

By Representative Feeney

1 A bill to be entitled
 2 An act relating to certified capital companies;
 3 providing a short title; providing a purpose;
 4 providing definitions; providing for a credit
 5 against the insurance premium tax; providing
 6 for certification of certified capital
 7 companies; requiring an application fee;
 8 requiring an annual certification fee;
 9 providing procedures; providing requirements;
 10 providing requirements for continuing
 11 certification; providing for distributions from
 12 certified capital companies; providing for
 13 decertification; providing procedures;
 14 requiring the Department of Banking and Finance
 15 to conduct annual reviews of certified capital
 16 companies for certain purposes; providing for
 17 recapture or forfeiture of premium tax credits
 18 under certain circumstances; providing
 19 exceptions; providing for immunity from
 20 regulation and certification for certain
 21 companies under certain certain circumstances;
 22 providing for transferability of certain
 23 credits; providing an effective date.

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

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 27 Section 1. This act may be cited as the "Certified
 28 Capital Company Act."

29 Section 2. The primary purpose of this act is to
 30 provide an incentive for insurance companies to invest in
 31 certified capital companies which will provide assistance in

1 the formation of new businesses, and the expansion of existing
2 businesses, which create jobs in this state.

3 Section 3. Definitions.--For the purpose of this act:

4 (1) "Affiliate of a certified capital company or
5 insurance company" means:

6 (a) Any person directly or indirectly beneficially
7 owning, whether through rights, options, convertible
8 interests, or otherwise, controlling, or holding power to vote
9 10 percent or more of the outstanding voting securities or
10 other ownership interests of the certified capital company or
11 insurance company, as applicable;

12 (b) Any person 10 percent or more of whose outstanding
13 voting securities or other ownership interest are directly or
14 indirectly beneficially owned, whether through rights,
15 options, convertible interests or otherwise, controlled, or
16 held with power to vote by the certified capital company or
17 insurance company, as applicable;

18 (c) Any person directly or indirectly controlling,
19 controlled by, or under common control with the certified
20 capital company or insurance company, as applicable;

21 (d) A partnership in which the certified capital
22 company or insurance company, as applicable, is a general
23 partner; or

24 (e) Any person who is an officer, director, or agent
25 of the certified capital company or insurance company, as
26 applicable, or an immediate family member of such officer,
27 director, or agent.

28 (2) "Certification date" means the date on which a
29 certified capital company is designated as such by the
30 department.

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1 (3) "Certified capital" means an investment of cash by
2 a certified investor in a certified capital company which
3 fully funds the purchase price of either or both its equity
4 interest in the certified capital company or a qualified debt
5 instrument issued by the certified capital company.

6 (4) "Certified capital company" means a partnership,
7 corporation, trust, or limited liability company, whether
8 organized on a profit or not-for-profit basis, that has as its
9 primary business activity the investment of cash in qualified
10 businesses and that is certified by the department as meeting
11 the criteria of this act.

12 (5) "Certified investor" means any insurance company
13 that contributes certified capital.

14 (6) "Department" means the Department of Banking and
15 Finance.

16 (7) "Person" means any natural person or entity,
17 including a corporation, general or limited partnership,
18 trust, or limited liability company.

19 (8) "Qualified business" means a business that meets
20 all of the following conditions as of the time a certified
21 capital company first invests in the business:

22 (a) The business is headquartered in this state and
23 its principal business operations are located in this state.

24 (b) The business is a small business concern as
25 defined in 13 C.F.R. s. 121.201, of the small business size
26 regulations of the United States Small Business
27 Administration.

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29 A business predominantly engaged in professional services
30 provided by accountants, lawyers, or physicians does not
31 constitute a qualified business.

1 (9) "Qualified debt instrument" means a debt
2 instrument issued by a certified capital company, at par value
3 or a premium, with an original maturity date of at least 5
4 years after the date of issuance, a repayment schedule which
5 is no faster than a level principal amortization, and
6 interest, distribution, or payment features which are not
7 related to the profitability of the certified capital company
8 or the performance of the certified capital company's
9 investment portfolio.

10 (10) "Qualified distribution" means any distribution
11 or payment to equity holders of a certified capital company in
12 connection with the following:

13 (a) Costs and expenses of forming, syndicating,
14 managing, and operating the certified capital company,
15 including an annual management fee in an amount that does not
16 exceed 2.5 percent of the certified capital of the certified
17 capital company, plus reasonable and necessary fees paid for
18 professional services, including, but not limited to, legal
19 and accounting services, related to the operation of the
20 certified capital company.

21 (b) Any projected increase in federal or state taxes,
22 including penalties and interest related to state and federal
23 income taxes, of the equity owners of a certified capital
24 company resulting from the earnings or other tax liability of
25 the certified capital company to the extent that the increase
26 is related to the ownership, management, or operation of a
27 certified capital company.

28 (11) "Qualified investment" means the investment of
29 cash by a certified capital company in a qualified business
30 for the purchase of any debt, equity, or hybrid security of
31 any nature and description whatsoever, including a debt

1 instrument or security which has the characteristics of debt
2 but which provides for conversion into equity or equity
3 participation instruments such as options or warrants.

4 (12) "Premium tax liability" means any liability
5 incurred by an insurance company under the provisions of
6 chapter 624, Florida Statutes.

7 Section 4. Premium tax credit.--

8 (1) Any certified investor who makes an investment of
9 certified capital shall, in the year of investment, earn a
10 vested credit against premium tax liability equal to 100
11 percent of the certified investor's investment of certified
12 capital. A certified investor shall be entitled to take up to
13 10 percent of the vested premium tax credit in any taxable
14 year of the certified investor.

15 (2) The credit to be applied against premium tax
16 liability in any 1 year may not exceed the premium tax
17 liability of the certified investor for such taxable year.
18 All unused credits against premium tax liability may be
19 carried forward for a maximum of 15 years.

20 (3) A certified investor claiming a credit against
21 premium tax liability earned through an investment in a
22 certified capital company shall not be required to pay any
23 additional retaliatory tax levied pursuant to s. 624.5091,
24 Florida Statutes, as a result of claiming such credit.

25 Section 5. Certification.--

26 (1) The department shall establish by rule or
27 regulation the procedures for making an application to become
28 a certified capital company. The applicant shall pay a
29 nonrefundable application fee of \$7,500 at the time of filing
30 the application with the department. The application shall
31 include a criminal background investigation, fingerprint

1 cards, and resumes detailing work experience for all
2 principals.

3 (2) A certified capital company's initial
4 capitalization, at the time of seeking certification, must be
5 \$500,000 or more.

6 (3) The department shall review the organizational
7 documents of each applicant for certification and the business
8 history of the applicant to determine that the applicant's
9 cash, marketable securities, and other liquid assets are at
10 least \$500,000.

11 (4) Each principal of the certified capital company
12 and any manager of the certified capital company shall have at
13 least 2 years of experience in the venture capital industry.

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

29 (6) Within 60 days after application, the department
30 shall issue the certification or shall refuse the
31 certification and communicate in detail to the applicant the

1 grounds for the refusal, including suggestions for the removal
2 of such grounds.

3 (7) No insurance company or any affiliate of an
4 insurance company shall be a managing general partner of or
5 control the direction of investments of such certified capital
6 company. This provision shall not preclude a certified
7 investor, insurance company, or any other party from
8 exercising its legal rights and remedies, which may include
9 interim management of a certified capital company, if a
10 certified capital company is in default of its statutory
11 obligations or its contractual obligations to such certified
12 investor, insurance company, or other party.

13 Section 6. Requirements for continuance of
14 certification.--

15 (1) To continue to be certified, a certified capital
16 company must make qualified investments according to the
17 following schedule:

18 (a) Within 3 years after the certification date of a
19 certified capital company, at least 30 percent of its
20 certified capital must be placed in qualified investments.

21 (b) Within 5 years after the certification date of a
22 certified capital company, at least 50 percent of its
23 certified capital must be placed in qualified investments.

24 (c) All certified capital not placed in qualified
25 investments by the certified capital company may be held or
26 invested in such manner as the certified capital company, in
27 its discretion, deems appropriate. The proceeds of all
28 certified capital returned to a certified capital company
29 after being originally placed in qualified investments may be
30 placed again in qualified investments and shall count toward

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1 any requirement of this act with respect to placing certified
2 capital in qualified investments.

3 (2) Any business which is classified as a qualified
4 business at the time of the first investment in such business
5 by a certified capital company shall remain classified as a
6 qualified business and may receive additional investments from
7 any certified capital company or any of its affiliates, and
8 such additional investments shall be qualified investments
9 even though such business may not meet the definition of a
10 qualified business at the time of such additional investments.

11 (3) No qualified investment may be made at a cost to a
12 certified capital company greater than 15 percent of the total
13 certified capital of the certified capital company at the time
14 of investment.

15 (4) The aggregate cumulative amount of all qualified
16 investments made by the certified capital company from the
17 date of its certification shall be considered in the
18 calculation of the percentage requirements under paragraphs
19 (1)(a) and (b).

20 (5)(a) Each certified capital company shall report the
21 following to the department, the Department of Revenue, and
22 the Department of Insurance:

23 1. As soon as practicable after the receipt of
24 certified capital:

25 a. The name of each certified investor from which
26 certified capital was received, including such investor's
27 insurance premium tax identification number.

28 b. The amount of each certified investor's investment
29 of certified capital and premium tax credits.

30 c. The date on which the certified capital was
31 received.

1 2. On a annual basis, on or before January 31:
2 a. The amount of the certified capital company's
3 certified capital at the end of the immediately preceding
4 year.
5 b. Whether or not the certified capital company has
6 invested more than 15 percent of its total certified capital
7 in any one business.
8 c. All qualified investments that the certified
9 capital company made during the previous calendar year.
10 (b) Each certified capital company shall provide to
11 the department annual audited financial statements, which
12 shall include the opinion of an independent certified public
13 accountant, within 90 days after the end of the fiscal year.
14 The audit shall address the methods of operation and conduct
15 of the business of the certified capital company to determine
16 if the certified capital company is complying with the laws
17 and program rules and that the funds received by the certified
18 capital company have been invested as required within the time
19 limits provided by paragraphs (1)(a) and (b).
20 (c) On or before January 31 of each year, each
21 certified capital company shall pay an annual, nonrefundable
22 certification fee of \$5,000 to the department, provided no
23 such fee shall be required within 6 months after the initial
24 certification date of a certified capital company.
25 Section 7. Distributions.--A certified capital company
26 may make qualified distributions at any time. In order to make
27 a distribution to its equity holders, other than a qualified
28 distribution, a certified capital company must have placed an
29 amount cumulatively equal to 100 percent of its certified
30 capital in qualified investments. Payments to debt holders of
31 a certified capital company, however, may be made without

1 restriction with respect to repayments of principal and
2 interest on indebtedness owed to them by a certified capital
3 company, including indebtedness of the certified capital
4 company on which certified investors earned premium tax
5 credits. A debt holder that is also a certified investor or
6 equity holder of a certified capital company may receive
7 payments with respect to such debt without restrictions.

8 Section 8. Decertification.--

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

17 (2) Any material violation of section 6 shall be
18 grounds for decertification of the certified capital company.
19 If the department determines that a certified capital company
20 is not in compliance with the requirements of section 6, the
21 department shall, by written notice, inform the officers of
22 the certified capital company that the certified capital
23 company may be subject to decertification in 120 days after
24 the date of mailing of the notice, unless the deficiencies are
25 corrected and the certified capital company is again in
26 compliance with all requirements for certification.

27 (3) At the end of the 120-day grace period, if the
28 certified capital company is still not in compliance with
29 section 6, the department may send a notice of decertification
30 to the certified capital company and to all other appropriate
31 state agencies.

1 (4) Decertification of a certified capital company may
2 cause the recapture of premium tax credits previously claimed
3 and the forfeiture of future premium tax credits to be claimed
4 by certified investors with respect to such certified capital
5 company, as follows:

6 (a) Decertification of a certified capital company
7 within 3 years after its certification date shall cause the
8 recapture of all premium tax credits previously claimed and
9 the forfeiture of all future premium tax credits to be claimed
10 by certified investors with respect to such certified capital
11 company.

12 (b) When a certified capital company meets all
13 requirements for continued certification under paragraph
14 (1)(a) of section 6 and subsequently fails to meet the
15 requirements for continued certification under the provisions
16 of paragraph (1)(b) of section 6, those premium tax credits
17 which have been or will be taken by certified investors within
18 3 years after the certification date of the certified capital
19 company shall not be subject to recapture or forfeiture;
20 however, all premium tax credits that have been or will be
21 taken by certified investors after the third anniversary of
22 the certification date of the certified capital company shall
23 be subject to recapture or forfeiture.

24 (c) If a certified capital company has met all
25 requirements for continued certification under paragraphs
26 (1)(a) and (b) of section 6, but is subsequently decertified,
27 those premium tax credits which have been or will be taken by
28 certified investors within 5 years after the certification
29 date of the certified capital company shall not be subject to
30 recapture or forfeiture. Those premium tax credits to be taken
31 subsequent to the fifth year of certification shall be subject

1 to forfeiture only if the certified capital company is
2 decertified within 5 years after its certification date.

3 (d) If a certified capital company has invested an
4 amount cumulatively equal to 100 percent of its certified
5 capital in qualified investments, all premium tax credits
6 claimed or to be claimed by its certified investors shall not
7 be subject to recapture or forfeiture.

8 (5) If a certified capital company has invested an
9 amount cumulatively equal to 100 percent of its certified
10 capital in qualified investments and has met all other
11 requirements under this act, the certified capital company
12 shall no longer be subject to regulation by the department and
13 shall no longer be subject to the requirements of section 6.

14 (6) The department shall send written notice to the
15 address of each certified investor whose premium tax credit
16 has been subject to recapture or forfeiture, using the address
17 last shown on the last premium tax filing.

18 Section 9. Transferability.--The premium tax credit
19 established pursuant to this act may be transferred or sold.
20 Any such transfer or sale shall not affect the time schedule
21 for taking the premium tax credit as provided in this act. Any
22 premium tax credits recaptured pursuant to section 6 shall be
23 the liability of the taxpayer which actually claimed the
24 premium tax credits.

25 Section 10. This act shall take effect October 1,
26 1997.

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HOUSE SUMMARY

Creates the "Certified Capital Company Act." Provides for regulation, certification, and decertification of certified capital companies. Provides for a credit against the insurance premium tax for insurance companies which invest in certified capital companies and provides for transfer or sale of premium tax credits. See bill for details.