

hbd-032

Bill No. HB 1981, 2nd Eng.

Amendment No.      (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Crow offered the following:

**Amendment to Senate Amendment (402018) (with title amendment)**

On page 97, between lines 5 and 6,

insert:

Section 41. Subsections (3) and (4), paragraphs (a) and (b) of subsection (5), paragraph (a) of subsection (6), paragraphs (a), (c), (d), (e), (f), (g), and (h) of subsection (7), paragraph (a) of subsection (8), paragraphs (a) and (b) of subsection (9), and paragraph (f) of subsection (10) of section 288.99, Florida Statutes, are amended, and paragraph (i) is added to subsection (7) of that section, to read:

288.99 Certified Capital Company Act.--

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

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

1. Any person directly or indirectly beneficially owning, whether through rights, options, convertible interests, or otherwise, controlling, or holding power to vote 15 ~~10~~ percent or more of the outstanding voting securities or

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- 1 other ownership interests of the insurance company;
- 2       2. Any person 15 ~~10~~ percent or more of whose
- 3 outstanding voting securities or other ownership interest is
- 4 directly or indirectly beneficially owned, whether through
- 5 rights, options, convertible interests, or otherwise,
- 6 controlled, or held with power to vote by the insurance
- 7 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.

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- 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~~
- 13 2. Less than 2 years old and has, together with its
- 14 affiliates, less than \$3 million in annual revenues for the
- 15 fiscal year immediately preceding the initial investment by
- 16 the certified capital company on a consolidated basis, as
- 17 determined in accordance with generally accepted accounting
- 18 principles; ~~The term also includes~~
- 19 3. The Florida Black Business Investment Board; ~~or~~
- 20 4. Any entity that is majority-owned ~~majority owned~~ by
- 21 the Florida Black Business Investment Board; ~~or~~
- 22 5. Any entity in which the Florida Black Business
- 23 Investment Board holds a majority voting interest on the board
- 24 of directors.
- 25 (h) "Office" means the Office of Tourism, Trade, and
- 26 Economic Development.
- 27 (i) "Premium tax liability" means any liability
- 28 incurred by an insurance company under the provisions of s.
- 29 624.509.
- 30 (j) "Principal" means an executive officer of a
- 31 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. For  
8 the purpose of this act, the terms "headquartered" and  
9 "principal business operations" mean that at least 75 percent  
10 of the employees are located in the state.

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

18 3. At the time a certified capital company makes an  
19 initial investment in a business, the business certifies in an  
20 affidavit that:

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

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

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1 job tax credit county, or nationally recognized historic  
2 district;

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

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

18 4. The term does not include:

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

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

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

29 d. Any company that has a strategic plan to grow  
30 through the acquisition of firms with substantially similar  
31 business which would result in the planned net loss of

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1 Florida-based jobs over a 12-month period after the  
2 acquisition as determined by the department.

3  
4 ~~A business predominantly engaged in retail sales, real estate~~  
5 ~~development, insurance, banking, lending, oil and gas~~  
6 ~~exploration, or engaged in professional services provided by~~  
7 ~~accountants, lawyers, or physicians does not constitute a~~  
8 ~~qualified business.~~

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

19 (m) "Qualified distribution" means any distribution or  
20 payment by ~~to equity holders~~ of a certified capital company  
21 for:

22 1. Reasonable costs and expenses, including  
23 professional fees, of forming and, syndicating the certified  
24 capital company, if no such costs are paid to a certified  
25 investor and the total cash, cash equivalents and other  
26 current assets permitted by s. 288.99(5)(b)3.g. that can be  
27 converted into cash within 5 business days available to the  
28 certified capital company at the time of receipt of certified  
29 capital from certified investors, after deducting the costs  
30 and expenses of forming and syndicating the certified capital  
31 company, including any payments made over time for obligations

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1 incurred at the time of receipt of certified capital excluding  
2 other future qualified distributions and payments made under  
3 s. 288.99(9)(a), are an amount equal to or greater than 50  
4 percent of the total certified capital allocated to the  
5 certified capital pursuant to s. 288.99(7);

6 2. Reasonable costs of managing, and operating the  
7 certified capital company, not exceeding 5 percent of the  
8 certified capital in any 1 year, including an annual  
9 management fee in an amount that does not exceed 2.5 percent  
10 of the certified capital of the certified capital company;  
11 plus

12 3. Reasonable and necessary fees in accordance with  
13 industry custom for professional services, including, but not  
14 limited to, legal and accounting services, related to the  
15 operation of the certified capital company; or

16 4.2. Any projected increase in federal or state taxes,  
17 including penalties and interest related to state and federal  
18 income taxes, of the equity owners of a certified capital  
19 company resulting from the earnings or other tax liability of  
20 the certified capital company to the extent that the increase  
21 is related to the ownership, management, or operation of a  
22 certified capital company.

23 (n) 1. "Qualified investment" means the investment of  
24 cash by a certified capital company in a qualified business  
25 for the purchase of any debt, equity, or hybrid security of  
26 any nature and description whatsoever, including a debt  
27 instrument or security that which has the characteristics of  
28 debt but which provides for conversion into equity or equity  
29 participation instruments such as options or warrants.

30 2. The term does not include:

31 a. Any investment made after the effective date of

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1 this act the contractual terms of which require the repayment  
2 of any portion of the principal in instances, other than  
3 default as determined by department rule, within 12 months  
4 following the initial investment by the certified capital  
5 company unless such investment has a repayment schedule no  
6 faster than a level principal amortization of at least 2  
7 years;

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

13 c. Any investment in a qualified business or affiliate  
14 of a qualified business that exceeds 15 percent of certified  
15 capital.

16 (o) "Program One" means the \$150 million in premium  
17 tax credits issued under this act in 1999, the allocation of  
18 such credits under this act, and the regulation of certified  
19 capital companies and investments made by them hereunder.

20 (p) "Program Two" means the \$50 million in premium tax  
21 credits to be issued under this act on April 1, 2002, the  
22 allocation of such credits under this act, and the regulation  
23 of certified capital companies and investments made by them  
24 hereunder.

25 (4) CERTIFICATION; GROUNDS FOR DENIAL OR  
26 DECERTIFICATION.--

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

30 (b) An applicant for certification as a certified  
31 capital company must file a verified application with the



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1 department on or before December 1, 1998, or November 1, 2001,  
2 in the case of applicants for Program Two, in a form which the  
3 department may prescribe by rule. The applicant shall submit  
4 a nonrefundable application fee of \$7,500 to the department.

5 The applicant shall provide:

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

8 2. The applicant's form and place of organization and  
9 the relevant organizational documents, bylaws, and amendments  
10 or restatements of such documents, bylaws, or amendments.

11 3. Evidence from the Department of State that the  
12 applicant is registered with the Department of State as  
13 required by law, maintains an active status with the  
14 Department of State, and has not been dissolved or had its  
15 registration revoked, canceled, or withdrawn.

16 4. The applicant's proposed method of doing business.

17 5. The applicant's financial condition and history,  
18 including an audit report on the financial statements prepared  
19 in accordance with generally accepted accounting principles  
20 showing net worth ~~capital~~ of not less than \$500,000 within 90  
21 days prior to ~~after~~ the date the application is submitted to  
22 the department. If the date of the application is more than 90  
23 days after preparation of the applicant's fiscal year-end  
24 financial statements, the applicant may file financial  
25 statements reviewed by an independent certified public  
26 accountant for the period subsequent to the audit report,  
27 together with the audited financial statement for the most  
28 recent fiscal year. If the applicant has been in business  
29 less than 12 months, and has not prepared an audited financial  
30 statement, the applicant may file a financial statement  
31 reviewed by an independent certified public accountant.

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1           6. Copies of any offering materials used or proposed  
2 to be used by the applicant in soliciting investments of  
3 certified capital from certified investors.

4           (c) On December 31, 1998, or December 31, 2001, in the  
5 case of applicants for Program Two,the department shall grant  
6 or deny certification as a certified capital company. If the  
7 department denies certification within the time period  
8 specified, the department shall inform the applicant of the  
9 grounds for the denial. If the department has not granted or  
10 denied certification within the time specified, the  
11 application shall be deemed approved. The department shall  
12 approve the application if the department finds that:

13           1. The applicant satisfies the requirements of  
14 paragraph (b).

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

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

25           4. The applicant's proposed method of doing business  
26 and raising certified capital as described in its offering  
27 materials and other materials submitted to the department  
28 conforms with the requirements of this act.

29           (d) The department may deny certification or decertify  
30 a certified capital company if the grounds for decertification  
31 are not removed or corrected within 90 days after the notice

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1 of such grounds is received by the certified capital company.  
2 The department may deny certification or decertify a certified  
3 capital company if the certified capital company fails to  
4 maintain a net worth of at least \$500,000, or if the  
5 department determines that the applicant, or any principal or  
6 director of the certified capital company, has:  
7       1. Violated any provision of this section;  
8       2. Made a material misrepresentation or false  
9 statement or concealed any essential or material fact from any  
10 person during the application process or with respect to  
11 information and reports required of certified capital  
12 companies under this section;  
13       3. Been convicted of, or entered a plea of guilty or  
14 nolo contendere to, a crime against the laws of this state or  
15 any other state or of the United States or any other country  
16 or government, including a fraudulent act in connection with  
17 the operation of a certified capital company, or in connection  
18 with the performance of fiduciary duties in another capacity;  
19       4. Been adjudicated liable in a civil action on  
20 grounds of fraud, embezzlement, misrepresentation, or deceit;  
21 or  
22       5.a. Been the subject of any decision, finding,  
23 injunction, suspension, prohibition, revocation, denial,  
24 judgment, or administrative order by any court of competent  
25 jurisdiction, administrative law judge, or any state or  
26 federal agency, national securities, commodities, or option  
27 exchange, or national securities, commodities, or option  
28 association, involving a material violation of any federal or  
29 state securities or commodities law or any rule or regulation  
30 adopted under such law, or any rule or regulation of any  
31 national securities, commodities, or options exchange, or

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1 national securities, commodities, or options association; or  
2 b. Been the subject of any injunction or adverse  
3 administrative order by a state or federal agency regulating  
4 banking, insurance, finance or small loan companies, real  
5 estate, mortgage brokers, or other related or similar  
6 industries.

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

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

24 (f)(g) No insurance company or any affiliate of an  
25 insurance company shall, directly or indirectly, own (whether  
26 through rights, options, convertible interests, or otherwise)  
27 15 percent or more of the equity interests of or manage or  
28 control the direction of investments of a certified capital  
29 company. This prohibition does not preclude a certified  
30 investor, insurance company, or any other party from  
31 exercising its legal rights and remedies, which may include

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1 interim management of a certified capital company, if a  
2 certified capital company is in default of its obligations  
3 under law or its contractual obligations to such certified  
4 investor, insurance company, or other party.

5 (g)~~(h)~~ On or before December 31 of each year, each  
6 certified capital company shall pay to the department an  
7 annual, nonrefundable renewal certification fee of \$5,000. If  
8 a certified capital company fails to pay its renewal fee by  
9 the specified deadline, it must pay a late fee of \$5,000 in  
10 addition to the renewal fee on or by January 31 of each year  
11 in order to continue its certification in the program. On or  
12 before April 30 of each year, each certified capital company  
13 shall file audited financial statements with the department.  
14 No renewal fees shall be required within 6 months after the  
15 date of initial certification.

16 (h)~~(i)~~ The department shall administer and provide for  
17 the enforcement of certification requirements for certified  
18 capital companies as provided in this act. The department may  
19 adopt any rules necessary to carry out its duties,  
20 obligations, and powers related to certification, renewal of  
21 certification, or decertification of certified capital  
22 companies and may perform any other acts necessary for the  
23 proper administration and enforcement of such duties,  
24 obligations, and powers.

25 (i)~~(j)~~ Decertification of a certified capital company  
26 under this subsection does not affect the ability of certified  
27 investors in such certified capital company from claiming  
28 future premium tax credits earned as a result of an investment  
29 in the certified capital company during the period in which it  
30 was duly certified.

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

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- 1 (a) To remain certified, a certified capital company  
2 must make qualified investments according to the following  
3 schedule:
- 4 1. At least 20 percent of its certified capital must  
5 be invested in qualified investments by December 31, 2000, or  
6 in the case of certified capital raised under Program Two, by  
7 December 31, 2003.
- 8 2. At least 30 percent of its certified capital must  
9 be invested in qualified investments by December 31, 2001, or  
10 in the case of certified capital raised under Program Two, by  
11 December 31, 2004.
- 12 3. At least 40 percent of its certified capital must  
13 be invested in qualified investments by December 31, 2002, or  
14 in the case of certified capital raised under Program Two, by  
15 December 31, 2005.
- 16 4. At least 50 percent of its certified capital must  
17 be invested in qualified investments by December 31, 2003, or  
18 in the case of certified capital raised under Program Two, by  
19 December 31, 2006. At least 50 percent of such qualified  
20 investments must be invested in early stage technology  
21 businesses.
- 22 (b) All capital not invested in qualified investments  
23 by the certified capital company:
- 24 1. Must be held in a financial institution as defined  
25 by s. 655.005(1)(h) or held by a broker-dealer registered  
26 under s. 517.12, except as set forth in s. 288.99(5)(b)3.g.
- 27 2. Must not be invested in a certified investor of the  
28 certified capital company or any affiliate of the certified  
29 investor of the certified capital company, except for an  
30 investment permitted by s. 288.99(5)(b)3.g., provided  
31 repayment terms do not permit the obligor to directly or

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1 indirectly manage or control the investment decisions of the  
2 certified capital company.  
3       3. Must be invested only in:  
4       a. Any United States Treasury obligations;  
5       b. Certificates of deposit or other obligations,  
6 maturing within 3 years after acquisition of such certificates  
7 or obligations, issued by any financial institution or trust  
8 company incorporated under the laws of the United States;  
9       c. Marketable obligations, maturing within 5 years or  
10 less after the acquisition of such obligations, which are  
11 rated "A" or better by any nationally recognized credit rating  
12 agency;  
13       d. Mortgage-backed securities, with an average life of  
14 5 years or less, after the acquisition of such securities,  
15 which are rated "A" or better by any nationally recognized  
16 credit rating agency;  
17       e. Collateralized mortgage obligations and real estate  
18 mortgage investment conduits that are direct obligations of an  
19 agency of the United States Government; are not private-label  
20 issues; are in book-entry form; and do not include the classes  
21 of interest only, principal only, residual, or zero; ~~or~~  
22       f. Interests in money market funds, the portfolio of  
23 which is limited to cash and obligations described in  
24 sub-subparagraphs a.-d.; or  
25       g. Obligations that are issued by an insurance company  
26 that is not a certified investor of the certified capital  
27 company making the investment, that has provided a guarantee  
28 indemnity bond, insurance policy, or other payment undertaking  
29 in favor of the certified capital company's certified  
30 investors as permitted by s. 288.99(3)(m)1. or an affiliate of  
31 such insurance company as defined by s. 288.99(3)(a)3. that is

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1 not a certified investor of the certified capital company  
2 making the investment, provided that such obligations are:  
3 (I) Issued or guaranteed as to principal by an entity  
4 whose senior debt is rated "AA" or better by Standard & Poor's  
5 Ratings Group or such other nationally recognized credit  
6 rating agency as the Department may by rule determine;  
7 (II) Not subordinated to other unsecured indebtedness  
8 of the issuer or the guarantor;  
9 (III) Invested by such issuing entity in accordance  
10 with s. 288.99(5)(b)3.a.-f.; and  
11 (IV) Readily convertible into cash within 5 business  
12 days for the purpose of making a Qualified Investment unless  
13 such obligations are held to provide a guarantee, indemnity  
14 bond, insurance policy, or other payment undertaking in favor  
15 of the certified capital company's certified investors as  
16 permitted by s. 288.99(3)(m)1.  
17 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.--  
18 (a) Any certified investor who makes an investment of  
19 certified capital shall earn a vested credit against premium  
20 tax liability equal to 100 percent of the certified capital  
21 invested by the certified investor. Certified investors shall  
22 be entitled to use no more than 10 percentage points of the  
23 vested premium tax credit earned under a particular program,  
24 including any carryforward credits from such program under  
25 this act, per year beginning with premium tax filings for  
26 calendar year 2000 for credits earned under Program One and  
27 calendar year 2003 for credits earned under Program Two. Any  
28 premium tax credits not used by certified investors in any  
29 single year may be carried forward and applied against the  
30 premium tax liabilities of such investors for subsequent  
31 calendar years. ~~The carryforward credit may be applied~~



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1 ~~against subsequent premium tax filings through calendar year~~  
2 ~~2017.~~

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

5 (a) The total amount of tax credits which may be  
6 allocated by the office shall not exceed \$150 million with  
7 respect to Program One and \$50 million with respect to Program  
8 Two. The total amount of tax credits which may be used by  
9 certified investors under this act shall not exceed \$15  
10 million annually with respect to credits earned under Program  
11 One and \$5 million annually with respect to credits earned  
12 under Program Two.

13 (c) Each certified capital company must apply to the  
14 office for an allocation of premium tax credits for potential  
15 certified investors by March 15, 1999, or by March 15, 2002,  
16 in the case of credits allocable under Program Two, on a form  
17 developed by the office with the cooperation of the Department  
18 of Revenue. The form shall be accompanied by an affidavit  
19 from each potential certified investor confirming that the  
20 potential certified investor has agreed to make an investment  
21 of certified capital in a certified capital company up to a  
22 specified amount, subject only to the receipt of a premium tax  
23 credit allocation pursuant to this subsection. No certified  
24 capital company shall submit premium tax allocation claims on  
25 behalf of certified investors that in the aggregate would  
26 exceed the total dollar amount appropriated by the Legislature  
27 for the specific program. No allocation shall be made to the  
28 potential investors of a certified capital company under  
29 Program Two unless such certified capital company has filed  
30 premium tax allocation claims ~~that would result in an~~  
31 ~~allocation to the potential investors in such certified~~

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1 ~~capital company~~ of not less than \$15 million in the aggregate.

2 (d) On or before April 1, 1999, or April 1, 2002, in  
3 the case of Program Two, the office shall inform each  
4 certified capital company of its share of total premium tax  
5 credits available for allocation to each of its potential  
6 investors.

7 (e) If a certified capital company does not receive  
8 certified capital equaling the amount of premium tax credits  
9 allocated to a potential certified investor for which the  
10 investor filed a premium tax allocation claim within 10  
11 business days after the investor received a notice of  
12 allocation, the certified capital company shall notify the  
13 office by overnight common carrier delivery service of the  
14 company's failure to receive the capital. That portion of the  
15 premium tax credits allocated to the certified capital company  
16 shall be forfeited. The department may levy a fine of not more  
17 than \$50,000 on any certified investor that does not invest  
18 the full amount of certified capital allocated by the  
19 department to such investor in accordance with the affidavit  
20 filed on its behalf. If the office must make a pro rata  
21 allocation under paragraph (f), the office shall reallocate  
22 such available credits among the other certified capital  
23 companies on the same pro rata basis as the initial  
24 allocation.

25 (f) If the total amount of capital committed by all  
26 certified investors to certified capital companies in premium  
27 tax allocation claims under Program Two exceeds the aggregate  
28 cap on the amount of credits that may be awarded under Program  
29 Two, the premium tax credits that may be allowed to any one  
30 certified investor under Program Two shall be allocated using  
31 the following ratio:

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$$\frac{A}{B} = \frac{X}{\$50,000,000}$$

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

where the letter "A" represents the total amount of certified capital certified investors have agreed to invest in any one certified capital company under Program Two, the letter "B" represents the aggregate amount of certified capital that all certified investors have agreed to invest in all certified capital companies under Program Two, the letter "X" is the numerator and represents the total amount of premium tax credits and certified capital that may be allocated to a certified capital company on April 1, 2002 in calendar year 1999, and ~~\$50~~\$150 million is the denominator and represents the total amount of premium tax credits and certified capital that may be allocated to all certified investors in calendar year 2002 1999. Any such premium tax credits are not first available for utilization until annual filings are made in 2001 for calendar year 2000 in the case of Program One, and until annual filings are made in 2004 for calendar year 2003 in the case of Program Two, and the tax credits may be used at a rate not to exceed 10 percent annually per program.

(g) The maximum amount of certified capital for which premium tax allocation claims may be filed on behalf of any certified investor and its affiliates by one or more certified capital companies may not exceed \$15 million for Program One, and \$7.5 million for Program Two.

(h) To the extent that less than ~~\$50~~\$150 million in certified capital is raised in connection with the procedure set forth in paragraphs (c)-(g), the department may adopt rules to allow a subsequent allocation of the remaining

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1 premium tax credits authorized under this section.

2 (i) The office shall issue a certification letter for  
3 each certified investor, showing the amount invested in the  
4 certified capital company under each program. The applicable  
5 certified capital company shall attest to the validity of the  
6 certification letter.

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

8 (a) On an annual basis, on or before January ~~December~~  
9 31, each certified capital company shall file with the  
10 department and the office, in consultation with the  
11 department, on a form prescribed by the office, for each  
12 calendar year:

13 1. The total dollar amount the certified capital  
14 company received from certified investors, the identity of the  
15 certified investors, and the amount received from each  
16 certified investor during the immediately preceding calendar  
17 year.

18 2. The total dollar amount the certified capital  
19 company invested and the amount invested in qualified  
20 businesses, together with the identity and location of those  
21 businesses and the amount invested in each qualified business  
22 during the immediately preceding calendar year.

23 3. For informational purposes only, the total number  
24 of permanent, full-time jobs either created or retained by the  
25 qualified business during the immediately preceding calendar  
26 year, the average wage of the jobs created or retained, the  
27 industry sectors in which the qualified businesses operate,  
28 and any additional capital invested in qualified businesses  
29 from sources other than certified capital companies.

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

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

16           (b) Cumulative distributions from a certified capital  
17 company out of funds related to a particular program to its  
18 certified investors and equity holders under such program,  
19 other than qualified distributions, in excess of the certified  
20 capital company's original certified capital raised under such  
21 program and any additional capital contributions to the  
22 certified capital company with respect to such program may be  
23 audited by a nationally recognized certified public accounting  
24 firm acceptable to the department, at the expense of the  
25 certified capital company, if the department directs such  
26 audit be conducted. The audit shall determine whether  
27 aggregate cumulative distributions from the funds related to a  
28 particular program made by the certified capital company to  
29 all certified investors and equity holders under such program,  
30 other than qualified distributions, have equaled the sum of  
31 the certified capital company's original certified capital

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1 raised under such program and any additional capital  
2 contributions to the certified capital company with respect to  
3 such program. If at the time of any such distribution made by  
4 the certified capital company, such distribution taken  
5 together with all other such distributions from the funds  
6 related to such program made by the certified capital company,  
7 other than qualified distributions, exceeds in the aggregate  
8 the sum of the certified capital company's original certified  
9 capital raised under such program and any additional capital  
10 contributions to the certified capital company with respect to  
11 such program, as determined by the audit, the certified  
12 capital company shall pay to the Department of Revenue 10  
13 percent of the portion of such distribution in excess of such  
14 amount. Payments to the Department of Revenue by a certified  
15 capital company pursuant to this paragraph shall not exceed  
16 the aggregate amount of tax credits used by all certified  
17 investors in such certified capital company for such program.

18 (10) DECERTIFICATION.--

19 (f) Decertification of a certified capital company for  
20 failure to meet all requirements for continued certification  
21 under paragraph (5)(a) with respect to the certified capital  
22 raised under a particular program may cause the recapture of  
23 premium tax credits previously claimed by such company under  
24 such program and the forfeiture of future premium tax credits  
25 to be claimed by certified investors under such program with  
26 respect to such certified capital company, as follows:

27 1. Decertification of a certified capital company  
28 within 3 years after its certification date with respect to a  
29 particular program shall cause the recapture of all premium  
30 tax credits earned under such program and previously claimed  
31 by such company and the forfeiture of all future premium tax

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1 credits earned under such program which are to be claimed by  
2 certified investors with respect to such company.

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

19           3. When a certified capital company meets all  
20 requirements for continued certification under subparagraphs  
21 (5)(a)1. and 2. with respect to a particular program and  
22 subsequently fails to meet the requirements for continued  
23 certification under the subparagraph (5)(a)3. with respect to  
24 such program, those premium tax credits earned under such  
25 program which have been or will be taken by certified  
26 investors within 4 years after the certification date of the  
27 certified capital company with respect to such program shall  
28 not be subject to recapture or forfeiture; however, all  
29 premium tax credits earned under such program that have been  
30 or will be taken by certified investors after the fourth  
31 anniversary of the certification date of the certified capital

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1 company with respect to such program shall be subject to  
2 recapture and forfeiture.

3 4. If a certified capital company has met all  
4 requirements for continued certification under paragraph  
5 (5)(a) with respect to certified capital raised under a  
6 particular program, but such company is subsequently  
7 decertified, those premium tax credits earned under such  
8 program which have been or will be taken by certified  
9 investors within 5 years after the certification date of such  
10 company with respect to such program shall not be subject to  
11 recapture or forfeiture. Those premium tax credits earned  
12 under such program and to be taken subsequent to the 5th year  
13 of certification with respect to such program shall be subject  
14 to forfeiture only if the certified capital company is  
15 decertified within 5 years after its certification date with  
16 respect to such program.

17 5. If a certified capital company has invested an  
18 amount cumulatively equal to 100 percent of its certified  
19 capital raised under a particular program in qualified  
20 investments, all premium tax credits claimed or to be claimed  
21 by its certified investors under such program shall not be  
22 subject to recapture or forfeiture.

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

26 And the title is amended as follows:

27 On page 102, line 27, of the amendment, after the  
28 semicolon,  
29 remove:

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31 insert:



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1           amending s. 288.99, F.S.; redefining the terms  
2           "early stage technology business" and  
3           "qualified distribution"; defining the terms  
4           "Program One" and "Program Two"; revising  
5           procedures and dates for certification and  
6           decertification under Program One and Program  
7           Two; revising the process for earning premium  
8           tax credits; providing a limitation on tax  
9           credits under Program Two; authorizing the  
10          Department of Banking and Finance to levy a  
11          fine; providing for distributions under both  
12          programs;

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