

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:

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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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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 the Digital Divide  
9 Trust Fund established under the State of Florida Technology  
10 Office or a business that meets the following conditions as  
11 evidenced by documentation required by department rule:

12 1. The business is headquartered in this state and its  
13 principal business operations are located in this state.

14 2. At the time a certified capital company makes an  
15 initial investment in a business, the business is a small  
16 business concern as defined in 13 C.F.R. s. 121.301(c)  
17 ~~121.201~~, "Size Standards Used to Define Small Business  
18 Concerns" of the United States Small Business Administration  
19 which is involved in manufacturing, processing or assembling  
20 products, conducting research and development, or providing  
21 services.

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

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

31

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

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

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

23           4. The term does not include:

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

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

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

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

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

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

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

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

27 1. Reasonable costs and expenses, including, but not  
28 limited to, professional fees, of forming and, syndicating the  
29 certified capital company, if no such costs or expenses are  
30 paid to a certified investor, except as provided in  
31 subparagraph (4)(f)2., and the total cash, cash equivalents,

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

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

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

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

30 (n)1. "Qualified investment" means the investment of  
31 cash by a certified capital company in a qualified business

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

6 2. The term does not include:

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

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

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

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

28 (p) "Program Two" means the \$150 million in premium  
29 tax credits to be issued under this section on April 1, 2003,  
30 the allocation of such credits under this section, and the  
31



1 regulation of certified capital companies and investments made  
2 by them hereunder.

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

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

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

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

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

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

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

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

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

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

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

27 1. The applicant satisfies the requirements of  
 28 paragraph (b).

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

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

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

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

23           1. Violated any provision of this section;

24           2. Made a material misrepresentation or false  
25 statement or concealed any essential or material fact from any  
26 person during the application process or with respect to  
27 information and reports required of certified capital  
28 companies under this section;

29           3. Been convicted of, or entered a plea of guilty or  
30 nolo contendere to, a crime against the laws of this state or  
31 any other state or of the United States or any other country

1 or government, including a fraudulent act in connection with  
2 the operation of a certified capital company, or in connection  
3 with the performance of fiduciary duties in another capacity;

4 4. Been adjudicated liable in a civil action on  
5 grounds of fraud, embezzlement, misrepresentation, or deceit;  
6 or

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

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

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

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

1 word 'certified' in an offering does not constitute a  
2 recommendation or endorsement of the investment by the State  
3 of Florida. Investments in a certified capital company prior  
4 to the time such company is certified are not eligible for  
5 premium tax credits. If applicable provisions of law are  
6 violated, the state may require forfeiture of unused premium  
7 tax credits and repayment of used premium tax credits by the  
8 certified investor."

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

23 2. A certified capital company may obtain a guaranty,  
24 indemnity, bond, insurance policy or other payment undertaking  
25 in favor of all of the certified investors of the certified  
26 capital company and its affiliates; provided that the entity  
27 from which such guaranty, indemnity, bond, insurance policy or  
28 other payment undertaking is obtained may not be a certified  
29 investor of, or be affiliated with more than one certified  
30 investor of, the certified capital company.

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1           ~~(g)(h)~~ On or before December 31 of each year, each  
2 certified capital company shall pay to the department an  
3 annual, nonrefundable renewal certification fee of \$5,000. If  
4 a certified capital company fails to pay its renewal fee by  
5 the specified deadline, the company must pay a late fee of  
6 \$5,000 in addition to the renewal fee on or by January 31 of  
7 each year in order to continue its certification in the  
8 program. On or before April 30 of each year, each certified  
9 capital company shall file audited financial statements with  
10 the department. No renewal fees shall be required within 6  
11 months after the date of initial certification.

12           ~~(h)(i)~~ The department shall administer and provide for  
13 the enforcement of certification requirements for certified  
14 capital companies as provided in this act. The department may  
15 adopt any rules necessary to carry out its duties,  
16 obligations, and powers related to certification, renewal of  
17 certification, or decertification of certified capital  
18 companies and may perform any other acts necessary for the  
19 proper administration and enforcement of such duties,  
20 obligations, and powers.

21           ~~(i)(j)~~ Decertification of a certified capital company  
22 under this subsection does not affect the ability of certified  
23 investors in such certified capital company from claiming  
24 future premium tax credits earned as a result of an investment  
25 in the certified capital company during the period in which it  
26 was duly certified.

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

28           (a) To remain certified, a certified capital company  
29 must make qualified investments according to the following  
30 schedule:  
31

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

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

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

13           4. At least 50 percent of its certified capital must  
14 be invested in qualified investments by December 31, 2003, or  
15 in the case of certified capital raised under Program Two, by  
16 December 31, 2007. At least 50 percent of such qualified  
17 investments must be invested in early stage technology  
18 businesses.

19           (b) All capital not invested in qualified investments  
20 by the certified capital company:

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

24           2. Must not be invested in a certified investor of the  
25 certified capital company or any affiliate of the certified  
26 investor of the certified capital company, except for an  
27 investment permitted by sub-subparagraph 3.g., provided  
28 repayment terms do not permit the obligor to directly or  
29 indirectly manage or control the investment decisions of the  
30 certified capital company.

31           3. Must be invested only in:

- 1           a. Any United States Treasury obligations;
- 2           b. Certificates of deposit or other obligations,  
3 maturing within 3 years after acquisition of such certificates  
4 or obligations, issued by any financial institution or trust  
5 company incorporated under the laws of the United States;
- 6           c. Marketable obligations, maturing within 10 5 years  
7 or less after the acquisition of such obligations, which are  
8 rated "A" or better by any nationally recognized credit rating  
9 agency;
- 10          d. Mortgage-backed securities, with an average life of  
11 5 years or less, after the acquisition of such securities,  
12 which are rated "A" or better by any nationally recognized  
13 credit rating agency;
- 14          e. Collateralized mortgage obligations and real estate  
15 mortgage investment conduits that are direct obligations of an  
16 agency of the United States Government; are not private-label  
17 issues; are in book-entry form; and do not include the classes  
18 of interest only, principal only, residual, or zero; ~~or~~
- 19          f. Interests in money market funds, the portfolio of  
20 which is limited to cash and obligations described in  
21 sub-subparagraphs a.-d.; or
- 22          g. Obligations that are issued by an insurance company  
23 that is not a certified investor of the certified capital  
24 company making the investment, that has provided a guarantee  
25 indemnity bond, insurance policy, or other payment undertaking  
26 in favor of the certified capital company's certified  
27 investors as permitted by subparagraph (3)(m)1. or an  
28 affiliate of such insurance company as defined by subparagraph  
29 (3)(a)3. that is not a certified investor of the certified  
30 capital company making the investment, provided that such  
31 obligations are:



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

5           (II) Not subordinated to other unsecured indebtedness  
6 of the issuer or the guarantor.

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

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

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

16           (a) Any certified investor who makes an investment of  
17 certified capital shall earn a vested credit against premium  
18 tax liability equal to 100 percent of the certified capital  
19 invested by the certified investor. Certified investors shall  
20 be entitled to use no more than 10 percentage points of the  
21 vested premium tax credit earned under a particular program,  
22 including any carryforward credits from such program under  
23 this act, per year beginning with premium tax filings for  
24 calendar year 2000 for credits earned under Program One and  
25 calendar year 2004 for credits earned under Program Two. Any  
26 premium tax credits not used by certified investors in any  
27 single year may be carried forward and applied against the  
28 premium tax liabilities of such investors for subsequent  
29 calendar years. ~~The carryforward credit may be applied~~  
30 ~~against subsequent premium tax filings through calendar year~~  
31 ~~2017.~~

1 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION  
2 PROCESS.--

3 (a) The total amount of tax credits which may be  
4 allocated by the office shall not exceed \$150 million with  
5 respect to Program One and \$150 with respect to Program Two.  
6 The total amount of tax credits which may be used by certified  
7 investors under this act shall not exceed \$15 million annually  
8 with respect to credits earned under Program One and \$15  
9 million annually with respect to credits earned under Program  
10 Two.

11 (c) Each certified capital company must apply to the  
12 office for an allocation of premium tax credits for potential  
13 certified investors by March 15, 1999, or by March 15, 2003,  
14 in the case of credits allocable under Program Two, on a form  
15 developed by the office with the cooperation of the Department  
16 of Revenue. The form shall be accompanied by an affidavit  
17 from each potential certified investor confirming that the  
18 potential certified investor has agreed to make an investment  
19 of certified capital in a certified capital company up to a  
20 specified amount, subject only to the receipt of a premium tax  
21 credit allocation pursuant to this subsection. No certified  
22 capital company shall submit premium tax allocation claims on  
23 behalf of certified investors that in the aggregate would  
24 exceed the total dollar amount appropriated by the Legislature  
25 for the specific program. No allocation shall be made to the  
26 potential investors of a certified capital company under  
27 Program Two unless such certified capital company has filed  
28 premium tax allocation claims ~~that would result in an~~  
29 ~~allocation to the potential investors in such certified~~  
30 ~~capital company~~ of not less than \$15 million in the aggregate.  
31

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

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

20 (f) If the total amount of capital committed by all  
 21 certified investors to certified capital companies in premium  
 22 tax allocation claims under Program Two exceeds the aggregate  
 23 cap on the amount of credits that may be awarded under Program  
 24 Two, the premium tax credits that may be allowed to any one  
 25 certified investor under Program Two shall be allocated using  
 26 the following ratio:

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

27  
 28  
 29  
 30 where the letter "A" represents the total amount of certified  
 31 capital certified investors have agreed to invest in any one

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

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

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

27 (i) The office shall issue a certification letter for  
28 each certified investor, showing the amount invested in the  
29 certified capital company under each program. The applicable  
30 certified capital company shall attest to the validity of the  
31 certification letter.

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

2 (a) On an annual basis, on or before January ~~December~~  
3 31, each certified capital company shall file with the  
4 department and the office, in consultation with the  
5 department, on a form prescribed by the office, for each  
6 calendar year:

7 1. The total dollar amount the certified capital  
8 company received from certified investors, the identity of the  
9 certified investors, and the amount received from each  
10 certified investor during the immediately preceding calendar  
11 year.

12 2. The total dollar amount the certified capital  
13 company invested and the amount invested in qualified  
14 businesses, together with the identity and location of those  
15 businesses and the amount invested in each qualified business  
16 during the immediately preceding calendar year.

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

24 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE  
25 PARTICIPATION.--

26 (a) A certified capital company may make qualified  
27 distributions at any time. In order to make a distribution to  
28 its equity holders, other than a qualified distribution from  
29 funds related to a particular program, a certified capital  
30 company must have invested an amount cumulatively equal to 100  
31 percent of its certified capital raised under such program in

1 qualified investments. Payments to debt holders of a certified  
2 capital company, however, may be made without restriction with  
3 respect to repayments of principal and interest on  
4 indebtedness owed to them by a certified capital company,  
5 including indebtedness of the certified capital company on  
6 which certified investors earned premium tax credits. A debt  
7 holder that is also a certified investor or equity holder of a  
8 certified capital company may receive payments with respect to  
9 such debt without restrictions.

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

1 other than qualified distributions, exceeds in the aggregate  
 2 the sum of the certified capital company's original certified  
 3 capital raised under such program and any additional capital  
 4 contributions to the certified capital company with respect to  
 5 such program, as determined by the audit, the certified  
 6 capital company shall pay to the Department of Revenue 10  
 7 percent of the portion of such distribution in excess of such  
 8 amount. Payments to the Department of Revenue by a certified  
 9 capital company pursuant to this paragraph shall not exceed  
 10 the aggregate amount of tax credits used by all certified  
 11 investors in such certified capital company for such program.

12 (10) DECERTIFICATION.--

13 (f) Decertification of a certified capital company for  
 14 failure to meet all requirements for continued certification  
 15 under paragraph (5)(a) with respect to the certified capital  
 16 raised under a particular program may cause the recapture of  
 17 premium tax credits previously claimed by such company under  
 18 such program and the forfeiture of future premium tax credits  
 19 to be claimed by certified investors under such program with  
 20 respect to such certified capital company, as follows:

21 1. Decertification of a certified capital company  
 22 within 3 years after its certification date with respect to a  
 23 particular program shall cause the recapture of all premium  
 24 tax credits earned under such program and previously claimed  
 25 by such company and the forfeiture of all future premium tax  
 26 credits earned under such program which are to be claimed by  
 27 certified investors with respect to such company.

28 2. When a certified capital company meets all  
 29 requirements for continued certification under subparagraph  
 30 (5)(a)1. with respect to certified capital raised under a  
 31 particular program and subsequently fails to meet the

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

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

28         4. If a certified capital company has met all  
29 requirements for continued certification under paragraph  
30 (5)(a) with respect to certified capital raised under a  
31 particular program, but such company is subsequently



1 decertified, those premium tax credits earned under such  
 2 program which have been or will be taken by certified  
 3 investors within 5 years after the certification date of such  
 4 company with respect to such program shall not be subject to  
 5 recapture or forfeiture. Those premium tax credits earned  
 6 under such program to be taken subsequent to the 5th year of  
 7 certification with respect to such program shall be subject to  
 8 forfeiture only if the certified capital company is  
 9 decertified within 5 years after its certification date with  
 10 respect to such program.

11 5. If a certified capital company has invested an  
 12 amount cumulatively equal to 100 percent of its certified  
 13 capital raised under a particular program in qualified  
 14 investments, all premium tax credits claimed or to be claimed  
 15 by its certified investors under such program shall not be  
 16 subject to recapture or forfeiture.

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

30 ~~(a) Through the voluntary sale, assignment, or other~~  
 31 ~~transfer of the business or control of the business of the~~

1 ~~certified investor, including the sale or other transfer of~~  
2 ~~stock or assets by merger, consolidation, or dissolution,~~  
3 ~~succeeds to all or substantially all of the business and~~  
4 ~~property of the certified investor;~~

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

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

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

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

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

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