

By the Committee on Banking and Insurance; and Senator Latvala

311-1845-02

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 providing for distributions under both
13 programs; specifying applicability of the act;
14 providing an effective date.

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

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18 Section 1. Subsections (3) and (4), paragraphs (a) and
19 (b) of subsection (5), paragraph (a) of subsection (6),
20 paragraphs (a), (c), (d), (e), (f), (g), and (h) of subsection
21 (7), paragraph (a) of subsection (8), paragraphs (a) and (b)
22 of subsection (9), paragraph (f) of subsection (10), and
23 subsection (11) of section 288.99, Florida Statutes, are
24 amended, and paragraph (i) is added to subsection (7) of that
25 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 invests ~~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:

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 by the Florida
24 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.

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

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

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

29 b. The business plan for the business projects that
30 the business is reasonably expected to achieve in excess of
31 \$25 million in sales revenue within 5 years after the initial

1 investment, or the business is located in a designated Front
2 Porch community, enterprise zone, urban high crime area, rural
3 job tax credit county, or nationally recognized historic
4 district;

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

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

20 4. The term does not include:

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

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

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

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

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

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

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

25 1. Reasonable costs and expenses, including, but not
26 limited to, professional fees, of forming and, syndicating the
27 certified capital company, if no such costs or expenses are
28 paid to a certified investor and the total cash, cash
29 equivalents, and other current assets permitted by
30 sub-subparagraph (5)(b)3.g. that can be converted into cash
31 within 5 business days available to the certified capital

1 company at the time of receipt of certified capital from
2 certified investors, after deducting the costs and expenses of
3 forming and syndicating the certified capital company,
4 including any payments made over time for obligations incurred
5 at the time of receipt of certified capital but excluding
6 other future qualified distributions and payments made under
7 paragraph (9)(a), are an amount equal to or greater than 50
8 percent of the total certified capital allocated to the
9 certified capital pursuant to subsection (7);~~7~~

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

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

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

27 (n)1. "Qualified investment" means the investment of
28 cash by a certified capital company in a qualified business
29 for the purchase of any debt, equity, or hybrid security ~~of~~
30 ~~any nature and description whatsoever,~~ including a debt
31 instrument or security that ~~which~~ has the characteristics of

1 debt but which provides for conversion into equity or equity
2 participation instruments such as options or warrants.

3 2. The term does not include:

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

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

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

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

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

30 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
31 DECERTIFICATION.--

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

4 (b) An applicant for certification as a certified
5 capital company must file a verified application with the
6 department on or before December 1, 1998, or November 1, 2002,
7 in the case of applicants for Program Two, in a form which the
8 department may prescribe by rule. The applicant shall submit
9 a nonrefundable application fee of \$7,500 to the department.

10 The applicant shall provide:

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

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

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

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

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

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

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

9 (c) On December 31, 1998, or December 31, 2002, in the
10 case of applicants for Program Two,the department shall grant
11 or deny certification as a certified capital company. If the
12 department denies certification within the time period
13 specified, the department shall inform the applicant of the
14 grounds for the denial. If the department has not granted or
15 denied certification within the time specified, the
16 application shall be deemed approved. The department shall
17 approve the application if the department finds that:

18 1. The applicant satisfies the requirements of
19 paragraph (b).

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

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

30 4. The applicant's proposed method of doing business
31 and raising certified capital as described in its offering

1 materials and other materials submitted to the department
2 conforms with the requirements of this section.

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

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

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

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

27 5.a. Been the subject of any decision, finding,
28 injunction, suspension, prohibition, revocation, denial,
29 judgment, or administrative order by any court of competent
30 jurisdiction, administrative law judge, or any state or
31 federal agency, national securities, commodities, or option

1 exchange, or national securities, commodities, or option
2 association, involving a material violation of any federal or
3 state securities or commodities law or any rule or regulation
4 adopted under such law, or any rule or regulation of any
5 national securities, commodities, or options exchange, or
6 national securities, commodities, or options association; or
7 b. Been the subject of any injunction or adverse
8 administrative order by a state or federal agency regulating
9 banking, insurance, finance or small loan companies, real
10 estate, mortgage brokers, or other related or similar
11 industries.

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

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

29 (f)(g) No insurance company or any affiliate of an
30 insurance company shall, directly or indirectly, own, whether
31 through rights, options, convertible interests, or otherwise,

1 15 percent or more of the equity interests of or manage or
2 control the direction of investments of a certified capital
3 company. This prohibition does not preclude a certified
4 investor, insurance company, or any other party from
5 exercising its legal rights and remedies, which may include
6 interim management of a certified capital company, if a
7 certified capital company is in default of its obligations
8 under law or its contractual obligations to such certified
9 investor, insurance company, or other party.

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

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

30 (i)(j) Decertification of a certified capital company
31 under this subsection does not affect the ability of certified

1 investors in such certified capital company from claiming
2 future premium tax credits earned as a result of an investment
3 in the certified capital company during the period in which it
4 was duly certified.

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

6 (a) To remain certified, a certified capital company
7 must make qualified investments according to the following
8 schedule:

9 1. At least 20 percent of its certified capital must
10 be invested in qualified investments by December 31, 2000, or
11 in the case of certified capital raised under Program Two, by
12 December 31, 2004.

13 2. At least 30 percent of its certified capital must
14 be invested in qualified investments by December 31, 2001, or
15 in the case of certified capital raised under Program Two, by
16 December 31, 2005.

17 3. At least 40 percent of its certified capital must
18 be invested in qualified investments by December 31, 2002, or
19 in the case of certified capital raised under Program Two, by
20 December 31, 2006.

21 4. At least 50 percent of its certified capital must
22 be invested in qualified investments by December 31, 2003, or
23 in the case of certified capital raised under Program Two, by
24 December 31, 2007. At least 50 percent of such qualified
25 investments must be invested in early stage technology
26 businesses.

27 (b) All capital not invested in qualified investments
28 by the certified capital company:

29 1. Must be held in a financial institution as defined
30 by s. 655.005(1)(h) or held by a broker-dealer registered
31 under s. 517.12, except as set forth in sub-subparagraph 3.g.

1 2. Must not be invested in a certified investor of the
2 certified capital company or any affiliate of the certified
3 investor of the certified capital company, except for an
4 investment permitted by sub-subparagraph 3.g., provided
5 repayment terms do not permit the obligor to directly or
6 indirectly manage or control the investment decisions of the
7 certified capital company.

8 3. Must be invested only in:

9 a. Any United States Treasury obligations;

10 b. Certificates of deposit or other obligations,
11 maturing within 3 years after acquisition of such certificates
12 or obligations, issued by any financial institution or trust
13 company incorporated under the laws of the United States;

14 c. Marketable obligations, maturing within 5 years or
15 less after the acquisition of such obligations, which are
16 rated "A" or better by any nationally recognized credit rating
17 agency;

18 d. Mortgage-backed securities, with an average life of
19 5 years or less, after the acquisition of such securities,
20 which are rated "A" or better by any nationally recognized
21 credit rating agency;

22 e. Collateralized mortgage obligations and real estate
23 mortgage investment conduits that are direct obligations of an
24 agency of the United States Government; are not private-label
25 issues; are in book-entry form; and do not include the classes
26 of interest only, principal only, residual, or zero; ~~or~~

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

30 g. Obligations that are issued by an insurance company
31 that is not a certified investor of the certified capital

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

9 (I) Issued or guaranteed as to principal by an entity
10 whose senior debt is rated "AA" or better by Standard & Poor's
11 Ratings Group or such other nationally recognized credit
12 rating agency as the department may by rule determine;

13 (II) Not subordinated to other unsecured indebtedness
14 of the issuer or the guarantor;

15 (III) Invested by such issuing entity in accordance
16 with sub-subparagraphs 3.a.-f; and

17 (IV) Readily convertible into cash within 5 business
18 days for the purpose of making a qualified investment unless
19 such obligations are held to provide a guarantee, indemnity
20 bond, insurance policy, or other payment undertaking in favor
21 of the certified capital company's certified investors as
22 permitted by subparagraph (3)(m)1.

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

24 (a) Any certified investor who makes an investment of
25 certified capital shall earn a vested credit against premium
26 tax liability equal to 100 percent of the certified capital
27 invested by the certified investor. Certified investors shall
28 be entitled to use no more than 10 percentage points of the
29 vested premium tax credit earned under a particular program,
30 including any carryforward credits from such program under
31 this act, per year beginning with premium tax filings for

1 calendar year 2000 for credits earned under Program One and
2 calendar year 2004 for credits earned under Program Two. Any
3 premium tax credits not used by certified investors in any
4 single year may be carried forward and applied against the
5 premium tax liabilities of such investors for subsequent
6 calendar years. ~~The carryforward credit may be applied~~
7 ~~against subsequent premium tax filings through calendar year~~
8 ~~2017.~~

9 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
10 PROCESS.--

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

19 (c) Each certified capital company must apply to the
20 office for an allocation of premium tax credits for potential
21 certified investors by March 15, 1999, or by March 15, 2003,
22 in the case of credits allocable under Program Two, on a form
23 developed by the office with the cooperation of the Department
24 of Revenue. The form shall be accompanied by an affidavit
25 from each potential certified investor confirming that the
26 potential certified investor has agreed to make an investment
27 of certified capital in a certified capital company up to a
28 specified amount, subject only to the receipt of a premium tax
29 credit allocation pursuant to this subsection. No certified
30 capital company shall submit premium tax allocation claims on
31 behalf of certified investors that in the aggregate would

1 exceed the total dollar amount appropriated by the Legislature
2 for the specific program.No allocation shall be made to the
3 potential investors of a certified capital company under
4 Program Two unless such certified capital company has filed
5 premium tax allocation claims ~~that would result in an~~
6 ~~allocation to the potential investors in such certified~~
7 ~~capital company~~ of not less than \$15 million in the aggregate.

8 (d) On or before April 1, 1999, or April 1, 2003, in
9 the case of Program Two,the office shall inform each
10 certified capital company of its share of total premium tax
11 credits available for allocation to each of its potential
12 investors.

13 (e) If a certified capital company does not receive
14 certified capital equaling the amount of premium tax credits
15 allocated to a potential certified investor for which the
16 investor filed a premium tax allocation claim within 10
17 business days after the investor received a notice of
18 allocation, the certified capital company shall notify the
19 office by overnight common carrier delivery service of the
20 company's failure to receive the capital. That portion of the
21 premium tax credits allocated to the certified capital company
22 shall be forfeited. If the office must make a pro rata
23 allocation under paragraph (f), the office shall reallocate
24 such available credits among the other certified capital
25 companies on the same pro rata basis as the initial
26 allocation.

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

1 certified investor under Program Two shall be allocated using
2 the following ratio:

$$3 \quad \quad \quad 4 \quad \quad \quad A/B = X/\$300,000,000\text{~~\$150,000,000~~}$$

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6 where the letter "A" represents the total amount of certified
7 capital certified investors have agreed to invest in any one
8 certified capital company under Program Two, the letter "B"
9 represents the aggregate amount of certified capital that all
10 certified investors have agreed to invest in all certified
11 capital companies under Program Two, the letter "X" is the
12 numerator and represents the total amount of premium tax
13 credits and certified capital that may be allocated to a
14 certified capital company on April 1, 2003 ~~in calendar year~~
15 ~~1999~~, and ~~\\$300~~~~\\$150~~ million is the denominator and represents
16 the total amount of premium tax credits and certified capital
17 that may be allocated to all certified investors in calendar
18 year 2003 ~~1999~~. Any such premium tax credits are not first
19 available for utilization until annual filings are made in
20 2001 for calendar year 2000 in the case of Program One, and
21 until annual filings are made in 2005 for calendar year 2004
22 in the case of Program Two, and the tax credits may be used at
23 a rate not to exceed 10 percent annually per program.

24 (g) The maximum amount of certified capital for which
25 premium tax allocation claims may be filed on behalf of any
26 certified investor and its affiliates by one or more certified
27 capital companies may not exceed \$15 million for Program One
28 and \$45 million for Program Two.

29 (h) To the extent that less than ~~\\$300~~~~\\$150~~ million in
30 certified capital is raised in connection with the procedure
31 set forth in paragraphs (c)-(g), the department may adopt

1 rules to allow a subsequent allocation of the remaining
2 premium tax credits authorized under this section.

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

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

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

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

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

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

31

1 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
2 PARTICIPATION.--

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

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

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

20 (10) DECERTIFICATION.--

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

29 1. Decertification of a certified capital company
30 within 3 years after its certification date with respect to a
31 particular program shall cause the recapture of all premium

1 tax credits earned under such program and previously claimed
2 by such company and the forfeiture of all future premium tax
3 credits earned under such program which are to be claimed by
4 certified investors with respect to such company.

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

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

1 or will be taken by certified investors after the fourth
2 anniversary of the certification date of the certified capital
3 company with respect to such program shall be subject to
4 recapture and forfeiture.

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

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

25 (11) TRANSFERABILITY.--The claim of a transferee of a
26 certified investor's unused premium tax credit shall be
27 permitted in the same manner and subject to the same
28 provisions and limitations of this act as the original
29 certified investor. The term "transferee" means any person
30 who:

31

1 (a) Through the voluntary sale, assignment, or other
2 transfer of the business or control of the business of the
3 certified investor, including the sale or other transfer of
4 stock or assets by merger, consolidation, or dissolution,
5 succeeds to all or substantially all of the business and
6 property of the certified investor;

7 (b) Becomes by operation of law or otherwise the
8 parent company of the certified investor;

9 (c) Directly or indirectly owns, whether through
10 rights, options, convertible interests, or otherwise,
11 controls, or holds power to vote 15 ~~10~~ percent or more of the
12 outstanding voting securities or other ownership interest of
13 the certified investor;

14 (d) Is a subsidiary of the certified investor or 15 ~~10~~
15 percent or more of whose outstanding voting securities or
16 other ownership interest are directly or indirectly owned,
17 whether through rights, options, convertible interests, or
18 otherwise, by the certified investor; or

19 (e) Directly or indirectly controls, is controlled by,
20 or is under the common control with the certified investor.

21 Section 2. Except as otherwise specifically provided
22 in this act, the provisions of this act shall apply only to
23 "Program Two" as defined in section 288.99(3), Florida
24 Statutes, as amended by this act.

25 Section 3. This act shall take effect July 1, 2002.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1296

4 The bill provides the following changes:

- 5 1. Revises the deadlines associated with Program Two by
6 requiring certification of CAPCOs by the Department of
7 Banking and Finance by December 31, 2002, rather than
8 2003; allowing the initial tax credits to be used on the
9 March 2005 Premium Tax Returns for calendar year 2004,
10 rather than calendar year 2005; and accelerating the
11 annual investment benchmarks for CAPCOs.
- 12 2. Specifies that the changes in the bill apply only to
13 Program Two, and not to the current certified Capital
14 Company program, referred to as Program One, unless
15 otherwise specifically provided.
- 16 3. Eliminates the authority of the Department of Banking
17 and Finance to assess an investor a fine of up to
18 \$50,000 for failing to invest the full amount in
19 accordance with terms of the affidavit filed on its
20 behalf.
- 21 4. Authorizes certified investors (insurance companies and
22 their affiliates) to receive a maximum premium tax
23 allocation of up to \$45 million, rather than \$22.5
24 million for Program Two.
- 25 5. Eliminates the requirement that a "Qualified Business"
26 locate at least 75 percent of the employees in Florida.
- 27 6. Technical and confirming changes are also made.