

STORAGE NAME: h1575s1z.fs

DATE: June 5, 1998

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1575, 1st Engrossed

RELATING TO: Certified Capital Companies

SPONSOR(S): Committee on Financial Services and Representative Feeney

COMPANION BILL(S): SB 1512 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
- (2) TRANSPORTATION & ECONOMIC DEV. APPROPRIATIONS YEAS 9 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

The House passed the 1st engrossed version of CS/HB 1575 by a vote of 118-1 on April 28, 1998. The Senate substituted the 1st engrossed version of CS/HB 1575 for CS/CS/SB 1512 and passed CS/HB 1575 by a vote of 39-0 on April 29, 1998. It became law without the Governor's signature on June 5, 1998: Chapter 98-257, Laws of Florida.

II. SUMMARY:

Venture capital is the long-term equity capital invested in new or rapidly expanding enterprises with an expectation of substantial capital gain. The Legislature has authorized Enterprise Florida, a public/private partnership, to develop sources of capital, including venture capital, for businesses operating in Florida in order to improve the state's economy as a whole. Corporations, partnerships, or limited liability companies may file for certification as a certified capital company (CAPCO) under the bill. CAPCOs certified by the Department of Banking and Finance could receive contributions of capital from insurers, who in turn would receive a credit against state premium taxes for each dollar contributed to a CAPCO. Investors who contribute to a CAPCO may utilize premium tax credits at a rate not to exceed 10 percent annually if the CAPCO invests at least 20 percent of its certified capital in qualified businesses beginning with premium tax filings for calendar year 2000. To remain certified, CAPCOs would be required to meet investment benchmarks. At least 30 percent of CAPCO funds must be invested in small businesses headquartered in and with their principal business operations in Florida ("qualified businesses") by December 31, 2001. By December 31, 2002, at least 40 percent of CAPCO funds must be invested in qualified businesses. By December 31, 2003, at least 50 percent of CAPCO funds must be invested in qualified businesses. Of the 50 percent required to be invested in qualified businesses, at least one-half, or 50 percent, of these investment funds must be invested in early stage technology businesses. If those investment benchmarks are not met the CAPCO would risk decertification. Decertification could result in the forfeiture or recapture of some, or all, of the premium tax credits earned by insurers.

The fiscal impact of this bill to the General Revenue Fund due to administration and reduced collection of premium taxes is estimated at a negative (\$381,890) for FY 1998-99, a negative (\$22,759,067) for FY 2001-02, and a negative (\$15,259,067) thereafter, until FY 2010-11. Due to a carryover provision in the bill, premium tax credits not used during those years may be used to offset premium tax liability for premium tax filings through calendar year 2017. Therefore, the bill's fiscal impact will continue in an indeterminate, but diminished fashion, until FY 2016-17, not to exceed a maximum of \$150 million over the life of the program.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Administration of Economic Development Programs

The Office of Tourism, Trade and Economic Development ("OTTED"), is an office within the Executive Office of the Governor, and is authorized pursuant to s. 14.2015, F.S., to administer several community development acts, including tax credit and tax refund programs, such as the community contribution tax credit program under ss. 220.183 and 645.5105, F.S., and the tax refund program for qualified target industry businesses under s. 288.106, F.S. According to s. 14.2015(2), F.S., in relevant part, the purpose of the OTTED is "...to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to provide economic opportunities for all Floridians."

Regulation of Investments

Chapter 517, Florida Statutes, authorizes the Department of Banking and Finance ("DBF") to regulate securities transactions in the private marketplace in order to protect investors. These protections are designed primarily for non-institutional investors, who transact business with registered securities dealers.

Insurance Company Premium Tax

Pursuant to s. 624.509, F.S., insurance companies doing business in Florida are required to pay a tax on premiums written in the state in the preceding calendar year, equal to 1% of total annuity premiums, and 1.75% of premiums on all other lines of business in the state. Premium taxes are paid on or before March 1 or each year, to the Department of Revenue (DOR), and distributed (after deductions and credits) to the General Revenue Fund. Insurance companies are permitted to reduce their premium tax liability with a variety of tax credits which are provided for in statute. For instance, Section 624.5105, F.S., authorizes insurance companies to receive a 50 percent credit against their premium tax obligations when they contribute to local redevelopment organizations who revitalize areas located within a designated enterprise zone. Other statutory premium tax credit options are available to insurance companies, including: Corporate Income Tax credit (s. 624.509(4), F.S.); Florida Employee's Salaries (s. 624.509(5), F.S.); Intangibles Tax credit (s. 624.509(4), F.S.); Municipal Firefighter's Pension Fund (s. 175.141, F.S.); and, the Municipal Police Officer's Retirement Fund (s. 185.12, F.S.)

Police and firefighter's assessments are distributed by the Department of Management Services to local governments. Fire Marshal assessments, filing fees, and \$125,000 annually adjusted by the lesser of 20 percent of the growth in total retaliatory taxes are deposited in the Insurance Commissioner's Regulatory Trust Fund. The remainder of the premium tax is deposited into the General Revenue Fund. In fiscal year 1996-1997, the proceeds of this tax totaled \$375.1 million after credits, and are deposited into the state's general revenue.

Regulation of Insurance Company Investments

Part II of Chapter 625, F.S., restricts the investment and lending activities in which insurance companies may engage using company assets. Section 625.302(1), F.S., specifies that insurers may invest or lend funds only in "eligible investments..." Pursuant to s. 625.303, F.S., new investments must be interest-bearing, must accrue dividends, must not be in default, and must be sold at or below market value in order to be eligible.

Section 625.304, F.S., restricts the authority of insurers to "make any investment or loan, other than a policy loan or annuity contract loan of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan." Section 625.305, F.S., requires that insurance company investments be diversified according to criteria in the law. Insurers' investments in stock are limited to 15% of assets. Investments in debt instruments are limited according to the grade of the investment, as determined by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC). For investments rated by the NAIC in the lowest grades --levels 5 or 6 --, insurers may invest only 1.5% of assets. According to the Department of Insurance, the 1995 nationwide admitted assets for insurance companies selling property, casualty, life and health insurance in Florida was \$2.72 trillion.

Section 625.324, F.S., authorizes insurers to invest in the stock of corporations if the stock is listed and traded on a national securities exchange, or approved by the Department of Insurance.

The Venture Capital Industry

Venture capital is the long-term equity capital invested in new or rapidly expanding enterprises. The most visible venture capital money comes from professionally-managed venture capital firms. These firms usually are funded by an informal network of investors that include: pension funds, insurance companies, endowment funds, foundations, bank holding companies and their affiliates, corporations, wealthy individuals, foreign investors and the venture capital professionals. Insurance companies, historically, have participated in the state's venture capital pool. However, they have chosen less risky investments, and avoided investing in businesses in the early stages of development.

In 1992, the Legislature created Enterprise Florida, Inc., to assist in the coordination of the state's economic development efforts and develop a strategic plan for economic development. In 1993, the Legislature created two additional Enterprise Florida Partnerships (subsequently renamed by the Legislature in 1996) -- the Enterprise Florida Innovation Board and the Enterprise Florida Capital Development Board. The Enterprise Florida Innovation Board is designed to foster the growth of high technology and value-added industries, and assist in the commercialization of technological products. The Enterprise Florida Capital Development Board exists to foster access to capital for Florida firms.

In 1994, the Enterprise Florida Capital Development Board created the Cypress Equity Fund, a "fund of funds" designed to target institutional investors (i.e., other professional

capital venture firms) which, in turn, invest in businesses around the country. To date, the Cypress Equity Fund has committed \$14.1 million to eight separate professionally-managed venture capital partnerships located in New York, Illinois, and California. According to the Enterprise Florida Capital Development Board, one-half of those partnerships actively seek investments in Florida. As of September 1997, a total of 5 Florida businesses have received over \$93 million in capital from Cypress Equity Fund-sponsored venture firms and their co-investors.

In 1995, the venture capital industry raised \$7.4 billion for 1100 deals, an average of \$6.7 million per deal according to VentureOne, a San Francisco-based research firm. Industry research indicates that the majority of venture capital investments go to emerging technologies in the computer, biotechnology, telecommunications and health care fields. Venture capital firms commonly purchase stock in the companies in which they invest, and gain positions on the corporate board of directors where they provide oversight and management assistance to the company.

Unlike publicly traded securities, venture capital investments are high-risk equity transactions, in a competitive marketplace, that remain invested for several years. The venture capital industry is generally free of governmental regulation.

Certified Capital Companies

Certified Capital Companies operate in much the same manner as traditional venture capital firms. They invest capital in new or expanding businesses, and their source of capital is the insurance companies.

Louisiana (1983), Missouri (1996) and New York (1997), have authorized CAPCOs through legislation. Though the implementing language is very similar in each state, there are some variations in the length of time in which credits maybe carried forward and in the amount of investments that CAPCOs must make in order to remain certified.

While it is too early to assess the New York and Missouri programs, data is available on the Louisiana program. According to the State of Louisiana, Office of Financial Institutions, as of December 31, 1996, insurers had invested \$146.3 million in Louisiana CAPCOs, which show total certified capital of \$155.7 million. There have been \$184 million in tax credits generated and \$63 million actually used. Of the \$155.7 million invested in CAPCOs, Louisiana CAPCOs have made \$63.4 million in qualified investments. According to data generated and reported by CAPCOs, investments have been made in 62 qualified businesses, creating 2,809 jobs. Officials of the Office of Financial Institutions for the state of Louisiana indicate that the number of actual jobs created has not been verified.

B. EFFECT OF PROPOSED CHANGES:

Corporations, partnerships, or limited liability companies may file for certification as a certified capital company (CAPCO) under the bill. CAPCOs certified by the Department of Banking and Finance could receive contributions of capital from insurers, who in turn would receive a credit against state premium taxes for each dollar contributed to a CAPCO. Investors who contribute to a CAPCO may utilize premium tax credits at a rate not to exceed 10 percent annually if the CAPCO invests at least 20 percent of its

certified capital in qualified businesses by December 31, 2000. To remain certified, CAPCOs would be required to meet investment benchmarks. At least 30 percent of CAPCO funds must be invested in businesses headquartered in and with their principal business operations in Florida ("qualified businesses") by December 31, 2001. By December 31, 2002, at least 40 percent of CAPCO funds must be invested in qualified businesses. By December 31, 2003, at least 50 percent of CAPCO funds must be invested in qualified businesses. Of the 50 percent required to be invested in qualified businesses, at least one-half, or 50 percent, of these investment funds must be invested in early stage technology businesses. If those investment benchmarks are not met the CAPCO would risk decertification. Decertification could result in the forfeiture or recapture of some, or all, of the premium tax credits earned by insurers.

In the event that distributions, other than qualified distributions, made by a CAPCO to certified investors and equity holders exceed the amount of the CAPCO's original certified capital plus any additional capital contributions, the CAPCO is required to pay an amount equal to 10 percent of that excess to the DOR.

For additional details, see Section D., SECTION-BY-SECTION RESEARCH.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The DBF is granted specific rulemaking authority to carry out duties relating to certification, certification renewal, or decertification of CAPCOs. The DOR is authorized to make rules necessary to carry out its duties as related to the premium tax credit provisions in the act. The OTTED is authorized to make rules necessary for the office to carry out its duties relating to the administration of the act, review of annual reports and its reporting requirements to the Governor and the Legislature.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. See (1), above.

(3) any entitlement to a government service or benefit?

Yes. Insurance companies receive the benefit of a credit against their premium tax liability owed to the state.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

Yes. Provisions in the bill allow insurers to gain credits against their premium tax liability to the state. As these credits are applied, there is a direct reduction in state general revenue.

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 14.2015, F.S., and creates s. 288.99, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 14. 2015, F.S., designating the OTTED as the administrator of the "Certified Capital Company Act."

Section 2. Creates s. 288.99, F.S., creating the "Certified Capital Company Act," and providing a short title for the act. The features of the act are as follows:

Purpose. It is the stated legislative intent that the act stimulate investments in Florida by providing an incentive for insurance companies to invest in CAPCOs which, in turn, make investments in new businesses and expanding businesses.

Definitions. The act sets out definitions of terms pertinent to the operation of CAPCOs, including: (i) *certified capital* - the legal tender or financial instruments deposited with certified capital companies which fund investments; (ii) *certified capital company* - the legal entity which initiates and administers investment activity; (iii) *certified investor* - investor insurance companies; (iv) *early stage technology business* - means a qualified business that is involved, at the time of the certified capital company's initial; investment in such business, in activities related to developing initial product or service offerings, such as prototype development or the establishment of initial production or service processes; (v) *qualified business* - businesses that may receive investment funds must be must be headquartered and have principal business operations in Florida, and must meet the definition of "small business concern" in federal regulations (13 C.F.R. §121.201). In addition, the business must be involved in manufacturing, processing, assembling, research and development or providing services. A business must submit an affidavit establishing that the business is unable to get conventional funding, that the business plan demonstrates an expectation of \$25

million in sales revenue within 5 years of investment by a CAPCO, that the business will remain in the state for the next 10 years, and that the business has less than 200 employees and employs 75 percent of workforce in the state ; (vi) *qualified investments* - cash invested by a certified capital company that may be used to purchase a debt, equity or hybrid security of any nature whatsoever, including a debt instrument or security which has the characteristics of debt but which can be converted into equity; and (vii) *premium tax liability* - the tax liability incurred by an insurance company under s. 624.509, F.S.

Certification and Grounds for Denial or Decertification. The act authorizes the Department of Banking and Finance (DBF) to establish certification procedures for CAPCOs, based on criteria specified in the bill, which consist of: (i) timely filing of an application, on or before December 1, 1998; (ii) \$7,500 application fee; (iii) DBF review of resumes and organizational documents of active business entities which are registered with the Department of State; (iv) \$500,000 in net capital demonstrated through an audited or reviewed financial statement; and (v) at least two principals must have a minimum 5 years experience making venture capital investments out of private equity funds with not less than \$20 million of the equity having been provided by third party investors for investment in early stage businesses. At least one full-time manager must be located in an office in the state. The DBF may deny certification or decertify a CAPCO if a CAPCO fails to maintain \$500,000 net capital or if any principal or director commits a criminal or deceptive act as specified in the bill. The DBF must approve or deny applications on December 31, 1998. The CAPCO must file a copy of its certification with the OTTED on or before January 31, 1999. Any offering material involving the sale of securities must have specific content as specified in the bill. The bill restricts ownership interests by insurance companies in certified capital companies. CAPCOs must pay an annual renewal fee of \$5,000 to the DBF. The DBF is granted specific rulemaking authority to carry out duties relating to certification, certification renewal, or decertification of CAPCOs.

Investments by Certified Capital Companies. CAPCOs are required to achieve investment benchmarks and follow investment guidelines in order to maintain their certification. In order to qualify toward reaching the investment benchmarks the CAPCO investments must be made in "qualified businesses," defined as businesses which are: (i) "small businesses" as defined in 13 C.F.R., s. 121.201, "Size Standards Used to Define Small Business Concerns;" and, (ii) headquartered in and with their principal business operations in Florida. CAPCOs must make qualified investments within the following guidelines:

- (a). By December 31, 2000, at least 20 percent of original certified capital must be invested in qualified businesses;
- (b). By December 31, 2001, at least 30 percent of original certified capital must be invested in qualified businesses;
- (c). By December 31, 2002, at least 40 percent of original certified capital must be invested in qualified businesses;
- (d). By December 31, 2003, at least 50 percent of original certified capital must be invested in qualified businesses, and at least 50 percent of these qualified investments must be invested in early stage technology businesses.

Certified capital which is not invested in qualified businesses must be held in a financial institution or held by a broker - dealer registered under s. 517.12, F.S., must not be invested in a certified investor (insurance company investor) or an affiliate, and may only be invested in securities as specified in the bill. The aggregate of all investments in

qualified businesses made by a CAPCO from the date of certification counts for the purpose of these requirements.

Premium Tax Credit; Amount; Limitations. An insurance company which invests in a CAPCO is authorized to receive a vested credit against its future premium tax liability, equal to the full amount of its investment. The investor may use only 10 percentage points of the vested tax credit, including any carry forward credit, per year beginning with premium tax filings in 2001 for calendar year 2000. Unused tax credits against premium tax liability may be carried forward and may be applied against subsequent premium tax filings through calendar year 2017. Investors applying credits against premium tax liability may not exceed their total tax liability in the year taken. Investors using premium tax credits under this act shall not have to pay additional retaliatory taxes levied pursuant to s. 624.5091, F.S.

Annual Tax Credit; Maximum Amount; Allocation Process. The aggregate amount of premium tax credits which may be allocated for the life of this program is capped at \$150,000,000. The total amount of tax credits which may be utilized by certified investors under the act shall not exceed \$15,000,000 annually.

CAPCOs must apply for their premium credit allocation on a form developed by the OTTED and the DOR on or before March 15, 1999. The form shall include an affidavit from each certified investor attesting that each will contribute to the CAPCO a specified amount, subject only to the receipt of a premium tax credit allocation pursuant to this section of the act. On or before April 1, 1999, the OTTED shall inform each CAPCO of its share of total premium tax credits that are available for distribution to certified investors. If a CAPCO does not receive the capital from a certified investor within 10 business days after receipt of the notice of allocation, then the CAPCO must notify the OTTED by overnight delivery service of its failure to receive the capital. That portion of the premium tax credits shall be forfeited by that CAPCO. If the office must make a pro rata allocation of tax credits, due to the contingency whereby the total amount of capital committed by all the investors for premium tax credits exceeds the aggregate cap on the amount of credits that may be awarded, then the OTTED will reallocate these available credits on the same pro rata basis as the initial allocation.

The allocation formula is as follows:

$$\frac{A}{B} = \frac{x}{\$150,000,000}$$

Where "x" is the numerator and represents the total amount of tax credits that may be allocated to a CAPCO for use by its certified investors beginning in calendar year 1999 in an amount not to exceed 10 percent annually, and \$150 million is the denominator and the total amount of premium tax credits that may be utilized beginning in fiscal year 2000-2001 in an amount that may not exceed 10 percent annually. "A" represents the total amount of certified capital each certified investor has committed to invest in a CAPCO. "B" represents the aggregate amount of certified capital that all CAPCOs have committed to invest in all CAPCOs.

The maximum amount of premium tax credit that may be claimed by any one CAPCO may not exceed \$15 million.

Annual Tax Credit; Claims Process. The bill creates s. 220.196, F.S., requiring each CAPCO to file a verified annual report with the DBF on or before December 31, and shall contain the following information:

- (a) the total amount of investments received from all certified investors, the identity of each investor, and the amount received from each individual investor;
- (b) the total dollar amount the CAPCO has invested in qualified businesses, the identity and location of each qualified business, and the total amount invested in each qualified business; and,
- (c) the total number of permanent, full time jobs either created or retained by the qualified business during the calendar year.

The OTTED shall review the verified annual reports and in turn verify each CAPCO's compliance with the provisions of this act and verify the amount of premium tax credit available for each certified investor.

The DOR is authorized to audit CAPCOs and their certified investors for the purpose of verifying the correctness of any report or audit that is filed according to the provisions of this act.

Reimbursement for 100 Percent Investment; State Participation. A CAPCO is permitted to make "qualified distributions" at any time. "Qualified distributions" include costs and expenses of forming and operating the CAPCO, including an annual management fee of not more than 2.5 percent of the certified capital, plus necessary and reasonable expenses for legal and accounting services. Qualified distributions also include the payment of any projected increase in federal or state taxes of equity owners resulting from earnings or other tax liability of the CAPCO. Debt service payments to debt holders may also be made at any time. In order to make a distribution, other than a qualified distribution, to an equity holder the CAPCO must have invested an amount cumulatively equal to 100 percent of its certified capital in qualified investments.

In the event that distributions, other than qualified distributions, made by a CAPCO to certified investors and equity holders exceed the amount of the CAPCO's original certified capital plus any additional capital contributions, the CAPCO is required to pay an amount equal to 10 percent of that excess to the DOR.

Decertification. The DBF is required to review each CAPCO annually to verify compliance with the act and to advise the CAPCO as to the eligibility status of its qualified investments. The CAPCO shall bear the cost of the review.

Any material (or substantive) violation of the act may be grounds for decertification. The DBF shall notify in writing any CAPCO that is found not to be in compliance with the certification requirements of the act and give the CAPCO up to 90 days in which to bring itself back into compliance. If, at the end of the 90 day period the CAPCO is not in compliance, the DBF may issue a notice to revoke or suspend the certification or impose an administrative fine. Each respondent shall be advised of their right to an administrative hearing under chapter 120, F.S. prior to final action by the DBF. Decertification shall operate to revoke, deny, or suspend the certification of any affiliate of the CAPCO.

Decertification may cause the recapture of premium tax credits previously claimed. If a CAPCO is decertified before December 31, 2001, then all premium tax credits previously claimed will be forfeited and subject to recapture. If a CAPCO invests at least 20 percent of its certified capital in qualified businesses by December 31, 2000, but fails to invest 30 percent by December 31, 2001, then all tax credits that have been or will be taken by certified investors after December 31, 2001 shall be subject to recapture or forfeiture. If a CAPCO invest 30 percent of its certified capital in qualified businesses but fails to invest 40 percent by December 31, 2002, then all tax credits that have been or will be taken by certified investors after December 31, 2002 shall be subject to recapture or forfeiture. If a CAPCO meets all of the investment thresholds but is subsequently decertified, then all tax credits that have been or will be taken by certified investors after December 31, 2003 shall be subject to recapture or forfeiture. If a CAPCO invests an amount equal to 100 percent of its certified capital in qualified businesses, then all premium tax credits claimed or to be claimed will not be subject to recapture or forfeiture. Decertification of a CAPCO, due to violations of the initial qualification standards for licensure as a CAPCO, would not affect the ability of certified investors to continue to claim future premium tax credits earned as an investment in the CAPCO during the period it was certified.

The certified investor is responsible for returning forfeited tax credits to the DOR and is responsible for filing an amended return and pay the required premium tax, and any retaliatory tax, not later than 60 days after decertification of a CAPCO in which the certified investor has invested. Failure to comply with this requirement may subject the certified investor to administrative fines and payment of interest on premium tax and retaliatory tax amounts due.

Tax Credit Transferability. Premium tax credits may be transferred by operation of law (e.g., receivership), or by the transfer of the business or control of the business through the voluntary sale, merger, consolidation, or dissolution of the certified investor in whose name the credits are vested. A transferee may be a person who owns, controls, or holds power to vote 10 percent or more of the outstanding voting securities of the certified investor.

Annual Report. The OTTED is required to file an annual report, on or before April 1, with the Governor, the Speaker of the House of Representatives and the Senate President. The report shall include

- (a) the total dollar amount received by each CAPCO from all verified investors and other investors, the identity of the certified investors and the total amount of tax credits utilized by each certified investor for the previous year;
- (b) the total amount invested by each CAPCO in qualified businesses, the identity and location of those businesses, and the number of permanent, full time jobs created or retained by each business; and
- (c) the return for the state as a result of the qualified investments, including:
 - (i) the contribution to overall employment growth;
 - (ii) the extent to which the wages for the jobs exceed the average for the county in which the jobs are located; and
 - (iii) the extent to which the economic base of the state.

Fees. All fees collected pursuant to this act shall be paid to the DBF and shall be deposited into the General Revenue Fund.

Rulemaking Authority. The DOR is authorized to make rules necessary to carry out its duties as related to the premium tax credit provisions in the act. The OTTED is authorized to make rules necessary for the office to carry out its duties relating to the administration of the act, review of annual reports and its reporting requirements to the Governor and the Legislature.

Section 3. A total of \$240,434 is appropriated for fiscal year 1998-1999 from the General Revenue Fund to the DBF to implement this act.

Section 4. A total of \$100,000 is appropriated for fiscal year 1998-1999 from the General Revenue Fund to the Office of Tourism, Trade, and Economic Development to implement this act.

Section 5. The act shall take effect upon becoming a law.

FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

F. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

	<u>FY 1998-99</u>
Revenues	\$37,500 ¹
Expenses	
DBF	(\$45,323)
OTTED	(\$77,500)
Total Non-recurring effects ²	(\$122,823)

2. Recurring Effects:

Estimates of the effect on premium tax revenues were provided by the Revenue Estimating Conference.

Revenues	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03

¹This estimate assumes that five companies will apply for certification. If 10 companies apply, then application fees will generate \$75,000; and If 15 companies apply, then application fees will generate \$112,500.

²This figure would be offset by the amount generated by application fees. See, footnote no. 1.

Premium Tax	\$0	\$0	\$(22.5m) ³	(\$15 m)	(\$15 m)
Annual Renewal Fees	\$0	\$ ⁴	see fn 4	see fn 4	see fn 4
Expenditures	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
FTEs (DBF) (OTTED)	4 1	4 1	4 1	4 1	4 1
Salaries (DBF) (OTTED)	\$175,500 \$ 50,350	\$175,500 \$ 50,350	\$175,500 \$ 50,350	\$175,500 \$ 50,350	\$175,500 \$ 50,350
Expenses (DBF) (OTTED)	\$ 19,611 \$ 13,606	\$ 19,611 \$ 13,606	\$ 19,611 \$ 13,606	\$ 19,611 \$ 13,606	\$ 19,611 \$ 13,606

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Total Revenues and Expenditures⁵	(\$381,890)	(\$259,067)	(\$22,759,067)	(\$15,259,067)	(\$15,259,067)

G. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

³Please see III D., FISCAL COMMENTS.

⁴ It is unknown how many companies which are certified will renew their certification annually as required under the bill, which requires a \$5,000 renewal fee.
 If 5 companies renew certification, then fees will generate \$25,000;
 If 10 companies renew certification, then application fees will generate \$50,000; and
 If 15 companies renew certification, then application fees will generate \$75,000.

⁵ A portion of these amounts may be offset by application fees collected in FY 1998-99, and by annual recertification fees collected thereafter. Please see footnote nos. 1 and 4. These amounts do not reflect offsetting amounts, if any, the DOR might receive as a result of the state participation section of the bill.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

H. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

All costs associated with establishment of CAPCOs and the costs of transactions are included in the operating budget of the CAPCO.

2. Direct Private Sector Benefits:

Small, expanding businesses in Florida may gain access to additional capital to support start-up and growth operations. Insurance companies should receive positive financial returns on their contributions to CAPCOs as a result of management of the CAPCO's portfolio.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill may result in increased venture capital made available to Florida businesses which may stimulate the economic expansion of more technology-based or capital-intensive companies, and the creation of high-wage jobs in the state.

I. FISCAL COMMENTS:

1. Sections 3 and 4 of the bill provides an appropriation of \$240,434 to the DBF, and \$100,000 to the OTTED, respectively, from the General Revenue Fund to implement this act.

2. The bill has a \$15 million cap on the amount of premium tax credit that may be used in any one year. The Revenue Estimating Conference, however, ran "REMI" models developed by the Regional Economic Modeling Inc., and estimated the fiscal impact of the bill in fiscal year 2000-01 at a negative (\$22,500,000). This amount does not reflect any offsetting amount, if any, the DOR might receive as a result of the state participation section of the bill. In addition, this amount does not reflect any offset reflected by application fees collected in FY 1998-99, and by annual recertification fees collected thereafter. The Impact Conference explained that insurance companies with premium tax liability must make premium tax payments annually, on or before March 15, which are based on premiums collected the previous year. Insurance companies must also pay estimated taxes based upon a percentage of their previous taxes due, after accounting for available credits. Accordingly, the estimated tax payments for fiscal year 2001-02 will be lower due to the premium tax credit insurance companies will receive for participation in the Certified Capital Company Act. As a result, there will be less estimated premium taxes collected.

Therefore, the estimated fiscal impact for fiscal year 2000-01 is estimated at a negative (\$22.5) million rather than a negative (\$15) million.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The 1st engrossed version of CS/HB 1575 differed from CS/HB 1575, in that the 1st engrossed version:

Reduces the Premium Tax Credit Cap

The cap for tax credits which may be allocated by OTTED is reduced from \$500 million to \$150 million, which may be used at a rate not to exceed \$15 million annually.

Provides for State Participation

The CS provides that CAPCOs will pay to the DOR an amount equal to 10 percent of any distributions made to equity holders in excess of the CAPCOs original certified capital amount.

Requires greater experience for CAPCO principals

Rather than requiring CAPCO principals to have at least 2 years experience, the CS requires that principals of CAPCOs have at least 5 years experience making venture capital investments from of private equity funds that invested not less than \$20 million in early stage businesses, provided by third party investors.

Targets certain industries in Florida for investment

Instead of simply requiring that "qualified businesses" be a "small business" as defined by the federal SBA, and be located in Florida, the CS requires that a "qualified business" be

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involved in manufacturing, processing, assembling, research and development or providing services, and requires that the business remain in the state for the next 10 years, and that the business has less than 200 employees and employs 75 percent of workforce in state.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Michael A. Kliner

Stephen Hogge

AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:

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