

Amendment No. 1 (for drafter's use only)

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

Representative(s) Mack offered the following:

Amendment

Remove everything after the enacting clause

and insert:

Section 1. Subsections (3) and (4), paragraphs (a) and (b) of subsection (5), paragraph (a) of subsection (6), paragraphs (a), (c), (d), (e), (f), (g), and (h) of subsection (7), paragraph (a) of subsection (8), paragraphs (a) and (b) of subsection (9), paragraph (f) of subsection (10), and subsection (11) of section 288.99, Florida Statutes, are amended, and paragraph (i) is added to subsection (7) of said section, to read:

288.99 Certified Capital Company Act.--

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

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

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

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1 other voting ownership interests of the insurance company;

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

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

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

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

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

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

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

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

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

29 (d) "Certified investor" means any insurance company
30 subject to premium tax liability pursuant to s. 624.509 that
31 invests ~~contributes~~ certified capital.

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- 1 (e) "Department" means the Department of Banking and
2 Finance.
- 3 (f) "Director" means the director of the Office of
4 Tourism, Trade, and Economic Development.
- 5 (g) "Early stage technology business" means a
6 qualified business that is:
- 7 1. Involved, at the time of the certified capital
8 company's initial investment in such business, in activities
9 related to developing initial product or service offerings,
10 such as prototype development or the establishment of initial
11 production or service processes; ~~The term includes a~~
12 ~~qualified business that is~~
- 13 2. Less than 2 years old and has, together with its
14 affiliates, less than \$3 million in annual revenues for the
15 fiscal year immediately preceding the initial investment by
16 the certified capital company on a consolidated basis, as
17 determined in accordance with generally accepted accounting
18 principles; ~~The term also includes~~
- 19 3. The Florida Black Business Investment Board; ~~or~~
- 20 4. Any entity that is majority owned by the Florida
21 Black Business Investment Board; ~~or~~
- 22 5. Any entity in which the Florida Black Business
23 Investment Board holds a majority voting interest on the board
24 of directors.
- 25 (h) "Office" means the Office of Tourism, Trade, and
26 Economic Development.
- 27 (i) "Premium tax liability" means any liability
28 incurred by an insurance company under the provisions of s.
29 624.509.
- 30 (j) "Principal" means an executive officer of a
31 corporation, partner of a partnership, manager of a limited

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1 liability company, or any other person with equivalent
2 executive functions.

3 (k) "Qualified business" means the Digital Divide
4 Trust Fund established under the State of Florida Technology
5 Office or a business that meets the following conditions as
6 evidenced by documentation required by department rule:

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

9 2. At the time a certified capital company makes an
10 initial investment in a business, the business is a small
11 business concern as defined in 13 C.F.R. s. 121.301(c)
12 ~~121.201~~, "Size Standards Used to Define Small Business
13 Concerns" of the United States Small Business Administration
14 which is involved in manufacturing, processing or assembling
15 products, conducting research and development, or providing
16 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

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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

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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 (1) "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, but not
22 limited to, professional fees, of forming and, syndicating the
23 certified capital company, if no such costs or expenses are
24 paid to a certified investor, except as provided in
25 subparagraph (4)(f)2., and the total cash, cash equivalents,
26 and other current assets permitted by sub-subparagraph
27 (5)(b)3.g. that can be converted into cash within 5 business
28 days available to the certified capital company at the time of
29 receipt of certified capital from certified investors, after
30 deducting the costs and expenses of forming and syndicating
31 the certified capital company, including any payments made

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

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

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

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

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

31 2. The term does not include:

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

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

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

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

22 (p) "Program Two" means the \$150 million in premium
23 tax credits to be issued under this section on April 1, 2003,
24 the allocation of such credits under this section, and the
25 regulation of certified capital companies and investments made
26 by them hereunder.

27 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
28 DECERTIFICATION.--

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

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

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

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

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

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

19 5. The applicant's financial condition and history,
20 including an audit report on the financial statements prepared
21 in accordance with generally accepted accounting principles.
22 The applicant must have, at the time of application for
23 certification, an equity capitalization of at least \$500,000
24 in the form of cash or cash equivalents. The applicant must
25 maintain this equity capitalization until the applicant
26 receives an allocation of certified capital pursuant to this
27 ~~act showing net capital of not less than \$500,000 within 90~~
28 ~~days after the date the application is submitted to the~~
29 ~~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

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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, 2002, 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.

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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 common stock or paid in capital ~~a net worth~~ of at
12 least \$500,000, or if the department determines that the
13 applicant, or any principal or director of the certified
14 capital company, has:

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

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

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

30 5.a. Been the subject of any decision, finding,
31 injunction, suspension, prohibition, revocation, denial,

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

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

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

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1 (f)1.(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 voting equity interests of or manage
5 or 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. Nothing in this
13 subparagraph shall limit an insurance company's ownership of
14 nonvoting equity interests in a certified capital company.

15 2. A certified capital company may obtain a guaranty,
16 indemnity, bond, insurance policy or other payment undertaking
17 in favor of all of the certified investors of the certified
18 capital company and its affiliates; provided that the entity
19 from which such guaranty, indemnity, bond, insurance policy or
20 other payment undertaking is obtained may not be a certified
21 investor of, or be affiliated with more than one certified
22 investor of, the certified capital company.

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

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

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

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

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

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

22 1. At least 20 percent of its certified capital must
23 be invested in qualified investments by December 31, 2000, or
24 in the case of certified capital raised under Program Two, by
25 December 31, 2004.

26 2. At least 30 percent of its certified capital must
27 be invested in qualified investments by December 31, 2001, or
28 in the case of certified capital raised under Program Two, by
29 December 31, 2005.

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

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1 in the case of certified capital raised under Program Two, by
2 December 31, 2006.

3 4. At least 50 percent of its certified capital must
4 be invested in qualified investments by December 31, 2003, or
5 in the case of certified capital raised under Program Two, by
6 December 31, 2007. At least 50 percent of such qualified
7 investments must be invested in early stage technology
8 businesses.

9 (b) All capital not invested in qualified investments
10 by the certified capital company:

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

14 2. Must not be invested in a certified investor of the
15 certified capital company or any affiliate of the certified
16 investor of the certified capital company, except for an
17 investment permitted by sub-subparagraph 3.g., provided
18 repayment terms do not permit the obligor to directly or
19 indirectly manage or control the investment decisions of the
20 certified capital company.

21 3. Must be invested only in:

22 a. Any United States Treasury obligations;

23 b. Certificates of deposit or other obligations,
24 maturing within 3 years after acquisition of such certificates
25 or obligations, issued by any financial institution or trust
26 company incorporated under the laws of the United States;

27 c. Marketable obligations, maturing within 10 5 years
28 or less after the acquisition of such obligations, which are
29 rated "A" or better by any nationally recognized credit rating
30 agency;

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

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1 5 years or less, after the acquisition of such securities,
2 which are rated "A" or better by any nationally recognized
3 credit rating agency;

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

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

12 g. Obligations that are issued by an insurance company
13 that is not a certified investor of the certified capital
14 company making the investment, that has provided a guarantee
15 indemnity bond, insurance policy, or other payment undertaking
16 in favor of the certified capital company's certified
17 investors as permitted by subparagraph (3)(m)1. or an
18 affiliate of such insurance company as defined by subparagraph
19 (3)(a)3. that is not a certified investor of the certified
20 capital company making the investment, provided that such
21 obligations are:

22 (I) Issued or guaranteed as to principal by an entity
23 whose senior debt is rated "AA" or better by Standard & Poor's
24 Ratings Group or such other nationally recognized credit
25 rating agency as the department may by rule determine.

26 (II) Not subordinated to other unsecured indebtedness
27 of the issuer or the guarantor.

28 (III) Invested by such issuing entity in accordance
29 with sub-subparagraphs 3.a.-f.

30 (IV) Readily convertible into cash within 5 business
31 days for the purpose of making a qualified investment unless

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1 such obligations are held to provide a guarantee, indemnity
2 bond, insurance policy, or other payment undertaking in favor
3 of the certified capital company's certified investors as
4 permitted by subparagraph (3)(m)1.

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

6 (a) Any certified investor who makes an investment of
7 certified capital shall earn a vested credit against premium
8 tax liability equal to 100 percent of the certified capital
9 invested by the certified investor. Certified investors shall
10 be entitled to use no more than 10 percentage points of the
11 vested premium tax credit earned under a particular program,
12 including any carryforward credits from such program under
13 this act, per year beginning with premium tax filings for
14 calendar year 2000 for credits earned under Program One and
15 calendar year 2004 for credits earned under Program Two. Any
16 premium tax credits not used by certified investors in any
17 single year may be carried forward and applied against the
18 premium tax liabilities of such investors for subsequent
19 calendar years. ~~The carryforward credit may be applied~~
20 ~~against subsequent premium tax filings through calendar year~~
21 ~~2017.~~

22 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
23 PROCESS.--

24 (a) The total amount of tax credits which may be
25 allocated by the office shall not exceed \$150 million with
26 respect to Program One and \$150 with respect to Program Two.
27 The total amount of tax credits which may be used by certified
28 investors under this act shall not exceed \$15 million annually
29 with respect to credits earned under Program One and \$15
30 million annually with respect to credits earned under Program
31 Two.

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1 (c) Each certified capital company must apply to the
2 office for an allocation of premium tax credits for potential
3 certified investors by March 15, 1999, or by March 15, 2003,
4 in the case of credits allocable under Program Two, on a form
5 developed by the office with the cooperation of the Department
6 of Revenue. The form shall be accompanied by an affidavit
7 from each potential certified investor confirming that the
8 potential certified investor has agreed to make an investment
9 of certified capital in a certified capital company up to a
10 specified amount, subject only to the receipt of a premium tax
11 credit allocation pursuant to this subsection. No certified
12 capital company shall submit premium tax allocation claims on
13 behalf of certified investors that in the aggregate would
14 exceed the total dollar amount appropriated by the Legislature
15 for the specific program. No allocation shall be made to the
16 potential investors of a certified capital company under
17 Program Two unless such certified capital company has filed
18 premium tax allocation claims ~~that would result in an~~
19 ~~allocation to the potential investors in such certified~~
20 ~~capital company~~ of not less than \$15 million in the aggregate.

21 (d) On or before April 1, 1999, or April 1, 2003, in
22 the case of Program Two, the office shall inform each
23 certified capital company of its share of total premium tax
24 credits available for allocation to each of its potential
25 investors.

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

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1 office by overnight common carrier delivery service of the
2 company's failure to receive the capital. That portion of the
3 premium tax credits allocated to the certified capital company
4 shall be forfeited. If the office must make a pro rata
5 allocation under paragraph (f), the office shall reallocate
6 such available credits among the other certified capital
7 companies on the same pro rata basis as the initial
8 allocation.

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

$$A/B = X / >\$150,000,000$$

16
17
18
19 where the letter "A" represents the total amount of certified
20 capital certified investors have agreed to invest in any one
21 certified capital company under Program Two, the letter "B"
22 represents the aggregate amount of certified capital that all
23 certified investors have agreed to invest in all certified
24 capital companies under Program Two, the letter "X" is the
25 numerator and represents the total amount of premium tax
26 credits and certified capital that may be allocated to a
27 certified capital company on April 1, 2003 ~~in calendar year~~
28 ~~1999~~, and \$150 million is the denominator and represents the
29 total amount of premium tax credits and certified capital that
30 may be allocated to all certified investors in calendar year
31 2003 ~~1999~~. Any such premium tax credits are not first

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1 available for utilization until annual filings are made in
2 2001 for calendar year 2000 in the case of Program One, and
3 until annual filings are made in 2005 for calendar year 2004
4 in the case of Program Two, and the tax credits may be used at
5 a rate not to exceed 10 percent annually per program.

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

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

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

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

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

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

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

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

13 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
14 PARTICIPATION.--

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

30 (b) Cumulative distributions from a certified capital
31 company from funds related to a particular program to its

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

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1 (10) DECERTIFICATION.--

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

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

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

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1 recapture or forfeiture.

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

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

31 5. If a certified capital company has invested an

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1 amount cumulatively equal to 100 percent of its certified
2 capital raised under a particular program in qualified
3 investments, all premium tax credits claimed or to be claimed
4 by its certified investors under such program shall not be
5 subject to recapture or forfeiture.

6 (11) TRANSFERABILITY.--The premium tax credit
7 established pursuant to this act may be transferred or sold.
8 The Department of Revenue shall adopt rules to facilitate the
9 transfer or sale of such premium tax credits. A transfer or
10 sale shall not affect the time schedule for taking the premium
11 tax credit as provided in this act. Any premium tax credits
12 recaptured shall be the liability of the taxpayer who actually
13 claimed the premium tax credits. The claim of a transferee of
14 a certified investor's unused premium tax credit shall be
15 permitted in the same manner and subject to the same
16 provisions and limitations of this act as the original
17 certified investor. ~~The term "transferee" means any person~~
18 ~~who:~~

19 ~~(a) Through the voluntary sale, assignment, or other~~
20 ~~transfer of the business or control of the business of the~~
21 ~~certified investor, including the sale or other transfer of~~
22 ~~stock or assets by merger, consolidation, or dissolution,~~
23 ~~succeeds to all or substantially all of the business and~~
24 ~~property of the certified investor;~~

25 ~~(b) Becomes by operation of law or otherwise the~~
26 ~~parent company of the certified investor;~~

27 ~~(c) Directly or indirectly owns, whether through~~
28 ~~rights, options, convertible interests, or otherwise,~~
29 ~~controls, or holds power to vote 10 percent or more of the~~
30 ~~outstanding voting securities or other ownership interest of~~
31 ~~the certified investor;~~

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1 ~~(d) Is a subsidiary of the certified investor or 10~~
2 ~~percent or more of whose outstanding voting securities or~~
3 ~~other ownership interest are directly or indirectly owned,~~
4 ~~whether through rights, options, convertible interests, or~~
5 ~~otherwise, by the certified investor; or~~
6 ~~(e) Directly or indirectly controls, is controlled by,~~
7 ~~or is under the common control with the certified investor.~~
8 Section 2. Except as otherwise specifically provided
9 in this act, the provisions of this act shall apply only to
10 "Program Two" as defined in s. 288.99(3), Florida Statutes, as
11 amended by this act.
12 Section 3. This act shall take effect July 1, 2002.
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