

By Senator Latvala

19-248E-01

1 A bill to be entitled
 2 An act relating to the Certified Capital
 3 Company Act; amending s. 288.99, F.S.;
 4 redefining the terms "early stage technology
 5 business" and "qualified distribution";
 6 defining the terms "Program One" and "Program
 7 Two"; revising procedures and dates for
 8 certification and decertification under Program
 9 One and Program Two; revising the process for
 10 earning premium tax credits; providing a
 11 limitation on tax credits under Program Two;
 12 authorizing the Department of Banking and
 13 Finance to levy a fine; providing for
 14 distributions under both programs; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsections (3) and (4), paragraph (a) of
 20 subsection (5), paragraph (a) of subsection (6), paragraphs
 21 (a), (c), (d), (e), (f), (g), and (h) of subsection (7),
 22 paragraph (a) of subsection (8), paragraphs (a) and (b) of
 23 subsection (9), and paragraph (f) of subsection (10) of
 24 section 288.99, Florida Statutes, are amended to read:

25 288.99 Certified Capital Company Act.--

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

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

28 1. Any person directly or indirectly beneficially
 29 owning, whether through rights, options, convertible
 30 interests, or otherwise, controlling, or holding power to vote
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1 10 percent or more of the outstanding voting securities or
2 other ownership interests of the insurance company;
3 2. Any person 10 percent or more of whose outstanding
4 voting securities or other ownership interest is directly or
5 indirectly beneficially owned, whether through rights,
6 options, convertible interests, or otherwise, controlled, or
7 held with power to vote by the insurance company;
8 3. Any person directly or indirectly controlling,
9 controlled by, or under common control with the insurance
10 company;
11 4. A partnership in which the insurance company is a
12 general partner; or
13 5. Any person who is a principal, director, employee,
14 or agent of the insurance company or an immediate family
15 member of the principal, director, employee, or agent.
16 (b) "Certified capital" means an investment of cash by
17 a certified investor in a certified capital company which
18 fully funds the purchase price of either or both its equity
19 interest in the certified capital company or a qualified debt
20 instrument issued by the certified capital company.
21 (c) "Certified capital company" means a corporation,
22 partnership, or limited liability company which:
23 1. Is certified by the department in accordance with
24 this act.
25 2. Receives investments of certified capital from two
26 or more unaffiliated certified investors.
27 3. Makes qualified investments as its primary
28 activity.
29 (d) "Certified investor" means any insurance company
30 subject to premium tax liability pursuant to s. 624.509 that
31 contributes certified capital.

1 (e) "Department" means the Department of Banking and
2 Finance.

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

5 (g) "Early stage technology business" means a
6 qualified business that is either:

7 1. Involved, at the time of the certified capital
8 company's initial investment in such business, in activities
9 related to developing initial product or service offerings,
10 such as prototype development or the establishment of initial
11 production or service processes; ~~The term includes a~~
12 ~~qualified business that is~~; 2. Less than 2 years old and has,
13 together with its affiliates, less than \$3 million in annual
14 revenues for the fiscal year immediately preceding the initial
15 investment by the certified capital company on a consolidated
16 basis, as determined in accordance with generally accepted
17 accounting principles; ~~The term also includes~~

18 3. The Florida Black Business Investment Board; ~~or~~

19 4. Any entity that is majority-owned ~~majority-owned~~ by
20 the Florida Black Business Investment Board; ~~or~~

21 5. Any entity in which the Florida Black Business
22 Investment Board holds a majority voting interest on the board
23 of directors.

24 (h) "Office" means the Office of Tourism, Trade, and
25 Economic Development.

26 (i) "Premium tax liability" means any liability
27 incurred by an insurance company under the provisions of s.
28 624.509.

29 (j) "Principal" means an executive officer of a
30 corporation, partner of a partnership, manager of a limited
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1 liability company, or any other person with equivalent
2 executive functions.

3 (k) "Qualified business" means a business that meets
4 the following conditions as evidenced by documentation
5 required by department rule:

6 1. The business is headquartered in this state and its
7 principal business operations are located in this state.

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

15 3. At the time a certified capital company makes an
16 initial investment in a business, the business certifies in an
17 affidavit that:

18 a. The business is unable to obtain conventional
19 financing, which means that the business has failed in an
20 attempt to obtain funding for a loan from a bank or other
21 commercial lender or that the business cannot reasonably be
22 expected to qualify for such financing under the standards of
23 commercial lending;

24 b. The business plan for the business projects that
25 the business is reasonably expected to achieve in excess of
26 \$25 million in sales revenue within 5 years after the initial
27 investment, or the business is located in a designated Front
28 Porch community, enterprise zone, urban high crime area, rural
29 job tax credit county, or nationally recognized historic
30 district;

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1 c. The business will maintain its headquarters in this
2 state for the next 10 years and any new manufacturing facility
3 financed by a qualified investment will remain in this state
4 for the next 10 years, or the business is located in a
5 designated Front Porch community, enterprise zone, urban high
6 crime area, rural job tax credit county, or nationally
7 recognized historic district; and

8 d. The business has fewer than 200 employees and at
9 least 75 percent of the employees are employed in this state.
10 For purposes of this subsection, the term "~~qualified business~~"
11 also includes the Florida Black Business Investment Board, any
12 entity majority owned by the Florida Black Business Investment
13 Board, or any entity in which the Florida Black Business
14 Investment Board holds a majority voting interest on the board
15 of directors.

16 4. The term does not include:

17 a. Any business predominantly engaged in retail sales,
18 real estate development, insurance, banking, lending, or oil
19 and gas exploration.

20 b. Any business predominantly engaged in professional
21 services provided by accountants, lawyers, or physicians.

22 c. Any company that has no historical revenues and
23 either has no specific business plan or purpose or has
24 indicated that its business plan is solely to engage in a
25 merger or acquisition with any unidentified company or other
26 entity.

27 d. Any company that has a strategic plan to grow
28 through the acquisition of firms with substantially similar
29 business which would result in the planned net loss of
30 Florida-based jobs over a 12-month period after the
31 acquisition as determined by the department.

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

11 (m) "Qualified distribution" means any distribution or
12 payment by ~~to equity holders~~ of a certified capital company
13 for:

14 1. Reasonable costs and expenses, including
15 professional fees, not exceeding 20 percent of the certified
16 capital raised, of forming and syndicating the certified
17 capital company, if no such costs are paid to a certified
18 investor;

19 2. Reasonable costs of managing and operating the
20 certified capital company, not exceeding 5 percent of the
21 certified capital in any 1 year, including an annual
22 management fee in an amount that does not exceed 2.5 percent
23 of the certified capital of the certified capital company; ,
24 ~~plus~~

25 3. Reasonable and necessary fees in accordance with
26 industry custom for professional services, including, but not
27 limited to, legal and accounting services, related to the
28 operation of the certified capital company; or

29 ~~4.2.~~ Any projected increase in federal or state taxes,
30 including penalties and interest related to state and federal
31 income taxes, of the equity owners of a certified capital

1 company resulting from the earnings or other tax liability of
2 the certified capital company to the extent that the increase
3 is related to the ownership, management, or operation of a
4 certified capital company.

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

12 2. The term does not include:

13 a. Any investment made after the effective date of
14 this act the contractual terms of which require the repayment
15 of any portion of the principal in instances, other than
16 default as determined by department rule, within 12 months
17 following the initial investment by the certified capital
18 company unless such investment has a repayment schedule no
19 faster than a level principal amortization of at least 2
20 years;

21 b. Any "follow-on" or "add-on" investment except for
22 the amount by which the new investment is in addition to the
23 amount of the certified capital company's initial investment
24 returned to it other than in the form of interest, dividends,
25 or other types of profit participation or distributions; or

26 c. Any investment in a qualified business or affiliate
27 of a qualified business that exceeds 15 percent of certified
28 capital.

29 (o) "Program One" means the \$150 million in premium
30 tax credits issued under this act in 1999, the allocation of

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1 such credits under this act, and the regulation of certified
2 capital companies and investments made by them hereunder.

3 (p) "Program Two" means the \$250 million in premium
4 tax credits to be issued under this act on April 1, 2002, the
5 allocation of such credits under this act, and the regulation
6 of certified capital companies and investments made by them
7 hereunder.

8 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
9 DECERTIFICATION.--

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

13 (b) An applicant for certification as a certified
14 capital company must file a verified application with the
15 department on or before December 1, 1998, or November 1, 2001,
16 in the case of applicants for Program Two, in a form which the
17 department may prescribe by rule. The applicant shall submit
18 a nonrefundable application fee of \$7,500 to the department.
19 The applicant shall provide:

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

22 2. The applicant's form and place of organization and
23 the relevant organizational documents, bylaws, and amendments
24 or restatements of such documents, bylaws, or amendments.

25 3. Evidence from the Department of State that the
26 applicant is registered with the Department of State as
27 required by law, maintains an active status with the
28 Department of State, and has not been dissolved or had its
29 registration revoked, canceled, or withdrawn.

30 4. The applicant's proposed method of doing business.
31

1 5. The applicant's financial condition and history,
2 including an audit report on the financial statements prepared
3 in accordance with generally accepted accounting principles
4 showing net worth ~~capital~~ of not less than \$500,000 within 90
5 days after the date the application is submitted to the
6 department. If the date of the application is more than 90
7 days after preparation of the applicant's fiscal year-end
8 financial statements, the applicant may file financial
9 statements reviewed by an independent certified public
10 accountant for the period subsequent to the audit report,
11 together with the audited financial statement for the most
12 recent fiscal year. If the applicant has been in business
13 less than 12 months, and has not prepared an audited financial
14 statement, the applicant may file a financial statement
15 reviewed by an independent certified public accountant.

16 6. Copies of any offering materials used or proposed
17 to be used by the applicant in soliciting investments of
18 certified capital from certified investors.

19 (c) On December 31, 1998, or December 31, 2001, in the
20 case of applicants for Program Two,the department shall grant
21 or deny certification as a certified capital company. If the
22 department denies certification within the time period
23 specified, the department shall inform the applicant of the
24 grounds for the denial. If the department has not granted or
25 denied certification within the time specified, the
26 application shall be deemed approved. The department shall
27 approve the application if the department finds that:

28 1. The applicant satisfies the requirements of
29 paragraph (b).

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

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

9 4. The applicant's proposed method of doing business
10 and raising certified capital as described in its offering
11 materials and other materials submitted to the department
12 conforms with the requirements of this act.

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

22 1. Violated any provision of this section;
23 2. Made a material misrepresentation or false
24 statement or concealed any essential or material fact from any
25 person during the application process or with respect to
26 information and reports required of certified capital
27 companies under this section;

28 3. Been convicted of, or entered a plea of guilty or
29 nolo contendere to, a crime against the laws of this state or
30 any other state or of the United States or any other country
31 or government, including a fraudulent act in connection with

1 the operation of a certified capital company, or in connection
2 with the performance of fiduciary duties in another capacity;

3 4. Been adjudicated liable in a civil action on
4 grounds of fraud, embezzlement, misrepresentation, or deceit;
5 or

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

17 b. Been the subject of any injunction or adverse
18 administrative order by a state or federal agency regulating
19 banking, insurance, finance or small loan companies, real
20 estate, mortgage brokers, or other related or similar
21 industries.

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

24 (e)(f) Any offering material involving the sale of
25 securities of the certified capital company shall include the
26 following statement: "By authorizing the formation of a
27 certified capital company, the State of Florida does not
28 endorse the quality of management or the potential for
29 earnings of such company and is not liable for damages or
30 losses to a certified investor in the company. Use of the
31 word 'certified' in an offering does not constitute a

1 recommendation or endorsement of the investment by the State
2 of Florida. Investments in a certified capital company prior
3 to the time such company is certified are not eligible for
4 premium tax credits. If applicable provisions of law are
5 violated, the state may require forfeiture of unused premium
6 tax credits and repayment of used premium tax credits by the
7 certified investor."

8 (f)~~(g)~~ No insurance company or any affiliate of an
9 insurance company shall, directly or indirectly, own (whether
10 through rights, options, convertible interests, or otherwise)
11 10 percent or more of the equity interests of or manage or
12 control the direction of investments of a certified capital
13 company or have, through ownership or any agreement or
14 understanding, the right to participate in 10 percent or more
15 of the profits of a certified capital company. This
16 prohibition does not preclude a certified investor, insurance
17 company, or any other party from exercising its legal rights
18 and remedies, which may include interim management of a
19 certified capital company, if a certified capital company is
20 in default of its obligations under law or its contractual
21 obligations to such certified investor, insurance company, or
22 other party.

23 (g)~~(h)~~ On or before December 31 of each year, each
24 certified capital company shall pay to the department an
25 annual, nonrefundable renewal certification fee of \$5,000. If
26 a certified capital company fails to pay its renewal fee by
27 the specified deadline, it must pay a late fee of \$5,000 in
28 addition to the renewal fee on or by January 31 of each year
29 in order to continue its certification in the program. On or
30 before April 30 of each year, each certified capital company
31 shall file audited financial statements with the department.

1 No renewal fees shall be required within 6 months after the
2 date of initial certification.

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

12 ~~(i)(j)~~ Decertification of a certified capital company
13 under this subsection does not affect the ability of certified
14 investors in such certified capital company from claiming
15 future premium tax credits earned as a result of an investment
16 in the certified capital company during the period in which it
17 was duly certified.

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

19 (a) To remain certified, a certified capital company
20 must make qualified investments according to the following
21 schedule:

22 1. At least 20 percent of its certified capital must
23 be invested in qualified investments by December 31, 2000, or
24 in the case of certified capital raised under Program Two, by
25 December 31, 2003.

26 2. At least 30 percent of its certified capital must
27 be invested in qualified investments by December 31, 2001, or
28 in the case of certified capital raised under Program Two, by
29 December 31, 2004.

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

1 in the case of certified capital raised under Program Two, by
2 December 31, 2005.

3 4. At least 50 percent of its certified capital must
4 be invested in qualified investments by December 31, 2003, or
5 in the case of certified capital raised under Program Two, by
6 December 31, 2006. At least 50 percent of such qualified
7 investments must be invested in early stage technology
8 businesses.

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

10 (a) Any certified investor who makes an investment of
11 certified capital shall earn a vested credit against premium
12 tax liability equal to 100 percent of the certified capital
13 invested by the certified investor. Certified investors shall
14 be entitled to use no more than 10 percentage points of the
15 vested premium tax credit earned under a particular program,
16 including any carryforward credits from such program under
17 this act, per year beginning with premium tax filings for
18 calendar year 2000 for credits earned under Program One and
19 calendar year 2003 for credits earned under Program Two. Any
20 premium tax credits not used by certified investors in any
21 single year may be carried forward and applied against the
22 premium tax liabilities of such investors for subsequent
23 calendar years. ~~The carryforward credit may be applied~~
24 ~~against subsequent premium tax filings through calendar year~~
25 ~~2017.~~

26 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
27 PROCESS.--

28 (a) The total amount of tax credits which may be
29 allocated by the office shall not exceed \$150 million with
30 respect to Program One and \$250 million with respect to
31 Program Two. The total amount of tax credits which may be used

1 by certified investors under this act shall not exceed \$15
2 million annually with respect to credits earned under Program
3 One and \$25 million annually with respect to credits earned
4 under Program Two.

5 (c) Each certified capital company must apply to the
6 office for an allocation of premium tax credits for potential
7 certified investors by March 15, 1999, or by March 15, 2002,
8 in the case of credits allocable under Program Two, on a form
9 developed by the office with the cooperation of the Department
10 of Revenue. The form shall be accompanied by an affidavit
11 from each potential certified investor confirming that the
12 potential certified investor has agreed to make an investment
13 of certified capital in a certified capital company up to a
14 specified amount, subject only to the receipt of a premium tax
15 credit allocation pursuant to this subsection. No allocation
16 shall be made to the potential investors of a certified
17 capital company under Program Two unless such certified
18 capital company has filed premium tax allocation claims ~~that~~
19 ~~would result in an allocation to the potential investors in~~
20 ~~such certified capital company~~ of not less than \$15 million in
21 the aggregate.

22 (d) On or before April 1, 1999, or April 1, 2002, in
23 the case of Program Two, the office shall inform each
24 certified capital company of its share of total premium tax
25 credits available for allocation to each of its potential
26 investors.

27 (e) If a certified capital company does not receive
28 certified capital equaling the amount of premium tax credits
29 allocated to a potential certified investor for which the
30 investor filed a premium tax allocation claim within 10
31 business days after the investor received a notice of

1 allocation, the certified capital company shall notify the
2 office by overnight common carrier delivery service of the
3 company's failure to receive the capital. That portion of the
4 premium tax credits allocated to the certified capital company
5 shall be forfeited. The department may levy a fine of not more
6 than \$50,000 on any certified investor that does not invest
7 the full amount of certified capital allocated by the
8 department to such investor in accordance with the affidavit
9 filed on its behalf. If the office must make a pro rata
10 allocation under paragraph (f), the office shall reallocate
11 such available credits among the other certified capital
12 companies on the same pro rata basis as the initial
13 allocation.

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

$$\frac{A}{B} = \frac{X}{\$250,000,000}$$

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

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

1 credits and certified capital that may be allocated to a
2 certified capital company on April 1, 2002 in calendar year
3 ~~1999~~, and \$250\$150 million is the denominator and represents
4 the total amount of premium tax credits and certified capital
5 that may be allocated to all certified investors in calendar
6 year 2002 ~~1999~~. Any such premium tax credits are not first
7 available for utilization until annual filings are made in
8 2001 for calendar year 2000 in the case of Program One, and
9 until annual filings are made in 2004 for calendar year 2003
10 in the case of Program Two, and the tax credits may be used at
11 a rate not to exceed 10 percent annually per program.

12 (g) The maximum amount of certified capital for which
13 premium tax allocation claims may be filed on behalf of any
14 certified investor and its affiliates by one or more certified
15 capital companies may not exceed \$15 million with respect to
16 Program One and \$25 million with respect to Program Two.

17 (h) To the extent that less than \$250\$150 million in
18 certified capital is raised in connection with the procedure
19 set forth in paragraphs (c)-(g), the department may adopt
20 rules to allow a subsequent allocation of the remaining
21 premium tax credits authorized under this section.

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

23 (a) On an annual basis, on or before January ~~December~~
24 31, each certified capital company shall file with the
25 department and the office, in consultation with the
26 department, on a form prescribed by the office, for each
27 calendar year:

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

1 certified investor during the immediately preceding calendar
2 year.

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

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

15 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
16 PARTICIPATION.--

17 (a) A certified capital company may make qualified
18 distributions at any time. In order to make a distribution to
19 its equity holders, other than a qualified distribution out of
20 funds related to a particular program, a certified capital
21 company must have invested an amount cumulatively equal to 100
22 percent of its certified capital raised under such program in
23 qualified investments. Payments to debt holders of a certified
24 capital company, however, may be made without restriction with
25 respect to repayments of principal and interest on
26 indebtedness owed to them by a certified capital company,
27 including indebtedness of the certified capital company on
28 which certified investors earned premium tax credits. A debt
29 holder that is also a certified investor or equity holder of a
30 certified capital company may receive payments with respect to
31 such debt without restrictions.

1 (b) Cumulative distributions from a certified capital
2 company out of funds related to a particular program to its
3 certified investors and equity holders under such program,
4 other than qualified distributions, in excess of the certified
5 capital company's original certified capital raised under such
6 program and any additional capital contributions to the
7 certified capital company with respect to such program may be
8 audited by a nationally recognized certified public accounting
9 firm acceptable to the department, at the expense of the
10 certified capital company, if the department directs such
11 audit be conducted. The audit shall determine whether
12 aggregate cumulative distributions from the funds related to a
13 particular program made by the certified capital company to
14 all certified investors and equity holders under such program,
15 other than qualified distributions, have equaled the sum of
16 the certified capital company's original certified capital
17 raised under such program and any additional capital
18 contributions to the certified capital company with respect to
19 such program. If at the time of any such distribution made by
20 the certified capital company, such distribution taken
21 together with all other such distributions from the funds
22 related to such program made by the certified capital company,
23 other than qualified distributions, exceeds in the aggregate
24 the sum of the certified capital company's original certified
25 capital raised under such program and any additional capital
26 contributions to the certified capital company with respect to
27 such program, as determined by the audit, the certified
28 capital company shall pay to the Department of Revenue 10
29 percent of the portion of such distribution in excess of such
30 amount. Payments to the Department of Revenue by a certified
31 capital company pursuant to this paragraph shall not exceed

1 the aggregate amount of tax credits used by all certified
2 investors in such certified capital company for such program.

3 (10) DECERTIFICATION.--

4 (f) Decertification of a certified capital company for
5 failure to meet all requirements for continued certification
6 under paragraph (5)(a) with respect to the certified capital
7 raised under a particular program may cause the recapture of
8 premium tax credits previously claimed by such company under
9 such program and the forfeiture of future premium tax credits
10 to be claimed by certified investors under such program with
11 respect to such certified capital company, as follows:

12 1. Decertification of a certified capital company
13 within 3 years after its certification date with respect to a
14 particular program shall cause the recapture of all premium
15 tax credits earned under such program and previously claimed
16 by such company and the forfeiture of all future premium tax
17 credits earned under such program which are to be claimed by
18 certified investors with respect to such company.

19 2. When a certified capital company meets all
20 requirements for continued certification under subparagraph
21 (5)(a)1. with respect to certified capital raised under a
22 particular program and subsequently fails to meet the
23 requirements for continued certification under the provisions
24 of subparagraph (5)(a)2. with respect to certified capital
25 raised under such program, those premium tax credits earned
26 under such program which have been or will be taken by
27 certified investors within 3 years after the certification
28 date of the certified capital company with respect to such
29 program shall not be subject to recapture or forfeiture;
30 however, all premium tax credits earned under such program
31 that have been or will be taken by certified investors after

1 the third anniversary of the certification date of the
2 certified capital company for such program shall be subject to
3 recapture or forfeiture.

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

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

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

9 Section 2. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Revises procedures and dates for certification and decertification of certified capital companies under defined Program One and Program Two of the Certified Capital Company Act. Revises the process for earning premium tax credits and provides a limitation on credits under Program Two. Authorizes the Department of Banking and Finance to levy a fine on certified investors under specified circumstances.