

By the Council for Ready Infrastructure and
Representatives Mack, Harper and Gottlieb

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; requiring the Department of Revenue
14 to adopt certain rules; providing an effective
15 date.

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

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

27 288.99 Certified Capital Company Act.--

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

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

30 1. Any person directly or indirectly beneficially
31 owning, whether through rights, options, convertible

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

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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31

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. 121.301(c)
16 ~~121.201~~, "Size Standards Used to Define Small Business
17 Concerns" of the United States Small Business Administration
18 which is involved in manufacturing, processing or assembling
19 products, conducting research and development, or providing
20 services.

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

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

30 b. The business plan for the business projects that
31 the business is reasonably expected to achieve in excess of

1 \$25 million in sales revenue within 5 years after the initial
2 investment, or the business is located in a designated Front
3 Porch community, enterprise zone, urban high crime area, rural
4 job tax credit county, or nationally recognized historic
5 district;

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

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

21 4. The term does not include:

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

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

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

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.

6
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, except as provided in
29 subparagraph (4)(f)2., and the total cash, cash equivalents,
30 and other current assets permitted by sub-subparagraph
31 (5)(b)3.g. that can be converted into cash within 5 business

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

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

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

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

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

1 instrument or security ~~that which~~ has the characteristics of
2 debt but which provides for conversion into equity or equity
3 participation instruments such as options or warrants.

4 2. The term does not include:

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

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

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

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

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

31

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

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

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

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

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

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

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

24 5. The applicant's financial condition and history,
25 including an audit report on the financial statements prepared
26 in accordance with generally accepted accounting principles.
27 The applicant must have, at the time of application for
28 certification, an equity capitalization of at least \$500,000
29 in the form of cash or cash equivalents. The applicant must
30 maintain this equity capitalization until the applicant
31 receives an allocation of certified capital pursuant to this

1 ~~act showing net capital of not less than \$500,000 within 90~~
2 ~~days after the date the application is submitted to the~~
3 ~~department.~~ If the date of the application is more than 90
4 days after preparation of the applicant's fiscal year-end
5 financial statements, the applicant may file financial
6 statements reviewed by an independent certified public
7 accountant for the period subsequent to the audit report,
8 together with the audited financial statement for the most
9 recent fiscal year. If the applicant has been in business
10 less than 12 months, and has not prepared an audited financial
11 statement, the applicant may file a financial statement
12 reviewed by an independent certified public accountant.

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

16 (c) On December 31, 1998, or December 31, 2002, in the
17 case of applicants for Program Two,the department shall grant
18 or deny certification as a certified capital company. If the
19 department denies certification within the time period
20 specified, the department shall inform the applicant of the
21 grounds for the denial. If the department has not granted or
22 denied certification within the time specified, the
23 application shall be deemed approved. The department shall
24 approve the application if the department finds that:

25 1. The applicant satisfies the requirements of
26 paragraph (b).

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

29 3. At least two of the principals have a minimum of 5
30 years of experience making venture capital investments out of
31 private equity funds, with not less than \$20 million being

1 provided by third-party investors for investment in the early
2 stage of operating businesses. At least one full-time manager
3 or principal of the certified capital company who has such
4 experience must be primarily located in an office of the
5 certified capital company which is based in this state.

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

10 (d) The department may deny certification or decertify
11 a certified capital company if the grounds for decertification
12 are not removed or corrected within 90 days after the notice
13 of such grounds is received by the certified capital company.
14 The department may deny certification or decertify a certified
15 capital company if the certified capital company fails to
16 maintain common stock or paid in capital ~~a net worth~~ of at
17 least \$500,000, or if the department determines that the
18 applicant, or any principal or director of the certified
19 capital company, has:

20 1. Violated any provision of this section;
21 2. Made a material misrepresentation or false
22 statement or concealed any essential or material fact from any
23 person during the application process or with respect to
24 information and reports required of certified capital
25 companies under this section;

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

1 4. Been adjudicated liable in a civil action on
2 grounds of fraud, embezzlement, misrepresentation, or deceit;
3 or

4 5.a. Been the subject of any decision, finding,
5 injunction, suspension, prohibition, revocation, denial,
6 judgment, or administrative order by any court of competent
7 jurisdiction, administrative law judge, or any state or
8 federal agency, national securities, commodities, or option
9 exchange, or national securities, commodities, or option
10 association, involving a material violation of any federal or
11 state securities or commodities law or any rule or regulation
12 adopted under such law, or any rule or regulation of any
13 national securities, commodities, or options exchange, or
14 national securities, commodities, or options association; or

15 b. Been the subject of any injunction or adverse
16 administrative order by a state or federal agency regulating
17 banking, insurance, finance or small loan companies, real
18 estate, mortgage brokers, or other related or similar
19 industries.

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

22 (e)(f) Any offering material involving the sale of
23 securities of the certified capital company shall include the
24 following statement: "By authorizing the formation of a
25 certified capital company, the State of Florida does not
26 endorse the quality of management or the potential for
27 earnings of such company and is not liable for damages or
28 losses to a certified investor in the company. Use of the
29 word 'certified' in an offering does not constitute a
30 recommendation or endorsement of the investment by the State
31 of Florida. Investments in a certified capital company prior

1 to the time such company is certified are not eligible for
2 premium tax credits. If applicable provisions of law are
3 violated, the state may require forfeiture of unused premium
4 tax credits and repayment of used premium tax credits by the
5 certified investor."

6 (f)1.(g) No insurance company or any affiliate of an
7 insurance company shall, directly or indirectly, own, whether
8 through rights, options, convertible interests, or otherwise,
9 15 percent or more of the voting equity interests of or manage
10 or control the direction of investments of a certified capital
11 company. This prohibition does not preclude a certified
12 investor, insurance company, or any other party from
13 exercising its legal rights and remedies, which may include
14 interim management of a certified capital company, if a
15 certified capital company is in default of its obligations
16 under law or its contractual obligations to such certified
17 investor, insurance company, or other party. Nothing in this
18 subparagraph shall limit an insurance company's ownership of
19 nonvoting equity interests in a certified capital company.

20 2. Not more than one certified investor in any
21 certified capital company or affiliates of such certified
22 investor may provide a guarantee, indemnity, bond, insurance
23 policy, or other payment undertaking in favor of the certified
24 investors of the certified capital company and its affiliates.

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

1 program. On or before April 30 of each year, each certified
2 capital company shall file audited financial statements with
3 the department. No renewal fees shall be required within 6
4 months after the date of initial certification.

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

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

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

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

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

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

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

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

11 (b) All capital not invested in qualified investments
12 by the certified capital company:

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

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

23 3. Must be invested only in:

24 a. Any United States Treasury obligations;

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

29 c. Marketable obligations, maturing within 10 5 years
30 or less after the acquisition of such obligations, which are
31

1 rated "A" or better by any nationally recognized credit rating
2 agency;

3 d. Mortgage-backed securities, with an average life of
4 5 years or less, after the acquisition of such securities,
5 which are rated "A" or better by any nationally recognized
6 credit rating agency;

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

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

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

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

29 (II) Not subordinated to other unsecured indebtedness
30 of the issuer or the guarantor.

31

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

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

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

10 (a) Any certified investor who makes an investment of
11 certified capital shall earn a vested credit against premium
12 tax liability equal to 100 percent of the certified capital
13 invested by the certified investor. Certified investors shall
14 be entitled to use no more than 10 percentage points of the
15 vested premium tax credit earned under a particular program,
16 including any carryforward credits from such program under
17 this act, per year beginning with premium tax filings for
18 calendar year 2000 for credits earned under Program One and
19 calendar year 2004 for credits earned under Program Two. Any
20 premium tax credits not used by certified investors in any
21 single year may be carried forward and applied against the
22 premium tax liabilities of such investors for subsequent
23 calendar years. ~~The carryforward credit may be applied~~
24 ~~against subsequent premium tax filings through calendar year~~
25 ~~2017.~~

26 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
27 PROCESS.--

28 (a) The total amount of tax credits which may be
29 allocated by the office shall not exceed \$150 million with
30 respect to Program One and \$300 with respect to Program Two.
31 The total amount of tax credits which may be used by certified

1 investors under this act shall not exceed \$15 million annually
2 with respect to credits earned under Program One and \$30
3 million annually with respect to credits earned under Program
4 Two.

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

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

30 (e) If a certified capital company does not receive
31 certified capital equaling the amount of premium tax credits

1 allocated to a potential certified investor for which the
2 investor filed a premium tax allocation claim within 10
3 business days after the investor received a notice of
4 allocation, the certified capital company shall notify the
5 office by overnight common carrier delivery service of the
6 company's failure to receive the capital. That portion of the
7 premium tax credits allocated to the certified capital company
8 shall be forfeited. If the office must make a pro rata
9 allocation under paragraph (f), the office shall reallocate
10 such available credits among the other certified capital
11 companies on the same pro rata basis as the initial
12 allocation.

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

20
21
$$A/B = X/\underline{\$300,000,000} \del{\$150,000,000}$$

22
23 where the letter "A" represents the total amount of certified
24 capital certified investors have agreed to invest in any one
25 certified capital company under Program Two, the letter "B"
26 represents the aggregate amount of certified capital that all
27 certified investors have agreed to invest in all certified
28 capital companies under Program Two, the letter "X" is the
29 numerator and represents the total amount of premium tax
30 credits and certified capital that may be allocated to a
31 certified capital company on April 1, 2003 ~~in calendar year~~

1 ~~1999~~, and ~~\$300~~~~\$150~~ million is the denominator and represents
2 the total amount of premium tax credits and certified capital
3 that may be allocated to all certified investors in calendar
4 year 2003 ~~1999~~. Any such premium tax credits are not first
5 available for utilization until annual filings are made in
6 2001 for calendar year 2000 in the case of Program One, and
7 until annual filings are made in 2005 for calendar year 2004
8 in the case of Program Two, and the tax credits may be used at
9 a rate not to exceed 10 percent annually per program.

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

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

20 (i) The office shall issue a certification letter for
21 each certified investor, showing the amount invested in the
22 certified capital company under each program. The applicable
23 certified capital company shall attest to the validity of the
24 certification letter.

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

26 (a) On an annual basis, on or before January ~~December~~
27 31, each certified capital company shall file with the
28 department and the office, in consultation with the
29 department, on a form prescribed by the office, for each
30 calendar year:

31

1 1. The total dollar amount the certified capital
2 company received from certified investors, the identity of the
3 certified investors, and the amount received from each
4 certified investor during the immediately preceding calendar
5 year.

6 2. The total dollar amount the certified capital
7 company invested and the amount invested in qualified
8 businesses, together with the identity and location of those
9 businesses and the amount invested in each qualified business
10 during the immediately preceding calendar year.

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

18 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
19 PARTICIPATION.--

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

1 holder that is also a certified investor or equity holder of a
2 certified capital company may receive payments with respect to
3 such debt without restrictions.

4 (b) Cumulative distributions from a certified capital
5 company from funds related to a particular program to its
6 certified investors and equity holders under such program,
7 other than qualified distributions, in excess of the certified
8 capital company's original certified capital raised under such
9 program and any additional capital contributions to the
10 certified capital company with respect to such program may be
11 audited by a nationally recognized certified public accounting
12 firm acceptable to the department, at the expense of the
13 certified capital company, if the department directs such
14 audit be conducted. The audit shall determine whether
15 aggregate cumulative distributions from the funds related to a
16 particular program made by the certified capital company to
17 all certified investors and equity holders under such program,
18 other than qualified distributions, have equaled the sum of
19 the certified capital company's original certified capital
20 raised under such program and any additional capital
21 contributions to the certified capital company with respect to
22 such program. If at the time of any such distribution made by
23 the certified capital company, such distribution taken
24 together with all other such distributions from the funds
25 related to such program made by the certified capital company,
26 other than qualified distributions, exceeds in the aggregate
27 the sum of the certified capital company's original certified
28 capital raised under such program and any additional capital
29 contributions to the certified capital company with respect to
30 such program, as determined by the audit, the certified
31 capital company shall pay to the Department of Revenue 10

1 percent of the portion of such distribution in excess of such
2 amount. Payments to the Department of Revenue by a certified
3 capital company pursuant to this paragraph shall not exceed
4 the aggregate amount of tax credits used by all certified
5 investors in such certified capital company for such program.

6 (10) DECERTIFICATION.--

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

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

22 2. When a certified capital company meets all
23 requirements for continued certification under subparagraph
24 (5)(a)1. with respect to certified capital raised under a
25 particular program and subsequently fails to meet the
26 requirements for continued certification under the provisions
27 of subparagraph (5)(a)2. with respect to certified capital
28 raised under such program, those premium tax credits earned
29 under such program which have been or will be taken by
30 certified investors within 3 years after the certification
31 date of the certified capital company with respect to such

1 program shall not be subject to recapture or forfeiture;
2 however, all premium tax credits earned under such program
3 that have been or will be taken by certified investors after
4 the third anniversary of the certification date of the
5 certified capital company for such program shall be subject to
6 recapture or forfeiture.

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

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

1 certification with respect to such program shall be subject to
2 forfeiture only if the certified capital company is
3 decertified within 5 years after its certification date with
4 respect to such program.

5 5. If a certified capital company has invested an
6 amount cumulatively equal to 100 percent of its certified
7 capital raised under a particular program in qualified
8 investments, all premium tax credits claimed or to be claimed
9 by its certified investors under such program shall not be
10 subject to recapture or forfeiture.

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

24 ~~(a) Through the voluntary sale, assignment, or other~~
25 ~~transfer of the business or control of the business of the~~
26 ~~certified investor, including the sale or other transfer of~~
27 ~~stock or assets by merger, consolidation, or dissolution,~~
28 ~~succeeds to all or substantially all of the business and~~
29 ~~property of the certified investor;~~

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

1 ~~(c) Directly or indirectly owns, whether through~~
2 ~~rights, options, convertible interests, or otherwise,~~
3 ~~controls, or holds power to vote 10 percent or more of the~~
4 ~~outstanding voting securities or other ownership interest of~~
5 ~~the certified investor;~~

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

11 ~~(e) Directly or indirectly controls, is controlled by,~~
12 ~~or is under the common control with the certified investor.~~

13 Section 2. Except as otherwise specifically provided
14 in this act, the provisions of this act shall apply only to
15 "Program Two" as defined in s. 288.99(3), Florida Statutes, as
16 amended by this act.

17 Section 3. This act shall take effect July 1, 2002.
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