

By the Committees on Ways and Means; Banking and Insurance;  
and Senators Latvala and Forman

301-2229A-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 requirements for distributions;  
6 providing decertification procedures;  
7 providing a cure period; providing recapture of  
8 tax credits under certain circumstances;  
9 providing a schedule for tax credit recapture  
10 and penalties; providing for transfer of tax  
11 credits; requiring the Office of Tourism,  
12 Trade, and Economic Development to annually  
13 report to the Governor and the Legislature;  
14 providing for application and renewal fees;  
15 providing rulemaking authority; providing  
16 appropriations; providing effective dates.

17

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

19

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

22 14.2015 Office of Tourism, Trade, and Economic  
23 Development; creation; powers and duties.--

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

1 (g)1. Administer the Florida Enterprise Zone Act under  
2 ss. 290.001-290.016, the community contribution tax credit  
3 program under ss. 220.183 and 624.5105, the tax refund program  
4 for qualified target industry businesses under s. 288.106,  
5 contracts for transportation projects under s. 288.063, the  
6 sports franchise facility program under s. 288.1162, the  
7 professional golf hall of fame facility program under s.  
8 288.1168, the Florida Jobs Siting Act under ss.  
9 403.950-403.972, the Rural Community Development Revolving  
10 Loan Fund under s. 288.065, the Regional Rural Development  
11 Grants Program under s. 288.018, the Certified Capital Company  
12 Act under s. 288.99, the Florida State Rural Development  
13 Council, and the Rural Economic Development Initiative.

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

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

31

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

3 288.99 Certified Capital Company Act.--

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

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

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

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

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

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

29 3. Any person directly or indirectly controlling,  
30 controlled by, or under common control with the insurance  
31 company;

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

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

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

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

13           1. Is certified by the department in accordance with  
14 this act.

15           2. Receives investments of certified capital.

16           3. Makes qualified investments as its primary  
17 activity.

18           (d) "Certified investor" means any insurance company  
19 subject to premium tax liability pursuant to s. 624.509 that  
20 contributes certified capital.

21           (e) "Department" means the Department of Banking and  
22 Finance.

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

25           (g) "Early stage technology business" means a  
26 qualified business that is involved, at the time of the  
27 certified capital company's initial investment in such  
28 business, in activities related to developing initial product  
29 or service offerings, such as prototype development or the  
30 establishment of initial production or service processes. The  
31 term includes a qualified business that is less than 2 years

1 old and has, together with its affiliates, less than \$3  
2 million in annual revenues for the fiscal year immediately  
3 preceding the initial investment by the certified capital  
4 company on a consolidated basis, as determined in accordance  
5 with generally accepted accounting principles.

6 (h) "Office" means the Office of Tourism, Trade, and  
7 Economic Development.

8 (i) "Premium tax liability" means any liability  
9 incurred by an insurance company under the provisions of s.  
10 624.509.

11 (j) "Principal" means an executive officer of a  
12 corporation, partner of a partnership, manager of a limited  
13 liability company, or any other person with equivalent  
14 executive functions.

15 (k) "Qualified business" means a business that meets  
16 the following conditions:

17 1. The business is headquartered in this state and its  
18 principal business operations are located in this state.

19 2. At the time a certified capital company makes an  
20 initial investment in a business, the business is a small  
21 business concern as defined in 13 C.F.R., s. 121.201, "Size  
22 Standards Used to Define Small Business Concerns" of the  
23 United States Small Business Administration which is involved  
24 in manufacturing, processing or assembling products,  
25 conducting research and development, or providing services.

26 3. At the time a certified capital company makes an  
27 initial investment in a business, the business certifies in an  
28 affidavit that:

29 a. The business is unable to obtain conventional  
30 financing, which means that the business has failed in an  
31 attempt to obtain funding for a loan from a bank or other

1 commercial lender or that the business cannot reasonably be  
2 expected to qualify for such financing under the standards of  
3 commercial lending;

4 b. The business plan for the business projects that  
5 the business is reasonably expected to achieve in excess of  
6 \$25 million in sales revenue within 5 years after the initial  
7 investment;

8 c. The business will maintain its headquarters in this  
9 state for the next 10 years and any new manufacturing facility  
10 financed by a qualified investment will remain in this state  
11 for the next 10 years; and

12 d. The business has fewer than 200 employees and at  
13 least 75 percent of the employees are employed in this state.

14  
15 A business predominantly engaged in retail sales, real estate  
16 development, insurance, banking, lending, oil and gas  
17 exploration or engaged in professional services provided by  
18 accountants, lawyers, or physicians does not constitute a  
19 qualified business.

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

30 (m) "Qualified distribution" means any distribution or  
31 payment to equity holders of a certified capital company for:

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

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

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

23           (4) CERTIFICATION; GROUNDS FOR DENIAL OR  
24 DECERTIFICATION.--

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

28           (b) An applicant for certification as a certified  
29 capital company must file a verified application with the  
30 department on or before December 1, 1998, in a form which the  
31 department may prescribe by rule. The applicant shall submit



1 a nonrefundable application fee of \$7,500 to the department.  
2 The applicant shall provide:  
3 1. The name of the applicant and the address of its  
4 principal office and each office in this state.  
5 2. The applicant's form and place of organization and  
6 the relevant organizational documents, bylaws, and amendments  
7 or restatements of such documents, bylaws, or amendments.  
8 3. Evidence from the Department of State that the  
9 applicant is registered with the Department of State as  
10 required by law, maintains an active status with the  
11 Department of State, and has not been dissolved or had its  
12 registration revoked, canceled, or withdrawn.  
13 4. The applicant's proposed method of doing business.  
14 5. The applicant's financial condition and history,  
15 including an audit report on the financial statements prepared  
16 in accordance with generally accepted accounting principles  
17 showing net capital of not less than \$500,000 within 90 days  
18 after the date the application is submitted to the department.  
19 If the date of the application is more than 90 days after  
20 preparation of the applicant's fiscal year-end financial  
21 statements, the applicant may file financial statements  
22 reviewed by an independent certified public accountant for the  
23 period subsequent to the audit report, together with the  
24 audited financial statement for the most recent fiscal year.  
25 If the applicant has been in business less than 12 months, and  
26 has not prepared an audited financial statement, the applicant  
27 may file a financial statement reviewed by an independent  
28 certified public accountant.  
29 (c) On December 31, 1998, the department shall grant  
30 or deny certification as a certified capital company. If the  
31 department denies certification within the time period

1 specified, the department shall inform the applicant of the  
2 grounds for the denial. If the department has not granted or  
3 denied certification within the time specified, the  
4 application shall be deemed approved. The department shall  
5 approve the application if the department finds that:

6 1. The applicant satisfies the requirements of  
7 paragraph (b).

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

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

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

27 1. Violated any provision of this section;

28 2. Made a material misrepresentation or false  
29 statement or concealed any essential or material fact from any  
30 person during the application process or with respect to  
31

1 information and reports required of certified capital  
2 companies under this section;

3 3. Been convicted of, or entered a plea of guilty or  
4 nolo contendere to, a crime against the laws of this state or  
5 any other state or of the United States or any other country  
6 or government, including a fraudulent act in connection with  
7 the operation of a certified capital company, or in connection  
8 with the performance of fiduciary duties in another capacity;

9 4. Been adjudicated liable in a civil action on  
10 grounds of fraud, embezzlement, misrepresentation, or deceit;  
11 or

12 5.a. Been the subject of any decision, finding,  
13 injunction, suspension, prohibition, revocation, denial,  
14 judgment, or administrative order by any court of competent  
15 jurisdiction, administrative law judge, or any state or  
16 federal agency, national securities, commodities, or option  
17 exchange, or national securities, commodities, or option  
18 association, involving a material violation of any federal or  
19 state securities or commodities law or any rule or regulation  
20 adopted under such law, or any rule or regulation of any  
21 national securities, commodities, or options exchange or  
22 national securities, commodities, or options association; or

23 b. Been the subject of any injunction or adverse  
24 administrative order by a state or federal agency regulating  
25 banking, insurance, finance or small loan companies, real  
26 estate, mortgage brokers, or other related or similar  
27 industries.

28  
29 For purposes of this subparagraph, the department may not deny  
30 registration to any applicant who has been continuously  
31 registered with the department for 5 years from the entry of

1 such decision, finding, injunction, suspension, prohibition,  
2 revocation, denial, judgment, or administrative order,  
3 provided such decision, finding, injunction, suspension,  
4 prohibition, revocation, denial, judgment, or administrative  
5 order has been timely reported to the department pursuant to  
6 the department's rules and regulations.

7 (e) The certified capital company shall file a copy of  
8 its certification with the office by January 31, 1999.

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

24 (g) No insurance company or any affiliate of an  
25 insurance company shall, directly or indirectly, manage or  
26 control the direction of investments of, a certified capital  
27 company. This prohibition does not preclude a certified  
28 investor, insurance company, or any other party from  
29 exercising its legal rights and remedies, which may include  
30 interim management of a certified capital company, if a  
31 certified capital company is in default of its obligations

1 under law or its contractual obligations to such certified  
2 investor, insurance company, or other party.

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

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

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

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

24 (a) To remain certified, a certified capital company  
25 must make qualified investments according to the following  
26 schedule:

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

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

31

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

3           4. At least 50 percent of its certified capital must  
4 be invested in qualified investments by December 31, 2003. At  
5 least 50 percent of such qualified investments must be  
6 invested in early stage technology businesses.

7           (b) All capital not invested in qualified investments  
8 by the certified capital company:

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

12           2. Must not be invested in a certified investor of the  
13 certified capital company or any affiliate of the certified  
14 investor of the certified capital company.

15           3. Must be invested only in:

16           a. Any United States Treasury obligations;

17           b. Certificates of deposit or other obligations,  
18 maturing within 3 years after acquisition of such certificates  
19 or obligations, issued by any financial institution or trust  
20 company incorporated under the laws of the United States;

21           c. Marketable obligations, maturing within 5 years or  
22 less after the acquisition of such obligations, which are  
23 rated "A" or better by any nationally recognized credit rating  
24 agency;

25           d. Mortgage-backed securities, with an average life of  
26 5 years or less, after the acquisition of such securities,  
27 which are rated "A" or better by any nationally recognized  
28 credit rating agency;

29           e. Collateralized mortgage obligations and real estate  
30 mortgage investment conduits that are direct obligations of an  
31 agency of the United States Government; are not private-label

1 issues; are in book-entry form; and do not include the classes  
2 of interest only, principal only, residual, or zero; or

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

6 (c) The aggregate amount of all qualified investments  
7 made by the certified capital company from the date of its  
8 certification shall be considered in the calculation of the  
9 percentage requirements under paragraph (a).

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

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

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

27 (c) A certified investor claiming a credit against  
28 premium tax liability earned through an investment in a  
29 certified capital company shall not be required to pay any  
30 additional retaliatory tax levied pursuant to s. 624.5091 as a  
31 result of claiming such credit. Because credits under this

1 section are available to a certified investor, s. 624.5091  
2 does not limit such credit in any manner.

3 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION  
4 PROCESS.--

5 (a) The total amount of tax credits which may be  
6 allocated by the office shall not exceed \$150 million. The  
7 total amount of tax credits which may be used by certified  
8 investors under this act shall not exceed \$15 million  
9 annually.

10 (b) The office shall be responsible for allocating  
11 premium tax credits as provided for in this act to certified  
12 capital companies.

13 (c) Each certified capital company must apply to the  
14 office for an allocation of premium tax credits for potential  
15 certified investors by March 15, 1999, on a form developed by  
16 the office with the cooperation of the Department of Revenue.  
17 The form shall be accompanied by an affidavit from each  
18 potential certified investor confirming that the potential  
19 certified investor has agreed to make an investment of  
20 certified capital in a certified capital company up to a  
21 specified amount, subject only to the receipt of a premium tax  
22 credit allocation pursuant to this subsection. No allocation  
23 shall be made to the potential investors of a certified  
24 capital company unless such certified capital company has  
25 filed premium tax allocation claims that would result in an  
26 allocation to the potential investors in such certified  
27 capital company of not less than \$15 million in the aggregate.

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



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

15           (f) If the total amount of capital committed by all  
16 certified investors to certified capital companies in premium  
17 tax allocation claims exceeds the aggregate cap on the amount  
18 of credits that may be awarded, the premium tax credits that  
19 may be allowed to any one certified investor shall be  
20 allocated using the following ratio:

$$\text{A/B} = \text{X}/\$150,000,000$$

21  
22  
23  
24 where the letter "A" represents the total amount of certified  
25 capital certified investors have agreed to invest in any one  
26 certified capital company, the letter "B" represents the  
27 aggregate amount of certified capital that all certified  
28 investors have agreed to invest in all certified capital  
29 companies, the letter "X" is the numerator and represents the  
30 total amount of premium tax credits and certified capital that  
31 may be allocated to a certified capital company in calendar

1 year 1999, and \$150 million is the denominator and represents  
2 the total amount of premium tax credits and certified capital  
3 that may be allocated to all certified investors in calendar  
4 year 1999. Any such premium tax credits are not first  
5 available for utilization until annual filings are made in  
6 2001 for calendar year 2000, and the tax credits may be used  
7 at a rate not to exceed 10 percent annually.

8 (g) The maximum amount of certified capital for which  
9 premium tax allocation claims may be filed on behalf of any  
10 certified investor and its affiliates by one or more certified  
11 companies may not exceed \$15 million.

12 (h) To the extent that less than \$150 million in  
13 certified capital is raised in connection with the procedure  
14 set forth in paragraphs (c)-(g), the department may adopt  
15 rules to allow a subsequent allocation of the remaining  
16 premium tax credits authorized under this section.

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

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

22 1. The total dollar amount the certified capital  
23 company received from certified investors, the identity of the  
24 certified investors, and the amount received from each  
25 certified investor during the calendar year.

26 2. The total dollar amount the certified capital  
27 company invested and the amount invested in qualified  
28 businesses, together with the identity and location of those  
29 businesses and the amount invested in each qualified business.

30 3. For informational purposes only, the total number  
31 of permanent, full-time jobs either created or retained by the

1 qualified business during the calendar year, the average wage  
2 of the jobs created or retained, the industry sectors in which  
3 the qualified businesses operate, and any additional capital  
4 invested in qualified businesses from sources other than  
5 certified capital companies.

6 (b) The form shall be verified by one or more  
7 principals of the certified capital company submitting the  
8 form. Verification shall be accomplished as provided in s.  
9 92.525(1)(b) and subject to the provisions of s. 92.525(3).

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

13 1. That the businesses in which certified capital has  
14 been invested by the certified capital company are in fact  
15 qualified businesses, and that the amount of certified capital  
16 invested by the certified capital company is as represented in  
17 the form.

18 2. The amount of certified capital invested in the  
19 certified capital company by the certified investors.

20 3. The amount of premium tax credit available to  
21 certified investors.

22 (d) The Department of Revenue is authorized to audit  
23 and examine the accounts, books, or records of certified  
24 capital companies and certified investors for the purpose of  
25 ascertaining the correctness of any report and financial  
26 return which has been filed, and to ascertain a certified  
27 capital company's compliance with the tax-related provisions  
28 of this act.

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

30 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE  
31 PARTICIPATION.--

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

15           (b) Cumulative distributions from a certified capital  
16 company to its certified investors and equity holders, other  
17 than qualified distributions, in excess of the certified  
18 capital company's original certified capital and any  
19 additional capital contributions to the certified capital  
20 company are subject to audit by a nationally recognized  
21 certified public accounting firm acceptable to the department,  
22 at the expense of the certified capital company. The audit  
23 must determine whether aggregate cumulative distributions from  
24 the certified capital company to all certified investors and  
25 equity holders, other than qualified distributions, have  
26 equaled the sum of the certified capital company's original  
27 certified capital and any additional capital contributions to  
28 the certified capital company. If at the time of any such  
29 distribution made by the certified capital company, such  
30 distribution, taken together with all other such distributions  
31 made by the certified capital company, other than qualified

1 distributions, exceeds in the aggregate the sum of the  
2 certified capital company's original certified capital and any  
3 additional capital contributions to the certified capital  
4 company, as determined by the audit, then the certified  
5 capital company shall pay to the Department of Revenue 10  
6 percent of the portion of such distribution in excess of such  
7 amount. Payments to the Department of Revenue by a certified  
8 capital company pursuant to this paragraph shall not exceed  
9 the aggregate amount of tax credits utilized by all certified  
10 investors in such certified capital company.

11 (10) DECERTIFICATION.--

12 (a) The department shall conduct an annual review of  
13 each certified capital company to determine if the certified  
14 capital company is abiding by the requirements of  
15 certification, to advise the certified capital company as to  
16 the eligibility status of its qualified investments, and to  
17 ensure that no investment has been made in violation of this  
18 act. The cost of the annual review shall be paid by each  
19 certified capital company.

20 (b) Any material violation of this section, or a  
21 finding that the certified capital company or any principal or  
22 director thereof has committed any act specified in paragraph  
23 (4)(d), shall be grounds for decertification of the certified  
24 capital company. If the department determines that a certified  
25 capital company is no longer in compliance with the  
26 certification requirements of this act, the department shall,  
27 by written notice, inform the officers of such company that  
28 the company may be subject to decertification 90 days after  
29 the date of mailing of the notice, unless the deficiencies are  
30 corrected and such company is again found to be in compliance  
31 with all certification requirements.

1           (c) At the end of the 90-day grace period, if the  
2 certified capital company is still not in compliance with the  
3 certification requirements, the department may issue a notice  
4 to revoke or suspend the certification or to impose an  
5 administrative fine. The department shall advise each  
6 respondent of the right to an administrative hearing under  
7 chapter 120 prior to final action by the department.

8           (d) If the department revokes a certification, such  
9 revocation shall also deny, suspend, or revoke the  
10 certifications of all affiliates of the certified capital  
11 company.

12           (e) Decertification of a certified capital company for  
13 failure to meet all requirements for continued certification  
14 under paragraph (5)(a) may cause the recapture of premium tax  
15 credits previously claimed by such company and the forfeiture  
16 of future premium tax credits to be claimed by certified  
17 investors with respect to such certified capital company, as  
18 follows:

19           1. Decertification of a certified capital company  
20 within 3 years after its certification date shall cause the  
21 recapture of all premium tax credits previously claimed by  
22 such company and the forfeiture of all future premium tax  
23 credits to be claimed by certified investors with respect to  
24 such company.

25           2. When a certified capital company meets all  
26 requirements for continued certification under subparagraph  
27 (5)(a)1. and subsequently fails to meet the requirements for  
28 continued certification under the provisions of subparagraph  
29 (5)(a)2., those premium tax credits which have been or will be  
30 taken by certified investors within 3 years after the  
31 certification date of the certified capital company shall not

1 be subject to recapture or forfeiture; however, all premium  
2 tax credits that have been or will be taken by certified  
3 investors after the third anniversary of the certification  
4 date of the certified capital company shall be subject to  
5 recapture or forfeiture.

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

18 4. If a certified capital company has met all  
19 requirements for continued certification under paragraph  
20 (5)(a), but such company is subsequently decertified, those  
21 premium tax credits which have been or will be taken by  
22 certified investors within 5 years after the certification  
23 date of such company shall not be subject to recapture or  
24 forfeiture. Those premium tax credits to be taken subsequent  
25 to the 5th year of certification shall be subject to  
26 forfeiture only if the certified capital company is  
27 decertified within 5 years after its certification date.

28 5. If a certified capital company has invested an  
29 amount cumulatively equal to 100 percent of its certified  
30 capital in qualified investments, all premium tax credits  
31

1 claimed or to be claimed by its certified investors shall not  
2 be subject to recapture or forfeiture.

3 (f) Decertification of a certified capital company  
4 pursuant to subsection (4) or this subsection does not affect  
5 the ability of certified investors in such certified capital  
6 company to continue to claim future premium tax credits earned  
7 as an investment in the certified capital company during the  
8 period in which it was duly certified.

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

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

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

23 (j) A notice of deficiency may be issued:

24 1. At any time within 5 years after the date such  
25 notification is given; or

26 2. At any time if a certified investor fails to notify  
27 the Department of Revenue.

28  
29 In either case, the amount of any proposed assessment set  
30 forth in such notice shall be limited to the amount of any  
31 deficiency resulting under this act from the recomputation of



1 the certified investor's insurance premium tax and, if  
2 applicable, its retaliatory tax for the taxable year giving  
3 effect only to the item or items reflected in the  
4 decertification adjustment.

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

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

17 (11) TRANSFERABILITY.--The claim of a transferee of a  
18 certified investor's unused premium tax credit shall be  
19 permitted in the same manner and subject to the same  
20 provisions and limitations of this act as the original  
21 certified investor. The term "transferee" means any person  
22 who:

23 (a) Through the voluntary sale, assignment, or other  
24 transfer of the business or control of the business of the  
25 certified investor, including the sale or other transfer of  
26 stock or assets by merger, consolidation, or dissolution,  
27 succeeds to all or substantially all of the business and  
28 property of the certified investor;

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

31

1       (c) Directly or indirectly owns, whether through  
2 rights, options, convertible interests, or otherwise,  
3 controls, or holds power to vote 10 percent or more of the  
4 outstanding voting securities or other ownership interest of  
5 the certified investor.

6       (12) REPORTING REQUIREMENTS.--

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

10       1. The total dollar amount each certified capital  
11 company received from all certified investors and any other  
12 investor, the identity of the certified investors, and the  
13 total amount of premium tax credit used by each certified  
14 investor for the previous calendar year.

15       2. The total dollar amount invested by each certified  
16 capital company and that portion invested in qualified  
17 businesses, the identity and location of those businesses, the  
18 amount invested in each qualified business, and the total  
19 number of permanent, full-time jobs created or retained by  
20 each qualified business.

21       3. The return for the state as a result of the  
22 certified capital company investments, including the extent to  
23 which:

24       a. Certified capital company investments have  
25 contributed to employment growth.

26       b. The wage level of businesses in which certified  
27 capital companies have invested exceed the average wage for  
28 the county in which the jobs are located.

29       c. The investments of the certified capital companies  
30 in qualified businesses have contributed to expanding or  
31 diversifying the economic base of the state.

1           (13) FEES.--All fees and charges of any nature  
2 collected by the department pursuant to this act shall be paid  
3 into the State Treasury and credited to the General Revenue  
4 Fund.

5           (14) RULEMAKING AUTHORITY.--

6           (a) The Department of Revenue may by rule prescribe  
7 forms and procedures for the tax credit filings, audits, and  
8 forfeiture of premium tax credits described in this section,  
9 and for certified capital company payments under paragraph  
10 (9)(b).

11           (b) The office may adopt any rules necessary to carry  
12 out its duties, obligations, and powers related to the  
13 administration, review, and reporting provisions of this  
14 section and may perform any other acts necessary for the  
15 proper administration and enforcement of such duties,  
16 obligations, and powers.

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

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

25           Section 5. Except as otherwise provided in this act,  
26 this act shall take effect upon becoming a law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 CS/SB 1512

4 The following substantial changes are made in the committee  
5 substitute:

- 6 1. The definition of qualified business is narrowed to  
7 require that the business must be involved in  
8 manufacturing, processing or assembling products,  
9 conducting research and development or providing  
10 services. At the time the CAPCO makes its initial  
11 investment, the business must certify that it is unable  
12 to obtain conventional financing, meaning that it has  
13 been turned down by a commercial lender or cannot  
14 reasonably be expected to qualify for a commercial loan,  
15 that the business plan projects that the business is  
16 reasonably expected to achieve in excess of \$25 million  
17 in sales revenue in 5 years, that the business will  
18 maintain its headquarters in Florida for the next 10  
19 years and any new manufacturing facility financed by a  
20 qualified investment will remain in the state for the  
21 next 10 years, and that the business has fewer than 200  
22 employees at least 75% of which are in Florida. In  
23 addition, businesses predominantly engaged in retail  
24 sales, real estate development, insurance, banking,  
25 lending, or oil and gas exploration do not qualify.
- 26 2. The requirement that half the investments of a CAPCO must  
27 be in businesses of less than \$5 million annual revenues  
28 is changed to require that half of the investments be in  
29 early stage technology companies. These companies are  
30 defined as businesses involved, at the time of the  
31 certified capital company's initial investment, in  
activities related to developing initial product or  
service offerings. The term includes businesses less than  
2 years old with annual revenues less than \$3 million.
3. The maximum investment by insurance companies is reduced  
from \$500 million to \$150 million. This reduces the  
maximum credit in any one year to \$15 million.
4. A requirement is added that, under certain circumstances,  
the CAPCO's would make a payment of a portion of their  
distributions to the insurance companies and equity  
holders to the state.
5. The exemption from insurance premium tax for certain  
minority owned business enterprises is not included in  
the committee substitute.