



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 261

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1 to Assembly
Substitute Amendment 1**

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Assembly Substitute Amendment 1 to Senate Bill 261, as amended by Assembly Amendment 1, was adopted by the Assembly on March 11, 2004. The bill was concurred in as amended on that same date. The substitute amendment creates an investment tax credit and a technology commercialization grant and loan program.

Assembly Substitute Amendment 1, as amended by Assembly Amendment 1, differs from the version of the bill as passed by the Senate, as follows:

1. Changes the early stage seed investment credit from 40% to 25% of the claimant's initial investment paid in the taxable year that is invested in a business certified as early stage seed investment. It also limits the aggregate amount of these tax credits that may be claimed per year to \$3.5 million per year for taxable years beginning after December 31, 2004 and before January 1, 2015.
2. Changes the angel investment credit from 20% to 12.5% of the claimant's investment made directly in an angel investment in the taxable year. It also changes the limit on the aggregate amount of these tax credits from \$1.5 million for taxable year 2007 and \$3 million for each succeeding taxable year before January 1, 2015, to \$3 million per taxable year for taxable years beginning after December 31, 2004 and before January 1, 2015.
3. Reduces the general purpose revenue (GPR) appropriation for fiscal year 2004-05 from \$4.5 million to \$2.6 million for the grant and loan programs in the bill. It provides that no grants or loans may be awarded before July 1, 2005. The total amount of grants and loans may not exceed \$2.6 million in each fiscal year beginning with fiscal year 2005-06.

The remainder of this memo describes Assembly Substitute Amendment 1 in its entirety.

Tax Credits

The following two types of investment credits are created in the substitute amendment: the early stage seed investment credit and the angel investment credit. The ***early stage seed investment credit*** is provided under the individual and corporate income and franchise taxes. The credit is equal to 25% of the claimant's initial investment paid in the taxable year to a fund manager that the manager invests in a business certified as an early stage seed investment by the Department of Commerce (DOC). The maximum amount of credits that may be claimed for all taxable years combined is \$35 million. The credit would begin for taxable years beginning after January 1, 2005.

Partnerships, limited liability companies (LLC), and tax option corporations could not claim the credits, but eligibility for, and the amount of, the credit would be based on each entity's equity investment that is attributable to its business operations. A partnership, LLC, or tax option corporation would be required to compute the amount of the credit each of its partners, members, or shareholders could claim and provide that information to them. Partners, members of LLCs, and shareholders of tax option corporations would claim the credit in proportion to their ownership interest.

The second type of tax credit is the ***angel investment credit***. An angel investment is defined as a purchase of an equity interest or any other expenditure, as determined by rule by the DOC, that is made by any of the following:

1. An individual who reviews new businesses or proposed new businesses for potential investment of the individual's money.
2. A network of individuals who satisfy this provision.

The angel investment credit is a credit under the individual income tax. A claimant may claim a credit against the income tax up to the amount of those taxes, in each taxable year for two years, beginning with the taxable year in which the claimant's individual investment is made, an amount equal to 12.5% of the claimant's bona fide angel investment made directly in an angel investment in the taxable year. The maximum amount of the credits that may be claimed for angel investments for all taxable years combined is \$30 million. The maximum amount of a claimant's investment that may be used as the basis for this credit is \$500,000 for each investment made directly in a business certified as an angel investment by the DOC. For nonresidents, if an equity investment is held by the claimant for less than one year, the claimant would be required to pay to the Department of Revenue (DOR), in a manner determined by the DOR, the amount of the credit received by the claimant that was related to the investment.

DOC Certification

The DOC is required to implement a program to certify businesses for both early stage seed business investment program and the angel investment program. To be certified as an angel investment, a business desiring certification must submit an application to the department in each taxable year for which the business desires certification. The business would have to satisfy all of the following conditions in order to be certified:

1. The business has headquarters in this state.

2. At least 51% of the employees of the business are employed in Wisconsin.
3. It is engaged in, or has committed to engage in, manufacturing, agriculture, or processing or assembling products and conducting research and development or developing a new product or business process.
4. It is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction.
5. It has less than 100 employees.
6. It has been in operation in Wisconsin for not more than seven consecutive years.
7. It has not received more than \$1 million in investments that have qualified for tax credits under s. 71.07 (5) (d), Stats.

The DOC would also be required to implement a program to certify investment fund managers for early stage seed investment tax credits. An investment fund manager desiring certification must submit an application to the DOC. In determining whether to certify an investment fund manager, the department shall consider the investment fund manager's experience in managing venture capital funds, the past performance of investment funds managed by the applicant, the expected level of investment in the investment fund to be managed by the applicant, and any other relevant factors. The department may certify only investment fund managers that commit to consider placing investments in businesses certified by the DOC's angel investments.

The DOC is required, in consultation with the DOR, to promulgate the following administrative rules to administer the tax credits:

1. To further define a "bona fide angel investment."
2. To limit the aggregate amount of angel investment tax credits that may be claimed for investments in businesses certified as angel investments at \$3 million per taxable year for taxable years beginning after December 31, 2004 and before January 1, 2015.
3. To limit the aggregate amount of tax credits for early stage seed investment credits that may be claimed for investments paid to fund managers at \$3.5 million per taxable year for taxable years beginning after December 31, 2004 and before January 1, 2015.
4. To establish a method for ensuring that the limit on tax credits specified for early stage seed investment credits is not exceeded.

The rules may not permit the DOC or the DOR to assign a dollar amount of investments qualifying for the tax credits that a particular business may subsequently raise.

Technology Commercialization Grant and Loan Program

The substitute amendment creates a technology commercialization grant and loan program in the DOC. Under this program, the types of authorized grants and loans are as follows:

1. Early stage planning grants and loans. These loans would fund professional services relating to completing an application to be submitted to the federal government for the purpose for obtaining early stage research and development funding or funding professional services to accomplish specific tasks as a condition of receiving early stage financing from third parties that is necessary for business development.
2. Matching grants and loans. This funding would be available for applicants that have received or been notified that they will receive a grant from the federal government for funding professional services related to developing a proposed technologically innovative product, process, or service.
3. Bridge grants and loans. This program would provide grants or loans to fund professional services necessary to maintain a project research and management team and fund basic operations until any pending third party financing request or federal grant application is approved or denied.
4. Venture capital grants and loans. The venture capital grants and loans would assist in enhancing the applicant's ability to obtain early stage financing from third parties.
5. Entrepreneurial and technology transfer center grants. These grants would support entrepreneurial and a technology transfer center that does all of the following:
 - a. Serves multiple regions of the state.
 - b. Provides assistance, other than financial assistance, to entrepreneurs to facilitate business development.
 - c. Reviews and analyzes entrepreneurial business plans and offers advice concerning the improvement of the plans.
 - d. Provides advice to entrepreneurs concerning patent, trademark, and copyright issues.
 - e. Provides appropriate referral services to entrepreneurs.

Early stage planning grants and loans may not exceed \$15,000. The DOC would be required to consider all of the following factors in addition to any other information the DOC considers relevant:

1. The amount of economic impact the applicant, if successful, will have in Wisconsin.
2. The quality of any businesses assisting the applicant.
3. The level of need demonstrated by the applicant.
4. The applicant's record of obtaining early stage financing in the past.

Matching grants and loans may not exceed 20% of the project costs or \$250,000, whichever is less. The DOC would be required to consider all of the following criteria in determining the amount of a matching grant or loan, in addition to any other information it considers relevant:

1. The viability of the applicant's business.
2. The likelihood that the applicant will successfully commercialize technology.
3. The applicant's management plan and the management team.
4. The amount of economic impact the applicant, if successful, will have in the state.
5. The applicant's record of obtaining early stage financing in the past.

Bridge grants and loans may not exceed 75% of the project costs or \$100,000, whichever is less. Venture capital grants and loans may not exceed 50% of the project costs or \$250,000, whichever is less. The total amount of grants under this provision may not exceed \$500,000 in any fiscal year.

Early stage planning, matching, bridge, and venture capital grants and loans may be made to applicants only if all of the following criteria apply:

1. The applicant:
 - a. Is a small business, or individual entrepreneur who intends to form a small business, that is completing a grant application to be submitted to the federal government for the purpose of obtaining early stage research and development funding, except that if the application is for a grant for a matching grant and loan, the requirement that the applicant be completing a federal grant application does not apply; or
 - b. Is an individual who is starting or developing a business which has significant growth potential, as evidenced by the potential to attract and receive early stage financing from third parties, but who needs assistance with a specific facet of, or starting or developing the business.
2. If the applicant seeks a grant or loan under the early stage planning grant and loans program, the applicant has sufficient funding from sources other than the state to finance at least 25% of the project costs.
3. The applicant has or will have a business location in this state.
4. If the application relates to a product, the product will be manufactured substantially in this state.
5. If the application relates to a service, the principal place of business from which the service will be sold will be located in this state.
6. All grant moneys will be spent in this state.

As part of the grant and loan program, the DOC would be required to develop a biennial plan for awarding grants and loans and submit the plan to the Governor and to the Chief Clerk of each house of the Legislature for distribution to the appropriate standing committees. The report would have to be prepared no later than December 1 of each year. The DOC would also be required to promulgate rules to administer the technology commercialization grant and loan program which establish application, reporting, auditing, and monitoring requirements.

The substitute amendment provides \$2.6 million GPR for the grant and loan program in fiscal year 2004-05. The substitute amendment provides that no grants or loans may be awarded before July 1, 2005. The total amount of grants and loans may not exceed \$2.6 million in each fiscal year, beginning with fiscal year 2005-06. The DOC appropriation is increased \$100,000 for fiscal year 2005-06 and \$200,000 for fiscal year 2006-07 to increase the authorized full-time equivalent positions for the DOC by 2.0 GPR positions to administer the grant and loan program and to prepare educational publications and instruction to promote the program.

Legislative History

The Senate adopted Senate Substitute Amendment 2 to 2003 Senate Bill 261, as amended by Senate Substitute Amendments 1, 2, and 3, and passed the bill as amended on November 13, 2003 by a vote of Ayes, 24; Noes, 8. The Assembly adopted Assembly Substitute Amendment 1 as amended by Assembly Amendment 1 on March 11, 2004, and concurred in the bill, as amended, by a vote of Ayes, 93; Noes, 6.

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