

State of Wisconsin



2009 Assembly Bill 532

Date of enactment: **May 10, 2010**
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2009 WISCONSIN ACT 268

AN ACT *to amend* 20.143 (1) (c); and *to create* 560.047 of the statutes; **relating to:** awarding a grant to Wisconsin Business Development Finance Corporation to establish a statewide capital access program and making an appropriation.

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

SECTION 1. 20.143 (1) (c) of the statutes, as affected by 2009 Wisconsin Acts 2 and 28, is amended to read:

20.143 (1) (c) *Wisconsin development fund; grants, loans, reimbursements, and assistance.* Biennially, the amounts in the schedule for grants under s. ss. 560.145 and 560.047; for grants and loans under s. 560.275 (2) and subch. V of ch. 560; for reimbursements under s. 560.167; for the costs specified in s. 560.607; for the loan under [1999 Wisconsin Act 9](#), section 9110 (4); and for the grants under [1995 Wisconsin Act 27](#), section 9116 (7gg), [1995 Wisconsin Act 119](#), section 2 (1), [1997 Wisconsin Act 27](#), section 9110 (6g), [2003 Wisconsin Act 33](#), section 9109 (1d) and (2q), [2007 Wisconsin Act 20](#), section 9108 (4u), (6c), (7c), (7f), (8c), (8i), (9i), and (10q), [2009 Wisconsin Act 2](#), section 9110 (2) and (3), and [2009 Wisconsin Act 28](#), section 9110 (17q).

SECTION 2. 560.047 of the statutes is created to read:

560.047 Capital access program. (1) DEFINITIONS.

In this section:

(a) "Administrator" means Wisconsin Business Development Finance Corporation or an entity that is under contract with Wisconsin Business Development

Finance Corporation to administer all or any portion of the program.

(b) "Bank" means either of the following:

1. A financial institution regulated by this state or by the United States that is in good standing with regulatory authorities.

2. An entity that has an existing portfolio of revolving loans to small businesses and that has as its primary purpose and mission the promotion of community development primarily in a limited geographic area of this state that is experiencing economic distress.

(c) "Borrower" means any organization or enterprise, operated for profit or not for profit, that fulfills all of the following conditions:

1. Is authorized to do business in this state.

2. Does not sell alcohol beverages, as defined in s. 125.02 (1).

3. Is not an executive officer, director, or principal shareholder of a participating bank, a member of the immediate family of an executive officer, director, or principal shareholder of a participating bank, or an organization or enterprise controlled by any of those individuals.

(d) "Eligible project" means any business purpose in this state except any of the following:

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. Construction or purchase of residential housing.
2. Passive real estate investment.

(e) "Participating bank" means a bank that enters into an agreement with the administrator and makes loans under the program.

(f) "Program" means the capital access program under this section.

(g) "Reserve funds" means premiums contributed under sub. (2) (d) and interest accrued on the premiums.

(2) DEPARTMENT GRANTS AND PROGRAM REQUIREMENTS. The department shall award grants totaling \$350,000 from the appropriation under s. 20.143 (1) (c) to Wisconsin Business Development Finance Corporation to fund a program if all of the following apply:

(a) The administrator enters into written agreements with banks desiring to participate in the program that specify the rights and obligations of the administrator and a participating bank under the program.

(b) The administrator develops a standard agreement form for use with banks desiring to participate in the program and any other standard forms necessary for use in the program.

(c) Under the program, a participating bank makes loans to borrowers for eligible projects for which financing might not otherwise be available due to the borrowers' lack of adequate collateral, net worth, or credit history.

(d) Whenever a participating bank makes a loan under the program, the borrower and the participating bank each contribute a premium in an amount determined by the participating bank, but not less than 1.5 percent nor more than 3.5 percent of the principal amount of the loan or the principal amount of the loan to be covered under the program. The administrator contributes a premium in an amount not less than 100 percent nor more than 150 percent of the total combined premium paid by the borrower and the participating bank and deposits all of the premiums into an account at the participating bank that contains the premiums, and interest accrued on those premiums, and that may also contain premiums and interest under a capital access program administered by Milwaukee Economic Development Corporation, from all of the loans made under the program by that participating bank.

(e) Reserve funds are owned and controlled by the administrator but reserved for the use of the participating bank that made the loans represented by the reserve funds.

(f) A participating bank may enroll a loan in the program only if the administrator approves the enrollment of the loan after reviewing an application submitted by the bank.

(g) A refinanced prior loan to a borrower for an eligible project may not be enrolled in the program except to the extent of any additional funds loaned to the borrower.

(h) Reserve funds held by a participating bank may not be withdrawn for use by the participating bank except in case of a loss on a loan that is enrolled in the program.

(i) In case of a loss on a loan that is enrolled in the program, the participating bank submits a claim to the administrator. The amount of the claim, up to the total amount of reserve funds held by the bank, may not exceed the amount of the loan's principal covered under the program and actually charged off by the participating bank, plus accrued interest and verifiable out-of-pocket collection expenses.

(j) The administrator is subrogated to the rights of a participating bank to recover against a borrower, including the right to enforce a security interest in collateral.

(k) Each participating bank agrees to reimburse the administrator for any funds, less out-of-pocket expenses, paid to the bank from its reserve funds that are later recovered by the bank.

(L) Each participating bank files a report with the administrator, at times requested by the administrator, listing the outstanding balance for each loan enrolled by the bank in the program.

(m) Upon notice to a bank, the administrator may inspect the records and files of the bank relating to any enrolled or charged-off loan.

(n) Wisconsin Business Development Finance Corporation may contract with a 3rd party to administer the program or any portion of the program, if the 3rd party has as its primary purpose and mission the promotion of community development, is described in section 501 (c) (3) of the Internal Revenue Code, and is exempt from federal tax under section 501 (a) of the Internal Revenue Code.

(o) Wisconsin Business Development Finance Corporation may withdraw up to 50 percent of the interest component of reserve funds and may use the moneys withdrawn to promote the program and to contract with a 3rd party to administer the program.

(p) The administrator may terminate a participating bank's right to make any new loans under the program.

(q) The administrator may not pay more than \$150,000 into a bank's reserve funds on behalf of any borrower in a 3-year period unless it has given written approval in advance.

(r) No grant may be awarded under this subsection after the first day of the 6th month beginning after the effective date of this paragraph [LRB inserts date].

(3) REPORTS ON PROGRAM. The administrator shall provide to the governor and to the presiding officer of each house of the legislature all of the following:

(a) No later than December 31, 2011, an interim report on the effects of the program.

(b) No later than June 30, 2013, a comprehensive evaluation of the program.

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SECTION 2m. Nonstatutory provisions.

(1) **REQUIRED GENERAL FUND BALANCE.** Section 20.003 (4) of the statutes does not apply to the action of the legislature in enacting this act.

SECTION 3. Fiscal changes.

(1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of com-

merce under section 20.143 (1) (c) of the statutes, as affected by the acts of 2009, the dollar amount is increased by \$350,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to provide funding for grants under section 560.047 of the statutes, as created by this act.
