



Legislative Fiscal Bureau

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2017

Joint Committee on Finance

Paper #294

Expand Enterprise Zone Tax Credit Program (General Fund Taxes -- Income and Franchise Taxes)

[LFB 2017-19 Budget Summary: Page 181, #15]

CURRENT LAW

The enterprise zone program provides refundable tax credits that can be claimed against the individual income tax and the corporate income/franchise tax for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. The Wisconsin Economic Development Corporation (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 30 areas in this state as enterprise zones and 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.

GOVERNOR

Allow WEDC to designate a new enterprise zone, subject to the current law limit on the number of zones it can designate, if: (a) an enterprise zone designation expires; or (b) WEDC revokes all certifications for tax benefits within a designated enterprise zone and cancels the designation of that zone.

DISCUSSION POINTS

1. The enterprise zone tax credit program was created under 2005 Wisconsin Act 361 and was administered by the former Department of Commerce (Commerce). As passed by the

Legislature, the bill would have created a tax credit program limited to geographic areas of no more than 5,000 acres per zone in rural parts 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 5,000 acres. The program has been modified and expanded several times. As noted, under current law, WEDC may designate up to 30 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. Other than those five zones, there is no geographic requirement for designating an area as an enterprise zone for the other 25 zones.

2. In practice, enterprise zone credits have been awarded on the basis of specific economic development projects performed by individual companies, rather than to multiple companies located in a geographic area. Table 1 provides information regarding the 21 enterprise zone tax credit awards that have, through April 17, 2017, been contracted by WEDC/Commerce, including the year in which each contract was executed, the number of years over which each business can earn the credits, and the amount of credits that have been verified by WEDC/Commerce as eligible to be claimed with the Department of Revenue (DOR). 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. Contracts for awards have ranged from \$65.0 million over a 12-year period for Mercury Marine to \$3.0 million over a four-year period for Saputo Cheese USA. WEDC/Commerce has entered into contracts to award up to \$485.1 million in enterprise zone tax credits from 2009 through 2024.

3. Attachment 1 provides additional detail regarding how WEDC/Commerce has allocated enterprise zone credit awards. The year in which WEDC allocated the largest amount of enterprise zone tax credits is 2014, when \$60.7 million was allocated to businesses in that year. Individual annual allocations of tax credit awards range from \$28,000 for Northstar Medical Radioisotopes, LLC in 2011 to \$17.3 million for Kohl's Corporation in 2015.

4. As noted, Table 1 shows that the duration of enterprise zone designations has been for between four and 12 years, with an average duration of eight years per zone. However, WEDC notes that each zone has a unique eligible earning period and the length of a specific contract is dependent on the terms of each contract and each business's unique plan for investment and job growth under that project.

5. Table 1 also shows that, although enterprise zone contracts total \$485.1 million for 21 businesses through April 17, 2017, only \$195.1 million of credits have been verified through that date for 17 of the certified businesses. Attachment 2 provides detail regarding the amount of credits that WEDC has verified by year in which the eligible business earned the credit. In addition, Attachment 2 illustrates the delay between how WEDC allocates when credits can be earned and when businesses are verified to claim the credits. Four businesses that WEDC verified as eligible to claim credits for eligible activity performed in 2014 have not yet been verified to claim credits in 2015. Similarly, eight businesses that were verified to receive credits in 2015 have not yet been verified to claim credits for eligible activity performed in 2016.

TABLE 1**Enterprise Zone Awards Contracted by WEDC through April 17, 2017**

<u>Award Recipient</u>	<u>Award Amount</u>	<u>Year Award was Contracted</u>	<u>Years Over Which the Credits Have Been Allocated</u>	<u>Amount of Credits Verified to Date</u>
Amazon.com	\$10,300,000	2013	2014-2024	\$4,702,000
Bucyrus International, Inc.*	20,000,000	2010	2010-2019	9,249,000
Direct Supply, Inc.	22,500,000	2016	2017-2023	0
Dollar General Corporation	5,500,000	2016	2015-2019	434,531
Exact Sciences Corporation	9,000,000	2015	2014-2020	1,100,000
Fincantieri Marine Group LLC	28,000,000	2011	2010-2019	18,400,000
InSinkEerator	15,500,000	2014	2014-2018	10,321,522
Johnsonville Sausage, LLC	10,000,000	2017	2017-2021	0
Kestrel Aircraft Company, Inc.	18,000,000	2012	2012-2019	717,500
Kohl's Corporation	62,500,000	2012	2011-2020	18,322,046
Mercury Marine	65,000,000	2010	2010-2021	46,225,000
Milwaukee Electric Tool Corporation	18,000,000	2016	2016-2021	0
Northstar Medical Radioisotopes, LLC	14,000,000	2011	2011-2018	1,747,457
Oshkosh Corporation	47,000,000	2010	2009-2019	26,710,000
Plexus Corp.	15,000,000	2012	2012-2018	6,972,000
Quad/Graphics, Inc.	61,700,000	2010	2010-2020	33,190,000
Saputo Cheese USA	3,000,000	2017	2016-2019	0
Trane US Inc.	5,500,000	2014	2013-2018	3,550,000
Uline, Inc.	18,600,000	2010	2010-2018	9,337,994
W Solar Group, Inc.*	28,000,000	2010	2010-2021	320,000
Weather Shield Mfg., Inc.	<u>8,000,000</u>	2013	2013-2019	<u>3,776,815</u>
Total	\$485,100,000			\$195,075,865

*Credits have been revoked.

Source: Wisconsin Economic Development Corporation

6. Under WEDC's 2016-17 policies and procedures for the enterprise zone tax credit program, its expectation is to assist three businesses in that year. With the exception of 2010 (the first year the program was in effect), WEDC/Commerce have entered into enterprise zone contracts with three companies in two different years, two companies in three years, and one company in one year. In 2010, Commerce entered into contracts with six businesses. If WEDC were to enter into three enterprise zone contracts per year at an average of eight years per contract, it is estimated that WEDC would reach the limit of 30 enterprise zone designations by 2020 under current law. However, WEDC states that, based on current business interest in the program, it anticipates having committed 30 zones by 2019-20 if the Governor's proposal is enacted. Under WEDC's projections, it would likely reach the current law limit of 30 zones in the 2017-19 biennium if it is not authorized to redesignate either of the two zones that have been revoked or the four zones that are set to expire after 2018.

7. According to WEDC, two businesses, Bucyrus International, Inc. (\$20.0 million) and

W. Solar Group, Inc. (\$28.0 million), have had the full amount of their enterprise zone tax credits revoked. In addition, WEDC expects one additional zone that is currently active to be revoked. If the Governor's request were adopted, WEDC could repurpose these zones to attract other business expansion and relocation projects to Wisconsin. Under a separate provision of the budget [described under LFB Paper #300], DOR would no longer be subject to the statute of limitations when making assessments to recover revoked enterprise zone credits. If DOR could recover all of the credits that were verified, claimed, and subsequently revoked by WEDC, or if the business were to return the revoked credits to WEDC, it is possible that there would be no net state fiscal effect from the prior designation of a revoked zone. However, it is possible that DOR may be unable to recover credits from a revoked business.

8. As noted, it has been the practice of WEDC/Commerce under the enterprise zone tax credit program to designate zones based on economic development projects undertaken by specific businesses (similar to how it administers the business development credit), rather than to designate a geographic area encompassing multiple companies within that area. State law does not provide any guidance as to what geographic area should comprise 25 of the 30 enterprise zones it can designate. WEDC states that certain businesses have been awarded enterprise zone credits for economic development projects in non-contiguous geographic areas throughout the state. Further, under the current statutory construction, state law does not prohibit WEDC from creating an enterprise zone that could encompass the entire state and certifying an unlimited number of businesses in the state as eligible to receive an unlimited amount of enterprise zone credits.

9. The Committee could choose to eliminate the term "zones" under the enterprise zone program and replace it with "projects." Under this alternative, WEDC could certify up to 30 businesses as eligible to receive enterprise zone tax credits for economic development projects performed by certified businesses in the state. In addition, the Committee could retain the requirement that WEDC certify at least three economic development projects in a political subdivision with populations of fewer than 5,000, and two projects in political subdivisions with populations between 5,000 and 30,000. The Committee could also retain the requirement that WEDC must consider, when certifying a business for an economic development project, the economic need of the area where the project would occur and the effect on other initiatives and programs to promote economic and community development in the surrounding area of the proposed project. This alternative would statutorily codify WEDC's current practice of certifying businesses as eligible to receive the credits, rather than certifying businesses in a geographically designated zone for the credits. Under this alternative, the statutes would not permit WEDC to designate an enterprise zone that could include all businesses in the state.

10. There is generally a two-year delay between when a business performs activities eligible to earn an enterprise zone credit and when the business claims the credit with DOR. Comparing the amount of awards allocated by WEDC with the amount verified by WEDC for eligible activities performed by those companies between 2009 and 2014, businesses earned approximately 89% of the credit awards allocated by WEDC that were verified as eligible to claim the credits. However, it should be noted that the total award amount and annual allocations of awards may change one or more times over the duration of a zone based on amended contracts between the certified business and WEDC. Based on these trends, as well as enterprise zones

allocations that have been or are expected to be revoked, expenditures for the 2017-19 biennium are estimated at \$37.6 million in 2017-18 and \$43.0 million in 2018-19 [as reestimated under LFB #295] under both current law and under the bill.

11. The administration did not include a fiscal effect for the Governor's proposal because WEDC's limit on the number of enterprise zones is not expected to be reached during this biennium. Further, based on the typical two-year delay between when the business completes the eligible activity and when that business has been verified by WEDC to claim credits with DOR, the fiscal effect of approving the Governor's recommendation may not increase state expenditures until 2021-22.

12. The rationale for placing a limit on the number of zones that WEDC can designate is, presumably, to limit the amount of state expenditures associated with the enterprise zone tax credit program. However, the current program does not limit the amount of credits that may be awarded for each zone, the aggregate amount for all zones, or the amount that can be allocated annually to a zone. Additionally, WEDC can amend its enterprise zone tax credit contracts with businesses one or more times over the duration of a zone.

13. The refundable enterprise zone tax credit program is unique compared to WEDC's other tax credit programs. The nonrefundable angel investment credit and early stage seed investment credit are limited by the amount of tax credits that WEDC can verify each year. The business development credit has, and the former jobs tax credit had, limits on the amount of credits WEDC could allocate each year. The former economic development credit had an aggregate limit on the amount of tax credits that WEDC could allocate under the program. Although the nonrefundable supplement to the federal rehabilitation tax credit does not have an annual or aggregate limit, the credit is only available if the project has been approved by both the National Park Service and the State Historic Preservation Officer [the Governor has recommended imposing an annual limit on the program under both the 2015-17 biennial budget and the current budget bill, as described in LFB Paper #296]. Our office is unaware of a similar program in any other state agency that provides sum sufficient funding to an agency without any dollar limits on the amount of awards that the agency has discretionary authority to make.

14. An alternative to limiting the number of zones would be to, instead, limit the amount of credits that WEDC could verify each state fiscal year under the enterprise zone tax credit program. The time at which WEDC verifies that a business has performed the eligible activity to claim the credit most closely aligns with when the credit is claimed with DOR and paid to the claimant. The Committee could adopt this alternative in a manner that is revenue-neutral, as compared to the revised estimates under the bill, by limiting the amount of credits that WEDC could verify per year to \$37.6 million in 2017-18 and \$43.0 million in 2018-19 and annually thereafter. WEDC would have to manage its enterprise zone tax credit allocations and awards to limit the amount of annual verifications to no more than the annual limits.

15. It should be noted that the enterprise zone tax credit is a refundable credit and, unlike nonrefundable credits, is paid to a claimant regardless of whether the claimant has a state tax liability. As a result, it could be argued that a refundable credit awarded on a discretionary basis by WEDC is similar to a grant awarded by any state agency. LFB Paper #293 discusses alternatives to

convert refundable tax credit programs administered by WEDC, including the enterprise zone tax credit program, to grant programs.

ALTERNATIVES

1. Adopt the Governor's recommendation to designate a new enterprise zone, subject to the current law limit on the number of zones it can designate, if: (a) an enterprise zone designation expires; or (b) WEDC revokes all certifications for tax benefits within a designated enterprise zone and cancels the designation of that zone.

2. Adopt Alternative 1, but amend the enterprise zone tax credit statutes so that WEDC could certify up to 30 businesses as eligible to receive enterprise zone tax credits for economic development projects undertaken by those businesses in Wisconsin, rather than allowing WEDC to designate up to 30 enterprise zones in the state. The criteria for whether a business could be certified by WEDC to receive the credits would be the same as under current law.

3. Eliminate the provision recommended by the Governor and eliminate the current law limit that WEDC can designate not more than 30 enterprise zones. Instead, specify that WEDC cannot verify one or more businesses as eligible to claim enterprise zone tax credits from DOR of more than \$37.6 million in 2017-18 and \$43.0 million in 2018-19 and annually thereafter.

4. Eliminate the provision recommended by the Governor and maintain current law.

Prepared by: Sean Moran
Attachment

ATTACHMENT 1

Allocation Schedule for When Enterprise Zone Tax Credits Can Be Earned: 2009 through 2024

<u>Award Recipient</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Amazon.com						\$1,655,500	\$3,046,500	\$535,000	\$560,000
Bucyrus International, Inc.*	\$2,333,000	\$3,047,000	\$2,160,000	\$1,709,000	1,732,000	1,755,000	1,779,000	1,803,000	1,803,000
Direct Supply, Inc.									2,770,000
Dollar General Corporation							1,250,000	4,080,000	80,000
Exact Sciences Corporation						200,000	900,000	1,300,000	1,900,000
Fincantieri Marine Group LLC	948,000	2,138,000	4,650,000	4,966,000	3,192,000	2,506,000	2,562,000	2,562,000	2,531,000
InSinkErator						6,850,700	4,153,800	1,985,000	2,069,000
Johnsonville Sausage, LLC									3,797,660
Kestrel Aircraft Company, Inc.				1,704,000	2,408,000	2,733,000	3,506,000	1,946,000	1,875,000
Kohl's Corporation				583,000	1,414,000	7,945,000	17,287,000	6,334,000	4,843,000
Mercury Marine	7,662,000	10,741,000	10,014,000	7,766,000	7,552,000	2,490,000	2,526,000	2,526,000	2,562,000
Milwaukee Electric Tool Corporation								3,510,000	3,935,000
Northstar Medical Radioisotopes, LLC			28,277	38,573	142,130	144,451	2,014,500	3,621,050	1,624,850
Oshkosh Corporation	\$2,496,457	8,470,543	4,812,000	4,511,000	4,176,000	2,716,000	1,936,000	4,064,000	3,792,000
Plexus Corp.				1,014,250	3,641,000	2,316,750	2,029,750	1,860,250	1,752,250
Quad/Graphics, Inc.		4,937,000	6,421,000	6,800,000	5,519,000	5,508,000	4,005,000	5,630,000	5,658,000
Saputo Cheese USA								1,000,000	1,863,000
Trane US Inc.					891,000	1,910,000	749,000	722,000	668,000
Uline, Inc.		1,567,000	1,785,000	2,022,000	2,074,000	2,124,000	2,176,000	2,230,000	2,285,000
W Solar Group, Inc.*		320,000		50,000	1,400,000	4,600,000	4,550,000	3,780,000	1,600,000
Weather Shield Mfg., Inc.					1,186,605	1,272,605	1,317,605	1,360,605	1,360,605
Total	\$2,496,457	\$26,237,543	\$28,972,277	\$33,546,823	\$37,292,735	\$52,452,006	\$55,672,155	\$50,824,905	\$49,329,365

*Credits have been revoked

Source: Wisconsin Economic Development Corporation 4/17/2017

ATTACHMENT 1 (continued)

Allocation Schedule for When Enterprise Zone Tax Credits Can Be Earned: 2009 through 2024

<u>Award Recipient</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>Grand Total</u>
Amazon.com	\$585,000	\$605,000	\$630,000	\$658,000	\$675,000	\$675,000	\$675,000	\$10,300,000
Bucyrus International, Inc.*	1,827,000	1,855,000						20,000,000
Direct Supply, Inc.	3,090,000	3,435,000	3,810,000	4,225,000	2,330,000	2,840,000		22,500,000
Dollar General Corporation	50,000	40,000						5,500,000
Exact Sciences Corporation	1,600,000	1,600,000	1,500,000					9,000,000
Fincantieri Marine Group LLC	2,461,000	2,046,000						28,000,000
InSinkErator	441,500							15,500,000
Johnsonville Sausage, LLC	1,586,000	1,718,000	1,659,000	1,239,340				10,000,000
Kestrel Aircraft Company, Inc.	2,058,000	1,770,000						18,000,000
Kohl's Corporation	6,026,000	7,344,000	7,343,000	3,381,000				62,500,000
Mercury Marine	3,099,000	3,491,000	3,529,000	3,568,000				65,000,000
Milwaukee Electric Tool Corporation	2,610,000	3,210,000	3,210,000	1,525,000				18,000,000
Northstar Medical Radioisotopes, LLC	6,386,169							14,000,000
Oshkosh Corporation	3,926,000	3,100,000	3,000,000					47,000,000
Plexus Corp.	1,373,250	1,012,500						15,000,000
Quad/Graphics, Inc.	5,698,000	5,742,000	5,782,000					61,700,000
Saputo Cheese USA	19,000	118,000						3,000,000
Trane US Inc.	560,000							5,500,000
Uline, Inc.	2,337,000							18,600,000
W Solar Group, Inc.*	1,750,000	1,850,000	4,050,000	4,050,000				28,000,000
Weather Shield Mfg., Inc.	<u>732,000</u>	<u>769,975</u>						<u>8,000,000</u>
Total	\$48,214,919	\$39,706,475	\$34,513,000	\$18,646,340	\$3,005,000	\$3,515,000	\$675,000	\$485,100,000

*Credits have been revoked

Source: Wisconsin Economic Development Corporation 4/17/17

ATTACHMENT 2

Enterprise Zone Tax Credit Verifications by WEDC by Year in Which the Credit was Earned

<u>Verified Recipient</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>Grand Total</u>
Amazon.com						\$1,655,500	\$3,046,500		\$4,702,000
Bucyrus International, Inc.*	\$2,333,000	\$3,047,000	\$2,160,000	\$1,709,000					9,249,000
Dollar General Corporation								\$434,531	434,531
Exact Sciences Corporation						200,000	900,000		1,100,000
Fincantieri Marine Group LLC		948,000	2,138,000	4,650,000	4,966,000	3,192,000	2,506,000		18,400,000
InSinkErator						2,969,754	3,816,200	3,535,568	10,321,522
Kestrel Aircraft Company, Inc.				402,408	248,809	66,283			717,500
Kohl's Corporation				583,000	1,414,000	6,818,460	9,506,586		18,322,046
Mercury Marine		7,662,000	10,741,000	10,014,000	7,766,000	7,552,000	2,490,000		46,225,000
Northstar Medical Radioisotopes, LLC			10,998	18,608	119,944	126,814	1,052,814	418,278	1,747,457
Oshkosh Corporation	\$2,496,457	8,470,543	4,812,000	4,511,000	4,176,000	2,244,000			26,710,000
Plexus Corp.				1,014,250	3,641,000	2,316,750			6,972,000
Quad/Graphics, Inc.		5,199,000	6,159,000	6,800,000	5,519,000	5,508,000	4,005,000		33,190,000
Trane US Inc.						2,801,000	749,000		3,550,000
Uline, Inc.		1,332,994	1,785,000	2,022,000	2,074,000	2,124,000			9,337,994
W Solar Group, Inc.*		320,000							320,000
Weather Shield Mfg., Inc.					<u>1,186,605</u>	<u>1,272,605</u>	<u>1,317,605</u>		<u>3,776,815</u>
Total	\$2,496,457	\$26,265,537	\$28,692,998	\$32,175,266	\$32,820,358	\$38,847,166	\$29,389,705	\$4,388,377	\$195,075,865

*Credits have been revoked.

Source: Wisconsin Economic Development Corporation 4/17/17