

By the Committee on Banking and Insurance and Senator Latvala

311-1847-98

1 A bill to be entitled
2 An act relating to certified capital companies;
3 amending s. 14.2015, F.S.; requiring the Office
4 of Tourism, Trade, and Economic Development of
5 the Executive Office of the Governor to
6 administer tax credits; creating s. 288.99,
7 F.S.; creating the "Certified Capital Company
8 Act"; providing a short title; providing a
9 purpose; providing definitions; providing
10 certification procedures; providing deadlines;
11 requiring an application fee; providing grounds
12 for application denial or decertification;
13 requiring the Department of Banking and Finance
14 to enforce certification and decertification
15 procedures; requiring certification reports
16 filed with the Office of Tourism, Trade, and
17 Economic Development; requiring an annual
18 renewal fee; specifying investment benchmarks;
19 specifying depositories for funds not invested
20 in qualified businesses; providing a credit
21 against premium tax liability; specifying
22 effect of credit on retaliatory tax; providing
23 an aggregate premium tax credit cap; providing
24 a tax credit allocation formula; requiring
25 forfeiture of tax credits under certain
26 circumstances; providing for an annual report
27 by each certified capital company; requiring
28 the Office of Tourism, Trade, and Economic
29 Development to review and verify annual
30 reports; authorizing the Department of Revenue
31 to audit and examine books of certified capital

1 companies and investors; providing for
2 distributions to debt holders; requiring the
3 Department of Banking and Finance to conduct
4 annual reviews of certified capital companies;
5 providing decertification procedures; providing
6 a cure period; providing recapture of tax
7 credits under certain circumstances; providing
8 a schedule for tax credit recapture and
9 penalties; providing for transfer of tax
10 credits; requiring the Office of Tourism,
11 Trade, and Economic Development to annually
12 report to the Governor and the Legislature;
13 providing for application and renewal fees;
14 providing rulemaking authority; creating s.
15 287.0932, F.S.; exempting certain insurers from
16 assessments and premium tax; providing
17 appropriations; providing effective dates.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Paragraphs (g) and (j) of subsection (2) of
22 section 14.2015, Florida Statutes, are amended to read:

23 14.2015 Office of Tourism, Trade, and Economic
24 Development; creation; powers and duties.--

25 (2) The purpose of the Office of Tourism, Trade, and
26 Economic Development is to assist the Governor in working with
27 the Legislature, state agencies, business leaders, and
28 economic development professionals to formulate and implement
29 coherent and consistent policies and strategies designed to
30 provide economic opportunities for all Floridians. To

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1 accomplish such purposes, the Office of Tourism, Trade, and
2 Economic Development shall:

3 (g)1. Administer the Florida Enterprise Zone Act under
4 ss. 290.001-290.016, the community contribution tax credit
5 program under ss. 220.183 and 624.5105, the tax refund program
6 for qualified target industry businesses under s. 288.106,
7 contracts for transportation projects under s. 288.063, the
8 sports franchise facility program under s. 288.1162, the
9 professional golf hall of fame facility program under s.
10 288.1168, the Florida Jobs Siting Act under ss.

11 403.950-403.972, the Rural Community Development Revolving
12 Loan Fund under s. 288.065, the Regional Rural Development
13 Grants Program under s. 288.018, the Certified Capital Company
14 Act under s. 288.99, the Florida State Rural Development
15 Council, and the Rural Economic Development Initiative.

16 2. The office may enter into contracts in connection
17 with the fulfillment of its duties concerning the Florida
18 First Business Bond Pool under chapter 159, tax incentives
19 under chapters 212 and 220, tax incentives under the Certified
20 Capital Company Act in chapter 288, foreign offices under
21 chapter 288, the Enterprise Zone program under chapter 290,
22 the Seaport Employment Training program under chapter 311, the
23 Florida Professional Sports Team License Plates under chapter
24 320, Spaceport Florida under chapter 331, Job Siting and
25 Expedited Permitting under chapter 403, and in carrying out
26 other functions that are specifically assigned to the office
27 by law.

28 (j) Promulgate rules to carry out its functions in
29 connection with the administration of the Qualified Target
30 Industry program, the Qualified Defense Contractor program,
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1 the Certified Capital Company Act, the Enterprise Zone
2 program, and the Florida First Business Bond pool.

3 Section 2. Section 288.99, Florida Statutes, is
4 created to read:

5 288.99 Certified Capital Company Act.--

6 (1) SHORT TITLE.--This section may be cited as the
7 "Certified Capital Company Act."

8 (2) PURPOSE.--The primary purpose of this act is to
9 stimulate a substantial increase in venture capital
10 investments in this state by providing an incentive for
11 insurance companies to invest in certified capital companies
12 in this state which, in turn, will make investments in new
13 businesses or in expanding businesses. The increase in
14 investment capital flowing into new or expanding businesses is
15 intended to contribute to employment growth, create jobs which
16 exceed the average wage for the county in which the jobs are
17 created, and expand or diversify the economic base of this
18 state.

19 (3) DEFINITIONS.--As used in this section, the term:

20 (a) "Affiliate of an insurance company" means:

21 1. Any person directly or indirectly beneficially
22 owning, whether through rights, options, convertible
23 interests, or otherwise, controlling, or holding power to vote
24 10 percent or more of the outstanding voting securities or
25 other ownership interests of the insurance company;

26 2. Any person 10 percent or more of whose outstanding
27 voting securities or other ownership interest is directly or
28 indirectly beneficially owned, whether through rights,
29 options, convertible interests, or otherwise, controlled, or
30 held with power to vote by the insurance company;

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1 3. Any person directly or indirectly controlling,
2 controlled by, or under common control with the insurance
3 company;

4 4. A partnership in which the insurance company is a
5 general partner; or

6 5. Any person who is a principal, director, employee,
7 or agent of the insurance company or an immediate family
8 member of the principal, director, employee, or agent.

9 (b) "Certified capital" means an investment of cash by
10 a certified investor in a certified capital company which
11 fully funds the purchase price of either or both its equity
12 interest in the certified capital company or a qualified debt
13 instrument issued by the certified capital company.

14 (c) "Certified capital company" means a corporation,
15 partnership, or limited liability company which:

16 1. Is certified by the department in accordance with
17 this act.

18 2. Receives investments of certified capital.

19 3. Makes qualified investments as its primary
20 activity.

21 (d) "Certified investor" means any insurance company
22 subject to premium tax liability pursuant to s. 624.509 that
23 contributes certified capital.

24 (e) "Department" means the Department of Banking and
25 Finance.

26 (f) "Director" means the director of the Office of
27 Tourism, Trade, and Economic Development.

28 (g) "Office" means the Office of Tourism, Trade, and
29 Economic Development.

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1 (h) "Premium tax liability" means any liability
2 incurred by an insurance company under the provisions of s.
3 624.509.

4 (i) "Principal" means an executive officer of a
5 corporation, partner of a partnership, manager of a limited
6 liability company, or any other person with equivalent
7 executive functions.

8 (j) "Qualified business" means a business that meets
9 the following conditions:

10 1. The business is headquartered in this state and its
11 principal business operations are located in this state.

12 2. At the time a certified capital company makes an
13 initial investment in a business, the business is a small
14 business concern as defined in 13 C.F.R., s. 121.201, "Size
15 Standards Used to Define Small Business Concerns" of the
16 United States Small Business Administration.

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18 A business predominantly engaged in professional services
19 provided by accountants, lawyers, or physicians does not
20 constitute a qualified business.

21 (k) "Qualified debt instrument" means a debt
22 instrument, or a hybrid of a debt instrument, issued by a
23 certified capital company, at par value or a premium, with an
24 original maturity date of at least 5 years after the date of
25 issuance, a repayment schedule which is no faster than a level
26 principal amortization over a 5-year period, and interest,
27 distribution, or payment features which are not related to the
28 profitability of the certified capital company or the
29 performance of the certified capital company's investment
30 portfolio.

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1 (l) "Qualified distribution" means any distribution or
2 payment to equity holders of a certified capital company for:

3 1. Costs and expenses of forming, syndicating,
4 managing, and operating the certified capital company,
5 including an annual management fee in an amount that does not
6 exceed 2.5 percent of the certified capital of the certified
7 capital company, plus reasonable and necessary fees in
8 accordance with industry custom for professional services,
9 including, but not limited to, legal and accounting services,
10 related to the operation of the certified capital company.

11 2. Any projected increase in federal or state taxes,
12 including penalties and interest related to state and federal
13 income taxes, of the equity owners of a certified capital
14 company resulting from the earnings or other tax liability of
15 the certified capital company to the extent that the increase
16 is related to the ownership, management, or operation of a
17 certified capital company.

18 (m) "Qualified investment" means the investment of
19 cash by a certified capital company in a qualified business
20 for the purchase of any debt, equity, or hybrid security of
21 any nature and description whatsoever, including a debt
22 instrument or security which has the characteristics of debt
23 but which provides for conversion into equity or equity
24 participation instruments such as options or warrants.

25 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
26 DECERTIFICATION.--

27 (a) To operate as a certified capital company, a
28 corporation, partnership, or limited liability company must be
29 certified by the department pursuant to this act.

30 (b) An applicant for certification as a certified
31 capital company must file a verified application with the

1 department on or before September 1, 1998, in a form which the
2 department may prescribe by rule. The applicant shall submit
3 a nonrefundable application fee of \$7,500 to the department.

4 The applicant shall provide:

5 1. The name of the applicant and the address of its
6 principal office and each office in this state.

7 2. The applicant's form and place of organization and
8 the relevant organizational documents, bylaws, and amendments
9 or restatements of such documents, bylaws, or amendments.

10 3. Evidence from the Department of State that the
11 applicant is registered with the Department of State as
12 required by law, maintains an active status with the
13 Department of State, and has not been dissolved or had its
14 registration revoked, canceled, or withdrawn.

15 4. The applicant's proposed method of doing business.

16 5. The applicant's financial condition and history,
17 including an audit report on the financial statements prepared
18 in accordance with generally accepted accounting principles
19 showing net capital of not less than \$500,000 within 90 days
20 after the date the application is submitted to the department.

21 If the date of the application is more than 90 days after
22 preparation of the applicant's fiscal year-end financial
23 statements, the applicant may file financial statements
24 reviewed by an independent certified public accountant for the
25 period subsequent to the audit report, together with the
26 audited financial statement for the most recent fiscal year.

27 If the applicant has been in business less than 12 months, and
28 has not prepared an audited financial statement, the applicant
29 may file a financial statement reviewed by an independent
30 certified public accountant.

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1 (c) Within 90 days after receipt of the completed
2 application, or December 31, 1998, whichever comes first, the
3 department shall grant or deny certification as a certified
4 capital company. If the department denies certification
5 within the time period specified, the department shall inform
6 the applicant of the grounds for the denial. If the
7 department has not granted or denied certification within the
8 time specified, the application shall be deemed approved. The
9 department shall approve the application if the department
10 finds that:

11 1. The applicant satisfies the requirements of
12 paragraph (b).

13 2. No evidence exists that the applicant has committed
14 any act specified in paragraph (d).

15 3. At least two of the principals have a minimum of 5
16 years of experience making venture capital investments out of
17 private equity funds, with not less than \$20 million being
18 provided by third-party investors for investment in the early
19 stage of operating businesses. At least one full-time manager
20 or principal of the certified capital company who has such
21 experience must be primarily located in an office of the
22 certified capital company which is based in this state.

23 (d) The department may deny certification or decertify
24 a certified capital company if the grounds for decertification
25 are not removed or corrected within 90 days after the notice
26 of such grounds is received by the certified capital company.
27 The department may deny certification or decertify a certified
28 capital company if the certified capital company fails to
29 maintain a net worth of at least \$500,000, or if the
30 department determines that the applicant, or any principal or
31 director of the certified capital company, has:

- 1 1. Violated any provision of this section;
2 2. Made a material misrepresentation or false
3 statement or concealed any essential or material fact from any
4 person during the application process or with respect to
5 information and reports required of certified capital
6 companies under this section;
7 3. Been convicted of, or entered a plea of guilty or
8 nolo contendere to, a crime against the laws of this state or
9 any other state or of the United States or any other country
10 or government, including a fraudulent act in connection with
11 the operation of a certified capital company, or in connection
12 with the performance of fiduciary duties in another capacity;
13 4. Been adjudicated liable in a civil action on
14 grounds of fraud, embezzlement, misrepresentation, or deceit;
15 or
16 5.a. Been the subject of any decision, finding,
17 injunction, suspension, prohibition, revocation, denial,
18 judgment, or administrative order by any court of competent
19 jurisdiction, administrative law judge, or any state or
20 federal agency, national securities, commodities, or option
21 exchange, or national securities, commodities, or option
22 association, involving a material violation of any federal or
23 state securities or commodities law or any rule or regulation
24 adopted under such law, or any rule or regulation of any
25 national securities, commodities, or options exchange or
26 national securities, commodities, or options association; or
27 b. Been the subject of any injunction or adverse
28 administrative order by a state or federal agency regulating
29 banking, insurance, finance or small loan companies, real
30 estate, mortgage brokers, or other related or similar
31 industries.

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2 For purposes of this subparagraph, the department may not deny
3 registration to any applicant who has been continuously
4 registered with the department for 5 years from the entry of
5 such decision, finding, injunction, suspension, prohibition,
6 revocation, denial, judgment, or administrative order,
7 provided such decision, finding, injunction, suspension,
8 prohibition, revocation, denial, judgment, or administrative
9 order has been timely reported to the department pursuant to
10 the department's rules and regulations.

11 (e) The certified capital company shall file a copy of
12 its certification with the office by January 15, 1999.

13 (f) Any offering material involving the sale of
14 securities of the certified capital company shall include the
15 following statement: "By authorizing the formation of a
16 certified capital company, the State of Florida does not
17 endorse the quality of management or the potential for
18 earnings of such company and is not liable for damages or
19 losses to a certified investor in the company. Use of the
20 word 'certified' in an offering does not constitute a
21 recommendation or endorsement of the investment by the State
22 of Florida. Investments in a certified capital company prior
23 to the time such company is certified are not eligible for
24 premium tax credits. If applicable provisions of law are
25 violated, the state may require forfeiture of unused premium
26 tax credits and repayment of used premium tax credits by the
27 certified investor."

28 (g) No insurance company or any affiliate of an
29 insurance company shall, directly or indirectly, manage or
30 control the direction of investments of, a certified capital
31 company. This prohibition does not preclude a certified

1 investor, insurance company, or any other party from
2 exercising its legal rights and remedies, which may include
3 interim management of a certified capital company, if a
4 certified capital company is in default of its obligations
5 under law or its contractual obligations to such certified
6 investor, insurance company, or other party.

7 (h) On or before December 31 of each year, each
8 certified capital company shall pay to the department an
9 annual, nonrefundable renewal certification fee of \$5,000. No
10 renewal fees shall be required within 6 months after the date
11 of initial certification.

12 (i) The department shall administer and provide for
13 the enforcement of certification requirements for certified
14 capital companies as provided in this act. The department may
15 adopt any rules necessary to carry out its duties,
16 obligations, and powers related to certification, renewal of
17 certification, or decertification of certified capital
18 companies and may perform any other acts necessary for the
19 proper administration and enforcement of such duties,
20 obligations, and powers.

21 (j) Decertification of a certified capital company
22 under this subsection does not affect the ability of certified
23 investors in such certified capital company from claiming
24 future premium tax credits earned as a result of an investment
25 in the certified capital company during the period in which it
26 was duly certified.

27 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

28 (a) To remain certified, a certified capital company
29 must make qualified investments according to the following
30 schedule:

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1 1. At least 20 percent of its certified capital must
2 be invested in qualified investments by December, 31, 2000.

3 2. At least 30 percent of its certified capital must
4 be invested in qualified investments by December 31, 2001.

5 3. At least 40 percent of its certified capital must
6 be invested in qualified investments by December 31, 2002.

7 4. At least 50 percent of its certified capital must
8 be invested in qualified investments by December 31, 2003. At
9 least 50 percent of such qualified investments must be
10 invested in qualified businesses having less than \$5 million
11 in annual revenues for the fiscal year immediately preceding
12 the investment by the certified capital company.

13 (b) All capital not invested in qualified investments
14 by the certified capital company:

15 1. Must be held in a financial institution as defined
16 by s. 655.005(1)(h) or held by a broker-dealer registered
17 under s. 517.12.

18 2. Must not be invested in a certified investor of the
19 certified capital company or any affiliate of the certified
20 investor of the certified capital company.

21 3. Must be invested only in:

22 a. Any United States Treasury obligations;

23 b. Certificates of deposit or other obligations,
24 maturing within 3 years after acquisition of such certificates
25 or obligations, issued by any financial institution or trust
26 company incorporated under the laws of the United States;

27 c. Marketable obligations, maturing within 5 years or
28 less after the acquisition of such obligations, which are
29 rated "A" or better by any nationally recognized credit rating
30 agency;

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1 d. Mortgage-backed securities, with an average life of
2 5 years or less, after the acquisition of such securities,
3 which are rated "A" or better by any nationally recognized
4 credit rating agency;

5 e. Collateralized mortgage obligations and real estate
6 mortgage investment conduits that are direct obligations of an
7 agency of the United States Government; are not private-label
8 issues; are in book-entry form; and do not include the classes
9 of interest only, principal only, residual, or zero; or

10 f. Interests in money market funds, the portfolio of
11 which is limited to cash and obligations described in
12 sub-subparagraphs a.-d.

13 (c) The aggregate amount of all qualified investments
14 made by the certified capital company from the date of its
15 certification shall be considered in the calculation of the
16 percentage requirements under paragraph (a).

17 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.--

18 (a) Any certified investor who makes an investment of
19 certified capital shall earn a vested credit against premium
20 tax liability equal to 100 percent of the certified capital
21 invested by the certified investor. Certified investors shall
22 be entitled to use no more than 10 percentage points of the
23 vested premium tax credit, including any carryforward credits
24 under this act, per year beginning with premium tax filings
25 for calendar year 2000. Any premium tax credits not used by
26 certified investors in any single year may be carried forward
27 and applied against the premium tax liabilities of such
28 investors for subsequent calendar years. The carryforward
29 credit may be applied against subsequent premium tax filings
30 through calendar year 2017.

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1 (b) The credit to be applied against premium tax
2 liability in any single year may not exceed the premium tax
3 liability of the certified investor for that taxable year.

4 (c) A certified investor claiming a credit against
5 premium tax liability earned through an investment in a
6 certified capital company shall not be required to pay any
7 additional retaliatory tax levied pursuant to s. 624.5091 as a
8 result of claiming such credit. Because credits under this
9 section are available to a certified investor, s. 624.5091
10 does not limit such credit in any manner.

11 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
12 PROCESS.--

13 (a) The total amount of tax credits which may be
14 allocated by the office shall not exceed \$500 million. The
15 total amount of tax credits which may be used by certified
16 investors under this act shall not exceed \$50 million
17 annually.

18 (b) The office shall be responsible for allocating
19 premium tax credits as provided for in this act to certified
20 capital companies.

21 (c) Each certified capital company must apply to the
22 office for an allocation of premium tax credits for potential
23 certified investors by February 15, 1999, on a form developed
24 by the office with the cooperation of the Department of
25 Revenue. The form shall be accompanied by an affidavit from
26 each potential certified investor confirming that the
27 potential certified investor has agreed to make an investment
28 of certified capital in a certified capital company up to a
29 specified amount, subject only to the receipt of a premium tax
30 credit allocation pursuant to this subsection. No allocation
31 shall be made to the potential investors of a certified

1 capital company unless such certified capital company has
2 filed premium tax allocation claims that would result in an
3 allocation to the potential investors in such certified
4 capital company of not less than \$15 million in the aggregate.

5 (d) On or before April 1, 1999, the office shall
6 inform each certified capital company of its share of total
7 premium tax credits available for allocation to each of its
8 potential investors.

9 (e) If a certified capital company does not receive
10 certified capital equaling the amount of premium tax credits
11 allocated to a potential certified investor for which the
12 investor filed a premium tax allocation claim within 10
13 business days after the investor received a notice of
14 allocation, the certified capital company shall notify the
15 office by overnight common carrier delivery service of the
16 company's failure to receive the capital. That portion of the
17 premium tax credits allocated to the certified capital company
18 shall be forfeited. If the office must make a pro rata
19 allocation under paragraph (f), the office shall reallocate
20 such available credits among the other certified capital
21 companies on the same pro rata basis as the initial
22 allocation.

23 (f) If the total amount of capital committed by all
24 certified investors to certified capital companies in premium
25 tax allocation claims exceeds the aggregate cap on the amount
26 of credits that may be awarded, the premium tax credits that
27 may be allowed to any one certified investor shall be
28 allocated using the following ratio:

$$\text{A/B} = \text{X}/\$500,000,000$$

1 where the letter "A" represents the total amount of certified
2 capital certified investors have agreed to invest in any one
3 certified capital company, the letter "B" represents the
4 aggregate amount of certified capital that all certified
5 investors have agreed to invest in all certified capital
6 companies, the letter "X" is the numerator and represents the
7 total amount of premium tax credits and certified capital that
8 may be allocated to a certified capital company in calendar
9 year 1999, and \$500 million is the denominator and represents
10 the total amount of premium tax credits and certified capital
11 that may be allocated to all certified investors in calendar
12 year 1999. Any such premium tax credits are not first
13 available for utilization until annual filings are made in
14 2001 for calendar year 2000, and the tax credits may be used
15 at a rate not to exceed 10 percent annually.

16 (g) The maximum amount of certified capital for which
17 premium tax allocation claims may be filed on behalf of any
18 certified investor and its affiliates by one or more certified
19 companies may not exceed \$50 million.

20 (h) To the extent that less than \$500 million in
21 certified capital is raised in connection with the procedure
22 set forth in paragraphs (c)-(g), the department may adopt
23 rules to allow a subsequent allocation of the remaining
24 premium tax credits authorized under this section.

25 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

26 (a) On an annual basis, on or before December 31, each
27 certified capital company shall file with the department and
28 the office, in consultation with the department, on a form
29 prescribed by the office, for each calendar year:

30 1. The total dollar amount the certified capital
31 company received from certified investors, the identity of the

1 certified investors, and the amount received from each
2 certified investor during the calendar year.

3 2. The total dollar amount the certified capital
4 company invested and the amount invested in qualified
5 businesses, together with the identity and location of those
6 businesses and the amount invested in each qualified business.

7 3. For informational purposes only, the total number
8 of permanent, full-time jobs either created or retained by the
9 qualified business during the calendar year, the average wage
10 of the jobs created or retained, the industry sectors in which
11 the qualified businesses operate, and any additional capital
12 invested in qualified businesses from sources other than
13 certified capital companies.

14 (b) The form shall be verified by one or more
15 principals of the certified capital company submitting the
16 form. Verification shall be accomplished as provided in s.
17 92.525(1)(b) and subject to the provisions of s. 92.525(3).

18 (c) The office shall review the form, and any
19 supplemental documentation, submitted by each certified
20 capital company for the purpose of verifying:

21 1. That the businesses in which certified capital has
22 been invested by the certified capital company are in fact
23 qualified businesses, and that the amount of certified capital
24 invested by the certified capital company is as represented in
25 the form.

26 2. The amount of certified capital invested in the
27 certified capital company by the certified investors.

28 3. The amount of premium tax credit available to
29 certified investors.

30 (d) The Department of Revenue is authorized to audit
31 and examine the accounts, books, or records of certified

1 capital companies and certified investors for the purpose of
2 ascertaining the correctness of any report and financial
3 return which has been filed, and to ascertain a certified
4 capital company's compliance with the tax-related provisions
5 of this act.

6 (e) This subsection shall take effect January 1, 1999.

7 (9) DISTRIBUTIONS.--A certified capital company may
8 make qualified distributions at any time. In order to make a
9 distribution to its equity holders, other than a qualified
10 distribution, a certified capital company must have invested
11 an amount cumulatively equal to 100 percent of its certified
12 capital in qualified investments. Payments to debt holders of
13 a certified capital company, however, may be made without
14 restriction with respect to repayments of principal and
15 interest on indebtedness owed to them by a certified capital
16 company, including indebtedness of the certified capital
17 company on which certified investors earned premium tax
18 credits. A debt holder that is also a certified investor or
19 equity holder of a certified capital company may receive
20 payments with respect to such debt without restrictions.

21 (10) DECERTIFICATION.--

22 (a) The department shall conduct an annual review of
23 each certified capital company to determine if the certified
24 capital company is abiding by the requirements of
25 certification, to advise the certified capital company as to
26 the eligibility status of its qualified investments, and to
27 ensure that no investment has been made in violation of this
28 act. The cost of the annual review shall be paid by each
29 certified capital company.

30 (b) Any material violation of this section, or a
31 finding that the certified capital company or any principal or

1 director thereof has committed any act specified in paragraph
2 (4)(d), shall be grounds for decertification of the certified
3 capital company. If the department determines that a certified
4 capital company is no longer in compliance with the
5 certification requirements of this act, the department shall,
6 by written notice, inform the officers of such company that
7 the company may be subject to decertification 90 days after
8 the date of mailing of the notice, unless the deficiencies are
9 corrected and such company is again found to be in compliance
10 with all certification requirements.

11 (c) At the end of the 90-day grace period, if the
12 certified capital company is still not in compliance with the
13 certification requirements, the department may issue a notice
14 to revoke or suspend the certification or to impose an
15 administrative fine. The department shall advise each
16 respondent of the right to an administrative hearing under
17 chapter 120 prior to final action by the department.

18 (d) If the department revokes a certification, such
19 revocation shall also deny, suspend, or revoke the
20 certifications of all affiliates of the certified capital
21 company.

22 (e) Decertification of a certified capital company for
23 failure to meet all requirements for continued certification
24 under paragraph (5)(a) may cause the recapture of premium tax
25 credits previously claimed by such company and the forfeiture
26 of future premium tax credits to be claimed by certified
27 investors with respect to such certified capital company, as
28 follows:

29 1. Decertification of a certified capital company
30 within 3 years after its certification date shall cause the
31 recapture of all premium tax credits previously claimed by

1 such company and the forfeiture of all future premium tax
2 credits to be claimed by certified investors with respect to
3 such company.

4 2. When a certified capital company meets all
5 requirements for continued certification under subparagraph
6 (5)(a)1. and subsequently fails to meet the requirements for
7 continued certification under the provisions of subparagraph
8 (5)(a)2., those premium tax credits which have been or will be
9 taken by certified investors within 3 years after the
10 certification date of the certified capital company shall not
11 be subject to recapture or forfeiture; however, all premium
12 tax credits that have been or will be taken by certified
13 investors after the third anniversary of the certification
14 date of the certified capital company shall be subject to
15 recapture or forfeiture.

16 3. When a certified capital company meets all
17 requirements for continued certification under subparagraphs
18 (5)(a)1. and 2. and subsequently fails to meet the
19 requirements for continued certification under the
20 subparagraph (5)(a)3., those premium tax credits which have
21 been or will be taken by certified investors within 4 years
22 after the certification date of the certified capital company
23 shall not be subject to recapture or forfeiture; however, all
24 premium tax credits that have been or will be taken by
25 certified investors after the fourth anniversary of the
26 certification date of the certified capital company shall be
27 subject to recapture and forfeiture.

28 4. If a certified capital company has met all
29 requirements for continued certification under paragraph
30 (5)(a), but such company is subsequently decertified, those
31 premium tax credits which have been or will be taken by

1 certified investors within 5 years after the certification
2 date of such company shall not be subject to recapture or
3 forfeiture. Those premium tax credits to be taken subsequent
4 to the 5th year of certification shall be subject to
5 forfeiture only if the certified capital company is
6 decertified within 5 years after its certification date.

7 5. If a certified capital company has invested an
8 amount cumulatively equal to 100 percent of its certified
9 capital in qualified investments, all premium tax credits
10 claimed or to be claimed by its certified investors shall not
11 be subject to recapture or forfeiture.

12 (f) Decertification of a certified capital company
13 pursuant to subsection (4) or this subsection does not affect
14 the ability of certified investors in such certified capital
15 company to continue to claim future premium tax credits earned
16 as an investment in the certified capital company during the
17 period in which it was duly certified.

18 (g) The office shall send written notice to the
19 address of each certified investor whose premium tax credit
20 has been subject to recapture or forfeiture, using the address
21 last shown on the last premium tax filing.

22 (h) The certified investor is responsible for
23 returning to the Department of Revenue any forfeited insurance
24 premium tax credits and such funds shall be paid into the
25 General Revenue Fund of the state.

26 (i) The certified investor shall file with the
27 Department of Revenue an amended return or such other report
28 as the department may prescribe by regulation and pay any
29 required tax, not later than 60 days after such
30 decertification has been agreed to or finally determined,
31 whichever shall first occur.

- 1 (j) A notice of deficiency may be issued:
2 1. At any time within 5 years after the date such
3 notification is given; or
4 2. At any time if a certified investor fails to notify
5 the Department of Revenue.

6
7 In either case, the amount of any proposed assessment set
8 forth in such notice shall be limited to the amount of any
9 deficiency resulting under this act from the recomputation of
10 the certified investor's insurance premium tax and, if
11 applicable, its retaliatory tax for the taxable year giving
12 effect only to the item or items reflected in the
13 decertification adjustment.

14 (k) Any certified investor who fails to report and
15 timely pay any tax due as a result of the forfeiture of its
16 insurance premium tax credit is in violation of this
17 subsection and is subject to a penalty of 10 percent of any
18 underpayment or delinquent taxes due and payable.

19 (l) When any taxpayer fails to pay any amount due as a
20 result of the forfeiture of its insurance premium tax credit
21 as provided for in this subsection, on or before the due date
22 as specified in this subsection, interest shall be due on any
23 insurance premium or retaliatory tax deficiency resulting from
24 such forfeiture, at the rate of 12 percent per year from the
25 due date of such amended return until paid.

26 (11) TRANSFERABILITY.--The claim of a transferee of a
27 certified investor's unused premium tax credit shall be
28 permitted in the same manner and subject to the same
29 provisions and limitations of this act as the original
30 certified investor. The term "transferee" means any person
31 who:

1 (a) Through the voluntary sale, assignment, or other
2 transfer of the business or control of the business of the
3 certified investor, including the sale or other transfer of
4 stock or assets by merger, consolidation, or dissolution,
5 succeeds to all or substantially all of the business and
6 property of the certified investor;

7 (b) Becomes by operation of law or otherwise the
8 parent company of the certified investor; or

9 (c) Directly or indirectly owns, whether through
10 rights, options, convertible interests, or otherwise,
11 controls, or holds power to vote 10 percent or more of the
12 outstanding voting securities or other ownership interest of
13 the certified investor.

14 (12) REPORTING REQUIREMENTS.--

15 (a) The office shall report on an annual basis to the
16 Governor, the President of the Senate, and the Speaker of the
17 House of Representatives on or before April 1:

18 1. The total dollar amount each certified capital
19 company received from all certified investors and any other
20 investor, the identity of the certified investors, and the
21 total amount of premium tax credit used by each certified
22 investor for the previous calendar year.

23 2. The total dollar amount invested by each certified
24 capital company and that portion invested in qualified
25 businesses, the identity and location of those businesses, the
26 amount invested in each qualified business, and the total
27 number of permanent, full-time jobs created or retained by
28 each qualified business.

29 3. The return for the state as a result of the
30 certified capital company investments, including the extent to
31 which:

1 a. Certified capital company investments have
2 contributed to employment growth.

3 b. The wage level of businesses in which certified
4 capital companies have invested exceed the average wage for
5 the county in which the jobs are located.

6 c. The investments of the certified capital companies
7 in qualified businesses have contributed to expanding or
8 diversifying the economic base of the state.

9 (13) FEES.--All fees and charges of any nature
10 collected by the department pursuant to this act shall be paid
11 into the State Treasury and credited to the General Revenue
12 Fund.

13 (14) RULEMAKING AUTHORITY.--

14 (a) The Department of Revenue may by rule prescribe
15 forms and procedures for the tax credit filings, audits, and
16 forfeiture of premium tax credits described in this section.

17 (b) The office may adopt any rules necessary to carry
18 out its duties, obligations, and powers related to the
19 administration, review, and reporting provisions of this
20 section and may perform any other acts necessary for the
21 proper administration and enforcement of such duties,
22 obligations, and powers.

23 Section 3. There is hereby appropriated \$240,434 for
24 fiscal year 1998-1999 from the General Revenue Fund to the
25 Department of Banking and Finance and four additional career
26 service positions are authorized within the department for the
27 purpose of enforcing the provisions of this act.

28 Section 4. There is hereby appropriated \$100,000 from
29 the General Revenue Fund to the Office of Tourism, Trade, and
30 Economic Development to implement this act.

31

1 Section 5. Section 287.0932, Florida Statutes, is
2 created to read:

3 287.0932 Minority business enterprises.--

4 (1) A minority business, which is at least 51 percent
5 owned by minority persons as described in s. 288.703(3),
6 desiring to operate or become licensed as a property and
7 casualty insurer shall be exempt, for a period of 5 years from
8 the date of receiving authority to transact insurance pursuant
9 to s. 624.407, from any and all assessments described in s.
10 627.351 and from any requirements of s. 624.509.

11 (2) For the purpose of meeting the requirements of
12 subsection (1), the insurer must:

13 (a) Be domiciled in this state;

14 (b) Have permanent employees in this state;

15 (c) Have an office in this state; and

16 (d) Have at least 20 percent of its policies written
17 and located in urban and inner-city areas that are
18 metropolitan statistical areas as defined in 42 U.S.C.
19 12902(5). However, the requirement that the minority persons
20 as described in s. 288.703(3) be permanent residents of this
21 state does not apply to this section and to the requirements
22 set forth in s. 627.3511.

23 (3) This section expires July 1, 2003.

24 Section 6. Except as otherwise provided herein, this
25 act shall take effect upon becoming a law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1512

4 The Committee Substitute makes the following changes:

- 5 1. Accelerates the deadline for filing an application for
6 certification from October 1, 1998, to September 1, 1998;
- 7 2. Revises the requirements for qualification of the
8 principles applying for certification;
- 9 3. Provides that decertification of a certified capital
10 company does not affect the ability of a certified
11 investor to continue to claim future premium tax credits
12 earned prior to the decertification;
- 13 4. Revises the qualified investment requirements of a
14 certified capital company to decrease the percent of
15 qualified investments required by December 31, 2000;
- 16 5. Requires at least 50 percent of such qualified
17 investments must be invested in qualified investments
18 with \$5 million in annual revenues by December 31, 2003;
- 19 6. Revises the guidelines for investment of capital not
20 invested by certified capital companys;
- 21 7. Authorizes certified investors to use no more than 10
22 percentage points of the premium tax credit per year
23 beginning with premium tax filings for calendar year
24 2000;
- 25 8. Prohibits an allocation to potential investors of the
26 certified capital company, unless such certified capital
27 company has filed premium tax allocations resulting a
28 minimum of \$15 million;
- 29 9. Clarifies the formula to be used for allocation premium
30 tax credits in the event oversubscription occurs;
- 31 10. Provides that the maximum amount of certified capital for
which premium tax credits may be filed by certified
capital companys annually is \$50 million;
11. Revises reporting requirements of the certified capital
company to include information regarding wages for jobs
created;
12. Provides specific rulemaking authority for the Department
of Banking and Finance;
13. Authorizes four full-time employees for the Department of
Banking and Finance.