



1997 SENATE BILL 333

October 29, 1997 - Introduced by Senators MOORE, PLACHE, DARLING, FITZGERALD, BRESKE, GROBSCHMIDT, WIRCH, HUELSMAN, C. POTTER, GEORGE, ROESSLER and RUDE, cosponsored by Representatives WARD, HOVEN, R. POTTER, GREEN, PLALE, KEDZIE, LAZICH, SCHAFFER, NOTESTEIN, GUNDERSON, LADWIG, GOETSCH, PLOUFF, PORTER, LORGE, HASENOHRL, FREESE, F. LASEE, BRANDEMUEHL and STASKUNAS. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT to create** 20.143 (1) (hm), 76.635 and subchapter II of chapter 560
2 [precedes 560.30] of the statutes; **relating to:** creating a certified capital
3 company program for companies that make certain types of investments,
4 providing tax credits to persons who make certain investments in certified
5 capital corporations, granting rule-making authority and making an
6 appropriation.

Analysis by the Legislative Reference Bureau

This bill allows insurers that pay a fee based on their gross premiums, rather than an income tax or franchise tax, to claim as a credit against their license fees their investments in certified capital companies. The insurers that are eligible for the credit are life insurers, out-of-state accident and health insurers, mortgage guarantee insurers, out-of-state fire insurers, out-of-state ocean marine insurers and out-of-state companies that sell other kinds of property and casualty insurance. Under the bill, a "certified capital company" is subject to a range of requirements designed to ensure that the company is engaged in providing venture capital financing to certain types of qualified businesses. In order for an insurer to be eligible for the credit, the insurer's investment in a certified capital company must be made in a lump sum, but only 10% of the amount of the investment may be claimed as a credit in any year. Credits that are not used to offset the license fees may be carried forward. Unused credits may also be sold to another insurer that is subject

to the premiums tax, if the seller notifies the department of revenue of the sale and provides the department a copy of the sale documents.

Under the bill, certain types of entities may apply to the department of commerce for certification as a certified capital company. The department of commerce may certify an applicant as a certified capital company if, among other things, the applicant is engaged in investing cash in qualified businesses, has a net worth of at least \$500,000, meets certain requirements regarding experience in the venture capital industry and pays a \$7,500 application fee. In order to remain certified as a certified capital company, the company must invest a specified percentage of its capital in certain types of small businesses, called "qualified businesses". The certified capital company have must placed 30% of its capital in qualified businesses within 3 years and 50% of its capital in qualified businesses within 5 years. The bill requires the department of commerce to promulgate rules governing the extent to which short-term investments may be counted toward these percentage requirements, as well as the extent to which the reinvestment of the proceeds of an investment in a qualified business may be counted. The remaining capital of a certified capital company may generally be invested as the company sees fit, except that it may not invest in an insurer or an affiliate of an insurer and except that no more than 15% of the company's capital may be placed in any one qualified business.

In general, a qualified business must be headquartered and have its principal business operations in Wisconsin. A qualified business must be in need of venture capital and must be unable to obtain conventional financing. The qualified business must have no more than 300 employees (at least 75% of whom must be employed in Wisconsin), must have had not more than \$6,000,000 in average annual net income over its most recent 2 fiscal years, and must have a net worth of no more than \$18,000,000. Generally, a business is not a qualified business if it is engaged in banking, lending, the development of real estate for resale, or professional services provided by accountants, lawyers or physicians. Even if a business does not meet these requirements, it may be considered a qualified business if the department of commerce determines that an investment in the business will further state economic development and the department issues a written opinion to that effect.

The bill subjects certified capital companies to a variety of reporting requirements and requires them to pay an annual fee of \$5,000. The bill also limits the ability of certified capital companies to make distributions. A certified capital company may make a distribution only if the distribution will not adversely affect the ability of the certified capital company to place 100% of its initial capital in qualified businesses, if the distribution is used to pay debt or certain management fees or if the distribution is to pay the increased taxes of an investor resulting from the investor's investment in the certified capital company.

The bill requires the department of commerce to conduct an annual review of a certified capital company to determine whether the company is in compliance with the bill's provisions. The bill contains provisions for disqualifying a certified capital company's investment pool or decertifying the certified capital company, if the company violates certain of the bill's requirements. If the certified capital company

is decertified or the investment pool is disqualified, the insurance company tax credits claimed for the investment in that certified capital company or pool are subject to recapture or forfeiture.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 20.143 (1) (hm) of the statutes is created to read:
2 20.143 (1) (hm) *Certified capital companies.* All moneys received under subch.
3 II of ch. 560 for the cost of administering subch. II of ch. 560.
- 4 **SECTION 2.** 76.635 of the statutes is created to read:
5 **76.635 Credit. (1) DEFINITIONS.** In this section:
6 (a) “Certified capital company” has the meaning given in s. 560.30 (2).
7 (b) “Certified capital investment” has the meaning given in s. 560.30 (4).
8 (c) “Investment date” has the meaning given in s. 560.30 (6).
9 (d) “Investment pool” has the meaning given in s. 560.30 (7).
10 (e) “Qualified investment” has the meaning given in s. 560.30 (11).
- 11 **(2) CREDIT.** An insurer that makes a certified capital investment may credit
12 against the fees due under s. 76.60, 76.63, 76.65 or 76.66, for 10 years beginning with
13 the year of the investment, either 10% of that investment or the amount by which
14 the sum of the insurer’s certified capital investments and the insurer’s qualified
15 investments exceeds the insurer’s qualified investments in the taxable year before
16 the insurer first claimed the credit under this section, whichever is less.
- 17 **(3) CARRY-FORWARD.** If the credit under sub. (2) is not entirely offset against the
18 fees under s. 76.60, 76.63, 76.65 or 76.66 otherwise due, the unused balance may be
19 carried forward and credited against those fees in the following years to the extent

1 that it is not offset by those fees otherwise due in all the years between the year in
2 which the investment was made and the year in which the carry-forward credit is
3 claimed.

4 **(4) RECAPTURE.** (a) If a certified capital company is decertified, or an
5 investment pool is disqualified, under s. 560.37 before the certified capital company
6 fulfills the investment requirement under s. 560.34 (1) (a) 1. with respect to the
7 investment pool; any insurer that has received a credit under this section with
8 respect to that investment pool shall repay that credit to the department of revenue,
9 for deposit in the general fund, and may not claim more credit in respect to that
10 investment pool.

11 (b) If a certified capital company fulfills the investment requirement under s.
12 560.34 (1) (a) 1. with respect to an investment pool but the certified capital company
13 is decertified, or an investment pool is disqualified, under s. 560.37 before the
14 certified capital company fulfills the investment requirement under s. 560.34 (1) (a)
15 2. for that investment pool, any insurer that has received a credit under this section
16 with respect to that investment pool shall repay all credits that were claimed for
17 taxable years after the taxable year that includes the 3rd anniversary of the
18 investment date of the investment pool and may claim no more credits for taxable
19 years after the taxable year that includes the 3rd anniversary of the investment date
20 of the investment pool.

21 **(5) SALE OF CREDIT.** An insurer may sell a credit under this section to another
22 insurer that is subject to taxation under this subchapter if the insurer notifies the
23 department of revenue of the sale and includes with that notification a copy of the
24 transfer documents.

1 **SECTION 3.** Subchapter II of chapter 560 [precedes 560.30] of the statutes is
2 created to read:

3 **CHAPTER 560**

4 SUBCHAPTER II

5 CERTIFIED CAPITAL COMPANIES

6 **560.30 Definitions.** In this subchapter:

7 **(1)** “Affiliate” means, with respect to a certified capital company or a certified
8 investor, any of the following:

9 (a) A person who, directly or indirectly, owns, controls, or holds power to vote,
10 10% or more of the outstanding voting securities or other voting ownership interests
11 of the certified capital company or certified investor.

12 (b) A person, 10% of whose outstanding voting securities or other voting
13 ownership interests are directly or indirectly owned, controlled or held with power
14 to vote by the certified capital company or certified investor.

15 (c) A person directly or indirectly controlling, controlled by, or under common
16 control with, the certified capital company or certified investor.

17 (d) A partnership in which the certified capital company or certified investor
18 is a general partner.

19 (e) A person who is an officer, director or agent of the certified capital company
20 or certified investor, or is an immediate family member of such an officer, director or
21 agent.

22 **(2)** “Certified capital company” means a person certified by the department
23 under s. 560.31.

24 **(3)** “Certified capital company tax credit” means the tax credit under s. 76.635.

1 (4) “Certified capital investment” means an investment in a certified capital
2 company that is certified under s. 560.32 (2) and that fully funds either the investor’s
3 equity interest in a certified capital company, a qualified debt instrument that a
4 certified capital company issues, or both.

5 (5) “Certified investor” means a person who makes a certified capital
6 investment.

7 (6) “Investment date” means, with respect to each investment pool, the date
8 on which the last certified capital that is part of that investment pool was invested
9 in the certified capital company.

10 (7) “Investment pool” means the aggregate of all investments of certified
11 capital in a certified capital company that are made as part of the same transaction,
12 except that investments received more than 30 days apart may not be considered
13 part of the same investment pool.

14 (8) “Qualified business” means a business which is a qualified business under
15 s. 560.33.

16 (9) “Qualified debt instrument” means a debt instrument that a certified
17 capital company issues at par value or at a premium; that has an original maturity
18 date of at least 5 years from the date on which it was issued; that has a repayment
19 schedule that is no faster than a level principal amortization and, until the certified
20 capital company may make distributions other than qualified distributions, the
21 interest, distribution or payment features of which are not related to the certified
22 capital company’s profitability or the performance of its investment portfolio.

23 (10) “Qualified distribution” means a distribution or payment by a certified
24 capital company to its equity holders for any of the following:

1 (a) The costs of forming, syndicating, managing or operating the certified
2 capital company.

3 (b) An annual management fee that does not exceed 2.5% of the certified capital
4 company's total certified capital.

5 (c) Reasonable and necessary fees paid for professional services related to the
6 operation of the certified capital company.

7 (d) A projected increase in federal or state taxes, including penalties and
8 interest on those taxes, of the equity owners of the certified capital company if those
9 amounts are related to the certified capital company's ownership, management or
10 operation.

11 **(11)** "Qualified investment" means an investment of cash in a qualified
12 business for the purchase of any of the following:

13 (a) An equity security of the qualified business.

14 (b) A debt security of the qualified business if the debt has a maturity of at least
15 5 years and if one of the following conditions is met:

16 1. The debt is unsecured.

17 2. The debt is convertible into equity securities or equity participation
18 instruments such as options or warrants.

19 **560.31 Certification of certified capital companies. (1) APPLICATION.** The
20 department shall promulgate rules establishing procedures under which a person
21 may apply to become a certified capital company. The department shall grant or deny
22 an application for certification under this section within 30 days of the date of
23 application. If the department denies certification, the department shall include
24 with the denial a detailed description of the grounds for the refusal, including
25 suggestions for removal of those grounds.

1 **(2) REQUIREMENTS FOR CERTIFICATION.** The department shall certify a person as
2 a certified capital company if the department determines that all of the following
3 conditions have been met:

4 (a) The person is a partnership, corporation, trust or limited liability company,
5 whether organized for profit or not for profit, that has as its primary business activity
6 the investment of cash in qualified businesses.

7 (b) The person has a net worth, at the time of application, of at least \$500,000
8 and has at least \$500,000 in cash, cash equivalents and marketable securities.

9 (c) The directors, officers, general partners, trustees, managers or members or
10 persons having a similar function are familiar with the requirements of this
11 subchapter.

12 (d) At least 2 officers, directors, general partners, trustees, managers or
13 members each have at least 2 years of experience in the venture capital industry.

14 (e) The person has included, in any offering material involving the sale of
15 securities, the statement required under s. 560.32 (1).

16 (f) The person has paid a nonrefundable application fee of \$7,500.

17 **560.32 Investments in certified capital companies. (1) REQUIRED**
18 **DISCLOSURES IN SECURITIES OFFERINGS.** Any offering material involving the sale of
19 securities of a certified capital company shall include all of the following statements:

20 (a) "By authorizing the formation of a certified capital company, the state does
21 not necessarily endorse the quality of management or the potential for earnings of
22 the company and is not liable for damages or losses to a certified investor in the
23 company. Use of the word "certified" in an offering is not a recommendation or
24 endorsement of the investment by the State of Wisconsin Department of Commerce."

1 (b) "Investments in a prospective certified capital company prior to the time the
2 company is certified are not eligible for a certified capital company investment credit
3 under section 76.635 of the Wisconsin Statutes. Investments in a certified capital
4 company are not eligible for a certified capital company investment credit under
5 section 76.635 of the Wisconsin Statutes unless the proposed investment is certified
6 under section 560.32 (2) of the Wisconsin Statutes before the investment is made. In
7 the event that certain statutory provisions are violated, the state may require
8 forfeiture of unused certified capital company investment credits and repayment of
9 used certified capital company investment credits."

10 **(2) CERTIFICATION OF CERTIFIED CAPITAL INVESTMENTS.** (a) A person may apply
11 to make a certified capital investment in a certified capital company by providing
12 notice under this paragraph to the department on a form specified by the
13 department. The notice shall include the name of the person, the name of the
14 certified capital company, the amount of the investment and any other information
15 specified by the department. The notice shall also include an undertaking by the
16 person to make the investment within 5 days after the department notifies the
17 person that the investment has been certified.

18 (b) The department may certify an investment under this subsection only if,
19 after the certification, the department will not have certified a total of more than
20 \$50,000,000 in investments under this subsection.

21 (c) 1. Except as provided in subd. 2., the department may not certify an
22 investment under this subsection if, after the certification, the investor, together
23 with all affiliates of the investor, would have made more than \$10,000,000 in certified
24 capital investments in that year.

1 2. If, by November 1 of a year, the department has certified less than
2 \$50,000,000 in certified capital investments, the limitation under subd. 1. does not
3 apply for the remainder of that year.

4 **(3) LIMITATION ON CERTIFIED INVESTOR INVESTMENT.** A certified investor may not,
5 individually, or with or through one or more affiliates, own 10% of more of the equity
6 securities in, be a general partner or manager of, or otherwise control the
7 investments of the certified capital company. This subsection does not preclude a
8 certified investor from exercising its legal rights and remedies, including interim
9 management of a certified capital company, in the event that a certified capital
10 company is in default of its statutory or contractual obligations to the certified
11 investor.

12 **560.33 Qualified businesses. (1) QUALIFICATIONS.** A business is a qualified
13 business if the department issues a written opinion under sub. (2) that the business
14 is a qualified business, if the department fails to provide a certified capital company
15 with a written opinion under sub. (2) within 10 working days after a request for an
16 opinion is received by the department, or if all of the following requirements are met
17 as of the time that a certified capital company, or any affiliate of the certified capital
18 company, makes its first investment in the business:

19 (a) The business is headquartered in this state and its principal business
20 operations are located in this state.

21 (am) The business is in need of venture capital and is unable to obtain
22 conventional financing, as defined by the department by rule.

23 (b) The business has no more than 300 employes, at least 75% of whom are
24 employed in this state.

1 (c) During its 2 most recent fiscal years, the business had, together with all of
2 its consolidated affiliates, an average annual net income, after federal income taxes
3 and excluding any carry-over losses, of not more than \$6,000,000, as determined in
4 accordance with generally accepted accounting principles.

5 (d) The business has, together with its consolidated affiliates, a net worth that
6 is not in excess of \$18,000,000.

7 (e) The business is not predominantly engaged in professional services
8 provided by accountants, lawyers or physicians.

9 (f) The business is not engaged in the development of real estate for resale.

10 (g) The business is not engaged in banking or lending and does not make any
11 loans to, or investments in, certified capital corporations.

12 **(2) DEPARTMENT OPINIONS AND EXCEPTIONS.** A certified capital company may,
13 prior to making an investment in a specific business, request a written opinion from
14 the department that a business in which it proposes to invest is a qualified business.
15 If the department determines that the business meets the requirements under sub.
16 (1), the department shall issue a written opinion stating that the business is a
17 qualified business. If the department determines that the business does not meet
18 all of the requirements under sub. (1), the department may nonetheless issue a
19 written opinion stating that the business is a qualified business if the department
20 determines that the proposed investment in the business will further state economic
21 development. Upon receiving a request, the department shall, within 10 working
22 days, determine whether or not the business is a qualified business and provide the
23 certified capital company with a written opinion stating its determination and
24 providing an explanation of the reasons for its determination. If the department fails
25 to provide the certified capital company with a written opinion within 10 working

1 day after receiving a request for an opinion under this subsection with respect to a
2 proposed investment, the business in which the certified capital company proposes
3 to invest is a qualified business.

4 **560.34 Operation of certified capital companies. (1) QUALIFIED**
5 **INVESTMENT REQUIREMENTS.** (a) In order for a certified capital company to prevent
6 disqualification of one of its investment pools under s. 560.37, the certified capital
7 company shall ensure that each of its investment pools makes qualified investments
8 according to the following schedule:

9 1. Within 3 years after the investment date for a particular investment pool,
10 at least 30% of the investment pool shall be placed in qualified investments.

11 2. Within 5 years after the investment date for a particular investment pool,
12 at least 50% of the investment pool shall be placed in qualified investments.

13 (b) The department shall promulgate rules governing the extent to which a
14 reinvestment of proceeds from a qualified investment in a qualified business may be
15 counted toward the percentage requirements under par. (a) and s. 560.36 (3). These
16 rules may provide that reinvested proceeds from short-term investments shall be
17 only partially counted toward the percentage requirements under par. (a) and s.
18 560.36 (3). The rules may also provide that proceeds from an investment in a
19 qualified business that are reinvested in that qualified business, or an affiliate of
20 that qualified business, shall be only partially counted toward the percentage
21 requirements under par. (a) and s. 560.36 (3).

22 **(2) NONQUALIFIED INVESTMENTS.** All certified capital investments in a certified
23 capital company that are not invested in qualified investments may be held or
24 invested by the certified capital company as it considers appropriate, except that a

1 certified capital company may not invest certified capital investments in an
2 insurance company or in an affiliate of an insurance company.

3 **(3) DIVERSIFICATION REQUIREMENT.** A certified capital company may not make
4 a qualified investment in a person if, at the time of the investment, more than 15%
5 of the total certified capital of the certified capital company would be invested in that
6 person and affiliates of that person.

7 **(4) RESTRICTIONS ON MANAGEMENT.** No certified capital company may be
8 managed or controlled by, or have a general partner that is, an insurance company
9 or an affiliate of an insurance company.

10 **560.35 Reporting requirements and fees. (1) RECEIPTS OF CERTIFIED**
11 **CAPITAL.** As soon as practicable after the receipt of a certified capital investment, a
12 certified capital company shall report all of the following to the department:

13 (a) The name of the certified investor from which the certified capital was
14 received, including the certified investor's tax identification number.

15 (b) The amount of the certified capital investment.

16 (c) The date on which the certified capital investment was received by the
17 certified capital company.

18 (d) The investment date for the investment pool of which the certified capital
19 will be a part.

20 **(2) ANNUAL REPORTS.** On or before January 31 annually, a certified capital
21 company shall report all of the following to the department:

22 (a) The amount of the certified capital company's certified capital at the end of
23 the preceding year.

24 (b) Whether the certified capital company has invested more than 15% of its
25 total certified capital in any one person.

1 (c) All qualified investments that the certified capital company has made
2 during the previous calendar year and the investment pool from which each qualified
3 investment was made.

4 **(3) FINANCIAL STATEMENTS.** Within 90 days of the end of the certified capital
5 company's fiscal year, the certified capital company shall provide to the department
6 a copy of its annual audited financial statements, including the opinion of an
7 independent certified public accountant. The audit shall address the methods of
8 operation and conduct of the business of the certified capital to determine whether
9 the certified capital company is complying with this subchapter and the rules
10 promulgated under this subchapter, including whether certified capital has been
11 invested in the manner required under s. 560.34. The financial statements provided
12 under this subsection shall be segregated by investment pool and shall be separately
13 audited on the basis to allow the department to determine whether the certified
14 capital company is in compliance with s. 560.34 (1).

15 **(4) FEES.** On or before January 31 annually, a certified capital company shall
16 pay a nonrefundable certification fee of \$5,000 to the department, unless January 31
17 falls within 6 months of the date on which the certified capital company was certified
18 under s. 560.31.

19 **(5) EXEMPTION FROM RIGHTS OF INSPECTION AND COPYING.** If the department
20 determines that a document submitted by a certified capital company under this
21 section contains a trade secret, as defined in s. 134.90 (1) (c) or a business secret, that
22 document is not subject to the right of inspection and copying under s. 19.35.

23 **560.36 Distributions.** A certified capital company may make a distribution
24 only if one of the following conditions is met:

25 **(1) QUALIFIED DISTRIBUTION.** The distribution is a qualified distribution.

1 **(2) WRITTEN DETERMINATION.** The department made a written determination
2 that the distribution may be made without adversely affecting the ability of the
3 certified capital company to place, in qualified investments, an amount equal to
4 100% of the certified capital in the investment pool from which the distribution is to
5 be made.

6 **(3) PLACEMENT OF 100% OF INVESTMENTS IN QUALIFIED INVESTMENTS.** The certified
7 capital company has placed in qualified investments an amount equal to 100% of the
8 certified capital investments in the investment pool.

9 **(4) DEBT PAYMENTS.** The distribution is a payment of principal or interest owed
10 to a debt holder of a certified capital company, even if the debt holder is also a holder
11 of equity and even if the indebtedness is a certified capital investment.

12 **560.37 Compliance reviews; decertification; disqualification. (1)**
13 **ANNUAL COMPLIANCE REVIEW.** The department shall conduct an annual review of each
14 certified capital company to determine if the certified capital company is complying
15 with the requirements of this subchapter, to advise the certified capital company
16 regarding the status of its investments as qualified investments and to ensure that
17 no investment has been made in violation of this subchapter. The cost of the annual
18 review shall be paid by each certified capital company according to a reasonable fee
19 schedule adopted by the department.

20 **(2) DISQUALIFICATION OF AN INVESTMENT POOL.** Any material violation of s. 560.34
21 (1) is a ground for disqualification of the noncomplying investment pool. If the
22 department of commerce determines that the certified capital company is not in
23 compliance with s. 560.34 (1) with respect to an investment pool, it shall send a
24 written notice to the certified capital company and the department of revenue stating
25 that the investment pool has been disqualified.

1 **(3) DECERTIFICATION OF A CERTIFIED CAPITAL COMPANY.** Any material violation of
2 s. 560.34 (2), (3) or (4) or 560.35 (1), (2), (3) or (4) is a ground for decertification of the
3 noncomplying certified capital company. If the department determines that the
4 certified capital company is not in compliance with s. 560.34 (2), (3) or (4) or 560.35
5 (1), (2), (3) or (4), the department shall send a written notice to the certified capital
6 company that the certified capital company may be subject to decertification in 120
7 days from the date on which the notice was mailed, unless the certified capital
8 company brings itself into full compliance with ss. 560.34 (2), (3) or (4) and 560.35
9 (1), (2), (3) and (4). If at the end of the 120-day period the certified capital company
10 is not in compliance with ss. 560.34 (2), (3) or (4) and 560.35 (1), (2), (3) and (4), the
11 department of commerce shall send a notice to the certified capital company and the
12 department of revenue stating that the certified capital company has been
13 decertified.

14 **(4) EFFECT OF DECERTIFICATION.** Decertification of a certified capital company
15 or an investment pool has the effects specified in s. 76.635 (4).

16 **(5) NOTICES TO CERTIFIED INVESTORS.** The department shall notify a certified
17 investor when the certified capital company tax credit arising from a certified
18 investment is no longer subject to recapture and forfeiture under s. 76.635 (4).

19 **SECTION 4. Nonstatutory provisions.**

20 **(1) RULE MAKING.** The department of commerce shall submit in proposed form
21 the rules required under sections 560.31 (1) and 560.34 of the statutes, as created by
22 this act, to the legislative council staff under section 227.15 (1) of the statutes no later
23 than the first day of the 4th month after the effective date of this subsection.

24 **SECTION 5. Initial applicability.**

1 (1) The treatment of section 76.635 of the statutes first applies to taxable years
2 beginning on January 1 of the year in which this subsection takes effect, except that
3 if this subsection takes effect on or after August 1 the treatment of that section first
4 applies to taxable years beginning on January 1 of the year following the year in
5 which this subsection takes effect.

6 **SECTION 6. Effective date.**

7 (1) This act takes effect on the first day of the 7th month beginning after
8 publication.

9 **(END)**