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Sunset and Modification of State Business Tax Credits (General Fund Taxes -- Income and Franchise Taxes)

[LFB 2015-17 Budget Summary: Page 176, #6 and #9]

CURRENT LAW

The state offers a number of business tax credits that can be claimed under the individual income tax, including the alternative minimum tax, and the corporate income/franchise tax. Some of the credits can be claimed against the insurance premiums tax. Many of the credits are intended to encourage firms to locate, expand, and hire employees in Wisconsin, and require certification by the Wisconsin Economic Development Corporation (WEDC). In addition, for many of the credits, the amount that can be claimed in a year, or in aggregate, is capped.

A tax credit is an amount that is subtracted from the gross income tax liability of a taxpayer in a given year. A credit is subtracted from the amount of tax owed itself, resulting in a dollar-for-dollar reduction in the gross tax liability. Some tax credits are refundable. When a refundable tax credit exceeds gross tax liability, the taxpayer receives a payment for the difference between the credit amount and the tax liability. For nonrefundable credits, unused amounts generally can be carried forward and claimed in future years. In some cases, unused credits can be sold or otherwise transferred to other taxpayers.

Enterprise Zones. The enterprise zone program provides refundable tax credits that can be claimed against the individual income tax, including the alternative minimum tax, and the corporate income/franchise tax for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. WEDC is responsible for designating enterprise zones, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to the enterprise zone program. WEDC is authorized to designate up to 20 areas in this state as enterprise zones. The Corporation is required to designate as zones at least three areas comprised of political subdivisions with populations of fewer than 5,000, and two areas comprised of political subdivisions with populations between 5,000 and 30,000.

Jobs. A refundable tax credit can be claimed against the individual income tax, including the alternative minimum tax, and the corporate income/franchise tax for up to 10% of the eligible wages paid to an eligible employee, up to $10,000 per employee, and/or the amount of costs incurred to undertake training activities in a tax year, as determined by WEDC. The Corporation may certify a claimant to receive tax credits for up to 10 years if the person: (a) is operating, or intends to operate, a business in this state; and (b) applies and enters into a contract with WEDC, prior to certification or verification of tax credits, that includes penalties for non-compliance. The maximum amount of jobs tax credits that WEDC can allocate in a calendar year is $10 million. In addition to the $10 million limit, WEDC is authorized to reallocate angel and early stage seed investment tax credits that are unused in any calendar year to persons eligible for the jobs tax credit, subject to a 14-day passive review by the Joint Committee on Finance (JFC).

Economic Development. Persons that conduct a job creation, capital investment, employee training, or corporate headquarters location or retention project are eligible to be certified by WEDC to claim economic development tax credits against the individual income tax, including the alternative minimum tax, the corporate income/franchise tax, and the insurance premiums tax. The credits are nonrefundable, but can be transferred to another person for non-monetary consideration in connection with an eligible activity for which the credits were originally awarded. WEDC is authorized to award up to $164.2 million in economic development credits to eligible business projects. Through April, 2015, a total of $139.9 million in credits have been contracted or committed, leaving $24.3 million in unallocated credits. WEDC is authorized to submit a request to JFC under a 14-day passive review process for an additional $39.0 million in credits.

GOVERNOR

As described below, the budget bill would increase the number of enterprise zones that may be established by WEDC, sunset the jobs tax credit and the economic development tax credit, and create a new business development credit.

Enterprise Zones. The bill would increase the number of enterprise zones that WEDC may designate from 20 to 30. The administration indicates that this provision would not have a fiscal effect in the 2015-17 biennium, but would increase estimated expenditures from the sum sufficient enterprise zone jobs credit appropriation by $12.1 million in 2017-18, $16.9 million in 2018-19, $24.1 million in 2019-20 through 2023-24, $21.7 million in 2024-25, $14.5 million in 2025-26, $7.2 million in 2026-27, and $0 in 2027-28 and annually thereafter. In total, the estimated fiscal impact would be $192.9 million over a ten-year period, or an average of $19.3 million for each additional enterprise zone.

Jobs. The bill would sunset the jobs tax credit for taxable years beginning after December 31, 2015. The administration indicates that repealing the jobs tax credit would reduce GPR expenditures by $2.5 million in 2016-17 and $10.0 million in 2017-18 and annually thereafter.

Economic Development. The bill would sunset the economic development tax credit for taxable years beginning after December 31, 2015. The administration indicates that repealing the economic development tax credit would increase state tax revenues by an estimated $2.25 million in 2015-16, $7.5 million in 2016-17, and $9.0 million in 2017-18 and annually thereafter.

Business Development. The bill would create a refundable business development tax credit for taxable years beginning in 2016. The credit could be used against the individual income tax, including the alternative minimum tax, and the corporate income/franchise tax. The Forward Wisconsin Development Authority (FWDA) could certify persons to receive the credit. Under a separate JFC decision, the Committee chose to delete provisions from the bill that would have created FWDA. The remainder of this paper describes the credit as it would be administered by WEDC, rather than FWDA. An amendment to the bill would be needed to accomplish this intent. Under the bill, business development tax credits would be available for all of the following:

a. The amount of wages that the claimant paid to an employee in an eligible position (a full-time job) in the taxable year, not to exceed 10% of such wages, as determined by WEDC;

b. In addition to "a", the amount of wages that the claimant paid to an employee in an eligible position in that taxable year, not to exceed 5% of such wages, if the employee is employed in an eligible position at the claimant's business in an economically distressed area, as determined by WEDC;

c. The amount of training costs that the claimant incurred, not to exceed 50% of such costs, as determined by WEDC, to undertake activities to enhance an employee's general knowledge, employability, and flexibility in the workplace; to develop skills unique to the person's workplace or equipment; or to develop skills that will increase the quality of the person's product;

d. The amount of the personal property investment, not to exceed 3% of such investment, and the amount of the real property investment, not to exceed 5% of such investment, in a capital investment project, as determined by WEDC, provided the project involves a total capital investment of at least $1 million, or the project involves a capital investment that is equal to at least $10,000 per employee employed on the project if less than $1 million; and

e. An amount, as determined by WEDC, equal to a percentage of the amount of wages that the person paid to an employee in an eligible position in the taxable year, provided the eligible position was created or retained in connection with the person's location or retention of the person's corporate headquarters in Wisconsin and the job duties associated with the eligible position involve the performance of corporate headquarters functions.

In order to be certified to receive business development tax credits, a person would have to operate or intend to operate a business in this state and enter into a contract with the Corporation. Certifications would remain in effect for up to 10 years. A person would be eligible to receive tax benefits if, in each year for which the person claims the credit, the person increases net employment in this state in the person's business above the level during the year before the person was certified, as determined under WEDC's policies and procedures.

WEDC could allocate up to $10 million in business development tax credits in any calendar year. Any unused allocation could be carried forward to future tax years. In addition, WEDC could reallocate any unused angel investment and early stage seed investment tax credits to the new credit in any calendar year, subject to 14-day passive review of JFC.

WEDC would have to notify DOR, on at least a quarterly basis, when the Corporation certifies a person to receive credits. WEDC would also have to notify DOR within 30 days of revoking a certification for business development tax credits. WEDC could require a person to repay any tax benefits the person claims for a year in which the person failed to maintain an eligible position, as required by an agreement with the Corporation. The Corporation would have to determine the maximum amount of credits that a certified business could claim, and notify DOR of this amount on at least a quarterly basis. WEDC would have to verify, annually, the information submitted to it by the person claiming credits. In addition, WEDC would be required to adopt policies and procedures for the implementation and operation of the credits.

Partnerships, limited liability companies (LLCs), and tax-option corporations (S corporations) could not claim the business development credit, but the eligibility for, and the amount of, the credit would be based on their payment of amounts eligible for the credit. A partnership, LLC, or S corporation would have to compute the amount of credit that each of its partners, members of LLCs, or shareholders of S corporations could claim and would have to provide that information to each of them. Partners, members, and shareholders could claim the credit in proportion to their ownership interests. The claimant would have to include a copy of the claimant's certification for tax benefits with the claimant's return in order to claim the credit.

DOR would be authorized to administer the credit, and take any action, conduct any proceeding, and proceed as authorized under state income and franchise tax laws. State tax provisions related to timely claims, assessments, refunds, appeals, collection, interest, and penalties would apply to the credit.

As noted, the new credit would be refundable. If the allowable amount of the credit claimed exceeds the tax otherwise due, the amount of the claim not used to offset the tax due would have to be certified by DOR to the Department of Administration for payment by check, share draft, or other draft drawn from the sum sufficient business development tax credit appropriation. The administration estimates that the proposed business development tax credit would increase GPR expenditures by $2.5 million in 2016-17 and $10.0 in 2017-18 and annually thereafter.

The administration has requested a number of modifications to the bill. The above description of the business development tax credit includes the recommended changes, which would: (a) clarify the sunset date for awarding economic development tax credits and jobs tax credits; (b) allow an eligible person to claim the economic development tax credits and jobs tax credits in accordance with a contract that the claimant entered into with WEDC prior to the sunset date of the credits; (c) delete extraneous language in the bill related to allowing credit carryforwards for the economic development tax credit and the jobs tax credit; (d) clarify the definition of "eligible position"; (e) clarify that the 5% credit for wages paid to persons employed in economically distressed areas is in addition to the regular 10% credit; (f) clarify the calculation of the credit for investment in real or personal property; (g) clarify which taxes the new credit could be claimed against; (h) clarify that the reallocation of unused angel and early stage seed tax credits to the business development credit would use the approval process that currently applies to reallocations to the jobs credit; and (i) correct inconsistent provisions regarding the credit for business headquarters. An amendment would be needed to make the bill consistent with the Governor's intent [Alternative 1]. As previously noted, an amendment to the bill would also be needed to apply the Governor's provisions for administration of the business development tax credit to WEDC, rather than FWDA [Alternative 1].

DISCUSSION POINTS

1. The existing enterprise zone credit and economic development tax credit allow an eligible taxpayer to be certified for several types of credits based on a set of criteria that encourages job creation and investment in the state. The jobs tax credit generally provides a credit to taxpayers to encourage new, high paying jobs through the expansion of payroll in the state. The newly created business development credit would be similar to the enterprise zone credit, but would include certain components of the existing jobs tax credit and the economic development tax credit, which the Governor has recommended be sunset under the bill. According to WEDC, the recommended business development tax credit would provide a complement to the enterprise zone tax credit, but would be targeted toward a larger number of businesses seeking smaller credit awards. A detailed comparison of the three existing credits and the Governor's proposed credit are included in the Attachment to this paper.

Enterprise Zone Expansion

2. The enterprise zones tax credit program was created pursuant to 2005 Wisconsin Act 361. As passed by the Legislature, the bill would have created a tax credit program limited to rural areas of the state. However, through a number of line item vetoes by the Governor, the tax credit program was expanded to apply statewide for up to 10 enterprise zones, and the maximum geographic area of a zone was limited to no more than 50 acres, rather than to zones of no more 5,000 acres as was the intent of the Legislature. The program has been modified and expanded several times. As noted, under current law, WEDC may designate up to 20 areas in the state as enterprise zones, of which three must be comprised of political subdivisions with populations of fewer than 5,000, and two areas must be comprised of political subdivisions with populations between 5,000 and 30,000. Under current law, there is no maximum geographical area for enterprise zones.

3. In practice, enterprise zone credits have been awarded on the basis of specific projects, rather than geographic areas. Table 1 provides information regarding the 16 enterprise zone tax credit awards that have been contracted or committed by Commerce/WEDC through May 1, 2015. Under the statutes, there is no cap on the amount of credits that a specific claimant may be awarded, and actual awards vary depending on the specific project. Awards have ranged from as much as

$65.0 million over a twelve-year period for Mercury Marine to as low as $5.5 million over a six-year period for Trane US Inc.

TABLE 1

Enterprise Zones Contracted or Committed by WEDC
($ in Millions)

Enterprise Zones	Contracted Amount of Credits	Years Over Which the Credits Have Been Allocated
Amazon.com	$10.3	2014 to 2024
Bucyrus International, Inc.	20.0	2010 to 2019
Exact Sciences Corporation	9.0	2014 to 2020
Fincantieri Marine Group LLC	28.0	2010 to 2019
InSinkErator	15.5	2014 to 2018
Kestrel Aircraft Company, Inc.	18.0	2012 to 2019
Kohl's Department Stores, Inc.	62.5	2012 to 2021
Mercury Marine	65.0	2010 to 2021
Northstar Medical Radioisotopes, LLC	14.0	2011 to 2018
Oshkosh Corporation	35.0	2009 to 2019
Plexus Corp.	15.0	2012 to 2019
Quad/Graphics, Inc.	46.0	2010 to 2020
Trane US Inc.	5.5	2013 to 2018
Uline Inc.	18.6	2010 to 2018
W Solar Group, Inc.	28.0	2013 to 2021
Weather Shield Mfg., Inc.	8.0	2013 to 2019
Total	$398.4	

4. According to the administration, it is estimated that permitting WEDC to designate an additional 10 enterprise zones would increase expenditures by $192.9 million over a ten-year period from 2017-18 through 2023-24, reflecting an average credit award of $19.3 million for each additional zone. Based on historical data shown above, enterprise zone tax credit awards have averaged approximately $24.9 million, which is higher than the administration's estimate. However, the median award amount since the program began is $18.3 million, which is lower than the administration's estimate. The administration's estimate appears reasonable based on previous enterprise zone awards. However, because the program is uncapped and provides WEDC a great deal of flexibility in awarding credits, the actual cost of increasing the number of zones could be significantly higher or lower than the administration's estimates.

5. An alternative to the Governor's proposal would be to limit the amount of enterprise zone credits that WEDC may allocate in a calendar year, rather than limit the amount of zones that may be designated. As noted, the Corporation and the former Department of Commerce have made enterprise zone credit awards to specific businesses, rather than to businesses locating in a particular geographic area (as was the intent of 2005 Act 361 prior to the Governor's vetoes). It is unclear what purpose is served from designating a geographic area if enterprise zone tax credit awards are

made to specific businesses. Table 2 provides historical information regarding the amount of credits that have been allocated to date by WEDC, by calendar year, for the 16 awards already contracted or committed. It should be noted that, under current law, WEDC may designate an additional four zones. Therefore, Table 2 understates the amount of credits that will be allocated in future years to the extent that the Corporation designates and makes the additional awards under its current law authority.

TABLE 2

Enterprise Zone Credits Allocated by Calendar Year

Year	Amount of Credits Allocated
2009	$5,278,500
2010	23,455,500
2011	28,972,277
2012	33,546,823
2013	37,292,735
2014	52,452,006
2015	53,132,155
2016	37,102,905
2017	32,001,705
2018	35,977,919
2019	25,553,475
2020	19,952,000
2021	11,657,000
2022	675,000
2023	675,000
2024	675,000
Total	$398,400,000

6. As shown in Table 2, the years in which the most credits were allocated were 2014 ($52.5 million) and 2015 ($53.1 million). One could argue that the purpose of limiting the number of enterprise zones that WEDC may designate is to limit the potential fiscal impact to the state's general fund in a given year. As noted, an alternative could be to limit the amount of credits that WEDC may allocate in a calendar year. For instance, the Committee could choose eliminate the concept of zones and, instead, specify that WEDC may not allocate more than $50 million of enterprise zone credits in any calendar year [Alternative 2a]. If this alternative were to take effect beginning in calendar year 2016, it would not affect the current credit allocations, but would limit the amount of additional credits that WEDC could allocate in 2016 and 2017 to no more than an additional $12.9 million and $18.0 million, respectively. This alternative would not limit the number of awardees to whom the Corporation could make credit awards. Because of the timing of when the credits are generally certified, verified, and claimed and paid to a claimant, this alternative would not be expected to have a fiscal effect in the current biennium.

Sunset the Jobs Tax Credit

7. The budget bill (as amended to reflect the Governor's intent) would sunset the jobs tax credit for taxable years beginning after December 31, 2015. No additional jobs tax credits could be certified by WEDC after that date; however, existing jobs tax credits that have been contracted or committed by WEDC prior to that date could still be claimed. Table 3 shows the amount of jobs tax credits contracted or committed through May 1, 2015. Since the program became effective, Commerce and WEDC have allocated $101.2 million in credits to 75 businesses, averaging $1.3 million in jobs tax credits per award. The average jobs tax credit award has been about 5% of the amount of the average enterprise zone award.

TABLE 3

Jobs Tax Credits Allocated by Calendar Year

Year	Amount of Credits Allocated
2010	$2,770,540
2011	4,452,475
2012	5,923,907
2013	8,298,413
2014	12,252,435
2015	17,457,372
2016	18,690,903
2017	15,293,087
2018	8,479,200
2019	3,253,801
2020	2,177,726
2021	1,080,015
2022	912,991
2023	110,635
Total	$101,153,500

8. A business can enter into a jobs tax credit with the Corporation for up to 10 years. Credit allocations are subject to the same annual limits as proposed for the business development tax credit under the bill of $10 million per calendar year. However, current law allows unallocated credits from prior years to be carried forward to future years and allows WEDC to reallocate any unused angel investment and early stage seed investment credits to the jobs tax credit under 14-day passive review of JFC. Any reallocated amounts from prior years or amounts approved by JFC are in addition to the annual credit limit. More than $26.9 million in unallocated angel investment and early stage seed business investment credits have, to date, been reallocated to the jobs tax credit under this provision.

9. In general, jobs tax credits are provided to incentivize businesses to expand payroll through new full-time jobs, higher wages, or to provide job training to employees. If a person does not perform the eligible activity specified in the jobs credit contract, those credits will not be

verified by the Corporation to be claimed against the claimant's taxes, but could be reallocated by WEDC for other contracts under its allocation limit. It should be noted that nearly half of the credits that have been allocated by WEDC are for years beginning after the credit's proposed sunset date. As previously noted, a technical amendment to the bill would be required to allow claimants to perform the eligible activity to claim the credits after the sunset date in accordance with those contracts.

10. The administration estimates that the sunset of this provision would reduce GPR expenditures by $2.5 million in 2016-17 and $10,000,000 in 2017-18 and annually thereafter. If the Committee chose to maintain current law and restore the credit, it is estimated that GPR expenditures would increase by those amounts [Alternative 2b]. However, it should be noted that the proposed business development tax credit includes a component that is very similar to the jobs credit and is estimated to offset the fiscal effect of repealing the jobs tax credit.

Sunset the Economic Development Tax Credit

11. The Governor's proposal would sunset the economic development tax credit for taxable years beginning after December 31, 2015. No additional economic development tax credits could be certified by WEDC after that date; however, credits that have been contracted or committed by WEDC prior to that date could still be claimed. As noted previously, an amendment to the bill would be necessary to allow claimants that have already entered into a contract with WEDC to remain eligible for the credits following the proposed sunset. Table 4 shows the amount of economic development tax credits contracted or committed through May 1, 2015. Through that date, slightly more than $300,000 had been awarded for years after the proposed sunset date for the credit.

TABLE 4

Economic Development Tax Credits Allocated by Calendar Year

Year	Amount of Credits Allocated
2009	$9,076,378
2010	11,440,546
2011	30,076,964
2012	39,366,370
2013	25,455,035
2014	17,677,450
2015	8,376,575
2016	187,800
2017	37,800
2018	37,800
2019	37,800
Total	$141,770,518

12. As shown in Table 4, total of $141.8 million in economic development tax credits have been awarded to 324 businesses through May 1, 2015. Unlike the enterprise zones tax credit and the jobs tax credit, the economic development credit is nonrefundable and can only be used to offset a claimant's tax liability. However, the credits can be transferred for non-monetary consideration in connection with an eligible activity for which they were originally awarded. Two such transfers have been authorized by WEDC for a total of $556,000 of credits. The average economic development tax credit awarded to date has been approximately $440,000 per claimant, representing an average award of less than 2% of the average enterprise zone award per recipient. Only 33 of the credit awards were for $1.0 million or more.

13. Current law limits the aggregate amount of economic development tax credits that WEDC can authorize to $164.2 million, which leaves $22.4 million of credits currently unallocated. Current law permits the Corporation to request an additional $39.0 million from JFC under a 14-day passive review process.

14. According to WEDC, interest in obtaining the economic development tax credit has lessened following creation of the manufacturing and agriculture credit (MAC). Once fully phased-in, the MAC will offset nearly all taxes that would otherwise be owed on income generated from manufacturing or agriculture property in Wisconsin. Because the economic development tax credit is nonrefundable, the MAC will make it of limited value to claimants in the manufacturing and agriculture sectors. A similar, refundable credit (such as the proposed business development credit) would be more valuable to such businesses.

15. The administration estimates that sunset of the economic development tax credit would increase state tax revenues by $2.25 million in 2015-16, $7.5 million in 2016-17, and $9.0 million in 2017-18. As noted previously, WEDC can only allocate an additional $22.4 million of economic development tax credits absent JFC approval. The administration's estimates appear reasonable, but it should be noted that additional credit allocations could be made during the remainder of tax year 2015 prior to the proposed sunset date. If the Committee chose to maintain current law and not sunset the economic development tax credit, it is estimated that state revenues would decrease by $2.25 million in 2015-16; $7.5 million in 2016-17, and $9.0 million in 2017-18, compared to the bill [Alternative 2c].

Create the Business Development Tax Credit

16. The Governor's proposal would create a new refundable tax credit for additional jobs and wages paid for new employees, employee training costs, investments in real property and personal property, and locating a corporate headquarters in Wisconsin. As shown in the Attachment, the business development tax credit would be similar to the current jobs tax credit with regards to the annual limit of $10 million of credits that can be allocated per year, the maximum eligible certification period, and the credit calculations for payroll growth. The new credit provides a simplified credit calculation for additional credits if a business expands payroll in an economically distressed area, as compared to the current law calculation for the jobs tax credit. The proposed credit generally adopts the economic development tax credit for capital expenditures and adopts a modified version of the credit for employment and wage growth related to locating a corporation's headquarters in the state. The proposal would provide a credit that is somewhat similar to the

current law credit for employee training costs provided under both the jobs tax credit and the economic development credit. The current credit provided under the economic development tax credit for jobs retained in the state would not be provided under the proposed business development tax credit.

17. As proposed by the Governor, two refundable tax credits related to economic development would exist under the bill; the enterprise zones tax credit and the business development tax credit. The two credits provide similar refundable credits for job creation, payroll growth, and investment in Wisconsin. In general, the enterprise zones tax credit is more flexible for WEDC to administer and more generous in the amount of credits that can be provided as compared to the proposed business development tax credit because it is uncapped, allows credit recipients to receive awards over a longer period of time, provides a credit for jobs retained in the state, provides a credit for purchases from Wisconsin suppliers, and provides a more generous credit for capital expenditures and for employee training costs. The only limitation to the enterprise zone tax credit is the number of zones that WEDC may designate. An argument can be made that a second refundable credit is not needed in addition to the enterprise zones tax credit since the two credits serve a similar purpose and provide similar refundable credits to encourage job growth and business investment in the state. Instead, the enterprise zone tax credit could be expanded to serve the purpose of both credits in the manner recommended by the Governor.

18. According to WEDC, the business development credit would provide a complement to the enterprise zones tax credit for smaller projects. Because the enterprise zones tax credit is limited to the number of potential persons that can receive the credit, rather than the amount of credits that can be allocated per year, that credit is focused on larger projects that encourage job growth and investment in the state. It should be noted that the smallest enterprise zones tax credit award, $5.5 million for Trane US, is larger than any jobs tax credit that has been awarded under current law. Because the maximum annual allocation of business development credits would be limited in the same manner as the jobs tax credit under current law, those credits are expected to be allocated by the Corporation in smaller amounts to a larger number of recipients, similar to how the jobs tax credit is currently awarded.

19. In addition to targeting a larger number of businesses and awarding a smaller amount of credits per recipient, the business development tax credit would allow some additional flexibility to provide credits for certain activities beyond what is available under the enterprise zones credit. Under the business development tax credit, a credit could be provided to persons who locate or retain their corporate headquarters in Wisconsin. The additional credit in economically distressed areas that would be available under the business development tax credit for an amount not to exceed 5% of employee wage growth, which provides a simplified calculation as compared of the more generous credit calculation for the credit for growth in employee wages in an economically distressed area under the enterprise zone credit.

20. The administration estimates that the proposed credit would increase state GPR expenditures by $2.5 million in 2016-17 and $10.0 million in 2017-18 and annually thereafter. If the Committee chose not to approve the proposed credit, estimated state expenditures would be reduced by the same amount [Alternative 2d]. As previously noted, the increased estimated GPR

expenditures would be offset by lower expenditures from sunset of the jobs tax credit.

21. As noted, the business development tax credit program proposed by the Governor would provide tax credits to encourage job creation, wage growth, employee training, and capital investment in a manner similar to those provided under the enterprise zones tax credit program. The bill would limit the amount of credits that WEDC could allocate for the business development tax credit to no more than $10.0 million, annually, beginning in 2016.

22. As discussed under a previous alternative, the Committee could choose to limit the amount of credits that WEDC could allocate under the enterprise zone tax credit program to no more than $50 million, annually, rather than increase the number of zones that the Corporation could designate. Another alternative would be to delete the proposed business development tax credit provisions entirely and, instead, limit the amount of enterprise zone credits that WEDC could allocate in a specific year to $60 million. Under this alternative, the enterprise zones tax credit program could be amended to adopt provisions of the business development tax credit program that provide additional flexibility to WEDC in making refundable tax credit awards. Specifically, the enterprise zone tax credit program could be amended to adopt the following provisions of the proposed business development tax credit, as shown in the Attachment: (a) the credit for new jobs and employee wage growth in full-time employee wages; (b) the credit for new jobs and employee wage growth in full-time employee wages in economically distressed areas; and (c) the credit for locating a corporate headquarters in Wisconsin. This alternative would maximize WEDC's flexibility to provide refundable business tax credits to persons that expand payroll, retain jobs, provide employee training, increase capital investment, purchase from Wisconsin suppliers, and/or locate their business headquarters in the state under one program. The annual limit on the amount of credits that WEDC may allocate during a calendar year would provide a level of certainty in budgeting estimated expenditures. In addition, providing WEDC the authority to certify credits under one refundable tax credit program with maximum flexibility, rather than having two refundable tax credit programs with similar provisions, would help further efforts to simplify the state's tax code [Alternative 3].

As noted, WEDC has indicated a preference for maintaining two refundable tax credit programs, one targeted to attract larger state investments and one targeted toward incentivizing employment and investment growth by smaller businesses. However, there are no required minimum award amounts under the current enterprise zones program, so WEDC would have sufficient flexibility to make smaller awards under that program. However, if there is concern that smaller awards would not be made, Alternative 3 could be modified to specifically require WEDC's Board to develop policies and procedures to specify that a portion of the Corporation's annual allocation of enterprise zone tax credits be awarded to businesses in amounts of no more than $2 million [Alternative 4].

23. It should be noted that refundable tax credits, unlike nonrefundable tax credits, are paid to a claimant regardless of whether the claimant has a state tax liability. As a result, it could be argued that a refundable tax credit awarded on a discretionary basis by WEDC is similar to a grant awarded by any other state agency. A separate paper prepared by this office discusses alternatives to convert refundable business tax credits administered by WEDC to grant programs.

ALTERNATIVES

1. Approve the provisions recommended by the Governor, but specify that these provisions would apply to WEDC, rather than FWDA. In addition, make the changes recommended by the administration to: (a) clarify that the sunset date for awarding economic development tax credits and jobs tax credits is December 31, 2015; (b) allow an eligible claimant to claim the economic development tax credits and jobs tax credits in accordance with a contract, or a letter of intent to enter into a contract, that the claimant entered into with WEDC prior to the sunset date of the credits; (c) delete extraneous language in the bill related to allowing credit carryforwards for the economic development tax credit and the jobs tax credit; (d) clarify that the definition of an "eligible position" means a person employed in a full-time job by a person certified to claim a business development tax credit; (e) clarify that the 5% credit for wages paid in an economically distressed area is in addition to the proposed 10% credit for additional wages paid to any eligible claimant; (f) clarify that the credit for real and personal property investments is up to, rather than equal to, the recommended percentages; (g) clarify that the credit could be claimed against state income or franchise taxes, including the alternative minimum tax.; (h) clarify that unused angel and early stage seed tax credits could be reallocated to the business development tax credit using the approval procedure currently used for reallocations to the jobs tax credit; and (i) correct an inconsistent provision regarding the credit for corporate headquarters being located in Wisconsin.

2. Adopt Alternative 1 with one or more of the following modifications:

a. Delete the current limit on the number of enterprise zones that may be designated by WEDC and, instead, specify that the Corporation may not allocate more than $50 million of enterprise zone credits in any calendar year beginning in 2016.

b. Do not sunset the jobs tax credit. Increase estimated expenditures under the bill by $2,500,000 in 2016-17 and $10,000,000 in 2017-18 and annually thereafter.

ALT 2b	**Change to Bill**
GPR	$2,500,000

c. Do not sunset the economic development tax credit. Reduce estimated state tax revenues under the bill by $2,250,000 in 2015-16, $7,500,000 in 2016-17, and $9,000,000 in 2017-18.

ALT 2c	**Change to Bill**
GPR-REV (Tax)	- $9,750,000

d. Delete the provisions under the bill that would create the business development tax credit program. Reduce estimated GPR expenditures by $2,500,000 in 2016-17 and $10,000,000 in 2017-18 and annually thereafter.

ALT 2d	Change to Bill
GPR	- $2,500,000

3. Sunset the jobs tax credit and the economic development tax credit as recommended by the Governor and modified under Alternative 1 to reflect the Governor's intent. Delete the limit on the number of enterprise zones that can be certified by WEDC and, instead, specify that the Corporation cannot allocate more than $60 million of enterprise zone credits in any calendar year beginning in 2016. Delete provisions under the bill that would create the business development tax credit program. In addition, modify the enterprise zones tax credit program to adopt the following provisions that were recommended by the Governor for the business development tax credit for taxable years beginning after December 31, 2015: (a) the credit for new jobs and employee wage growth in full-time employee wages; (b) the additional credit for new jobs and employee wage growth in full-time employee wages in economically distressed areas; and (c) the credit for locating a corporate headquarters in Wisconsin. It is estimated that this alternative would be revenue-neutral relative to the Governor's recommendation.

4. In addition to Alternative 3, require WEDC's Board to develop policies and procedures to specify that a portion of the Corporation's annual allocation of enterprise zone tax credits be awarded to businesses in amounts of no more than $2 million.

5. Delete the provisions recommended by the Governor. Reduce estimated state tax revenues under the bill by $2,250,000 in 2015-16, $7,500,000 in 2016-17, and $9,000,000 in 2017-18.

ALT 5	Change to Bill
GPR-REV (Tax)	- $9,750,000

Prepared by: Sean Moran
Attachment

ATTACHMENT

Comparison of the Enterprise Zones, Business Development, Jobs, and Economic Development Tax Credits

Credit Program	Enterprise Zones Credit	Proposed Business Development Credit	Jobs Tax Credit	Economic Development
Type of Credit	Refundable.	Refundable.	Refundable.	Nonrefundable. Credits can be transferred for non-monetary consideration in connection with an eligible activity for which the credits were originally awarded.
Criteria for Certification	A business generally may be certified for tax benefits if the business: (a) begins operations in an enterprise zone; (b) relocates to a zone from outside the state; (c) increases personnel by at least 10% in the zone; (d) makes a significant capital investment in property located in the zone; (e) retains jobs in a zone, but only if the business makes a significant capital investment in property located in the zone and is either a manufacturer with significant supply chain in Wisconsin or has more than 500 full-time employees employed by the business in the zone; or (f) is located in an enterprise zone and purchases items or services from Wisconsin vendors.	Person must operate or intend to operate a business in this state and enter into a contract with WEDC and, in each year for which the person claims the credit, the person increases net employment in Wisconsin above the level during the year before the person was certified, as determined under WEDC's policies and procedures.	The claimant must be certified by WEDC, be operating, or intend to operate, a business in this state, and apply and enter into a contract with WEDC. The person must increase net employment in Wisconsin in the person's business as compared to the year prior to the year in which the person was certified must pay the eligible employee the required wages and/or provide the required training.	Varies for each type of credit. Credits are awarded based on an evaluation of applications on a competitive basis. Businesses that engage in a job creation, job retention, capital investment, employee training, or headquarters location in this state may be eligible for the credit.

Credit Program	Enterprise Zones Credit	Proposed Business Development Credit	Jobs Tax Credit	Economic Development
Limits on Credits	WEDC is authorized to designate up to 20 areas (proposed increase to 30 areas under the bill) in the state as enterprise zones, of which three areas must be comprised of political subdivisions with populations of fewer than 5,000, and two areas comprised of political subdivisions with populations between 5,000 and 30,000. The credit for job retention is limited to five consecutive years.	WEDC could allocate up to $10 million in credits in any calendar year. Unused allocations could be carried forward to future years. WEDC could reallocate any unused angel and early stage seed credits in a calendar year to this credit under a 14-day passive review of JFC.	WEDC may allocate up to $10 million in credits in any calendar year. Unused allocations may be carried forward to future years. WEDC may reallocate any unused angel and early stage seed credits in a calendar year to this credit under a 14-day passive review of JFC.	Up to $164.2 million in economic development credits to eligible business projects. WEDC may submit a request, including a report with information about the use of the credits, to JFC under a 14-day passive review process for an additional $39.0 million (aggregate total of $203.2 million).
Duration of Eligibility for Credits	A zone designation cannot last more than 12 years.	Certifications remain in effect for up to 10 years.	WEDC may certify a claimant for up to 10 years.	Varies by contract, generally certification and credit award are for up to five years.
Taxes Against which the Credit can be Claimed	Individual income tax, including the alternative minimum tax, and the corporate income/franchise tax.	Individual income tax, including the alternative minimum tax, and the corporate income/franchise tax.	Individual income tax, including the alternative minimum tax, and the corporate income/franchise tax.	Individual income tax, including the alternative minimum tax, the corporate income/franchise tax, and the insurance premiums tax.
Credit for New Jobs and Growth in Full-time Employee Wages	Up to 7% of the increased wages calculated by dividing total wages for full-time employees' wages in a year, provided that wages per full-time employee are in excess of $30,000 annually and the wages were above the aggregate wage level in the year preceding the designation of the enterprise zone. The credit calculation excludes wage amounts in excess of $100,000.	The amount of wages that the claimant paid to an employee in a full-time job in the taxable year, not to exceed 10% of such wages, as determined by WEDC.	Up to 10% of the wages paid to an employee, but no more than $10,000 per eligible employee, if the employee earned wages in the year of at least $30,000.	Up to between $3,000 per full-time job created and $7,000 per job created, depending on the wage level for the job, provided certain health insurance benefits are provided to employees. Credits for job creation are based on the projected number of jobs created over three years. New jobs must be maintained for five years. Credits are released annually based on the number of new full-time jobs created during the previous year.

Credit Program	Enterprise Zones Credit	Proposed Business Development Credit	Jobs Tax Credit	Economic Development
Credit for New Jobs and Growth in Full-Time Employee Wages in Economically Distressed Areas	The same calculation as for non-economically distressed areas; however, the credit is available for wages in excess of $22,620 per full-time employee, rather than for wages in excess of $30,000.	Additional amount of wages that the claimant paid to an employee in a full-time job in the taxable year, not to exceed 5% of such wages, if the employee is employed in an eligible position at the claimant's business in an economically distressed area, as determined by WEDC.	Up to 10% of the wages paid to an employee, but no more than $10,000 per eligible employee, if the employee earned wages in the year of at least $22,620, rather than at least $30,000.	Job creation and retention credits are awarded in areas with consideration given to: (a) unemployment rates; (b) recent layoffs; (c) regional poverty rates; (d) distressed county; (e) per capita income; and (f) public involvement necessary to move the project forward.
Credit for Existing Jobs Created or Retained in Wisconsin	Up to 7%, excluding wage amounts in excess of $100,000, paid to full-time employees who were employed in the enterprise zone whose annual wages were greater than the wages paid to the employee in the year in which the zone was designated.	None.	None.	Up to between $3,000 per full-time job retained and $7,000 per job retained, depending on the wage level for the full-time job, provided certain health insurance benefits are provided to employees. Credits for job retention are released annually over a five-year period, at a rate of 20% of the total tax credit allocation per year. The credits are pro-rated if between 80% and 99% of the required jobs are retained. No credits are released if less than 80% of the number of jobs required to receive the total tax credit are retained.
Credit for Employee Training Expenditures	The amount paid in the tax year to upgrade or improve the job-related skills of any of the claimant's full-time employees on job-related use of new technologies, or to provide job-related training to any full-time employee who is employed in his/her first full-time job.	The amount of training costs that the claimant incurred, not to exceed 50% of such costs, as determined by WEDC, for undertaking certain activities	WEDC can award tax credits in an amount determined by the Corporation for costs incurred to undertake certain training activities.	Up to 50% of eligible training costs, or $5,000 per employee being trained that is provided to new or existing employees in full-time jobs. WEDC can increase the credit amount at its discretion, and the credits are released annually over a three-year period based on actual eligible training costs incurred in the previous year.

Credit Program	Enterprise Zones Credit	Proposed Business Development Credit	Jobs Tax Credit	Economic Development
Credit for Capital Expenditures	Up to 10% of the claimant's significant capital expenditures, as determined by WEDC, in the enterprise zone. A significant capital expenditure is a capital investment in a WEDC designated enterprise zone beyond a certified businesses' normal capital expenditures needed to achieve a specific purpose agreed upon by WEDC.	Up to 3% of a personal property investment and up to 5% of a capital investment project, as determined by WEDC, provided the project involves a capital investment of at least $1 million. If less than $1 million, the project's capital investment must be equal to at least $10,000 per employee	None.	A business may be eligible for a credit of up to 3% of eligible capital investment for personal property or up to 5% of the capital investment for real property. Credits are allocated based on eligible capital investments that are projected over a three-year period and are released annually based on the amount of actual investments made in the preceding year.
Credit for Purchases from Wisconsin Suppliers	Up to 1% of the amount the claimant paid to purchase goods or services.	None.	None.	None.
Credit for Locating a Corporate Headquarters in Wisconsin	None. However, if location of a business headquarters in Wisconsin involved increased employment or investment in this state, the business could qualify for a credit under other provisions.	An amount, as determined by WEDC, equal to a percentage of the amount of wages that the person paid to an employee in an eligible position in the taxable year, provided the eligible position was created or retained in connection with the person's location or retention of the person's corporate headquarters in Wisconsin and the job duties associated with the eligible position involve the performance of corporate headquarters functions.	None. However, if location of a business headquarters in Wisconsin involved increased employment in this state, the business could qualify for a credit under other provisions.	Up to $4,000 per full-time job or up to $10,000 per full-time job, depending on the wage level of each job, if the credits will result in the location or retention of a corporate headquarters in Wisconsin. Full-time jobs created or retained in the state must meet certain conditions regarding the provision of health insurance to be eligible for the credit.
Change to Credit Under the Bill	Exists under current law and would exist under the bill. Maximum number of zones would be increased from 20 to 30.	Proposed to be created on January 1, 2016. No sunset date.	Proposed sunset date for taxable years beginning after December 31, 2015.	Proposed sunset date for taxable years beginning after December 31, 2015.