2013 Assembly Bill 181 (LRB -1812)

An Act to create 25.17 (72), 238.03 (4) and 238.155 of the statutes; relating to: venture capital investment program. (FE)

2013

04-29.	A.	Introduced by Representatives **Kuglitsch, Clark, Suder, Tauchen, Klenke, J. Ott, Petryk, Kahl, LeMahieu, A. Ott, Jagler, Honadel, Kolste, Bies, Smith, Brooks, Kleefisch, Tittl, Nygren, Sargent, Endsley, Schraa** and **Stone**; cosponsored by Senators **Darling, T. Cullen, Leibham, Gudex, Schultz** and **L. Taylor**. 135
04-29.	A.	Read first time and referred to Committee on Jobs, Economy and Mining 135
04-30.	A.	Representative Strachota added as a coauthor 136
05-01.	A.	Public hearing held
05-02.	A.	Fiscal estimate received
05-02.	A.	Fiscal estimate received
05-06.	A.	Assembly Amendment 1 offered by Representatives Kuglitsch and Clark **(LRB a0341)** 142
05-08.	A.	Assembly Amendment 2 offered by Representatives Zamarripa and Bernard Schaber **(LRB a0375)** 154
05-09.	A.	Assembly Amendment 3 offered by Representative Bernard Schaber **(LRB a0407)** 161
05-13.	A.	Assembly Amendment 4 offered by Representative Clark **(LRB a0414)** 163
05-10.	A.	Executive action taken
05-14.	A.	Report Assembly Amendment 1 adoption recommended by Committee on Jobs, Economy and Mining, Ayes 13, Noes 1 167
05-14.	A.	Report Assembly Amendment 3 adoption recommended by Committee on Jobs, Economy and Mining, Ayes 8, Noes 6 167
05-14.	A.	Report Assembly Amendment 4 adoption recommended by Committee on Jobs, Economy and Mining, Ayes 14, Noes 0 167
05-14.	A.	Report passage as amended recommended by Committee on Jobs, Economy and Mining, Ayes 8, Noes 6 167
05-14.	A.	Referred to Committee on Rules 167
05-14.	A.	Made a special order of business at 1:02 PM on 6-4-2013 pursuant to Assembly Resolution 10 180
05-16.	A.	Fiscal estimate received
05-29.	A.	Assembly Substitute Amendment 1 offered by Representatives Kuglitsch and Clark **(LRB s0052)** 191
06-06.	A.	Emergency statement attached by Governor pursuant to s. 16.47(2), Wisconsin Statutes 204
06-06.	A.	Fiscal estimate received
06-06.	A.	Fiscal estimate received
06-06.	A.	Read a second time 206
06-06.	A.	Assembly Amendment 1 to Assembly Substitute Amendment 1 offered by Representatives Zamarripa, Barca, Genrich and Bewley **(LRB a0566)** 202
06-06.	A.	Assembly Amendment 1 to Assembly Substitute Amendment 1 laid on table, Ayes 57, Noes 38 206
06-06.	A.	Assembly Amendment 2 to Assembly Substitute Amendment 1 offered by Representatives Berceau, C. Taylor, Sargent, Genrich, Richards, Pope and Goyke **(LRB a0570)** 207
06-06.	A.	Assembly Amendment 2 to Assembly Substitute Amendment 1 laid on table, Ayes 57, Noes 37 207
06-06.	A.	Assembly Amendment 3 to Assembly Substitute Amendment 1 offered by Representatives Hintz, C. Taylor, Zamarripa, Pasch, Barca, Bewley and Genrich **(LRB a0571)** 207
06-06.	A.	Assembly Amendment 3 to Assembly Substitute Amendment 1 laid on table, Ayes 57, Noes 37 207
06-06.	A.	Assembly Substitute Amendment 1 **adopted** 207
06-06.	A.	Ordered to a third reading 207
06-06.	A.	Rules suspended 207
06-06.	A.	Read a third time and **passed**, Ayes 91, Noes 2, Paired 4 207
06-06.	A.	Ordered immediately messaged 208
06-07.	S.	Received from Assembly 252
06-11.	S.	Read first time and referred to committee on Economic Development and Local Government 259
06-11.	S.	Senate Amendment 1 offered by Senator Gudex **(LRB a0614)** 257
06-12.	S.	Senate Amendment 2 offered by Senator Lassa **(LRB a0618)** 268
06-12.	S.	Executive action taken
06-12.	S.	Report adoption of Senate Amendment 1 recommended by Committee on Economic Development and Local Government, Ayes 5, Noes 0 268
06-12.	S.	Report concurrence as amended recommended by Committee on Economic Development and Local Government, Ayes 5, Noes 0 268
06-12.	S.	Available for scheduling
06-17.	S.	Referred to Joint Committee on Finance by Committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0
06-17.	S.	Withdrawn from joint committee on Finance and made Available for Scheduling by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0

06-17. S. Public hearing requirement waived by committee on Senate Organization, pursuant to Senate Rule 18 (1m), Ayes 5, Noes 0
06-17. S. Placed on calendar 6-18-2013 pursuant to Senate Rule 18(1)
06-18. S. Senate Substitute Amendment 1 offered by Senators Lassa, Hansen, Erpenbach, Harris, Shilling, Wirch, C. Larson and L. Taylor **(LRB s0087)**
06-18. S. Senate Amendment 3 offered by Senators L. Taylor, Carpenter, Shilling, Miller, Wirch, C. Larson, Hansen, Erpenbach and Harris **(LRB a0673)**
06-18. S. Senate Amendment 4 offered by Senators Hansen, Erpenbach, Carpenter, Vinehout, Harris, Shilling, Lehman, Miller, T. Cullen, Wirch, Risser, C. Larson, Lassa and L. Taylor **(LRB a0663)**
06-18. S. Senator Miller added as a cosponsor
06-18. S. Read a second time
06-18. S. Senate Substitute Amendment 1 laid on table, Ayes 19, Noes 13
06-18. S. Senate Amendment 1 **adopted**
06-18. S. Senate Amendment 3 laid on table, Ayes 18, Noes 14
06-18. S. Senate Amendment 4 laid on table, Ayes 18, Noes 14
06-18. S. Ordered to a third reading
06-18. S. Rules suspended
06-18. S. Read a third time and **concurred in** as amended, Ayes 29, Noes 3
06-18. S. Ordered immediately messaged
06-18. A. Received from Senate amended and concurred in as amended (Senate amendment 1 adopted)
06-18. A. Representatives Williams, Hintz, Berceau and Vruwink added as coauthors
06-18. A. Senate Amendment 1 **concurred in**
06-18. A. Action ordered immediately messaged

2013
ENROLLED BILL

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ADOPTED DOCUMENTS:

☐ Orig ☐ Engr A SubAmdt 1 13 S 0052 / 1

Amendments to above (if none, write "NONE"): SA 1 — a 06.14/1

Corrections – show date (if none, write "NONE"): None

Topic Rel AS AMENDED

6-19-13
Date

Enrolling Drafter

State of Wisconsin
2013 - 2014 LEGISLATURE

LRBs0052/1
MPG:kjf:rs

ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 181

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

AN ACT ***to create*** 16.295, 20.505 (1) (fm) and 25.17 (72) of the statutes; **relating to:** venture capital investment program. INS. SA1-1

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:

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

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

(2) ESTABLISHMENT OF PROGRAM. The department 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) 1. The secretary shall form a committee to select the investment manager. The committee shall consist of 3 representatives of the investment board, one representative of the department, appointed by the secretary, and one representative of the Wisconsin Technology Council, appointed by the board of directors of the Wisconsin Technology Council. The committee shall select a person as investment manager who has expertise in the venture capital or private equity asset class.

INS. SA1-2

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

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

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

2. If, within 14 working days after the date the joint committee on finance receives the legislative audit bureau's letter of review under par. (a) 2., the cochairpersons of the joint committee on finance do not notify the secretary that the committee has scheduled a meeting to determine whether the department'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 department 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 secretary that the committee has scheduled that meeting, the department 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 department 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 department 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 department shall pay $25,000,000 from the appropriation under s. 20.505 (1) (fm) 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 department.

(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 in the agriculture, information technology, engineered products, advanced manufacturing, medical devices, or medical imaging industry and attempt to ensure that all of those moneys are invested in businesses that are diverse with respect to 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 department 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 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 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 department 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 department 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 department 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 department shall make the investment manager's quarterly report under par. (c) readily accessible to the public on the department's Internet site.

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

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

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

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

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

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

			2013–14	**2014–15**
20.505 Administration, department of				
(1) SUPERVISION AND MANAGEMENT				
(fm) Fund of funds investment program	GPR	A	25,000,000	–0–

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

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

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

25.17 **(72)** Appoint the board's representatives to the committee under s. 16.295 (3) (a).

(END)

State of Wisconsin
2013 - 2014 LEGISLATURE

LRBa0614/1
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SENATE AMENDMENT 1,

TO ASSEMBLY BILL 181

June 11, 2013 - Offered by Senator GUDEX.

At the locations indicated, amend the bill, as shown by assembly substitute amendment 1, as follows:

SA1-1

1. Page 1, line 2: after "program" insert "and making an appropriation".

2. Page 4, line 9: delete the material beginning with "board," and ending with "Council" on line 12 and substitute "board and 2 representatives, appointed by the secretary, of the capital finance office in the department".

SA1-2

(END)