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Business Development Tax Credit for Renewable Energy
(General Fund Taxes -- Refundable Tax Credits and Other Payments)

[LFB 2021-23 Budget Summary: Page 229, #14]

CURRENT LAW

The refundable business development tax credit can be claimed against the individual income tax and the corporate income/franchise tax equal to a portion of eligible expenses for increased employment, retention of employees, employee training, capital investment, and corporate headquarters location or retention in Wisconsin. The Wisconsin Economic Development Corporation (WEDC) is responsible for certifying businesses as eligible to receive credits, verifying eligible activities to claim credits from the Department of Revenue (DOR), and performing other general administrative activities related to the business development tax credit program.

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.

Under the credit for capital investment, WEDC can certify businesses to earn a credit for up to 3% of the business's personal property investment and for up to 5% of a new real property investment that is made in a capital investment project of $1 million or more. For projects involving a capital investment of less than $1 million, the investment must be equal to at least $10,000 per eligible employee employed in the project for the business to be eligible to receive a capital investment credit.

DISCUSSION POINTS

1. According to the Governor's Task Force on Climate Change report, climate change is projected to have significant economic costs as a result of extreme heat events, flooding, tornadoes, and polar vortexes. For example, extreme swings in weather negatively impact Wisconsin's agricultural and livestock sectors, which depend on predictable weather patterns. The report cites the National Oceanic and Atmospheric Administration's Billion-Dollar Weather and Climate Disasters database, indicating that there were 19 severe storms, two floods, and six drought-related disasters that affected Wisconsin between 2000 and 2020, causing $100 billion in economic costs.

2. The Task Force made several policy recommendations to address the effects of climate change, including the creation of a WEDC green grant and loan program to support: (a) Wisconsin businesses that focus on energy efficiency and green technology; and (b) businesses that use sustainable materials to make their products.

3. Assembly Bill 68/Senate Bill 111 (AB 68/SB 111) would create a new tax credit under the refundable business development tax credit program, administered by WEDC, equal to up to 25% of the claimant's energy efficiency or renewable energy project expenditures on real or personal property located in Wisconsin. When making an award, WEDC would have to ensure that the percentage of expenditures taken into account positively correlates to the scale of the project. According to the administration, WEDC would award larger credit percentages for larger projects, up to a maximum of 25%. The credit would first apply to awards made on and after January 1, 2022. It should be noted that AB 68/SB 111 contains no fiscal estimates of the effect of the recommendation.

4. In the Department of Administration's Budget in Brief, the administration indicates that the new tax credit would incent businesses to generate more renewable energy on-site and reduce energy consumption, thereby improving Wisconsin's competitive standing for renewable energy projects and addressing climate change.

5. The Committee could choose to create a refundable credit equal to up to 25% of energy efficiency or renewable energy project expenditures for the following reasons (Alternative A1). As part of this alternative, an awardee would not be able to claim the same expenditures under both the capital investment credit and the new credit for energy efficiency or renewable energy project expenditures (and thus the total credit would be up to 25%, rather than up to 3% or 5% for the existing refundable credits for personal property and real property investments, respectively).

6. Tax incentives can support environmental and economic development policy goals and correct market failures that undervalue energy efficiency and renewable energy. For example, electricity and gas prices may not adequately account for the negative externalities associated with

energy production, such as pollution and greenhouse gas emission. Thus, although a business can reduce its energy costs by investing in energy efficiency and renewable power generation on an ongoing basis, energy prices may not adequately account for the true cost of energy production and the societal savings from making such "up-front" investments. Providing refundable credits for energy efficiency and clean energy generation would increase the incentives for businesses to invest.

7. The proposed tax incentives would leverage private construction spending to deliver energy efficiency and renewable energy generation. The eligible businesses are already venturing to undertake a capital investment project, and thus, a state investment through the 25% credit may ultimately have an outsized impact. Further, the tax benefits may have a spillover effect that influences other persons to pursue such investments without being certified as eligible to claim the credit, such as by increasing the size of the market for, and increasing awareness of, energy efficiency and renewable energy generation projects. Government policies that support research, development, and deployment of renewable energy may drive down costs and spur innovations in the energy sector.

8. On the other hand, the Committee could decide to take no action on the proposal for the following reasons (Alternative A5). First, businesses already have a long-term financial incentive to reduce their energy costs. As a result, tax incentives for energy efficiency and renewable energy generation may award tax benefits to businesses that were already planning to make some or all of such investments. Awarding tax credits to such businesses would not improve the overall energy efficiency or renewal energy generation in the state.

9. Second, WEDC is not an environmental protection agency and generally does not develop its rules and procedures based on environmental impacts or studies. Aside from requiring WEDC to scale the proportion of the credit with the size of the project, the proposal would not provide any standards or guidance for WEDC to determine what sorts of projects should qualify for the tax incentive or what particular policy goals the incentive should seek to achieve. The Committee could reasonably conclude that WEDC lacks the expertise needed to develop the policies and procedures to administrate or assess the effectiveness of the program.

10. Finally, fluctuations in energy prices may provide clearer incentives than the tax benefits provided under the proposed tax credit. Generally, businesses will be more sensitive to energy costs when they are higher and less so when they are lower. Thus, energy price fluctuations may become the incentive to increase usage of the proposed tax credit. The Committee could conclude that the program cost is vulnerable to unpredictable swings in energy prices that would undermine its usefulness in incenting businesses to undertake energy efficiency and renewable power generation projects.

11. Rather than creating a new tax credit program, the Committee could, instead, create a new sum certain GPR appropriation to provide WEDC with $2,400,000, annually, beginning in 2022-23 to administer a green grant and loan program (Alternative A4). According to the Task Force report, the grant program could draw environmentally friendly businesses to Wisconsin, lessen the state's reliance on imported energy, create jobs, and retain students graduating from the state's higher education systems. Under this alternative, WEDC would be directed to implement a grant and loan program for energy efficiency and renewable energy generation projects to fund businesses related to clean energy, zero-waste, or green technologies. Awards could be up to 25% (or a percentage the

Committee chooses) of an awardee's energy efficiency or renewable energy expenditures on real or personal property located in this state. WEDC would be directed to reinvest any loan repayments back into the program.

Fiscal Effect of the Governor's Proposal and Maximum Allocation of Credits

12. The administration did not provide an estimated cost for the proposed refundable credit. However, the creation of a new tax credit for real and personal property investment related to energy efficiency and generation of renewable energy under the business development program would allow WEDC to certify persons to claim tax benefits for which they previously would not have qualified. Thus, the fiscal effect of the credit, and alternatives to increase the funding available for it, are discussed below.

13. As adopted by the Committee under LFB Paper #102 (sum sufficient estimates), it is estimated that the amounts that will be claimed for business development tax credits under current law are $12,900,000 in 2021-22 and $14,700,000 in 2022-23. However, WEDC can allocate up to $22 million of credits annually.

14. Based upon information supplied by WEDC regarding the allocation of business development credits for capital investment, data from the U.S. Census Bureau's Annual Capital Expenditures Survey for 2019, and industry data on investment into energy efficiency and renewable power generation from the international energy agency, it is estimated that WEDC could allocate an additional $2,400,000 annually in credits for energy efficiency and generation of renewable energy under the business development tax credit program.

15. The new credit that would be first available to businesses in 2022 would not be claimed at DOR until 2022-23 at the earliest. The estimated fiscal effect of the Governor's proposal is $600,000 GPR in 2022-23 and $2,400,000 GPR in 2023-24 and annually thereafter. Because WEDC would need time to establish policies and procedures for the new credit and would need additional time to review new applications to certify newly eligible applicants, and because applicants would need to finish their capital investment projects before WEDC could review and verify the amounts to be claimed at DOR, it is estimated that the fiscal effect of the proposal would be fully phased-in beginning in 2023-24.

16. Alternatively the Committee could decide to adopt the proposed tax credit, but reduce the percentage from 25% to 10% of the claimant's energy efficiency or renewable energy project expenditures on real or personal property located in Wisconsin (Alternative A2). The estimated fiscal effect of the 10% credit is $200,000 GPR in 2022-23 and $700,000 GPR in 2023-24 and annually thereafter.

17. As discussed above, current law limits the amount of credits WEDC may allocate to $22.0 million each year, unless a requested increase is approved by the Committee. If less than that maximum amount is allocated, the shortfall carries forward to be allocated in a future year.

18. The table below shows the business development tax credit amounts WEDC allocated by contract year compared to its statutory limit on allocations. The ending balance corresponds to the amounts carried forward to be allocated in contracts executed in a future year. WEDC has not requested that the Joint Committee on Finance provide an additional credit allocation increase since 2016.

Business Development Tax Credits Allocated Under Contracts by Calendar Year (as of April 21, 2021)

	2016	2017	2018	2019	2020	2021
Opening Balance	$0	$2,715,000	$3,470,200	$2,255,200	$8,900,200	$23,055,200
Limit	25,000,000*	22,000,000	22,000,000	22,000,000	22,000,000	22,000,000
Tax Credits Contracted	22,285,000	21,244,800	23,215,000	15,355,000	7,845,000**	3,370,000
Ending balance	$2,715,000	$3,470,200	$2,255,200	$8,900,200	$23,055,200**	$41,685,200

* In 2016, the limit on contracting tax credits was $17,000,000. The Committee approved an increase of $8,000,000 in its June, 2016, meeting.
** WEDC indicates that additional contracts may be finalized for awards of more than $1,000,000 which certify recipients for tax credits based upon payroll and activities conducted in 2020.

19. As shown in Table 1, WEDC allocated credits in an amount that was more than, or close to, $22 million in 2016, 2017, and 2018. WEDC indicates that contract awards and performance slowed significantly afterwards due to economic disruptions caused by the COVID-19 pandemic.

20. Assuming that WEDC would revert to allocating approximately $22 million in future years for business development credits under current law, it follows that the estimated cost of $2,400,000 annually for the energy efficiency and renewable power generation credit may either require WEDC to refrain from issuing the newly-created credit or to reduce awards of the other business development credits under current law. Therefore, the Committee could also choose to increase the allocation limit to $24,400,000 annually, beginning in 2022, to account for the estimated increase in credits that would be allocated under the proposed energy efficiency and renewable power generation credit (Alternative A3). This provision is not estimated to increase the cost of the proposed credit in the 2021-23 biennium because WEDC is not currently allocating up to its current law limit. However, it would provide WEDC with statutory authority to allocate more business development tax credits in future years.

21. On the other hand, the Committee could find that it is unnecessary to increase the allocation limit because WEDC has not allocated the maximum amount of business development credits allowed under current law since 2018. As shown in Table 1, WEDC can allocate up to $45.1 million in credits in 2021. It is likely that WEDC would be able to allocate additional tax credits without increasing the limit under current law during the 2021-23 biennium. If needed, WEDC could request the Committee to increase the limit by up to $10,000,000 in each year. Thus, the Committee could choose to retain the current limit of $22,000,000.

Reporting of Unallocated Business Development Tax Credits

22. Because the maximum amount of business development tax credits WEDC may allocate each year may change, the maximum amount that may be claimed by recipients at DOR will also vary from year to year. The flexibility provided under current law for WEDC to allocate tax benefits also makes it more difficult to predict the amounts that will be claimed under the program in a given year. For example, as shown in the table, more than double the $22 million annual limit is available for contract awards in 2021. For this reason, LFB Paper #333, discusses the alternative to recast the business development tax credit program as a grant program with a sum certain continuing appropriation.

23. Alternatively, the Committee could require WEDC to identify the amount of unallocated tax credits carried forward into the current year on or before January 31 of each calendar year (Alternative B1). Under current law, WEDC must submit an annual report to the Legislature on January 1 regarding the economic development projects that the Board intends to develop and implement during the current fiscal year. However, current law does not specifically require WEDC to identify the amount of unallocated business development tax credits that were carried forward from the previous year for allocation in a future year as part of that report. Providing a reporting requirement would clarify the amount of tax credits available to be allocated and inform the Legislature of the funding likely to be required in the current and subsequent years.

24. Finally, in order to provide for more oversight of the program, the Committee could, instead, sunset the provision which allows unallocated amounts to carry forward after December 31, 2021 (Alternative B2). In the event WEDC required additional authority to allocate credits, WEDC would retain the ability to request that the Committee increase its annual allocation limit by up to $10,000,000 in any given year. While this alternative is not expected to lower estimated expenditures under the bill, this would provide for more certainty over the maximum cost of credits allocated under the program each year because Committee approval would be required for WEDC to allocate more than the limit in any given year.

ALTERNATIVES

A. Tax Credits for Energy Efficiency and Generation of Renewable Energy

1. Create a new tax credit under the refundable business development tax credit program, administered by WEDC, equal to up to 25% of the claimant's energy efficiency or renewable energy project expenditures on real or personal property located in Wisconsin. Specify that, when making an award, WEDC would have to ensure that the percentage of expenditures taken into account positively correlates to the scale of the project. The credit would first apply to awards made on and after January 1, 2022. Further, specify that an awardee would not be able to claim the same expenditures under both the existing capital investment credit and the new credit for energy efficiency or renewable energy project expenditures. Estimate increased expenditures for credit claims of $600,000 GPR in 2022-23 and $2,400,000 in 2023-24 and annually thereafter.

ALT A1	Change to Base
GPR	$600,000

2. Adopt Alternative A1, but reduce the credit percentage to 10% of the claimant's energy efficiency or renewable energy project expenditures on real or personal property located in Wisconsin. Estimate increased expenditures for credit claims of $200,000 in 2022-23 and $700,000 in 2023-24 and annually thereafter.

ALT A2	Change to Base
GPR	$200,000

3. Adopt Alternative A1, with the modification to increase the statutory limit for allocations of business development tax credits from $22,000,000 annually to $24,400,000 annually, beginning in 2022.

ALT A3	Change to Base
GPR	$600,000

4. Create a new sum certain GPR appropriation to provide WEDC with $2,400,000 annually, beginning in 2022-23, and require WEDC implement a grant and loan program for energy efficiency and renewable energy generation projects. Specify that awards could be up to 25% of the energy efficiency or renewable energy expenditures on real or personal property located in this state. Direct WEDC to reinvest any loan repayments back into the program.

ALT A4	Change to Base
GPR	$2,400,000

5. Take no action.

B. Reporting Unallocated of Business Development Tax Credit

1. Require WEDC to submit a report to the Joint Committee on Finance no later than January 31 each year identifying the amount of unallocated tax credit carried forward as of December 31 of the previous year.

2. Prohibit unused allocations for business development tax credits from carrying over to be allocated in a future year after December 31, 2021.

3. Maintain current law with respect to the allocation and reporting of business development tax credits.

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