

568-179AX-32

Bill No. CS/HB 293

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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11 Representative(s) Crow offered the following:

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13 **Amendment (with title amendment)**

14 Remove from the bill: Everything after the enacting clause

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16 and insert in lieu thereof:

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18 Section 1. Subsections (3) and (4), paragraphs (a) and

19

20 (b) of subsection (5), paragraph (a) of subsection (6),

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22 paragraphs (a), (c), (d), (e), (f), (g), and (h) of subsection

23

24 (7), paragraph (a) of subsection (8), paragraphs (a) and (b)

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26 of subsection (9), and paragraph (f) of subsection (10) of

27

28 section 288.99, Florida Statutes, are amended, and paragraph

29

30 (i) is added to subsection (7) of that section, to read:

31

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

other ownership interests of the insurance company;

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

1 Finance.

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

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

6 1. Involved, at the time of the certified capital
7 company's initial investment in such business, in activities
8 related to developing initial product or service offerings,
9 such as prototype development or the establishment of initial
10 production or service processes; ~~The term includes a~~
11 ~~qualified business that is~~

12 2. Less than 2 years old and has, together with its
13 affiliates, less than \$3 million in annual revenues for the
14 fiscal year immediately preceding the initial investment by
15 the certified capital company on a consolidated basis, as
16 determined in accordance with generally accepted accounting
17 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
31 liability company, or any other person with equivalent

1 executive functions.

2 (k) "Qualified business" means a business that meets

3 the following conditions as evidenced by documentation

4 required by department rule:

5 1. The business is headquartered in this state and its

6 principal business operations are located in this state. For

7 the purpose of this act, the terms "headquartered" and

8 "principal business operations" mean that at least 75 percent

9 of the employees are located in the state.

10 2. At the time a certified capital company makes an

11 initial investment in a business, the business is a small

12 business concern as defined in 13 C.F.R. s. 121.201, "Size

13 Standards Used to Define Small Business Concerns" of the

14 United States Small Business Administration which is involved

15 in manufacturing, processing or assembling products,

16 conducting research and development, or providing services.

17 3. At the time a certified capital company makes an

18 initial investment in a business, the business certifies in an

19 affidavit that:

20 a. The business is unable to obtain conventional

21 financing, which means that the business has failed in an

22 attempt to obtain funding for a loan from a bank or other

23 commercial lender or that the business cannot reasonably be

24 expected to qualify for such financing under the standards of

25 commercial lending;

26 b. The business plan for the business projects that

27 the business is reasonably expected to achieve in excess of

28 \$25 million in sales revenue within 5 years after the initial

29 investment, or the business is located in a designated Front

30 Porch community, enterprise zone, urban high crime area, rural

31 job tax credit county, or nationally recognized historic

1 district;

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

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

17 4. The term does not include:

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

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

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

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

1 acquisition as determined by the department.

2

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

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

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

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

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

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

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

15 ~~4.2.~~ Any projected increase in federal or state taxes,
16 including penalties and interest related to state and federal
17 income taxes, of the equity owners of a certified capital
18 company resulting from the earnings or other tax liability of
19 the certified capital company to the extent that the increase
20 is related to the ownership, management, or operation of a
21 certified capital company.

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

29 2. The term does not include:

30 a. Any investment made after the effective date of
31 this act the contractual terms of which require the repayment

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

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

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

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

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

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

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

29 (b) An applicant for certification as a certified
30 capital company must file a verified application with the
31 department on or before December 1, 1998, or November 1, 2001,

1 in the case of applicants for Program Two, in a form which the
2 department may prescribe by rule. The applicant shall submit
3 a nonrefundable application fee of \$7,500 to the department.
4 The applicant shall provide:

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

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

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

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

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

31 6. Copies of any offering materials used or proposed

1 to be used by the applicant in soliciting investments of
2 certified capital from certified investors.

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

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

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

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

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

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

1 The department may deny certification or decertify a certified
2 capital company if the certified capital company fails to
3 maintain a net worth of at least \$500,000, or if the
4 department determines that the applicant, or any principal or
5 director of the certified capital company, has:

6 1. Violated any provision of this section;

7 2. Made a material misrepresentation or false
8 statement or concealed any essential or material fact from any
9 person during the application process or with respect to
10 information and reports required of certified capital
11 companies under this section;

12 3. Been convicted of, or entered a plea of guilty or
13 nolo contendere to, a crime against the laws of this state or
14 any other state or of the United States or any other country
15 or government, including a fraudulent act in connection with
16 the operation of a certified capital company, or in connection
17 with the performance of fiduciary duties in another capacity;

18 4. Been adjudicated liable in a civil action on
19 grounds of fraud, embezzlement, misrepresentation, or deceit;
20 or

21 5.a. Been the subject of any decision, finding,
22 injunction, suspension, prohibition, revocation, denial,
23 judgment, or administrative order by any court of competent
24 jurisdiction, administrative law judge, or any state or
25 federal agency, national securities, commodities, or option
26 exchange, or national securities, commodities, or option
27 association, involving a material violation of any federal or
28 state securities or commodities law or any rule or regulation
29 adopted under such law, or any rule or regulation of any
30 national securities, commodities, or options exchange, or
31 national securities, commodities, or options association; or

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

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

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

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

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

4 (g)~~(h)~~ On or before December 31 of each year, each
5 certified capital company shall pay to the department an
6 annual, nonrefundable renewal certification fee of \$5,000. If
7 a certified capital company fails to pay its renewal fee by
8 the specified deadline, it must pay a late fee of \$5,000 in
9 addition to the renewal fee on or by January 31 of each year
10 in order to continue its certification in the program. On or
11 before April 30 of each year, each certified capital company
12 shall file audited financial statements with the department.

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

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

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

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

31 (a) To remain certified, a certified capital company

1 must make qualified investments according to the following
2 schedule:

3 1. At least 20 percent of its certified capital must
4 be invested in qualified investments by December 31, 2000, or
5 in the case of certified capital raised under Program Two, by
6 December 31, 2003.

7 2. At least 30 percent of its certified capital must
8 be invested in qualified investments by December 31, 2001, or
9 in the case of certified capital raised under Program Two, by
10 December 31, 2004.

11 3. At least 40 percent of its certified capital must
12 be invested in qualified investments by December 31, 2002, or
13 in the case of certified capital raised under Program Two, by
14 December 31, 2005.

15 4. At least 50 percent of its certified capital must
16 be invested in qualified investments by December 31, 2003, or
17 in the case of certified capital raised under Program Two, by
18 December 31, 2006. At least 50 percent of such qualified
19 investments must be invested in early stage technology
20 businesses.

21 (b) All capital not invested in qualified investments
22 by the certified capital company:

23 1. Must be held in a financial institution as defined
24 by s. 655.005(1)(h) or held by a broker-dealer registered
25 under s. 517.12, except as set forth in s. 288.99(5)(b)3.g.

26 2. Must not be invested in a certified investor of the
27 certified capital company or any affiliate of the certified
28 investor of the certified capital company, except for an
29 investment permitted by s. 288.99(5)(b)3.g., provided
30 repayment terms do not permit the obligor to directly or
31 indirectly manage or control the investment decisions of the

1 certified capital company.

2 3. Must be invested only in:

3 a. Any United States Treasury obligations;

4 b. Certificates of deposit or other obligations,

5 maturing within 3 years after acquisition of such certificates

6 or obligations, issued by any financial institution or trust

7 company incorporated under the laws of the United States;

8 c. Marketable obligations, maturing within 5 years or

9 less after the acquisition of such obligations, which are

10 rated "A" or better by any nationally recognized credit rating

11 agency;

12 d. Mortgage-backed securities, with an average life of

13 5 years or less, after the acquisition of such securities,

14 which are rated "A" or better by any nationally recognized

15 credit rating agency;

16 e. Collateralized mortgage obligations and real estate

17 mortgage investment conduits that are direct obligations of an

18 agency of the United States Government; are not private-label

19 issues; are in book-entry form; and do not include the classes

20 of interest only, principal only, residual, or zero; ~~or~~

21 f. Interests in money market funds, the portfolio of

22 which is limited to cash and obligations described in

23 sub-subparagraphs a.-d.; or

24 g. Obligations that are issued by an insurance company

25 that is not a certified investor of the certified capital

26 company making the investment, that has provided a guarantee

27 indemnity bond, insurance policy, or other payment undertaking

28 in favor of the certified capital company's certified

29 investors as permitted by s. 288.99(3)(m)1. or an affiliate of

30 such insurance company as defined by s. 288.99(3)(a)3. that is

31 not a certified investor of the certified capital company

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

1 ~~2017-~~

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

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

12 (c) Each certified capital company must apply to the
13 office for an allocation of premium tax credits for potential
14 certified investors by March 15, 1999, or by March 15, 2002,
15 in the case of credits allocable under Program Two, on a form
16 developed by the office with the cooperation of the Department
17 of Revenue. The form shall be accompanied by an affidavit
18 from each potential certified investor confirming that the
19 potential certified investor has agreed to make an investment
20 of certified capital in a certified capital company up to a
21 specified amount, subject only to the receipt of a premium tax
22 credit allocation pursuant to this subsection. No certified
23 capital company shall submit premium tax allocation claims on
24 behalf of certified investors that in the aggregate would
25 exceed the total dollar amount appropriated by the Legislature
26 for the specific program. No allocation shall be made to the
27 potential investors of a certified capital company under
28 Program Two unless such certified capital company has filed
29 premium tax allocation claims that would result in an
30 allocation to the potential investors in such certified
31 capital company of not less than \$15 million in the aggregate.

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

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

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

31

Amendment No. ____ (for drafter's use only)

1
$$\frac{A}{B} = \frac{X}{\$50,000,000}$$
2
$$\frac{A}{B} = \frac{X}{\$150,000,000}$$

3

4 where the letter "A" represents the total amount of certified
 5 capital certified investors have agreed to invest in any one
 6 certified capital company under Program Two, the letter "B"
 7 represents the aggregate amount of certified capital that all
 8 certified investors have agreed to invest in all certified
 9 capital companies under Program Two, the letter "X" is the
 10 numerator and represents the total amount of premium tax
 11 credits and certified capital that may be allocated to a
 12 certified capital company on April 1, 2002 in calendar year
 13 ~~1999~~, and ~~\$50~~~~\$150~~ million is the denominator and represents
 14 the total amount of premium tax credits and certified capital
 15 that may be allocated to all certified investors in calendar
 16 year 2002 ~~1999~~. Any such premium tax credits are not first
 17 available for utilization until annual filings are made in
 18 2001 for calendar year 2000 in the case of Program One, and
 19 until annual filings are made in 2004 for calendar year 2003
 20 in the case of Program Two, and the tax credits may be used at
 21 a rate not to exceed 10 percent annually per program.

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

27 (h) To the extent that less than ~~\$50~~~~\$150~~ million in
 28 certified capital is raised in connection with the procedure
 29 set forth in paragraphs (c)-(g), the department may adopt
 30 rules to allow a subsequent allocation of the remaining
 31 premium tax credits authorized under this section.

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

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

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

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

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

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

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

31 (a) A certified capital company may make qualified

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

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

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

17 (10) DECERTIFICATION.--

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

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

1 certified investors with respect to such company.

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

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

1 recapture and forfeiture.

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

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

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

23
24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 remove from the title of the bill: the entire title

28
29 and insert in lieu thereof:

30 A bill to be entitled

31 An act relating to the Certified Capital

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1 Company Act; amending s. 288.99, F.S.;

2 redefining the terms "early stage technology

3 business" and "qualified distribution";

4 defining the terms "Program One" and "Program

5 Two"; revising procedures and dates for

6 certification and decertification under Program

7 One and Program Two; revising the process for

8 earning premium tax credits; providing a

9 limitation on tax credits under Program Two;

10 authorizing the Department of Banking and

11 Finance to levy a fine; providing for

12 distributions under both programs; providing an

13 effective date.

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