Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

March 11, 2024

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 932/Senate Bill 883: Modifying the Criteria to Become a Qualified New Business Venture

On January 12, 2024, Assembly Bill 932 (AB 932) was introduced and referred to the Assembly Committee on State Affairs. That Committee held a public hearing on the bill on January 24, 2024. Assembly Substitute Amendment 1 (ASA 1) to AB 932 was introduced on February 8, 2024. On February 14, 2024, that Committee, by separate votes of 13 to 0, adopted the substitute amendment and recommended AB 932, as amended, for passage. On February 22, 2024, the Assembly adopted the substitute amendment, and passed AB 932, as amended, on a voice vote. The bill was immediately messaged to the Senate.

An identical companion bill, Senate Bill 883 (SB 883), was introduced and referred to the Senate Committee on Economic Development and Technical Colleges on January 5, 2024. An identical Senate Substitute Amendment 1 (SSA 1) to SB 883 was introduced on February 8, 2024. That Committee held a public hearing on the bill on February 21, 2024. On February 28, 2024, that Committee, by separate votes of 6 to 0, adopted SSA 1 and recommended SB 833, as amended, for passage.

ASA 1 to AB 932 and SSA 1 to SB 883 are herein referred to as "the substitute amendment."

BACKGROUND

The early stage business investment program includes the angel investment tax credit and the early stage seed investment tax credit. The angel investment tax credit equals 25% of the claimant's bona fide angel investment made directly in a qualified new business venture (QNBV) certified by Wisconsin Economic Development Corporation (WEDC). The early stage seed investment tax credit is equal to 25% of the claimant's investment paid in the tax year to a certified fund manager that the fund manager invests in a QNBV certified by the WEDC. Public funds, including investments made by the State Fund of Funds and the federal State Small Business Credit Initiative programs, cannot be used as the basis for claiming credits.

WEDC is required to certify QNBVs and fund managers and to perform administrative functions related to the allocation and transfer of credits, revocation of certifications, verification of investments and credits, and processing and compiling reports. Businesses and fund managers must apply to WEDC to be certified.

WEDC may certify a business as a QNBV only if it meets certain statutory conditions. In relevant part, a business may be certified if it meets either of the following criteria:

a. Has the potential for increasing jobs and/or capital investment in Wisconsin and is engaged in, or has committed to engage in, innovation in any of the following: (1) manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology; (2) processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying differentiating technology; or (3) services that are enabled by applying differentiating technology.

b. Is undertaking pre-commercialization activity related to differentiating technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying differentiating technology. Pursuant to WEDC policies and procedures, “differentiating technology” means a specialized product or process that demonstrates distinct and significant technological differences and advantages over potential competitors.

Current law disqualifies certain businesses from being certified as a QNBV, including those primarily engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction (except construction of power production plants that derive energy from a renewable resource).

WEDC can verify investments as eligible to claim up to $30 million of angel and early stage seed investment credits per calendar year. The aggregate amount of investment in any one QNBV that may qualify for angel investment or early stage seed investment tax credits is $12.0 million, eligible for up to $3.0 million of credits ($12.0 million investment * 25% = $3.0 million of credits). Investments in a QNBV must be maintained in the business by an angel investor, angel investment network, or certified fund manager for at least three years. Based on a review of submitted materials, WEDC issues a verification form to the angel investor, angel investment network, or certified fund manager stating the amount of credits that may be claimed. Investors must submit a copy of the certification for tax benefits and the verification form, including the amount of tax benefits that may be claimed and the date and amount of the investment, with the investor's tax return when it is submitted to the Department of Revenue (DOR).

SUMMARY OF THE SUBSTITUTE AMENDMENT

The substitute amendment would repeal the QNBV eligibility requirement described above under "a." Instead, the substitute amendment would require an eligible business to be engaged in, or be committed to engage in, innovation, if the innovation involves the development of a differentiating technology, product, service, or production process. The second eligibility requirement under "b." would be retained under the substitute amendment.

The substitute amendment would provide that these changes would first apply to businesses certified on the effective date of the bill.

FISCAL EFFECT OF THE SUBSTITUTE AMENDMENT

WEDC submitted a fiscal estimate for the bill prior to the introduction of the substitute amendment, which stated that the original bill language may lead to reduced utilization of the early stage business investment tax credit program. DOR also submitted a fiscal estimate for the bill prior to the introduction of the substitute amendment. Although the QNBV eligibility changes may change the number of business ventures and associated investments that qualify for tax credits, DOR stated that the bill would have an indeterminate effect on revenues because the total amount of angel and early stage seed investment tax credits would continue to be determined by WEDC credit awards and QNBV certifications. Neither DOR nor WEDC submitted a fiscal estimate for the substitute amendment, which would expand QNBV eligibility criteria under the bill.

As discussed, current law limits WEDC from verifying more than a combined total of $30 million of angel investment and early stage seed investment tax credits in a year, based on $120 million of eligible investments. WEDC verifications have never reached this limit. For example, in 2022, WEDC verified investments for $12.6 million of credits. Since WEDC's creation in 2011, the largest amount of credits WEDC verified in a year was $18.3 million in both 2015 and 2016.

To the extent that the expanded QNBV certification requirements under the substitute amendment enables WEDC to certify additional businesses as QNBVs each year, then the revenue reduction associated with early stage business investment credits would increase under the bill. Based on information from WEDC regarding the average number of applications WEDC approves and denies each year, it is estimated that WEDC would certify an additional four QNBVs annually. Based on the average credit amounts awarded by WEDC and the amounts later claimed and used at DOR by tax filers, it is estimated that the substitute amendment would reduce revenues by a minimal amount in 2023-24, $200,000 in 2024-25, $350,000 in 2025-26, $500,000 in 2026-27, $650,000 in 2027-28, and $800,000 in 2028-29 and annually thereafter.

Prepared by: John Gentry