



## Legislative Fiscal Bureau

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February 7, 2024

TO: Members  
Joint Finance Committee

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 627: Changes to the Business Development and Enterprise Zone Tax Credits

Assembly Bill 627 (AB 627) was introduced on November 8, 2023, and referred to the Assembly Committee on Ways and Means. That Committee held a public hearing on the bill on November 29, 2023. Assembly Substitute Amendment 1 (ASA 1) to AB 627 (the substitute amendment) was introduced on December 7, 2023, and a public hearing was held on December 12, 2023. On January 4, 2024, that Committee recommended adoption of the substitute amendment by a vote of 12 to 0 and recommended the bill, as amended, for passage by a vote of 12 to 0. On January 18, 2024, the bill was referred to the Committee on Rules and Assembly Amendment 1 to ASA 1 (the amendment) was introduced on January 30, 2024. At this time no action has been taken on the amendment.

### BACKGROUND

Under current law, the Wisconsin Economic Development Corporation (WEDC) is responsible for awarding tax credits, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to both the business development and enterprise zone tax credit programs. Typically, WEDC will certify a business as eligible via a contract that specifies a maximum amount of tax benefits that may be earned by the business by successfully completing specified goals.

In general, for purposes of such credits, a "full-time job" means a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and benefits that are not required by federal or state law.

*Business Development Credit.* The refundable business development tax credit can be claimed

for eligible expenses for increased employment, retaining employees, employee training, capital investment, and corporate headquarters location or retention in Wisconsin. In order to be certified to receive any of the business development tax credits, a person must operate, or intend to operate, a business in this state and enter into a contract with WEDC. Certifications can remain in effect for up to 10 years. A certified business is eligible to receive tax benefits if, in each year the business claims the credit, it increases net employment in Wisconsin above the level during the year before the person was certified, as determined by WEDC under its policies and procedures. There is no limit on the number of businesses that may be certified as eligible to receive business development tax credits.

State law permits WEDC to allocate up to \$22 million in business development tax credits annually. Any unused allocation can be carried forward to future years. WEDC may request from the Joint Committee on Finance an increase of up to \$10 million annually for the amount of business development credits that may be allocated.

Certified businesses can earn a refundable job creation or job retention credit for up to 10% of the amount of wages paid to an eligible employee (full-time job) in a tax year. If the employee is employed in a full-time job at the claimant's business in an "economically distressed area," as determined by WEDC, an additional credit may be awarded for up to 5% of such wages.

*Enterprise Zone Credit.* The enterprise zone program provides refundable tax credits that can be claimed for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. A credit is also made available to one financial services technology business that, after completing a competitive corporate relocation process, retains its corporate headquarters in this state and retains at least 93% of its full-time employees in this state.

The refundable enterprise zone tax credit for job creation can be claimed for up to a percentage of the increase in wages resulting from creating full-time jobs in the zone. Specifically, the credit is an amount equal to a percentage (up to 7%, as determined by WEDC) multiplied by: (a) the number of the claimant's new full-time employees; and (b) the creditable wage amount. New full-time employees are equal to the number of employees in the zone in the taxable year minus the number of employees in the "base year" (or, if the difference is smaller, the new employees in the state minus base year employees in the state). The creditable wage amount is the average zone payroll minus the average eligible wage amount. The average eligible wage amount is currently \$22,620 for Tier I and \$30,000 for Tier II counties and municipalities. A similar refundable credit for job retention can be claimed for an amount equal to the percentage, up to 7% as determined by WEDC, of the claimant's zone payroll (excluding wage amounts that are over \$100,000) paid in the tax year to full-time employees who were employed in the enterprise zone and whose annual wages were greater than the eligible wage amount.

The "base year" is the taxable year beginning during the calendar year prior to the calendar year in which the enterprise zone takes effect. "Full-time employee" means an individual who is employed in a regular, nonseasonal job and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays.

## SUMMARY OF THE SUBSTITUTE AMENDMENT

Provisions of the substitute amendment would make the following changes to the business development and enterprise zone tax credits programs for taxable years beginning after December 31, 2023.

*Business Development Credit.* The substitute amendment would create two new tax credits under the refundable business development tax credit program. The substitute amendment would create a new credit equal to up to 15% of the investment in workforce housing for employees, as determined by WEDC. For rental properties that would qualify as workforce housing, the estimated annual housing costs may not exceed, or not be expected to exceed, 30% of state median income (with certain allowable adjustments). For owner-occupied housing, the estimated annual housing cost may not exceed, or not be expected to exceed, 30% to 140% of the area median income (with certain adjustments). Income limits would be the area median household income for rental properties or 140% of the area household median for owner-occupied housing.

The substitute amendment would create a credit equal to up to 15% of the investment in establishing an employee child care program for employees, as determined by WEDC. Investments eligible for the workforce housing and child care credits may include only capital expenditures. The expenses used to calculate the workforce housing and child care credits could not be used to calculate the other business development credits (such as the credit for capital investment). However, the substitute amendment would not prevent a credit claimant from potentially utilizing loan proceeds issued by the Wisconsin Housing and Economic Development Authority to fulfill WEDC contract expenditure requirements, to the extent WEDC allows such proceeds to be used.

As discussed above, current law limits the amount of credits WEDC may allocate to \$22,000,000 each year, along with previously unallocated amounts, unless a requested increase is approved by the Committee. The substitute amendment would increase the annual amount WEDC may allocate to include unused allocations from closed awards. For example, if WEDC allocated \$1,000,000 in credit awards to a business that ultimately only earned and claimed \$500,000, WEDC would be permitted to increase future allocations by the unused \$500,000 in the next year to award to a different applicant.

WEDC would be permitted to require an awardee to repay tax benefits claimed in a year in which the claimant failed to comply with the terms of its contract with WEDC (rather than merely failing to employ the employees required under the contract).

The substitute amendment would require WEDC to approve or deny the certification of a person for business development tax credits within 90 days after receiving a person's application.

Under current law, a person is eligible for business development tax credits if the person increases net employment in this state compared to the year preceding the person's certification. Under the substitute amendment, a person would be eligible to receive tax benefits if, in each year for which the person claims tax benefits, the following conditions are met (as determined by WEDC under its policies and procedures): (a) the person makes a capital investment in the person's business,

and the person either creates new full-time jobs or retains existing full-time jobs; and (b) the person does not decrease net employment in this state in the person's business below the net employment in this state in the person's business during the year before the person is certified.

"Full-time employee" would mean an individual employed in a full-time job. "Full-time job" would mean a nonseasonal job for which the annual pay is more than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$7.25) and for which the person is offered retirement, health, and other benefits. The current law prohibition that a "full-time job" does not include initial training before an employment position begins would be removed under the substitute amendment,

*Enterprise Zone Credit.* "Zone Payroll" would mean the amount of state payroll that is attributable to wages paid to full-time employees based in an enterprise zone (rather than to wages paid to full-time employees that are performed in a zone under current law). As a result, businesses could earn credits on wages earned for services performed outside of the zone (such as positions that travel to perform services at client sites, or remote workers based at the zone that perform the services from outside the zone, or in a different state or country).

The credit available under current law for one financial services technology company to retain its headquarters in this state would be repealed. To date, no such credit has been awarded by WEDC. This credit was created under 2017 Act 58, and was intended to be awarded to Fiserv, Inc.

The "base year" for calculating enterprise zone credits would mean the twelve-month period immediately preceding the date on which the claimant is certified (rather than the tax year beginning in the year preceding the creation of the zone).

Similar to the changes to the business development tax credit, "full-time employee" would mean an individual employed in a full-time job, and "full-time job" would mean a nonseasonal job for which the annual pay is more than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$7.25) and for which the person is offered retirement, health, and other benefits. Although the current law definition of full-time job does not include a reference to 150% of the minimum wage, the new statutory language would reflect current law provisions for determining the amount of job creation and retention credit claims.

WEDC would be permitted to require an awardee to repay tax benefits claimed in a year in which the claimant failed to comply with the terms of its contract with WEDC (rather than merely failing to make the amount of significant capital investment or employ the employees required under the contract).

## **SUMMARY OF THE AMENDMENT**

Under current law, the business development credit for capital investment is available in an amount equal to up to 3% of personal property investment and 5% for real property investment in a capital investment project, if the project involves at least \$1,000,000 (or if less than \$1,000,000, then equal to at least \$10,000 per eligible employee employed on the project). For taxable years beginning

after December 31, 2023, the amendment would reduce the required investment amount from \$1,000,000 to \$250,000.

## **FISCAL EFFECT OF THE SUBSTITUTE AMENDMENT AND AMENDMENT**

As discussed, WEDC can allocate up to \$22,000,000 of business development credits annually (and may ask for authority from the Joint Committee on Finance to allocate an additional \$10,000,000 each year). However, credit claims each fiscal year have generally been lower than the \$22,000,000 annual limit. WEDC does not always allocate the maximum amount to each year. Further, due to the timing difference between tax years and state fiscal years, as well as the various timelines under the contracts for businesses to invest and create jobs, the year in which credits are verified at WEDC and later claimed at the Department of Revenue (DOR) is not necessarily the same year in which WEDC allocates the credit. Also, not all businesses successfully perform their contract terms, and WEDC can later amend contract terms to change credit amounts and performance timelines. As a result, the estimated amount of credits claimed each fiscal year differ from \$22,000,000. For example, it is estimated that the amounts that will be claimed for business development tax credits in this biennium are \$15,700,000 in 2023-24 and \$17,000,000 in 2024-25.

DOR submitted a fiscal estimate for the bill prior to the introduction of the substitute amendment, which estimated that the creation of the child care and workforce housing credits under the business development tax credit program would not affect state expenditures because the annual allocation limits under the program would not be altered. However, WEDC provided a fiscal estimate stating that the program would become highly competitive, and it expects to allocate credits up to the maximum \$22,000,000 every year due to the availability of two new credits. Neither estimate has been updated for the changes contained in the substitute amendment.

To the extent that the new credits for child care and workforce housing to cause WEDC to allocate the maximum \$22,000,000 each year, the estimated use of the credit would generally increase in future years compared to the current biennium (which is estimated to be \$5 million less than that amount in 2024-25). Further, the estimated increase in credit usage could be higher to the extent the changes cause WEDC to allocate previously unused credit allocations. Based upon previous allocations and contract awards in 2023, it is estimated that \$25.2 million of unallocated amounts carried forward to be allocated into 2024. As a result, WEDC could allocate up to \$47.2 million of business development credits in 2024, after which WEDC could request an additional \$10.0 million from this Committee. Credit usage would increase to the extent the substitute amendment causes WEDC to award more credits than anticipated under current law. For example, it is possible that WEDC could allocate up to \$47.2 million in 2024, \$25.2 million more than previously estimated, to a small number of large housing developments. Assuming all amounts are earned via contract terms lasting three years, the credits claimed could increase on a one-time basis by \$8.4 million each year for three years, compared to the currently estimated baseline of \$17.0 million for all other business development tax credit activity.

Assuming WEDC annually allocates \$22.0 million on an ongoing basis and allocates the one-time balance of \$25.2 million, it is estimated that the substitute amendment would increase GPR expenditures for business development tax credit claims by \$5.0 million in 2024-25, \$13.4 million in 2025-26 through 2027-28, and \$5.0 million annually thereafter. In addition, the substitute

amendment allows WEDC to carry forward an indeterminate amount of previously allocated, but unearned, unverified, and unused tax credits. Thus, WEDC would likely award an additional amount of credits that otherwise would not ultimately be claimed under current law.

The fiscal effect of the changes to the enterprise zone credit, including credits for wages earned from services performed outside of the zone, are indeterminate. It is unclear how WEDC would alter awards of tax credits, or amend contracts for preexisting zones, to include awards for such wages. Current law does not limit the dollar amount of enterprise zone tax credits that WEDC may award.

In its fiscal note, WEDC states that no additional funding is provided for WEDC to administer the bill. Therefore, any such costs would need to be absorbed within WEDC's current budget.

Prepared by: John D. Gentry