State of Wisconsin
2013 – 2014 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT 1,

TO SENATE BILL 169

May 31, 2013 – Offered by Senator DARLING.

AN ACT *to create* 25.17 (72) and 234.63 of the statutes; **relating to:** venture capital investment program.

Analysis by the Legislative Reference Bureau

This substitute amendment directs the Wisconsin Housing and Economic Development Authority (WHEDA) 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, WHEDA must contract with an investment manager to manage investments in venture capital funds and Wisconsin businesses.

Before WHEDA contracts with an investment manager, WHEDA and the State of Wisconsin Investment Board (SWIB) must form a committee to select the investment manager. A majority of the committee's members must be representatives of SWIB.

WHEDA's proposed contract with the investment manager is subject to passive review by the Joint Committee on Finance (JCF). However, 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 WHEDA 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 WHEDA, 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 that are diverse with respect to industry classification and 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 WHEDA, described below.

6. Disclose to the investment manager and to WHEDA 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 WHEDA 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 WHEDA 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.

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

The investment manager must also submit a quarterly report to WHEDA 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. WHEDA must publish the information contained in the investment manager's quarterly report on WHEDA's Internet site.

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

SECTION 1. 25.17 (72) of the statutes is created to read:

25.17 **(72)** Appoint the board's representatives to the committee under s. 243.63 (3) (a).

SECTION 2. 234.63 of the statutes is created to read:

234.63 Fund of funds investment program. (1) DEFINITION. In this section, "investment manager" means the person the committee selects under sub. (3) (a).

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

(3) SELECTION OF INVESTMENT MANAGER; CONTRACT APPROVAL. (a) The authority and the investment board shall form a committee, consisting of representatives of the authority, who shall be appointed by the authority, and the investment board, to select the investment manager. The majority of the committee's members shall be representatives of the investment board. The committee shall select a person as investment manager who has expertise in the venture capital or private equity asset class.

(b) 1. The executive director of WHEDA shall notify in writing the joint committee on finance of the investment manager selected under par. (a). The notice shall include the authority's proposed contract with the investment manager.

2. If, within 14 working days after the date of the notice under subd. 1., the cochairpersons of the joint committee on finance do not notify the executive director of WHEDA that the committee has scheduled a meeting to determine whether the authority's proposed contract with the investment manager is contrary to this section or fails to implement an applicable provision of subs. (4) to (7), the authority and investment manager may execute that contract. If, within 14 working days after the date of that notice, the cochairpersons of the committee notify the executive

director that the committee has scheduled that meeting, the authority and investment manager may execute the contract unless the committee determines at that meeting that the contract, in whole or in part, is contrary to this section or fails to implement an applicable provision of subs. (4) to (7).

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

(b) The investment manager shall disclose to the authority any interest that it or an owner, stockholder, partner, officer, director, member, employee, or agent of the investment manager has in a venture capital fund that receives moneys under sub. (5) (b) or a business in which a venture capital fund invests those moneys.

(5) INVESTMENTS IN VENTURE CAPITAL FUNDS. (a) Subject to sub. (4) (a), the authority shall pay $25,000,000 to the investment manager in fiscal year 2013–14.

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

1. The moneys under par. (a).

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

3. At least $5,000,000 that the investment manager raises from sources other than the authority.

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

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

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

1. Make new investments in an amount equal to the moneys it receives under par. (b) in one or more businesses that are headquartered in this state and employ at least 50 percent of their full–time employees, including any subsidiary or other affiliated entity, in this state, and invest at least one–half of those moneys in one or more businesses that employ fewer than 150 full–time employees, including any subsidiary or other affiliated entity, when the venture capital fund first invests moneys in the business under this section. The venture capital fund's contract with a business in which the venture capital fund makes an investment under this subdivision shall require that, if within 3 years after the venture capital fund makes that investment, the business relocates its headquarters outside of this state or fails to employ at least 50 percent of its full–time employees, including any subsidiary or other affiliated entity, in this state, the business shall promptly pay to the venture capital fund an amount equal to the total amount of moneys designated under par. (b) 1. that the venture capital fund invested in the business. The venture capital fund shall reinvest those moneys in one or more businesses that are eligible to receive an investment under this subdivision, subject to the requirements of this section.

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

3. Invest all of the moneys it receives under par. (b) in businesses that are diverse with respect to industry classification and geographic location within this state.

4. At least match any moneys it receives under par. (b) and invests in a business with an investment in that business of moneys the venture capital fund has raised from sources other than the investment manager. The investment manager shall ensure that, on average, for every $1 a venture capital fund receives under par. (b) and invests in a business, the venture capital fund invests $2 in that business from sources other than the investment manager.

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

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

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

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

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

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

(7) REPORTS OF THE INVESTMENT MANAGER; PUBLIC DISCLOSURES. (a) Annually, within 120 days after the end of the investment manager's fiscal year, the investment manager shall submit a report to the authority for that 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 under sub. (5) (b).

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

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

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

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

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

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

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 in the business.

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

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

f. A statement of the number of employees the business employed when the venture capital fund first invested moneys in the business that the venture capital fund received under sub. (5) (b), 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.

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

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

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

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

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

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

(END)