Wisconsin Legislative Council
ACT MEMO

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2023 Wisconsin Act 98 [2023 Assembly Bill 890]	**Fund of Funds Investment Program**

BACKGROUND

The Department of Administration (DOA) administers a fund of funds venture capital investment program. Under the program, DOA contracts with an investment manager to manage investments in venture capital funds, which, in turn, invest in Wisconsin businesses.[1]

2023 WISCONSIN ACT 98

2023 Wisconsin Act 98 modifies the following features of the program: the minimum number of investments in venture capital funds; the investment manager's management fee; a venture capital fund's responsibilities; reinvestment of the proceeds from investments of program capital; and the investment manager's reporting requirements.

Investments in Venture Capital Funds

Under the program, the investment manager must commit the following program capital in at least four venture capital funds:

- A payment of $25 million to the investment manager from DOA in fiscal year 2013-14.
- A payment of $25 million to the investment manager from DOA in fiscal year 2023-24.
- The capital raised by the investment manager from sources other than DOA, which must be at least $5 million.
- At least $300,000 of the investment manager's own capital.

Under the program, the investment manager must commit the $25 million payment from DOA in fiscal year 2023-24 to investments in venture capital funds headquartered in Wisconsin within 24 months after receiving it. Under **Act 98**, the investment manager must commit that capital to at least four such investments.

Management Fee

Under the program, the contact between DOA and the investment manager establishes the manager's compensation, including any management fee.

[1] For a description of the program as enacted, see Legislative Council, 2013 Wisconsin Act 41, Act Memo.

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Under **prior law**, the investment manager could receive an annual management fee for no more than four years, and the fee could not exceed one percent of the total amount of the following program capital:

- The two payments of $25 million from DOA.
- The capital raised by the investment manager from sources other than DOA.

Act 98 removes the four-year limitation on receipt of the management fee, thus allowing the investment manager to receive the fee on an annual basis.

Act 98 also adds the following amount to the total amount on which the one-percent fee is calculated:

- Amounts reinvested (as described below) by the investment manager from the gross proceeds of the investment of the two payments of $25 million from DOA.

Responsibilities of the Venture Capital Funds

Under the program, the investment manager contracts with each venture capital fund that receives program capital. Each contract must impose certain requirements on the venture capital fund. **Act 98** modifies two of those requirements, as follows:

- **Investment in Wisconsin businesses**. Each venture capital fund must make new investments in one or more businesses that are headquartered in Wisconsin and that employ at least 50 percent of their full-time employees, including any subsidiary or other affiliated entity, in Wisconsin. If a business fails to meet those two requirements within three years after the venture capital fund makes the investment, the business must promptly repay the amount of the investment. **Act 98** clarifies that the three-year period is measured from the initial investment by the venture capital fund in that business.
- **Match capital received through the program**. Under **prior law**, for every $1 a venture capital fund received from the manager and invested in a business, the venture capital fund had to, on average, invest $2 in that business from other sources. Under **Act 98**, the venture capital fund must, on average and when measured across all individual businesses receiving capital under the program, at least match any amount it receives from the investment manager with investments in such businesses that the venture capital fund raises from other sources.

Reinvestment of Gross Proceeds from Investments

Act 98 alters the disposition of proceeds from investments made with program capital.

Under **prior law**, the investment manager held in an escrow account its gross proceeds from all investments of capital contributed to the program by DOA in fiscal year 2013-14 (i.e., $25 million). At least annually, the investment manager had to pay the amount in that escrow account to the state for deposit into the general fund. Those two requirements were in effect only until the investment manager had paid a total of $25 million to the state. After that point, the investment manager had to pay 90 percent of its gross proceeds from such investments to the state for deposit into the general fund.

Under **Act 98**, the investment manager must hold in an escrow account, in a bank with its headquarters in Wisconsin, its gross proceeds from all investments of capital contributed to the program by DOA in both fiscal year 2013-14 and fiscal year 2023-24 (i.e., $50 million). Rather than paying the amount in the escrow account to the state for deposit into the general fund, the investment manager must—within 24 months of receiving any proceeds from the investment of capital contributed to the program by DOA—commit 90 percent of the gross proceeds to investments in venture capital funds headquartered in Wisconsin.

Mirroring the required contract between the investment manager and a venture capital fund that receives an investment of program capital, the investment manager must contract with each venture capital fund that receives a commitment of the gross proceeds. Such a contract must include all of the following requirements:

- **Investment in Wisconsin businesses**. Each venture capital fund must make new investments, in an amount equal to the gross proceeds that it receives, in one or more businesses that are headquartered in Wisconsin and that employ at least 50 percent of their full-time employees, including any subsidiary or other affiliated entity, in Wisconsin. If the business fails to meet those two requirements within three years after the venture capital fund makes the initial investment, the business must promptly repay the amount of the investment.
- **Investment in small businesses**. When it first invests the gross proceeds that it receives, each venture capital fund must invest at least half in one or more businesses that employ fewer than 150 full-time employees, including any subsidiary or other affiliated entity.
- **Invest in targeted industries**. Each venture capital fund must invest the gross proceeds that it receives in businesses in the agriculture, information technology, engineered products, advanced manufacturing, medical devices, or medical imaging industry. In addition, the venture capital fund must attempt to ensure that investments are made in businesses that are diverse with respect to geographic location within the state.
- **Match gross proceeds received**. The investment manager must ensure that, when averaged across all venture capital fund recipients, for every $1 of the gross proceeds that is committed, venture capital fund recipients must receive $2 from other sources. Any individual business that receives a commitment of the gross proceeds from the investment manager must receive additional investments made by sources other than the investment manager.
- **Provide reporting information to the investment manager**. Each venture capital fund must provide the information necessary for the investment manager to prepare reports required under the program, described below.
- **Disclose interests in investments**. Each venture capital fund must disclose to the investment manager and to DOA any interests that the venture capital fund or an owner, stockholder, partner, officer, director, member, employee, or agent of the venture capital fund holds in a business in which the venture capital fund invests or intends to invest the gross proceeds that it receives.

Reporting Requirements

Annual and Quarterly Reports of the Investment Manager

Under the program, the investment manager is required to submit an annual report and quarterly reports to DOA regarding investments made with capital provided under the program. These reports include information on the investment manager's internal rate of return, information about each venture capital fund that contracted with the investment manager, and information about each business that received an investment of capital under the program, including information regarding the number of employees employed by the business at certain times.

Act 98 requires that these reports include the same information regarding investments made with the gross proceeds of investments, as described above.

DOA Progress Reports

Prior law required DOA to submit two progress reports to the Joint Committee on Finance, one in 2015 and one in 2018. Each progress report must contain the following:

- A comprehensive assessment of the performance to date of the investment program.
- Any recommendations DOA and the State of Wisconsin Investment Board have for improving the investment program and the specific actions that they intend to take, or propose to be taken, to implement those recommendations.

Act 98 requires DOA to submit a progress report with the same content in 2024.

Effective date: March 2, 2024

For a full history of the bill, visit the Legislature's bill history page.

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