CO-SPONSORSHIP MEMORANDUM

FROM: Representatives Nancy VanderMeer and Jill Billings
Senators Dan Feyen and Janis Ringhand

DATE: Wednesday, August 21, 2019

RE: Co-sponsorship of LRB-1243/1 and 4005/1, relating to: Income and franchise tax benefit for investment in Wisconsin opportunity zones

DEADLINE: Friday, Sept. 6, 2019 at 5:00 PM

The Opportunity Zones community development program was established by Congress with bipartisan support in 2017 to encourage long-term investments in low-income urban and rural communities across the county. The innovative program offers tax incentives to encourage investors to re-invest their unrealized capital gains into Opportunity Zone projects, including residential development and business expansion.

Low-income community census tracts are used to determine eligible Opportunity Zones to ensure the program drives private investment to the nation's most economically challenged communities. Wisconsin has 120 Opportunity Zones, which are in both urban and rural parts of the state. CLICK HERE to view the Wisconsin Opportunity Zone look-up map.

The program strives to unlock an estimated $6 trillion in unrealized capital gains in the United States. Individuals who invest in Opportunity Zones – through qualified Opportunity Funds – receive tax incentives including tax deferral on the invested capital gains and tax-free growth on the Opportunity Fund investment earnings if the investment is held for at least 10 years. In addition, investors receive a 10% reduction in the original capital gains tax if the Opportunity Fund investment is held for at least 5 years and a 15% reduction after 7 years.

Last session, Wisconsin incorporated the federal Opportunity Zone tax provisions into state law, which means the deferral and exclusion treatments apply when calculating state income taxes.

LRB-1243 would double the Opportunity Zone tax exclusion at the state level for investors who invest in Wisconsin Qualified Opportunity Funds – which are required to hold at least 90% of their assets in Wisconsin Opportunity Zone projects. More specifically, investors would receive an additional 10% state capital gains tax reduction if they hold an investment in a Wisconsin Qualified Opportunity Fund for at least five years, and an additional 15% after seven years.

The legislation will encourage Wisconsin investors to keep their investment dollars in Wisconsin, driving much-need private capital to economically challenged areas of the state and accelerating economic growth and job creation across the board.

If you have any questions or would like to co-sponsor LRB-1243/1 and companion legislation, LRB 4005/1, please contact Representative VanderMeer's office at 6-8366 or contact Senator Feyen's office at 6-5300 by 5:00 PM on Friday, Sept. 6. You will be automatically added to the Assembly and Senate version of bill unless directed otherwise.

Analysis by the Legislative Reference Bureau

This bill allows a taxpayer to decrease the amount of capital gains subject to income and franchise taxation by investing in a Wisconsin opportunity zone.

Currently, under the federal opportunity zone program created in 2017, a taxpayer may defer paying federal income tax on capital gains, and in some cases reduce the amount of tax owed, by investing the gains in an opportunity zone. An opportunity zone is a low-income population census tract designated by the U.S. Treasury secretary, with input from a state's governor. Wisconsin has 120 opportunity zones. A taxpayer invests in an opportunity zone by investing in a qualified fund, which must hold at least 90 percent of its assets in opportunity zone property. If the fund's opportunity zone assets fall below the 90 percent threshold, the fund is subject to a fine that is based on the shortfall for each month the threshold is not met. Under the federal program, the taxpayer defers paying tax on the capital gains until the earlier of the date on which the taxpayer sells the investment in the fund or December 31, 2026. At that time, the taxpayer may permanently exclude 10 percent of the deferred gains from income, and thus not pay tax on that amount, if the investment was held for at least five years. The exclusion increases to 15 percent of the gains if the investment was held for at least seven years. Additionally, if the taxpayer holds the investment for at least ten years, the investment's earnings are not taxed. Wisconsin has incorporated the federal provisions into state law and, therefore, the deferral and exclusion treatments apply when calculating state income and franchise taxes.

Under the bill, for income and franchise tax purposes, a taxpayer may exclude an additional 10 percent of the deferred gains if the taxpayer holds the investment in a Wisconsin qualified opportunity fund for at least five years or an additional 15 percent of the deferred gains if the taxpayer holds the investment for at least seven years. A Wisconsin qualified opportunity fund must hold at least 90 percent of its assets in property that qualifies under the federal program and is located in a Wisconsin opportunity zone. If the fund is liable for the federal penalty for failing to meet the 90 percent threshold for opportunity zone assets, the fund must also pay a state civil penalty that is equal to 33 percent of the federal penalty.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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