

By Senator Latvala

19-74A-02

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.

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

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

26 288.99 Certified Capital Company Act.--

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

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

29 1. Any person directly or indirectly beneficially
30 owning, whether through rights, options, convertible
31 interests, or otherwise, controlling, or holding power to vote

1 15 ~~10~~ percent or more of the outstanding voting securities or
2 other ownership interests of the insurance company;

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

9 3. Any person directly or indirectly controlling,
10 controlled by, or under common control with the insurance
11 company;

12 4. A partnership in which the insurance company is a
13 general partner; or

14 5. Any person who is a principal, director, employee,
15 or agent of the insurance company or an immediate family
16 member of the principal, director, employee, or agent.

17 (b) "Certified capital" means an investment of cash by
18 a certified investor in a certified capital company which
19 fully funds the purchase price of either or both its equity
20 interest in the certified capital company or a qualified debt
21 instrument issued by the certified capital company.

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

24 1. Is certified by the department in accordance with
25 this act.

26 2. Receives investments of certified capital from two
27 or more unaffiliated certified investors.

28 3. Makes qualified investments as its primary
29 activity.

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1 (d) "Certified investor" means any insurance company
2 subject to premium tax liability pursuant to s. 624.509 that
3 contributes certified capital.

4 (e) "Department" means the Department of Banking and
5 Finance.

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

8 (g) "Early stage technology business" means a
9 qualified business that is either:

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

16 2. Less than 2 years old and has, together with its
17 affiliates, less than \$3 million in annual revenues for the
18 fiscal year immediately preceding the initial investment by
19 the certified capital company on a consolidated basis, as
20 determined in accordance with generally accepted accounting
21 principles; ~~The term also includes~~

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

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

25 5. Any entity in which the Florida Black Business
26 Investment Board holds a majority voting interest on the board
27 of directors.

28 (h) "Office" means the Office of Tourism, Trade, and
29 Economic Development.

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1 (i) "Premium tax liability" means any liability
2 incurred by an insurance company under the provisions of s.
3 624.509.

4 (j) "Principal" means an executive officer of a
5 corporation, partner of a partnership, manager of a limited
6 liability company, or any other person with equivalent
7 executive functions.

8 (k) "Qualified business" means a business that meets
9 the following conditions as evidenced by documentation
10 required by department rule:

11 1. The business is headquartered in this state and its
12 principal business operations are located in this state. For
13 the purpose of this act, the terms "headquartered" and
14 "principal business operations" mean that at least 75 percent
15 of the employees are located in the state.

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

23 3. At the time a certified capital company makes an
24 initial investment in a business, the business certifies in an
25 affidavit that:

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

1 b. The business plan for the business projects that
2 the business is reasonably expected to achieve in excess of
3 \$25 million in sales revenue within 5 years after the initial
4 investment, or the business is located in a designated Front
5 Porch community, enterprise zone, urban high crime area, rural
6 job tax credit county, or nationally recognized historic
7 district;

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

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

23 4. The term does not include:

24 a. Any business predominantly engaged in retail sales,
25 real estate development, insurance, banking, lending, or oil
26 and gas exploration.

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

29 c. Any company that has no historical revenues and
30 either has no specific business plan or purpose or has
31 indicated that its business plan is solely to engage in a

1 merger or acquisition with any unidentified company or other
2 entity.

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

8
9 ~~A business predominantly engaged in retail sales, real estate~~
10 ~~development, insurance, banking, lending, oil and gas~~
11 ~~exploration, or engaged in professional services provided by~~
12 ~~accountants, lawyers, or physicians does not constitute a~~
13 ~~qualified business.~~

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

24 (m) "Qualified distribution" means any distribution or
25 payment by ~~to equity holders~~ of a certified capital company
26 for:

27 1. Reasonable costs and expenses, including, but not
28 limited to, professional fees, of forming and, syndicating the
29 certified capital company, if no such costs or expenses are
30 paid to a certified investor and the total cash, cash
31 equivalents and other current assets permitted by s.

1 288.99(5)(b)3.g. that can be converted into cash within 5
2 business days available to the certified capital company at
3 the time of receipt of certified capital from certified
4 investors, after deducting the costs and expenses of forming
5 and syndicating the certified capital company, including any
6 payments made over time for obligations incurred at the time
7 of receipt of certified capital excluding other future
8 qualified distributions and payments made under s.
9 288.99(9)(a), are an amount equal to or greater than 50
10 percent of the total certified capital allocated to the
11 certified capital pursuant to s. 288.99(7);~~7~~

12 2. Reasonable costs of managing~~7~~ and operating the
13 certified capital company, not exceeding 5 percent of the
14 certified capital in any 1 year, including an annual
15 management fee in an amount that does not exceed 2.5 percent
16 of the certified capital of the certified capital company;~~7~~
17 plus

18 3. Reasonable and necessary fees in accordance with
19 industry custom for professional services, including, but not
20 limited to, legal and accounting services, related to the
21 operation of the certified capital company;~~7~~ or~~7~~

22 ~~4.2.~~ Any projected increase in federal or state taxes,
23 including penalties and interest related to state and federal
24 income taxes, of the equity owners of a certified capital
25 company resulting from the earnings or other tax liability of
26 the certified capital company to the extent that the increase
27 is related to the ownership, management, or operation of a
28 certified capital company.

29 (n)1. "Qualified investment" means the investment of
30 cash by a certified capital company in a qualified business
31 for the purchase of any debt, equity, or hybrid security ~~of~~

1 ~~any nature and description whatsoever~~, including a debt
2 instrument or security that which has the characteristics of
3 debt but which provides for conversion into equity or equity
4 participation instruments such as options or warrants.

5 2. The term does not include:

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

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

19 c. Any investment in a qualified business or affiliate
20 of a qualified business that exceeds 15 percent of certified
21 capital.

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

26 (p) "Program Two" means the \$300 million in premium
27 tax credits to be issued under this act on April 1, 2003, the
28 allocation of such credits under this act, and the regulation
29 of certified capital companies and investments made by them
30 hereunder.

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1 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
2 DECERTIFICATION.--

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

6 (b) An applicant for certification as a certified
7 capital company must file a verified application with the
8 department on or before December 1, 1998, or November 1, 2003,
9 in the case of applicants for Program Two, in a form which the
10 department may prescribe by rule. The applicant shall submit
11 a nonrefundable application fee of \$7,500 to the department.
12 The applicant shall provide:

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

15 2. The applicant's form and place of organization and
16 the relevant organizational documents, bylaws, and amendments
17 or restatements of such documents, bylaws, or amendments.

18 3. Evidence from the Department of State that the
19 applicant is registered with the Department of State as
20 required by law, maintains an active status with the
21 Department of State, and has not been dissolved or had its
22 registration revoked, canceled, or withdrawn.

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

24 5. The applicant's financial condition and history,
25 including an audit report on the financial statements prepared
26 in accordance with generally accepted accounting principles
27 showing net worth ~~capital~~ of not less than \$500,000 within 90
28 days prior to ~~after~~ the date the application is submitted to
29 the department. If the date of the application is more than 90
30 days after preparation of the applicant's fiscal year-end
31 financial statements, the applicant may file financial

1 statements reviewed by an independent certified public
2 accountant for the period subsequent to the audit report,
3 together with the audited financial statement for the most
4 recent fiscal year. If the applicant has been in business
5 less than 12 months, and has not prepared an audited financial
6 statement, the applicant may file a financial statement
7 reviewed by an independent certified public accountant.

8 6. Copies of any offering materials used or proposed
9 to be used by the applicant in soliciting investments of
10 certified capital from certified investors.

11 (c) On December 31, 1998, or December 31, 2003, in the
12 case of applicants for Program Two,the department shall grant
13 or deny certification as a certified capital company. If the
14 department denies certification within the time period
15 specified, the department shall inform the applicant of the
16 grounds for the denial. If the department has not granted or
17 denied certification within the time specified, the
18 application shall be deemed approved. The department shall
19 approve the application if the department finds that:

20 1. The applicant satisfies the requirements of
21 paragraph (b).

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

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

1 4. The applicant's proposed method of doing business
2 and raising certified capital as described in its offering
3 materials and other materials submitted to the department
4 conforms with the requirements of this section.

5 (d) The department may deny certification or decertify
6 a certified capital company if the grounds for decertification
7 are not removed or corrected within 90 days after the notice
8 of such grounds is received by the certified capital company.
9 The department may deny certification or decertify a certified
10 capital company if the certified capital company fails to
11 maintain a net worth of at least \$500,000, or if the
12 department determines that the applicant, or any principal or
13 director of the certified capital company, has:

14 1. Violated any provision of this section;

15 2. Made a material misrepresentation or false
16 statement or concealed any essential or material fact from any
17 person during the application process or with respect to
18 information and reports required of certified capital
19 companies under this section;

20 3. Been convicted of, or entered a plea of guilty or
21 nolo contendere to, a crime against the laws of this state or
22 any other state or of the United States or any other country
23 or government, including a fraudulent act in connection with
24 the operation of a certified capital company, or in connection
25 with the performance of fiduciary duties in another capacity;

26 4. Been adjudicated liable in a civil action on
27 grounds of fraud, embezzlement, misrepresentation, or deceit;
28 or

29 5.a. Been the subject of any decision, finding,
30 injunction, suspension, prohibition, revocation, denial,
31 judgment, or administrative order by any court of competent

1 jurisdiction, administrative law judge, or any state or
2 federal agency, national securities, commodities, or option
3 exchange, or national securities, commodities, or option
4 association, involving a material violation of any federal or
5 state securities or commodities law or any rule or regulation
6 adopted under such law, or any rule or regulation of any
7 national securities, commodities, or options exchange, or
8 national securities, commodities, or options association; or

9 b. Been the subject of any injunction or adverse
10 administrative order by a state or federal agency regulating
11 banking, insurance, finance or small loan companies, real
12 estate, mortgage brokers, or other related or similar
13 industries.

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

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

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1 ~~(f)(g)~~ No insurance company or any affiliate of an
2 insurance company shall, directly or indirectly, own, whether
3 through rights, options, convertible interests, or otherwise,
4 15 percent or more of the equity interests of or manage or
5 control the direction of investments of a certified capital
6 company. This prohibition does not preclude a certified
7 investor, insurance company, or any other party from
8 exercising its legal rights and remedies, which may include
9 interim management of a certified capital company, if a
10 certified capital company is in default of its obligations
11 under law or its contractual obligations to such certified
12 investor, insurance company, or other party.

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

24 ~~(h)(i)~~ The department shall administer and provide for
25 the enforcement of certification requirements for certified
26 capital companies as provided in this act. The department may
27 adopt any rules necessary to carry out its duties,
28 obligations, and powers related to certification, renewal of
29 certification, or decertification of certified capital
30 companies and may perform any other acts necessary for the
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1 proper administration and enforcement of such duties,
2 obligations, and powers.

3 ~~(i)(j)~~ Decertification of a certified capital company
4 under this subsection does not affect the ability of certified
5 investors in such certified capital company from claiming
6 future premium tax credits earned as a result of an investment
7 in the certified capital company during the period in which it
8 was duly certified.

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

10 (a) To remain certified, a certified capital company
11 must make qualified investments according to the following
12 schedule:

13 1. At least 20 percent of its certified capital must
14 be invested in qualified investments by December 31, 2000, or
15 in the case of certified capital raised under Program Two, by
16 December 31, 2005.

17 2. At least 30 percent of its certified capital must
18 be invested in qualified investments by December 31, 2001, or
19 in the case of certified capital raised under Program Two, by
20 December 31, 2006.

21 3. At least 40 percent of its certified capital must
22 be invested in qualified investments by December 31, 2002, or
23 in the case of certified capital raised under Program Two, by
24 December 31, 2007.

25 4. At least 50 percent of its certified capital must
26 be invested in qualified investments by December 31, 2003, or
27 in the case of certified capital raised under Program Two, by
28 December 31, 2008. At least 50 percent of such qualified
29 investments must be invested in early stage technology
30 businesses.

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- 1 (b) All capital not invested in qualified investments
2 by the certified capital company:
- 3 1. Must be held in a financial institution as defined
4 by s. 655.005(1)(h) or held by a broker-dealer registered
5 under s. 517.12, except as set forth in s. 288.99(5)(b)3.g.
- 6 2. Must not be invested in a certified investor of the
7 certified capital company or any affiliate of the certified
8 investor of the certified capital company, except for an
9 investment permitted by s. 288.99(5)(b)3.g., provided
10 repayment terms do not permit the obligor to directly or
11 indirectly manage or control the investment decisions of the
12 certified capital company.
- 13 3. Must be invested only in:
- 14 a. Any United States Treasury obligations;
- 15 b. Certificates of deposit or other obligations,
16 maturing within 3 years after acquisition of such certificates
17 or obligations, issued by any financial institution or trust
18 company incorporated under the laws of the United States;
- 19 c. Marketable obligations, maturing within 5 years or
20 less after the acquisition of such obligations, which are
21 rated "A" or better by any nationally recognized credit rating
22 agency;
- 23 d. Mortgage-backed securities, with an average life of
24 5 years or less, after the acquisition of such securities,
25 which are rated "A" or better by any nationally recognized
26 credit rating agency;
- 27 e. Collateralized mortgage obligations and real estate
28 mortgage investment conduits that are direct obligations of an
29 agency of the United States Government; are not private-label
30 issues; are in book-entry form; and do not include the classes
31 of interest only, principal only, residual, or zero; ~~or~~

1 f. Interests in money market funds, the portfolio of
2 which is limited to cash and obligations described in
3 sub-subparagraphs a.-d.; or

4 g. Obligations that are issued by an insurance company
5 that is not a certified investor of the certified capital
6 company making the investment, that has provided a guarantee
7 indemnity bond, insurance policy, or other payment undertaking
8 in favor of the certified capital company's certified
9 investors as permitted by s. 288.99(3)(m)1. or an affiliate of
10 such insurance company as defined by s. 288.99(3)(a)3. that is
11 not a certified investor of the certified capital company
12 making the investment, provided that such obligations are:

13 (I) Issued or guaranteed as to principal by an entity
14 whose senior debt is rated "AA" or better by Standard & Poor's
15 Ratings Group or such other nationally recognized credit
16 rating agency as the Department may by rule determine;

17 (II) Not subordinated to other unsecured indebtedness
18 of the issuer or the guarantor;

19 (III) Invested by such issuing entity in accordance
20 with s. 288.99(5)(b)3.a.-f.; and

21 (IV) Readily convertible into cash within 5 business
22 days for the purpose of making a Qualified Investment unless
23 such obligations are held to provide a guarantee, indemnity
24 bond, insurance policy, or other payment undertaking in favor
25 of the certified capital company's certified investors as
26 permitted by s. 288.99(3)(m)1.

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

28 (a) Any certified investor who makes an investment of
29 certified capital shall earn a vested credit against premium
30 tax liability equal to 100 percent of the certified capital
31 invested by the certified investor. Certified investors shall

1 be entitled to use no more than 10 percentage points of the
2 vested premium tax credit earned under a particular program,
3 including any carryforward credits from such program under
4 this act, per year beginning with premium tax filings for
5 calendar year 2000 for credits earned under Program One and
6 calendar year 2005 for credits earned under Program Two. Any
7 premium tax credits not used by certified investors in any
8 single year may be carried forward and applied against the
9 premium tax liabilities of such investors for subsequent
10 calendar years. ~~The carryforward credit may be applied~~
11 ~~against subsequent premium tax filings through calendar year~~
12 ~~2017.~~

13 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
14 PROCESS.--

15 (a) The total amount of tax credits which may be
16 allocated by the office shall not exceed \$150 million with
17 respect to Program One and \$300 million with respect to
18 Program Two. The total amount of tax credits which may be used
19 by certified investors under this act shall not exceed \$15
20 million annually with respect to credits earned under Program
21 One and \$30 million annually with respect to credits earned
22 under Program Two.

23 (c) Each certified capital company must apply to the
24 office for an allocation of premium tax credits for potential
25 certified investors by March 15, 1999, or by March 15, 2004,
26 in the case of credits allocable under Program Two, on a form
27 developed by the office with the cooperation of the Department
28 of Revenue. The form shall be accompanied by an affidavit
29 from each potential certified investor confirming that the
30 potential certified investor has agreed to make an investment
31 of certified capital in a certified capital company up to a

1 specified amount, subject only to the receipt of a premium tax
2 credit allocation pursuant to this subsection. No certified
3 capital company shall submit premium tax allocation claims on
4 behalf of certified investors that in the aggregate would
5 exceed the total dollar amount appropriated by the Legislature
6 for the specific program. No allocation shall be made to the
7 potential investors of a certified capital company under
8 Program Two unless such certified capital company has filed
9 premium tax allocation claims that would result in an
10 allocation to the potential investors in such certified
11 capital company of not less than \$15 million in the aggregate.

12 (d) On or before April 1, 1999, or April 1, 2004, in
13 the case of Program Two, the office shall inform each
14 certified capital company of its share of total premium tax
15 credits available for allocation to each of its potential
16 investors.

17 (e) If a certified capital company does not receive
18 certified capital equaling the amount of premium tax credits
19 allocated to a potential certified investor for which the
20 investor filed a premium tax allocation claim within 10
21 business days after the investor received a notice of
22 allocation, the certified capital company shall notify the
23 office by overnight common carrier delivery service of the
24 company's failure to receive the capital. That portion of the
25 premium tax credits allocated to the certified capital company
26 shall be forfeited. The department may levy a fine of not more
27 than \$50,000 on any certified investor that does not invest
28 the full amount of certified capital allocated by the
29 department to such investor in accordance with the affidavit
30 filed on its behalf. If the office must make a pro rata
31 allocation under paragraph (f), the office shall reallocate

1 such available credits among the other certified capital
2 companies on the same pro rata basis as the initial
3 allocation.

4 (f) If the total amount of capital committed by all
5 certified investors to certified capital companies in premium
6 tax allocation claims under Program Two exceeds the aggregate
7 cap on the amount of credits that may be awarded under Program
8 Two, the premium tax credits that may be allowed to any one
9 certified investor under Program Two shall be allocated using
10 the following ratio:

$$11 \qquad \qquad \qquad A/B = X/\$300,000,000$$

$$12 \qquad \qquad \qquad A/B = X/\$150,000,000$$

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15 where the letter "A" represents the total amount of certified
16 capital certified investors have agreed to invest in any one
17 certified capital company under Program Two, the letter "B"
18 represents the aggregate amount of certified capital that all
19 certified investors have agreed to invest in all certified
20 capital companies under Program Two, the letter "X" is the
21 numerator and represents the total amount of premium tax
22 credits and certified capital that may be allocated to a
23 certified capital company on April 1, 2004 ~~in calendar year~~
24 ~~1999~~, and ~~\$300~~~~\$150~~ million is the denominator and represents
25 the total amount of premium tax credits and certified capital
26 that may be allocated to all certified investors in calendar
27 year 2004 ~~1999~~. Any such premium tax credits are not first
28 available for utilization until annual filings are made in
29 2001 for calendar year 2000 in the case of Program One, and
30 until annual filings are made in 2006 for calendar year 2005

1 in the case of Program Two, and the tax credits may be used at
2 a rate not to exceed 10 percent annually per program.

3 (g) The maximum amount of certified capital for which
4 premium tax allocation claims may be filed on behalf of any
5 certified investor and its affiliates by one or more certified
6 capital companies may not exceed \$15 million for Program One,
7 and \$22.5 million for Program Two.

8 (h) To the extent that less than ~~\$300~~\$150 million in
9 certified capital is raised in connection with the procedure
10 set forth in paragraphs (c)-(g), the department may adopt
11 rules to allow a subsequent allocation of the remaining
12 premium tax credits authorized under this section.

13 (i) The office shall issue a certification letter for
14 each certified investor, showing the amount invested in the
15 certified capital company under each program. The applicable
16 certified capital company shall attest to the validity of the
17 certification letter.

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

19 (a) On an annual basis, on or before January ~~December~~
20 31, each certified capital company shall file with the
21 department and the office, in consultation with the
22 department, on a form prescribed by the office, for each
23 calendar year:

24 1. The total dollar amount the certified capital
25 company received from certified investors, the identity of the
26 certified investors, and the amount received from each
27 certified investor during the immediately preceding calendar
28 year.

29 2. The total dollar amount the certified capital
30 company invested and the amount invested in qualified
31 businesses, together with the identity and location of those

1 businesses and the amount invested in each qualified business
2 during the immediately preceding calendar year.

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

10 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
11 PARTICIPATION.--

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

27 (b) Cumulative distributions from a certified capital
28 company from funds related to a particular program to its
29 certified investors and equity holders under such program,
30 other than qualified distributions, in excess of the certified
31 capital company's original certified capital raised under such

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

29 (10) DECERTIFICATION.--

30 (f) Decertification of a certified capital company for
31 failure to meet all requirements for continued certification

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

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

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

30 3. When a certified capital company meets all
31 requirements for continued certification under subparagraphs

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

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

28 5. If a certified capital company has invested an
29 amount cumulatively equal to 100 percent of its certified
30 capital raised under a particular program in qualified
31 investments, all premium tax credits claimed or to be claimed

1 by its certified investors under such program shall not be
2 subject to recapture or forfeiture.

3 Section 2. This act shall take effect July 1, 2003.

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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.