, member, or other principal that is,
8 an insurance company or other person subject to premium tax liability or an affiliate
9 of that person or insurance company.

10 **239.24 Distributions; profit sharing fee. (1) PERMISSIBLE DISTRIBUTIONS.**

11 A certified jobs now fund may make only the following distributions:

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

15 (b) A distribution for the cost of forming, syndicating, managing, or operating
16 the certified jobs now fund, including a reasonable and necessary fee paid for
17 professional services.

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

20 (d) A distribution to cover a projected increase in state or federal taxes,
21 including penalties and interest, for the certified jobs now fund's equity owners if
22 that increase is related to the fund's ownership, management, or operation.

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

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

5 (2) PROFIT SHARING FEE. (a) In this subsection, "net profit realized" means the
6 amount of money returned to a certified jobs now fund on a qualified investment that
7 exceeds the amount of that qualified investment.

8 (b) When a certified jobs now fund makes a distribution under sub. (1) (f), the
9 fund shall pay to the authority a fee equal to 20 percent of the net profit realized on
10 each qualified investment from which a distribution is made. The authority shall
11 pay that fee to the secretary of administration for deposit in the general fund.

12 **239.25 Certified jobs now fund reporting requirements.** (1) REPORT
13 UPON RECEIPT OF DESIGNATED CAPITAL. As soon as practicable after it receives
14 designated capital, a certified jobs now fund shall submit a report to the authority
15 that includes:

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

18 (b) The amount of designated capital.

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

20 (2) ANNUAL REPORT. By January 31 of each year, a certified jobs now fund shall
21 submit a report to the authority that includes:

22 (a) For each qualified investment made during the preceding year, the amount
23 of designated capital invested, the allocation date of the designated capital, the date
24 of the qualified investment, and the name and address of the business in which the
25 qualified investment was made.

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1 (b) For each qualified business in which the fund held an investment during
2 the preceding year, a description of the business, including the number of employees
3 the business employed when the first qualified investment in the business was made
4 by the fund and the number of employees the business employed on December 31 of
5 the preceding year.

6 (c) A statement whether the certified jobs now fund has invested more than 15
7 percent of its total designated capital in any one business.

8 (d) A detailed accounting of the certified jobs now fund's investment progress
9 according to the schedule of investments required under s. 239.23 (4).

10 (e) An accounting of all distributions the certified jobs now fund made during
11 the year.

12 (f) Any other information the authority requires.

13 **(3) FINANCIAL STATEMENT.** Within 90 days after the end of a certified jobs now
14 fund's fiscal year, the fund shall file with the authority a copy of its annual audited
15 financial statement, including the opinion of an independent certified public
16 accountant.

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

21 **239.26 Compliance reviews; decertification.** (1) ANNUAL COMPLIANCE
22 REVIEW. The authority shall review annually each certified jobs now fund to ensure
23 that the fund continues to satisfy the requirements of this subchapter, to ensure that
24 the fund has not made any investment in violation of this subchapter, and to

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1 determine the status of the fund's qualified investments with respect to the schedule
2 of investments required under s. 239.23 (4).

3 **(2) DECERTIFICATION.** (a) If the authority determines that a certified jobs now
4 fund is not in compliance with any provision of this subchapter, or any requirement
5 of the authority, the authority shall notify the officers of the fund in writing that the
6 fund may be subject to decertification or a monetary penalty, or both, if the fund is
7 not brought into compliance within 120 days after the fund's receipt of the notice.

8 (b) The authority may decertify a certified jobs now fund if, after opportunity
9 for hearing, the authority determines that the fund is in violation of this subchapter
10 and that the fund's violation has not been corrected to the authority's satisfaction
11 within the period under par. (a). The authority shall notify any appropriate state
12 agency of the decertification.

13 **(3) EFFECT OF DECERTIFICATION.** Decertification of a certified jobs now fund has
14 the effects specified under s. 76.634 (4) with respect to a participating investor. A
15 certified jobs now fund may agree to indemnify, or purchase insurance for the benefit
16 of, a participating investor for the participating investor's losses under s. 76.634 (4)
17 due to the fund's decertification.

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

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

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

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

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

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

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

7 **SECTION 68.** 281.75 (4) (b) 3. of the statutes, as affected by 2011 Wisconsin Act
8 10, is amended to read:

9 281.75 (4) (b) 3. An authority created under subch. II of ch. 114 or ch. 231, 233,
10 234, 237, ~~or 238,~~ or 239.

11 **SECTION 69.** 285.59 (1) (b) of the statutes, as affected by 2011 Wisconsin Act 10,
12 is amended to read:

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

23 **SECTION 70. Nonstatutory provisions.**

24 (1) DEFINITIONS. In this section:

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1 (a) "Authority" means the Wisconsin Venture Capital Authority, as created by
2 this act.

3 (b) "Corporation" means the Wisconsin Economic Development Corporation.

4 (2) INITIAL APPOINTMENTS.

5 (a) Notwithstanding the requirement of advice and consent of the senate under
6 section 239.02 (1) (b) of the statutes, as created by this act, the initial members of the
7 board of directors of the authority nominated by the governor under that section may
8 be provisionally appointed by the governor, subject to later senate confirmation. Any
9 provisional appointment shall be in full force until withdrawn by the governor or
10 acted upon by the senate, and if confirmed by the senate shall continue for the
11 remainder of the unexpired term of the member and until a successor is chosen and
12 qualifies. A provisional appointee may exercise all the powers and duties of board
13 membership to which the person is appointed during the time in which the appointee
14 qualifies.

15 (b) A provisional appointment made under paragraph (a) that is withdrawn by
16 the governor shall, upon withdrawal, lapse and create a vacancy for provisional
17 appointment of another initial member of the board of directors or chairperson of the
18 board of the authority. Any provisional appointment made under paragraph (a) that
19 is rejected by the senate shall upon rejection lapse and create a vacancy for
20 nomination and appointment of another initial board member or chairperson of the
21 board under paragraph (a).

22 (c) Notwithstanding the lengths of terms specified in section 239.02 (2) of the
23 statutes, as created by this act, the initial members of the board of directors of the
24 authority shall be appointed for the following terms:

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

3 2. One member appointed by the governor under section 239.02 (1) (b) of the
4 statutes, as created by this act, for a term expiring on June 30, 2015.

5 3. One member appointed by the governor under section 239.02 (1) (b) of the
6 statutes, as created by this act, and the member appointed by the speaker of the
7 assembly, for terms expiring on June 30, 2016.

8 4. One member appointed by the governor under section 239.02 (1) (b) of the
9 statutes, as created by this act, and the member appointed by the majority leader of
10 the senate, for terms expiring on July 1, 2017.

11 (3) TEMPORARY ADMINISTRATION BY THE DEPARTMENT OF COMMERCE. The
12 department of commerce, in coordination with the authority and the secretary of the
13 department of administration, shall administer chapter 239 of the statutes, as
14 created by this act, until the initial appointments by the governor, including any
15 provisional appointments under subsection (2) (a), the speaker of the assembly, and
16 the senate majority leader have been made to the authority and the authority has
17 adequate personnel to carry out its powers and duties, or until the effective date of
18 the 2011-13 biennial budget act, whichever is later. During that period, the
19 department of commerce may collect fees under sections 239.12 (3) and 239.21 (3),
20 as created by this act, and may use those fees as appropriate only for administration
21 of subchapters II and III of chapter 239 of the statutes, as created by this act. The
22 department shall credit any fees collected under this subsection to the appropriation
23 account under section 20.143 (1) (a) of the statutes. When the department of
24 commerce ceases to administer the authority's programs under this subsection, the
25 department shall transfer to the authority, or to the Corporation for administration

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1 of the authority's programs under subsection (4) if the authority is not prepared to
2 assume administration of its programs on or before the effective date of the 2011-13
3 biennial budget act, any unused portion of the fees the department collected under
4 this subsection.

5 (4) TEMPORARY ADMINISTRATION BY THE WISCONSIN ECONOMIC DEVELOPMENT
6 CORPORATION. If the authority is not prepared to assume administration of its
7 programs on or before the effective date of the 2011-13 biennial budget act, then,
8 commencing on that date, the corporation, in coordination with the authority and the
9 secretary of the department of administration, shall administer chapter 239 of the
10 statutes, as created by this act, until the initial appointments by the governor,
11 including any provisional appointments under subsection (2) (a), the speaker of the
12 assembly, and the senate majority leader have been made to the authority and the
13 authority has adequate personnel to carry out its powers and duties. During that
14 interim period, the corporation may collect fees under sections 239.12 (3) and 239.21
15 (3) of the statutes, as created by this act, and may use those fees as appropriate only
16 for administration of subchapters II and III of chapter 239 of the statutes, as created
17 by this act. When the corporation ceases to administer the authority's programs
18 under this subsection, the corporation shall transfer to the authority any unused
19 portion of fees the department of commerce transferred to the corporation under
20 subsection (3) or that the corporation collected under this subsection.

21 (5) TRANSFER OF GENERAL FUND MONEYS FROM THE DEPARTMENT OF COMMERCE. The
22 secretary of administration shall transfer moneys from the appropriation under
23 section 20.143 (1) (a) of the statutes to the appropriation under section 20.195 (1) (k)
24 of the statutes, as created by this act, for the establishment and initial operation
25 costs of the Wisconsin Venture Capital Authority.

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SECTION 71. Fiscal changes.

(1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of commerce under section 20.143 (1) (a) of the statutes, as affected by the acts of 2011, the dollar amount is increased by \$250,000 for the 2010-11 fiscal year for the establishment and initial operation costs of the Wisconsin Venture Capital Authority.

SECTION 72. Effective dates. This act takes effect on the day after publication, except as follows:

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

(2) The repeal of section 20.195 (1) (k) of the statutes and SECTION 70 (4) takes effect on July 1, 2011, or on the day after publication of the 2011-13 biennial budget act, whichever is later.

of this act's

(END)

By 1:00 p.m.

THANKS.

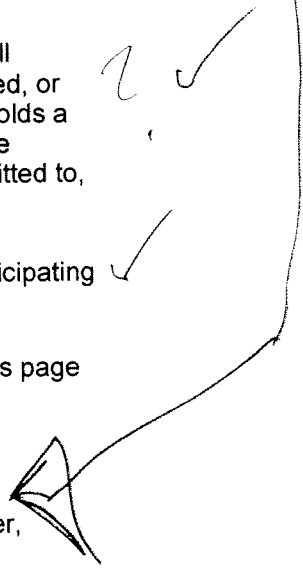
Gallagher, Michael

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]
Sent: Friday, May 06, 2011 8:24 AM
To: Gallagher, Michael
Cc: Hoechst, Jonathan S - DOA
Subject: Last Changes to Draft
Mike,

Please Jacket
and send to
Brian Quinn @
DOA.

Here is the final battery of changes:

1. Page ~~48~~⁴, Lines 14-16 – Broaden the assets on which the fee may be assessed to include all assets under management. The enumerate these, these would be funds invested, committed, or held in reserve by the fund. To use an analogy to a mutual fund, the mutual fund typically holds a certain percentage of its assets in case and it still charges a fee on those amounts. Possible language “0.5 percent of the total amount of capital that the authority has raised and committed to, or invested in, certified investors.” ✓
2. Page 53, Lines 9 and 10 – Specify that this cap applies for a given allocation period. A participating investor may receive additional amounts in a successive allocation period. ✓
3. Page 65, Lines 4-8 – Strike in their entirety and this probably means that (5) on the previous page should be stricken as well.



If at all possible, expedite the editing of this draft and have it jacketed today by this afternoon.

Also, since Jonathan is out today, could you have the draft sent directly to me or to his team leader, Jenny Kraus?

Call me if you have questions.

Thanks.

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

Gallagher, Michael

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

Sent: Thursday, May 05, 2011 1:24 PM

To: Gallagher, Michael; Kreye, Joseph

Cc: Hoechst, Jonathan S - DOA

Subject: Re: Analysis Section of WVCA Draft

Mike,

One more aesthetic change.

On page 4, in the first paragraph of the "Issuance of Bonds" section, the analysis language still says that the credits may be transferred but not sold. This should be changed so that it says that they can be sold and transferred, consistent with the new bill language.

Thanks.

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

Godwin, Gigi

From: Evenson, Andrew
Sent: Friday, May 06, 2011 2:06 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1556/3 Topic: Creation of rapid growth fund certification program

Please Jacket LRB 11-1556/3 for the SENATE.

Sincerely,

Andrew Evenson
Legislative Aide
Office of Senator Randy Hopper
608-266-5300