



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 181**

May 29, 2013 – Offered by Representatives KUGLITSCH and CLARK.

1 **AN ACT to create** 16.295, 20.505 (1) (fm) and 25.17 (72) of the statutes; **relating**
2 **to:** venture capital investment program.

Analysis by the Legislative Reference Bureau

This substitute amendment directs the Department of Administration (DOA) to establish an economic development program that operates like what is often referred to as a “fund of funds.” Typically, under a fund of funds investment model, an investment fund invests moneys with other investment funds that in turn invest those moneys directly in operating businesses. Under the substitute amendment, DOA must contract with an investment manager to manage investments in venture capital funds and Wisconsin businesses.

Before DOA contracts with an investment manager, the secretary of DOA must form a committee to select the investment manager. The committee must consist of three members appointed by the State of Wisconsin Investment Board (SWIB), one member appointed by the secretary of DOA, and one member appointed by the Wisconsin Technology Council. A majority of the committee’s members must be representatives of SWIB.

DOA’s proposed contract with the investment manager must be reviewed by the Legislative Audit Bureau and is subject to passive review by the Joint Committee on Finance (JCF) based on the audit bureau’s opinion of the contract. JCF’s passive review is limited to determining whether the contract is contrary to the substitute amendment or fails to implement an applicable provision of the substitute amendment.

The substitute amendment requires DOA to pay \$25,000,000 to the investment manager for investments in venture capital funds. The substitute amendment also requires the investment manager to contribute to those investments \$300,000 of its own moneys and \$5,000,000 raised from other funding sources. The investment manager must commit all of those moneys to investments within 24 months after the date the investment manager executes the contract with DOA, and the investment manager must invest those moneys in at least four different venture capital funds. The investment manager may not invest more than \$10,000,000 in any one venture capital fund.

The substitute amendment requires the investment manager to contract with each venture capital fund that receives moneys under the program. Under that contract, each venture capital fund must do all of the following:

1. Invest all of the moneys the venture capital fund receives under the program in businesses that are headquartered in Wisconsin and employ at least 50 percent of their full-time employees in Wisconsin and invest at least one-half of those moneys in businesses that employ fewer than 150 full-time employees when the venture capital fund first invests in the business under the program. If, within three years after the venture capital fund makes an investment in a business under the program, the business relocates its headquarters outside of Wisconsin or fails to employ at least 50 percent of its full-time employees in Wisconsin, the business must pay to the venture capital fund an amount equal to the amount of moneys contributed by the state that the venture capital fund invested in the business under the program, and the venture capital fund must reinvest those moneys in one or more eligible businesses, subject to the substitute amendment's requirements.

2. Commit at least one-half of those moneys to investments in businesses within 24 months after the venture capital fund receives the moneys and commit all of the moneys to investments in businesses within 48 months.

3. Invest all of those moneys in businesses in the agriculture, information technology, engineered products, advanced manufacturing, or medical devices and imaging industries and attempt to ensure that those moneys are invested in businesses that are diverse with respect to geographic location within Wisconsin.

4. At least match the amount of the moneys the investment manager contributes to an investment in a business with an investment of moneys in that business that the venture capital fund has raised from other funding sources. The substitute amendment also requires the investment manager to ensure that, on average, a venture capital fund invests \$2 in a business for every \$1 the investment manager contributes to the investment in that business.

5. Provide to the investment manager the information necessary for the investment manager to make its reports to DOA, described below.

6. Disclose to the investment manager and to DOA any interest that the venture capital fund or one of its owners or other representatives or agents holds in a business in which the venture capital fund invests or intends to invest moneys under the program.

Similarly, the substitute amendment requires the investment manager to disclose to DOA any interest that it or an owner or other representative or agent of

the investment manager holds in a venture capital fund that receives moneys under the program or a business in which a venture capital fund invests such moneys. Also, the investment manager's profit-sharing agreement with a venture capital fund under the program must be on terms that are substantially equivalent to the terms applicable for other funding sources of the venture capital fund.

Under the substitute amendment, the investment manager must set aside and pay to the state its proceeds from investments of the moneys contributed to the program by the state until the investment manager has paid the state \$25,000,000, the amount of the state's contribution. After that point, the investment manager must pay 90 percent of its proceeds from such investments to the state.

The substitute amendment requires the investment manager to submit a report to DOA each year within 120 days after the end of the investment manager's fiscal year that includes all of the following:

1. An audit of the investment manager's financial statements performed by an independent certified public accountant.

2. The investment manager's internal rate of return from investments in venture capital funds under the program.

3. For each venture capital fund that received an investment under the program: a) the name and address of the venture capital fund; b) the amount of the investment; c) an accounting of any fees the venture capital fund paid to itself or any principal or manager, and d) the venture capital fund's average rate of return on its investments under the program.

4. For each business in which a venture capital fund held an investment of moneys contributed by the investment manager under the program: a) the name and address of the business; b) a description of the nature of the business; c) an identification of the venture capital fund that made the investment; d) the amount of each investment in the business and the amount contributed by the venture capital fund; e) the internal rate of return realized by the venture capital fund on the investment; and f) a statement of the number of employees the business employed when the venture capital fund first invested in the business under the program, the number of employees the business employed on the first day of the investment manager's fiscal year, and the number of employees the business employed on the last day of the investment manager's fiscal year.

DOA must submit the investment manager's annual report to the legislature.

The investment manager must also submit a quarterly report to DOA for the preceding quarter that identifies each venture capital fund participating in the program, each business in which a venture capital fund held an investment under the program and the amount of each investment, and the number of employees each business employed when the venture capital fund first invested in the business under the program and the number of employees the business employed at the end of the quarter. DOA must publish the information contained in the investment manager's quarterly report on DOA's Internet site.

The substitute amendment also requires DOA to submit to JCF two progress reports, one in 2015 and one in 2018. Each report must include all of the following:

1. A comprehensive assessment of the performance to date of the investment program created in the substitute amendment.

2. Any recommendations DOA has for improving the investment program and the specific actions DOA intends to take or proposes to be taken to implement those recommendations.

3. Any recommendations SWIB has for improving the investment program and the specific actions SWIB proposes to be taken to implement those recommendations.

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

1 **SECTION 1.** 16.295 of the statutes is created to read:

2 **16.295 Fund of funds investment program. (1) DEFINITION.** In this section,
3 “investment manager” means the person the committee selects under sub. (3) (a) 1.

4 **(2) ESTABLISHMENT OF PROGRAM.** The department shall establish and
5 administer a program for the investment of moneys in venture capital funds that
6 invest in businesses located in this state.

7 **(3) SELECTION OF INVESTMENT MANAGER; CONTRACT APPROVAL.** (a) 1. The secretary
8 shall form a committee to select the investment manager. The committee shall
9 consist of 3 representatives of the investment board, one representative of the
10 department, appointed by the secretary, and one representative of the Wisconsin
11 Technology Council, appointed by the board of directors of the Wisconsin Technology
12 Council. The committee shall select a person as investment manager who has
13 expertise in the venture capital or private equity asset class.

14 2. When the department gives the notice under par. (b) 1., the department shall
15 submit its proposed contract with the investment manager to the legislative audit
16 bureau for review. The legislative audit bureau shall review the proposed contract
17 and, within 14 days after it receives the proposed contract for review, submit to the
18 joint committee on finance and the department a letter of review that evaluates the

1 terms of the contract and offers an opinion concerning the extent to which the
2 contract conforms with this section and implements subs. (4) to (7).

3 (b) 1. The secretary shall notify in writing the joint committee on finance of the
4 investment manager selected under par. (a) 1. The notice shall include the
5 department's proposed contract with the investment manager.

6 2. If, within 14 working days after the date the joint committee on finance
7 receives the legislative audit bureau's letter of review under par. (a) 2., the
8 cochairpersons of the joint committee on finance do not notify the secretary that the
9 committee has scheduled a meeting to determine whether the department's proposed
10 contract with the investment manager is contrary to this section or fails to
11 implement an applicable provision of subs. (4) to (7), the department and investment
12 manager may execute that contract. If, within 14 working days after the date of that
13 notice, the cochairpersons of the committee notify the secretary that the committee
14 has scheduled that meeting, the department and investment manager may execute
15 the contract unless the committee determines at that meeting that the contract, in
16 whole or in part, is contrary to this section or fails to implement an applicable
17 provision of subs. (4) to (7).

18 **(4) CONTRACT WITH INVESTMENT MANAGER; DISCLOSURE REQUIREMENT.** (a) Subject
19 to sub. (3), the department shall contract with the investment manager. The contract
20 shall establish the investment manager's compensation, including any management
21 fee. Any management fee may not exceed, annually for no more than 4 years, 1
22 percent of the total moneys designated under sub. (5) (b) 1. and raised under sub. (5)
23 (b) 3.

24 (b) The investment manager shall disclose to the department any interest that
25 it or an owner, stockholder, partner, officer, director, member, employee, or agent of

1 the investment manager has in a venture capital fund that receives moneys under
2 sub. (5) (b) or a business in which a venture capital fund invests those moneys.

3 **(5) INVESTMENTS IN VENTURE CAPITAL FUNDS.** (a) Subject to sub. (4) (a), the
4 department shall pay \$25,000,000 from the appropriation under s. 20.505 (1) (fm) to
5 the investment manager in fiscal year 2013-14.

6 (b) The investment manager shall invest the following moneys in at least 4
7 venture capital funds:

8 1. The moneys under par. (a).

9 2. At least \$300,000 of the investment manager's own moneys.

10 3. At least \$5,000,000 that the investment manager raises from sources other
11 than the department.

12 (c) 1. Of the moneys designated under par. (b), the investment manager may
13 not invest more than \$10,000,000 in a single venture capital fund.

14 2. Of the moneys designated under par. (b), the investment manager shall
15 commit at least one-half of those moneys to investments in venture capital funds
16 within 12 months after the date the investment manager executes the contract under
17 sub. (4) (a), and the investment manager shall commit all of those moneys to
18 investments in venture capital funds within 24 months after that date.

19 (d) The investment manager shall contract with each venture capital fund that
20 receives moneys under par. (b). Each contract shall require the venture capital fund
21 to do all of the following:

22 1. Make new investments in an amount equal to the moneys it receives under
23 par. (b) in one or more businesses that are headquartered in this state and employ
24 at least 50 percent of their full-time employees, including any subsidiary or other
25 affiliated entity, in this state, and invest at least one-half of those moneys in one or

1 more businesses that employ fewer than 150 full-time employees, including any
2 subsidiary or other affiliated entity, when the venture capital fund first invests
3 moneys in the business under this section. The venture capital fund's contract with
4 a business in which the venture capital fund makes an investment under this
5 subdivision shall require that, if within 3 years after the venture capital fund makes
6 that investment, the business relocates its headquarters outside of this state or fails
7 to employ at least 50 percent of its full-time employees, including any subsidiary or
8 other affiliated entity, in this state, the business shall promptly pay to the venture
9 capital fund an amount equal to the total amount of moneys designated under par.

10 (b) 1. that the venture capital fund invested in the business. The venture capital fund
11 shall reinvest those moneys in one or more businesses that are eligible to receive an
12 investment under this subdivision, subject to the requirements of this section.

13 2. Commit at least one-half of any moneys it receives under par. (b) to
14 investments in businesses within 24 months after the date it receives those moneys
15 and commit all of those moneys to investments in businesses within 48 months after
16 that date.

17 3. Invest all of the moneys it receives under par. (b) in businesses in the
18 agriculture, information technology, engineered products, advanced manufacturing,
19 medical devices, or medical imaging industry and attempt to ensure that all of those
20 moneys are invested in businesses that are diverse with respect to geographic
21 location within this state.

22 4. At least match any moneys it receives under par. (b) and invests in a business
23 with an investment in that business of moneys the venture capital fund has raised
24 from sources other than the investment manager. The investment manager shall
25 ensure that, on average, for every \$1 a venture capital fund receives under par. (b)

1 and invests in a business, the venture capital fund invests \$2 in that business from
2 sources other than the investment manager.

3 5. Provide to the investment manager the information necessary for the
4 investment manager to complete the annual report under sub. (7) (a) and the
5 quarterly report under sub. (7) (c).

6 6. Disclose to the investment manager and the department any interest that
7 the venture capital fund or an owner, stockholder, partner, officer, director, member,
8 employee, or agent of the venture capital fund holds in a business in which the
9 venture capital fund invests or intends to invest moneys received under par. (b).

10 (e) The investment manager's profit-sharing agreement with each venture
11 capital fund that receives moneys under par. (b) shall be on terms that are
12 substantially equivalent to the terms applicable for other funding sources of the
13 venture capital fund.

14 **(6) SPECIAL REQUIREMENTS FOR INVESTMENTS OF MONEYS CONTRIBUTED BY THE**
15 **STATE.** (a) The investment manager shall hold in an escrow account its gross proceeds
16 from all investments of the moneys designated under sub. (5) (b) 1. until the
17 investment manager satisfies par. (b).

18 (b) At least annually, the investment manager shall pay any moneys held under
19 par. (a) to the secretary for deposit into the general fund until the investment
20 manager has paid a total of \$25,000,000 under this paragraph.

21 (c) After the investment manager satisfies par. (b), the investment manager
22 shall pay 90 percent of its gross proceeds from investments of the moneys designated
23 under sub. (5) (b) 1. to the secretary for deposit into the general fund.

24 **(7) REPORTS OF THE INVESTMENT MANAGER; PUBLIC DISCLOSURES.** (a) Annually,
25 within 120 days after the end of the investment manager's fiscal year, the investment

1 manager shall submit a report to the department for that fiscal year that includes
2 all of the following:

3 1. An audit of the investment manager's financial statements performed by an
4 independent certified public accountant.

5 2. The investment manager's internal rate of return from investments under
6 sub. (5) (b).

7 3. For each venture capital fund that contracts with the investment manager
8 under sub. (5) (d), all of the following:

9 a. The name and address of the venture capital fund.

10 b. The amounts invested in the venture capital fund under sub. (5) (b).

11 c. An accounting of any fee the venture capital fund paid to itself or any
12 principal or manager of the venture capital fund.

13 d. The venture capital fund's average internal rate of return on its investments
14 of the moneys it received under sub. (5) (b).

15 4. For each business in which a venture capital fund held an investment of
16 moneys the venture capital fund received under sub. (5) (b), all of the following:

17 a. The name and address of the business.

18 b. A description of the nature of the business.

19 c. An identification of the venture capital fund that made the investment in the
20 business.

21 d. The amount of each investment in the business and the amount invested by
22 the venture capital fund from funding sources other than the investment manager.

23 e. The internal rate of return realized by the venture capital fund upon the
24 venture capital fund's exit from the investment in the business.

1 f. A statement of the number of employees the business employed when the
2 venture capital fund first invested moneys in the business that the venture capital
3 fund received under sub. (5) (b), the number of employees the business employed on
4 the first day of the investment manager's fiscal year, and the number of employees
5 the business employed on the last day of the investment manager's fiscal year.

6 (b) No later than 10 days after it receives the investment manager's report
7 under par. (a), the department shall submit the report to the chief clerk of each house
8 of the legislature, for distribution to the legislature under s. 13.172 (2).

9 (c) Quarterly, the investment manager shall submit a report to the department
10 for the preceding quarter that includes all of the following:

11 1. An identification of each venture capital fund under contract with the
12 investment manager under sub. (5) (d).

13 2. An identification of each business in which a venture capital fund held an
14 investment of moneys the venture capital fund received under sub. (5) (b) and a
15 statement of the amount of the investment in each business that separately specifies
16 the amount of moneys designated under sub. (5) (b) 1. that were contributed to the
17 investment.

18 3. A statement of the number of employees the business employed when the
19 venture capital fund first invested moneys in the business that the venture capital
20 fund received under sub. (5) (b) and the number of employees the business employed
21 at the end of the quarter.

22 (d) The department shall make the investment manager's quarterly report
23 under par. (c) readily accessible to the public on the department's Internet site.

1 **(8) PROGRESS REPORTS.** In 2015 and 2018, no later than March 1, the department
2 shall submit reports to the joint committee on finance that include all of the
3 following:

4 (a) A comprehensive assessment of the performance to date of the investment
5 program under this section.

6 (b) Any recommendations the department has for improvement of the
7 investment program under this section and the specific actions the department
8 intends to take or proposes to be taken to implement those recommendations.

9 (c) Any recommendations the investment board has for improvement of the
10 investment program under this section and the specific actions the investment board
11 proposes to be taken to implement those recommendations.

12 **(9) EXEMPTION FROM LOW BID AND CONTRACTUAL SERVICES REQUIREMENTS.** Sections
13 16.705 and 16.75 do not apply to this section.

14 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
15 the following amounts for the purposes indicated:

	2013-14	2014-15
20.505 Administration, department of		

18 (1) SUPERVISION AND MANAGEMENT

19 (fm) Fund of funds investment pro-
20 gram

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21 **SECTION 3.** 20.505 (1) (fm) of the statutes is created to read:

22 20.505 **(1)** (fm) *Fund of funds investment program.* The amounts in the
23 schedule for the venture capital investment program under s. 16.295.

24 **SECTION 4.** 25.17 (72) of the statutes is created to read:

