

Bill No. CS for CS for SB 1566

Amendment No. ____

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| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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Senator Kirkpatrick moved the following amendment:

Senate Amendment (with title amendment)

On page 91, lines 13-16, delete those lines

and insert:

Section 27. Subsection (1) of section 288.707, Florida Statutes, is amended to read:

288.707 Florida Black Business Investment Board.--

(1) The Legislature finds that the public interest of Florida will be served by the creation and growth of black business enterprises by:

(a) Increasing opportunities for employment of blacks, as well as the population in general;

(b) Providing role models and establishing business networks for the benefit of future generations of aspiring black entrepreneurs; ~~and~~

(c) Strengthening the economy of the state by increasing the number of qualified black business enterprises, which in turn will increase competition in the marketplace and improve the welfare of economically depressed neighborhoods;

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1 and-

2 (d) Taking measures to increase access of black
3 businesses to both debt and equity capital.

4 Section 28. Present subsection (17) of section
5 288.709, Florida Statutes, 1998 Supplement, is redesignated as
6 subsection (19), and new subsections (17) and (18) are added
7 to that section to read:

8 288.709 Powers of the Florida Black Business
9 Investment Board.--The board shall have all the powers
10 necessary or convenient to carry out and effectuate the
11 purposes and provisions of ss. 9-21, chapter 85-104, Laws of
12 Florida, including, but not limited to, the power to:

13 (17) Promote black ownership of financial institutions
14 in Florida.

15 (18) Take, hold, and improve property, including real
16 property.

17 Section 29. Subsections (3), (6), and (11) of section
18 288.99, Florida Statutes, 1998 Supplement, are amended to
19 read:

20 288.99 Certified Capital Company Act.--

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

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

23 1. Any person directly or indirectly beneficially
24 owning, whether through rights, options, convertible
25 interests, or otherwise, controlling, or holding power to vote
26 10 percent or more of the outstanding voting securities or
27 other ownership interests of the insurance company;

28 2. Any person 10 percent or more of whose outstanding
29 voting securities or other ownership interest is directly or
30 indirectly beneficially owned, whether through rights,
31 options, convertible interests, or otherwise, controlled, or

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1 held with power to vote by the insurance company;

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

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

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

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

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

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

19 2. Receives investments of certified capital.

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

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

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

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

29 (g) "Early stage technology business" means a
30 qualified business that is involved, at the time of the
31 certified capital company's initial investment in such

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1 business, in activities related to developing initial product
2 or service offerings, such as prototype development or the
3 establishment of initial production or service processes. The
4 term includes a qualified business that is less than 2 years
5 old and has, together with its affiliates, less than \$3
6 million in annual revenues for the fiscal year immediately
7 preceding the initial investment by the certified capital
8 company on a consolidated basis, as determined in accordance
9 with generally accepted accounting principles. The term also
10 includes the Florida Black Business Investment Board, any
11 entity majority owned by the Florida Black Business Investment
12 Board, or any entity in which the Florida Black Business
13 Investment Board holds a majority voting interest on the board
14 of directors.

15 (h) "Office" means the Office of Tourism, Trade, and
16 Economic Development.

17 (i) "Premium tax liability" means any liability
18 incurred by an insurance company under the provisions of s.
19 624.509.

20 (j) "Principal" means an executive officer of a
21 corporation, partner of a partnership, manager of a limited
22 liability company, or any other person with equivalent
23 executive functions.

24 (k) "Qualified business" means a business that meets
25 the following conditions:

26 1. The business is headquartered in this state and its
27 principal business operations are located in this state.

28 2. At the time a certified capital company makes an
29 initial investment in a business, the business is a small
30 business concern as defined in 13 C.F.R. s. 121.201, "Size
31 Standards Used to Define Small Business Concerns" of the

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1 United States Small Business Administration which is involved
2 in manufacturing, processing or assembling products,
3 conducting research and development, or providing services.

4 3. At the time a certified capital company makes an
5 initial investment in a business, the business certifies in an
6 affidavit that:

7 a. The business is unable to obtain conventional
8 financing, which means that the business has failed in an
9 attempt to obtain funding for a loan from a bank or other
10 commercial lender or that the business cannot reasonably be
11 expected to qualify for such financing under the standards of
12 commercial lending;

13 b. The business plan for the business projects that
14 the business is reasonably expected to achieve in excess of
15 \$25 million in sales revenue within 5 years after the initial
16 investment;

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

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

23
24 For purposes of this subsection, the term "Qualified Business"
25 also includes the Florida Black Business Investment Board, any
26 entity majority owned by the Florida Black Business Investment
27 Board, or any entity in which the Florida Black Business
28 Investment Board holds a majority voting interest on the board
29 of directors.

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31 A business predominantly engaged in retail sales, real estate

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1 development, insurance, banking, lending, oil and gas
2 exploration, or engaged in professional services provided by
3 accountants, lawyers, or physicians does not constitute a
4 qualified business.

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

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

17 1. Costs and expenses of forming, syndicating,
18 managing, and operating the certified capital company,
19 including an annual management fee in an amount that does not
20 exceed 2.5 percent of the certified capital of the certified
21 capital company, plus reasonable and necessary fees in
22 accordance with industry custom for professional services,
23 including, but not limited to, legal and accounting services,
24 related to the operation of the certified capital company.

25 2. Any projected increase in federal or state taxes,
26 including penalties and interest related to state and federal
27 income taxes, of the equity owners of a certified capital
28 company resulting from the earnings or other tax liability of
29 the certified capital company to the extent that the increase
30 is related to the ownership, management, or operation of a
31 certified capital company.

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1 (n) "Qualified investment" means the investment of
2 cash by a certified capital company in a qualified business
3 for the purchase of any debt, equity, or hybrid security of
4 any nature and description whatsoever, including a debt
5 instrument or security which has the characteristics of debt
6 but which provides for conversion into equity or equity
7 participation instruments such as options or warrants.

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9 (Redesignate subsequent sections.)

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12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 4, line 31, delete that line

15

16 and insert:

17 s. 288.707, F.S.; directing the Florida Black
18 Business Investment Board to increase access to
19 capital for black businesses; amending s.
20 288.709, F.S.; revising the powers of the Black
21 Business Investment Board; amending s. 288.99,
22 F.S.; revising definitions related to the
23 Certified Capital Company Act; specifying that
24 tax credits

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