

**STORAGE NAME:** h0243s1.ric.doc

**DATE:** March 8, 2002

## HOUSE OF REPRESENTATIVES

### COUNCIL FOR READY INFRASTRUCTURE ANALYSIS

**BILL #:** CS/HB 243

**RELATING TO:** Certified Capital Company Act

**SPONSOR(S):** Council Ready Infrastructure and Representative(s) Mack & others

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMITTEE ON INFORMATION TECHNOLOGY YEAS 10 NAYS 0
  - (2) FISCAL POLICY & RESOURCES YEAS 10 NAYS 0
  - (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 17 NAYS 0
  - (4)
  - (5)
- 

I. SUMMARY:

This bill amends the Certified Capital Company Act, s. 288.99, F.S. (the "Act"), by creating a second program to succeed the first program (now expired) and provide an additional \$300 million in insurance premium tax credits to stimulate the growth of technology and small businesses in Florida.

This bill:

- Revises the definitions of "affiliate of an insurance company," "certified capital company," "early stage technology business," "qualified business," "qualified distribution," and "qualified investment;"
- Creates definitions of "Program One" and "Program Two;"
- Requires an applicant under "Program Two" to provide the Department of Banking and Finance with an audit report on its financial condition and history showing that has an equity capitalization of at of at least \$500,000 in the form of cash or cash equivalents;
- Provides that an insurance company may have unlimited non-voting equity ownership of a certified capital company (CAPCO);
- Authorizes certified capital not invested in qualified investments to be invested in certain obligations issued by insurance companies;
- Restricts certified investors to using no more than 10% of vested premium tax credit annually under each program ("Program One" and "Program Two");
- Limits the total amount of tax credits that can be used annually by certified investors under "Program Two" to \$30 million;
- Prohibits any CAPCO from claiming premium tax credits for certified investors that total an amount in excess of the amount appropriated by the Legislature;
- Limits the amount of certified capital for which premium tax allocation claims may be filed by one or more CAPCOs for any certified investor to \$45 million under Program Two;
- Authorizes certified investors to transfer or sell insurance premium tax credits and authorizes the Department of Revenue to adopt rules to facilitate the transfer or sale of insurance premium tax credits issued under the Act;
- Provides that the changes to the Act by this bill apply only to Program Two except as otherwise specifically provided for by this bill; and
- Takes effect on July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                                         |                                        |                                         |
|-----------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

Less Government: By adding "Program Two" the Act would be extended for the duration of "Program Two." The duties and responsibilities the Act presently imposes on the Department of Banking and Finance, the Department of Revenue, and OTTED for administration of "Program One" would be extended to administration of "Program Two."

B. PRESENT SITUATION:

**Overview of the CAPCO Program**

The Certified Capital Company Act, s. 288.99, F.S. was adopted in 1998 to establish a mechanism to provide venture capital financing, through certified capital companies (CAPCOs), to qualified small businesses. The Act was intended to increase the number of Florida-based certified venture capitalists, to facilitate access to institutional investors for smaller companies, and to create high-paying, high-skilled jobs.

The Act authorized corporations, partnerships, or limited liability companies to apply for certification as a CAPCO on or before December 1, 1998. CAPCOs, in short, are venture capital firms that receive capital from insurance companies (certified investors) to make early-stage capital investments in other businesses. As certified investors, insurance companies can, within limits, receive a credit against state premium taxes for each dollar invested in a CAPCO at the rate of 10 percent a year for 10 years, beginning with premium tax filings for the year 2000. The purpose of the tax credits was to encourage insurance companies to invest in certified capital companies, which, in turn, would make investments in qualified small businesses. The total of tax credits could not exceed \$15 million annually; the tax credits were subject to an aggregate cap of \$150 million.

Three entities are responsible for administration of the CAPCO program. The Department of Banking and Finance is responsible for certification and de-certification. The Department of Revenue oversees the tax credit filings and related requirements. The Office of Tourism, Trade, and Economic Development (OTTED) is responsible for the initial allocation of premium tax credits and for preparing an annual report on the CAPCO program.

**Certification Requirements**

To have been certified, a CAPCO must have had net capital of at least \$500,000. At least two of its principals must have demonstrated 5 years of experience in making venture capital investments. The CAPCO must have submitted an application to the Department of Banking and Finance, along with a \$7,500 application fee. Each CAPCO was and is required to pay an annual renewal fee of \$5,000 to the Department of Banking and Finance.

To remain certified, CAPCOs are required to meet statutorily defined investment benchmarks. "Qualified business," means a small business (determined by rules of the U.S. Small Business

Administration) headquartered in Florida and with its principal business operations in Florida. By December 31, 2000, at least 20 percent of CAPCO funds must have been invested in qualified businesses. At least 30 percent of CAPCO funds must have been invested in qualified businesses by December 31, 2001. By December 31, 2002, at least 40 percent of CAPCO funds must be invested in qualified businesses. By December 31, 2003, at least 50 percent of CAPCO funds must be invested in qualified businesses.

A qualified business must certify that it is unable to obtain conventional financing and that it has fewer than 200 employees, at least 75 percent of who are employed in Florida.

A qualified business does not include a business predominantly engaged in retail sales, real estate development, insurance, banking, lending, oil and gas exploration, or engaged in professional services provided by accountants, lawyers, or physicians.

At least 50 percent of the CAPCO's investments in qualified businesses must be in "early stage technology businesses" involved in activities related to developing initial product or service offerings. If those investment benchmarks are not met, the CAPCO may be decertified. Decertification could result in the forfeiture or recapture of some, or all, of the premium tax credits earned by certified investors. The Department of Banking and Finance is required to review each CAPCO annually to verify compliance with the Act and to advise the CAPCO as to the eligibility status of its qualified investments.

### **Distributions**

Before a CAPCO may make any distribution to its equity holders, other than a "qualified distribution," the CAPCO must have invested 100 percent of its certified capital in qualified investments. A "qualified distribution" of up to 2.5 percent of the CAPCO's certified capital may be made to equity holders for the costs and expenses of forming, managing, and operating the company, plus reasonable and necessary fees for professional services, such as legal and accounting services. Payments of principal and interest to debt holders may be made without restriction.

A CAPCO is required to pay to the Department of Revenue 10 percent of the portion of distributions to all certified investors (insurers) and equity holders that exceed the CAPCO's original certified capital (which includes both equity and debt investments) and any additional capital contributions to the CAPCO.

### **Allocation of Premium Tax Credits**

OTTED is responsible for allocating premium tax credits to certified investors that apply and submit specified documentation. The aggregate amount of premium tax credits that may be allocated for the life of the program is capped at \$150 million. On an annual basis, a CAPCO must file a report with OTTED and the Department of Banking and Finance. The report must detail the investments that the CAPCO has received from certified investors and the investments it has made in qualified businesses, including the number of jobs created or retained and the average wages of such jobs. The Department of Banking and Finance must conduct an annual review of each CAPCO to determine if it is abiding by the requirements of certification, and the Department of Revenue may audit and examine the records of CAPCOs and certified investors.

### **Transferability**

A certified investor may transfer insurance premium tax credits issued under the Certified Capital Company Act when the certified investor is acquired by, merges with, or consolidates with another

entity. Certified investors may transfer insurance premium tax credits to certain subsidiaries or affiliated businesses under certain circumstances.

### **Impact of Florida's CAPCO Program to Date**

Following program initiation in 1999, the capital commitments from state insurance companies exceeded the \$150 million limit of tax credits. According to a Washington Economic Group study published May 7, 2001, CAPCO-funded businesses directly generated 321 new jobs and indirectly led to another 532 jobs since program initiation in 1999. The study reported that in 2000, the average salary for an employee of a CAPCO-funded company was \$48,800. Survey results indicated that many CAPCO-funded businesses consider the CAPCO funds important in their successful efforts to obtain additional, follow-on, capital from private investors.

According to CAPCO annual reports filed with OTTED as of December 31, 2001, CAPCO funded businesses employ an estimated 588 Floridians with an average salary of \$53,097.

PricewaterhouseCoopers *Shaking the Money Tree – Venture Capital Trends in Florida* reports that the CAPCO program has facilitated venture capital investing in Florida.

“Traditionally, almost all of the venture capital invested in Florida-based companies has come from out of state. Venture funds in New York and Boston in particular have been adept at identifying promising startups in various Florida markets and quietly making their investments . . . This is beginning to change, though . . . Also spurring this growth was the creation of the Florida “CapCo” (Certified Capital Company) program by the Legislature in 1999.”

## **C. EFFECT OF PROPOSED CHANGES:**

### **Definitions**

Under the current statute, the definition of "affiliate of an insurance company" includes any person directly or indirectly controlling the power to vote 10 percent or more of the outstanding voting securities or other ownership interest of the insurance company, or any person 10 percent or more of whose interest is directly or indirectly beneficially owned, controlled or held with the power to vote by the insurance company. The bill changes the 10 percent or more language to 15 percent or more of voting securities or other **voting** ownership interests in both circumstances.

The bill changes the definition of "certified capital company" to require the CAPCO to receive investments of certified capital from two or more **unaffiliated** certified investors. This provision is intended to prevent a single certified investor from controlling a CAPCO.

The bill changes the definition of "early stage technology business" to include a business that is **either** involved in activities related to developing initial product or service offerings **or** less than two years old with less than \$3 million in annual revenues for the fiscal year immediately preceding the initial investment by the CAPCO. This change allows a business that meets all of other requirements, except for the less-than two-year requirement, to be deemed an "early stage technology business." This change recognizes that some businesses, such as those engaged in research and development, may be formally incorporated for a substantial period of time before business is actually transacted. Such businesses, which otherwise meet the statutory requirements, will not be precluded from being a CAPCO merely because they have been in existence for more than two years.

The bill changes the definition of "qualified business" to require that at the time the CAPCO makes its initial investment, the business is a small business as defined in 13 C.F.R. s. 121.301(c). Under

this definition, the business must have a tangible net worth of not more than \$18 million and an average net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years not in excess of \$6 million.

The bill changes the definition of "qualified business" to exclude certain types of businesses. A business with no historical revenues and no specific business plan or purpose, or that has indicated that its business plan is solely to engage in a merger or acquisition with another company or entity, is excluded from the definition. Any company that has a strategic plan to grow through the acquisition of firms with substantially similar business that would result in the planned net loss of Florida-based jobs over a 12-month period after the acquisition is also excluded.

The bill changes the definition of "qualified distribution" to include the payment of reasonable costs and expenses, including but not limited to professional fees and expenses, associated with forming and syndicating the CAPCO, if such costs or expenses are not paid to a certified investor. Also, qualified distributions may not equal or exceed 50 percent of the total certified capital allocated to the CAPCO. The bill allows for payment of reasonable costs of managing and operating the CAPCO, in an amount not exceeding 5 percent of the certified capital in any year. This bill allows certified investors to make payments or distributions to another certified investor when the certified investor provides a guaranty, indemnity, bond, insurance policy, or other payment undertaking in favor of the certified investors of the CAPCO.

The bill changes the definition of "qualified investment" to exclude three types of investments: (1) certain investments with repayment periods of less than 12 months from the initial investment; (2) certain follow-up or add-on investments; and (3) investments in a qualified business or affiliate of a qualified business that exceeds 15 percent of certified capital.

The bill adds definitions for "Program One" and "Program Two" to distinguish between the \$150 million in premium tax credits available under Program One and from the proposed additional \$300 million in tax credits that would be available under Program Two.

### **Certification and Decertification**

The bill establishes November 1, 2002, as the deadline by which businesses seeking certification as a "certified capital company" under Program Two must file a verified application. The bill also requires businesses seeking certification to submit "copies of any offering materials used or proposed to be used by the applicant in soliciting investments of certified capital from certified investors." The bill changes the financial requirements for applicants and requires that the applicant have, at the time of application for certification, an equity capitalization of at least \$500,000 in the form of cash or cash equivalents, rather than "net capital," of at least \$500,000 and provide a verified audit report of its financial condition and history. The applicant is required to maintain this equity capitalization until it receives an allocation of certified capital.

The bill establishes December 31, 2002, as the deadline for the Department of Banking and Finance to grant or deny certification to a Program Two applicant.

The bill establishes as one of the factors that may be considered by the Department of Banking and Finance in determining whether to certify a potential CAPCO is whether "[t]he applicant's proposed method of doing business and raising certified capital as described in its offering materials and other materials submitted to the department conforms with the requirements of this section." This provision allows the Department to make an initial analysis of the potential CAPCO's business plan prior to its certification to ensure that a potential CAPCO is likely to be in compliance with Departmental regulations.

The bill deletes the requirement that a CAPCO file a copy of its certification with OTTED.

The bill prohibits an insurance company or its affiliates from owning or controlling 15 percent or more of the voting interests in a CAPCO. This bill adds a provision specifically authorizing a certified investor to own an unlimited equity ownership interest in a CAPCO.

This bill authorizes no more than one certified investor of a CAPCO to provide a guaranty, indemnity, bond, insurance policy, or other payment undertaking in favor of the certified investors of the CAPCO. Any payment under this provision is excepted from the provisions regulating qualified distributions. This provision allows a certified investor in a CAPCO to guaranty the investment of all other certified investors in the CAPCO.

The bill authorizes the Department of Banking and Finance to impose a \$5,000 late fee if a CAPCO fails to pay the annual renewal fee on or before January 31 of each year. The bill requires each CAPCO to file audited financial statements with the Department on or before April 30 of each year.

### **Investments by CAPCOs**

The bill sets the schedule for the investments to be made by a CAPCO under Program Two. To remain certified, a Program Two CAPCO must invest at least: 20 percent of its certified capital in qualified investments by December 31, 2004; 30 percent of its certified capital in qualified investments by December 31, 2005; 40 percent of its certified capital in qualified investments by December 31, 2006; and 50 percent of its certified capital in qualified investments by December, 2007. As with Program One, at least 50 percent of such qualified investments must be invested in early stage technology businesses.

The existing Act authorizes CAPCOs to invest in marketable obligations, maturing within 5 years or less after the acquisition of such obligations, which are rated "A" or better by any nationally recognized credit rating agency. The bill changes the maturation date of such obligations from maturing from 5 years or less to 10 years or less after the acquisition of such obligations.

The bill changes existing language providing that all capital not invested in qualified investments must be held in a financial institution or a registered broker-dealer. This bill authorizes CAPCOs to invest in obligations issued by insurance companies, provided such obligations are not issued by any certified investor in the CAPCO. With this change, a CAPCO may invest in a bond or other debt offered by an insurance company.

The bill eliminates language limiting a carry-forward credit allowance through the year 2017. With this change, premium tax credits under Program Two have no expiration date and can be carried forward indefinitely.

### **Annual Tax Credit; Maximum Amount; Allocation Process**

The bill limits to \$300 million the total tax credits that may be allocated by OTTED under Program Two and limits to \$30 million the tax credits that can be earned per year under Program Two. An insurer will earn a vested credit against premium tax liability in an amount equal to 100 percent of the certified capital invested in the CAPCO, but the insurer may use no more than 10 percent of its tax credit annually. The bill also establishes a March 15, 2003, deadline for a Program Two CAPCO to apply to OTTED for an allocation of premium tax credits to its potential investors. The bill requires OTTED to notify each Program Two CAPCO of its share of the total premium tax credits available on or before April 1, 2003. The bill prohibits CAPCOs from submitting premium tax allocation claims on behalf of certified investors that total an amount in excess of the total appropriated by the Legislature for the program. The bill clarifies existing language that requires a CAPCO to file premium tax credit claims of not less than \$15 million in the aggregate in order for certified investors of such CAPCO to receive any allocation of insurance premium tax credits.

The bill authorizes any single certified investor to claim no more than \$45 million premium tax credits in the aggregate under Program Two.

The bill establishes a formula to determine the premium tax credits that may be allocated to any one certified investor under Program Two in the event the total amount of capital committed by all certified investors exceeds the total credits that may be awarded under Program Two.

The bill authorizes the Department of Banking and Finance to adopt rules to allocate the remainder of the \$300 million allocated tax credits in the event that less than \$300 million in certified capital is raised in the initial allocation period of Program Two. Existing language in the Act provides such authority for the \$150 million in tax credits authorized for Program One.

The bill requires OTTED to issue a certification letter for each certified investor, showing the amount invested in the CAPCO under each program, and to require the corresponding CAPCO to attest to the validity of the letter.

### **Annual Tax Credit; Claim Process**

The bill requires each CAPCO to file a report on or before January 31 each year providing specific information related to its financial and employment activity for the immediately preceding calendar year.

### **Requirement for 100 Percent Investment; State Participation**

The bill requires a CAPCO to have first invested an amount cumulatively equal to 100 percent of the certified capital raised under Program one or Program Two before it may make qualified distributions to its equity holders. The bill also requires a CAPCO to pay 10 percent of the portion of any excess distribution to the Department of Revenue if the total of its distributions, other than qualified distributions, exceeds the aggregate sum of the certified capital raised by the CAPCO. The bill limits the total amount paid to the Department of Revenue by a CAPCO to the total tax credits used by all certified investors in the CAPCO.

The bill conforms the language in the Act applicable to Program One to the extent to accommodate Program Two.

The bill requires forfeiture of premium tax credits when a CAPCO fails to continue to meet CAPCO certification requirements.

### **Transferability**

Under the existing Act, insurance premium tax credits may be transferred to the parent company, subsidiary, and certain affiliates of a certified investor. The bill authorizes certified investors in Program Two to sell or transfer insurance premium tax credits issued under the Act. The bill directs the Department of Revenue to adopt rules to facilitate the sale and transfer of insurance premium tax credits issued under the Act. The bill provides that the sale or transfer of tax credits shall not affect the time schedule and limitations for claiming tax credits. The bill provides that any insurance premium tax credits recaptured shall be the liability of the taxpayer who actually claimed the premium tax credits.

### **Applicability of this Bill**

Section 2 of this bill provides that except as otherwise specifically provided in this bill, the provisions of this bill shall apply only to Program Two.

**Date of Effectiveness**

The bill takes effect July 1, 2002.

**D. SECTION-BY-SECTION ANALYSIS:**

See Effect of Proposed Changes for a description of the bill.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The Revenue Impact Conference has determined that there is no cash impact in fiscal year 02-03 (annualized estimate is negative \$30 million). The total fiscal impact against General Revenue will be negative \$30 million in fiscal year 03-04 and negative \$42 million in fiscal year 04-05.

2. Expenditures:

In HB 293 (2001) the estimated cost to fund this program was estimated to be between \$207,000 and \$220,000.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Assuming that the proposed tax credits (\$300 million over 10 years) are fully subscribed, certified investors under Program Two are entitled to take tax credits of \$5 million a year against their insurance premium tax filings beginning with the filings made in 2005 for the calendar year 2004. A certified investor may carry-forward any unused tax credits indefinitely.

Except for non-compliance with the filing and fee payment provisions of the Act, the bill would not impose any additional costs on the private sector. Businesses seeking certification as a CAPCO will continue to pay the existing \$7,500 application fee and the existing \$5,000 annual renewal fee.

Expansion of the CAPCO program could result in additional venture capital investing and high-wage job creation in Florida-based technology businesses. Small businesses would have access to additional sources of venture capital for start-up or expansion.



D. FISCAL COMMENTS:

A certified investor will earn a vested tax credit against premium tax liability of 100 percent of the certified capital invested in the CAPCO, but could use no more than 10 percent of the tax credit annually.

The Department of Banking and Finance is authorized to collect a filing fee of \$7,500, an annual renewal fee of \$5,000, and impose a \$5,000 late fee for late payment of the annual certification renewal fee.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds, nor would it require counties or municipalities to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is given authority to adopt rules to facilitate the transfer or sale of insurance premium tax credits issued under the CAPCO act.

C. OTHER COMMENTS:

**The following comments were provided by the Committee on Information Technology:**

Subsections 288.99 (7) (c)-(d) on pages 17-18 of the bill use the word "potential" as a modifier of the phrase "certified investor" when neither the Act nor the bill otherwise provide for identification of any "potential" certified investor. Therefore, an amendment should be considered that would delete the word "potential" where it immediately precedes the phrase "certified investor" in lines 25, 30 and 31 on page 17 and in lines 8, 11, 16 and 20 on page 18 of the bill.

Subsection 288.99 (7) (d) on page 18 of the bill requires OTTED to "inform each certified capital company of its share of premium tax credits available for allocation to each of its potential investors." The word "inform" is insufficient to ensure that the certified capital company receives **effective notice** of any such allocation. Additionally, this subsection does not provide for OTTED to inform the certified investors of the certified capital company, who are the primary beneficiaries of any such allocation. Therefore, an amendment should be considered that would require OTTED to simultaneously give written notice by a specific means to both the certified capital company and to

each of the certified investors identified in the application for allocation for premium tax credits the certified capital company submitted to OTTED pursuant to s. 288.99 (7) (c) on page 17 of the bill.

The first two sentences of subsection 288.99 (7) (e) on pages 18-19 of the bill provide that if a certified capital company does not receive certified capital equaling the amount of premium tax credits allocated to a potential certified investor for which the investor filed a claim within 10 business days after the investor received notice of allocation, the certified capital company is required to notify OTTED that such capital has not been received, and that the part of premium tax credits allocated to the certified capital company shall be forfeited. Those provisions incorrectly presume that a certified investor files claims for premium tax credits and that the certified investor received notice of the allocation of premium tax credits made by OTTED upon consideration of the certified investor affidavits that accompanied the application for such allocation submitted by the certified capital company. Additionally, those provisions, together with the present provisions of s. 288.99 (7) (d), appear legally insufficient to ensure that the certified investor is provided with reasonable notice and opportunity to avoid any such forfeiture. As noted above, the present provisions of the Act and the bill do not provide for the certified investor to be given notice or otherwise informed of any such allocation. Subsection 288.99 (7) (c) on page 17 of the bill provides for the certified capital company, not any certified investor, to apply to OTTED for approval of premium tax credits to the certified investors identified in the application in a total amount equal to the aggregate total of certified capital each certified investor agrees to invest in the certified capital company, as is evidenced by the affidavit executed by each certified investor that accompanies the application, and to allocate all such approved premium tax credits to such certified investors in proportion to the respective amounts of certified capital each so agreed to invest in the certified capital company. Subsection 288.99 (8) (a) on pages 20-21 of the bill provide for the certified capital company, not any certified investor, to file a claim with OTTED for entitlement of its certified investors to use allocated premium tax credits. Therefore, an amendment should be considered that would ensure that a certified investor who does not timely deliver to the certified capital company the full amount of certified capital the certified investor agreed to invest, as evidenced by the certified investor's affidavit that accompanied the application for allocation of premium tax credits the certified capital company submitted to OTTED, will receive reasonable notice and opportunity to avoid forfeiture of any part of the premium tax credits OTTED allocated to the certified investor in acting on the application, and that would correctly provide that it is the certified capital company, not any certified investor, that files a claim for entitlement of certified investors to use allocated premium tax credits.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**The Committee on Information Technology adopted the following amendments at its meeting on January 23, 2002.**

**Amendment 1**

Amendment 1 removed a period and inserted "; and" in three places of a four part list in the section of the bill listing investment requirements for certified capital companies.

**Amendment 2**

Amendment 2 inserted the word "million" to clarify that Program Two would allocate \$300 million in insurance premium tax credits.

**Amendment 3**

Amendment 3 removed "\$5" and inserted "\$30" to clarify that Program Two insurance premium tax credits would be limited to \$30 million annually.

#### **Amendment 4**

Amendment 4 removed "\$7.5" and inserted "\$30" to clarify that no certified investor would be permitted to claim for more than \$30 million in insurance premium tax credits under Program Two.

#### **Amendment 5**

Amendment 5 deleted language that granted the Department of Banking and Finance discretion to levy a fine of up to \$50,000 if a certified investor failed to invest certified capital to the extent agreed in the affidavit that accompanied the application the certified capital company submitted to OTTED for allocation of premium tax credits. The language deleted by amendment 5 may have resulted in an unlawful delegation of legislative authority.

#### **Amendment 6**

Amendment 6 removed "authorizing the Department of Banking and Finance to levy a fine" from the title of the bill to conform to the change made by Amendment 5.

#### **Amendment 7**

Amendment 7 removed the word "contributes" and inserted the word "invests" to clarify that certified investors invest not contribute capital.

**On February 27, 2002, the Council for Ready Infrastructure adopted a "strike-everything" amendment, and an amendment to the strike-everything amendment. The bill was reported as a council substitute.**

The strike-everything amendment incorporated traveling amendments 2, 3, 5, 6, and 7. The strike-everything amendment incorporated numerous other technical and substantive changes to the bill that are described in the Effect of Proposed Changes section of this analysis.

Among other changes, the strike-everything amendment authorizes the affiliates of one certified investor of a CAPCO to provide a guarantee, indemnity, bond, or insurance policy or other payment undertaking in favor of all certified investors of the CAPCO. This provision would allow an affiliate of a certified investor to guarantee the investment of all other certified investors.

The strike-everything amendment also authorizes certified investors to sell or transfer insurance premium tax credits allocated under Program One and Program Two of the CAPCO Act, and directs the Department of Revenue to adopt rules to facilitate the sale and transfer of tax credits. Under the amendment, any tax credits recaptured shall be the liability of the taxpayer who actually claimed the premium tax credits.

The strike-everything amendment also contains a new section not to be codified in statute providing that except as otherwise provided in the bill, the provisions of the bill shall apply only to Program Two as amended by this bill.

The amendment to the strike-everything amendment allows one certified investor in a CAPCO to provide a guarantee, indemnity, bond, insurance policy, or other payment undertaking in favor of all certified investors of the certified capital company and its affiliates. This amendment to the strike-everything amendment authorizes one investor in a CAPCO to provide a guarantee to all certified investors for any investment made in a CAPCO.

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VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON INFORMATION TECHNOLOGY:

Prepared by:

Staff Director:

Andrew Stearns/John Barley

Charles M. Davidson

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Adam Shamy

Lynne Overton

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Council Director:

Andrew Stearns / Randy L. Havlicak

Thomas J. Randle