

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.

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

4 (e) "Department" means the Department of Banking and
5 Finance.

6 (f) "Director" means the director of the Office of
7 Tourism, Trade, and Economic Development.

8 (g) "Early stage technology business" means a
9 qualified business that is:

10 1. Involved, at the time of the certified capital
11 company's initial investment in such business, in activities
12 related to developing initial product or service offerings,
13 such as prototype development or the establishment of initial
14 production or service processes; ~~The term includes a~~
15 ~~qualified business that is~~

16 2. Less than 2 years old and has, together with its
17 affiliates, less than \$3 million in annual revenues for the
18 fiscal year immediately preceding the initial investment by
19 the certified capital company on a consolidated basis, as
20 determined in accordance with generally accepted accounting
21 principles; ~~The term also includes~~

22 3. The Florida Black Business Investment Board; ~~or~~

23 4. Any entity that is majority owned by the Florida
24 Black Business Investment Board; ~~or~~

25 5. Any entity in which the Florida Black Business
26 Investment Board holds a majority voting interest on the board
27 of directors.

28 (h) "Office" means the Office of Tourism, Trade, and
29 Economic Development.
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1 (i) "Premium tax liability" means any liability
2 incurred by an insurance company under the provisions of s.
3 624.509.

4 (j) "Principal" means an executive officer of a
5 corporation, partner of a partnership, manager of a limited
6 liability company, or any other person with equivalent
7 executive functions.

8 (k) "Qualified business" means 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. For
14 the purpose of this act, the terms "headquartered" and
15 "principal business operations" shall mean at least 75 percent
16 of the employees are located in the state.

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

25 3. At the time a certified capital company makes an
26 initial investment in a business, the business certifies in an
27 affidavit that:

28 a. The business is unable to obtain conventional
29 financing, which means that the business has failed in an
30 attempt to obtain funding for a loan from a bank or other
31 commercial lender or that the business cannot reasonably be

1 expected to qualify for such financing under the standards of
2 commercial lending;

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

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

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

25 4. The term does not include:

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

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

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1 c. Any company that has no historical revenues and
2 either has no specific business plan or purpose or has
3 indicated that its business plan is solely to engage in a
4 merger or acquisition with any unidentified company or other
5 entity.

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

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

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

27 (m) "Qualified distribution" means any distribution or
28 payment ~~by to equity holders~~ of a certified capital company
29 for:

30 1. Reasonable costs and expenses, including, but not
31 limited to, professional fees, of forming and, syndicating the

1 certified capital company, if no such costs or expenses are
 2 paid to a certified investor, except as provided in
 3 subparagraph (4)(f)2., and the total cash, cash equivalents,
 4 and other current assets permitted by sub-subparagraph
 5 (5)(b)3.g. that can be converted into cash within 5 business
 6 days available to the certified capital company at the time of
 7 receipt of certified capital from certified investors, after
 8 deducting the costs and expenses of forming and syndicating
 9 the certified capital company, including any payments made
 10 over time for obligations incurred at the time of receipt of
 11 certified capital but excluding other future qualified
 12 distributions and payments made under paragraph (9)(a), are an
 13 amount equal to or greater than 50 percent of the total
 14 certified capital allocated to the certified capital pursuant
 15 to subsection (7);

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

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

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

3 (n)1. "Qualified investment" means the investment of
4 cash by a certified capital company in a qualified business
5 for the purchase of any debt, equity, or hybrid security ~~of~~
6 ~~any nature and description whatsoever~~, including a debt
7 instrument or security that which has the characteristics of
8 debt but which provides for conversion into equity or equity
9 participation instruments such as options or warrants.

10 2. The term does not include:

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

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

24 c. Any investment in a qualified business or affiliate
25 of a qualified business that exceeds 15 percent of certified
26 capital.

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

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

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

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

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

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

20 2. The applicant's form and place of organization and
21 the relevant organizational documents, bylaws, and amendments
22 or restatements of such documents, bylaws, or amendments.

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

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

29 5. The applicant's financial condition and history,
30 including an audit report on the financial statements prepared
31 in accordance with generally accepted accounting principles.

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

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

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

30 1. The applicant satisfies the requirements of
 31 paragraph (b).

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

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

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

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

25 1. Violated any provision of this section;

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

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1 3. Been convicted of, or entered a plea of guilty or
2 nolo contendere to, a crime against the laws of this state or
3 any other state or of the United States or any other country
4 or government, including a fraudulent act in connection with
5 the operation of a certified capital company, or in connection
6 with the performance of fiduciary duties in another capacity;

7 4. Been adjudicated liable in a civil action on
8 grounds of fraud, embezzlement, misrepresentation, or deceit;
9 or

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

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

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

28 (e)(f) Any offering material involving the sale of
29 securities of the certified capital company shall include the
30 following statement: "By authorizing the formation of a
31 certified capital company, the State of Florida does not

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

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

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

1 investor of, or be affiliated with more than one certified
2 investor of, the certified capital company.

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

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

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

29 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--
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1 (a) To remain certified, a certified capital company
2 must make qualified investments according to the following
3 schedule:

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

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

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

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

22 (b) All capital not invested in qualified investments
23 by the certified capital company:

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

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

1 indirectly manage or control the investment decisions of the
2 certified capital company.

3 3. Must be invested only in:

4 a. Any United States Treasury obligations;

5 b. Certificates of deposit or other obligations,
6 maturing within 3 years after acquisition of such certificates
7 or obligations, issued by any financial institution or trust
8 company incorporated under the laws of the United States;

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

13 d. Mortgage-backed securities, with an average life of
14 5 years or less, after the acquisition of such securities,
15 which are rated "A" or better by any nationally recognized
16 credit rating agency;

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

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

25 g. Obligations that are issued by an insurance company
26 that is not a certified investor of the certified capital
27 company making the investment, that has provided a guarantee
28 indemnity bond, insurance policy, or other payment undertaking
29 in favor of the certified capital company's certified
30 investors as permitted by subparagraph (3)(m)1. or an
31 affiliate of such insurance company as defined by subparagraph

1 (3)(a)3. that is not a certified investor of the certified
2 capital company making the investment, provided that such
3 obligations are:

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

8 (II) Not subordinated to other unsecured indebtedness
9 of the issuer or the guarantor.

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

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

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

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

1 calendar years. ~~The carryforward credit may be applied~~
 2 ~~against subsequent premium tax filings through calendar year~~
 3 ~~2017.~~

4 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
 5 PROCESS.--

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

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

1 ~~allocation to the potential investors in such certified~~
2 ~~capital company~~ of not less than \$15 million in the aggregate.

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

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

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

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

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

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

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

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

1 certified capital company shall attest to the validity of the
2 certification letter.

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

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

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

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

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

26 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
27 PARTICIPATION.--

28 (a) A certified capital company may make qualified
29 distributions at any time. In order to make a distribution to
30 its equity holders, other than a qualified distribution from
31 funds related to a particular program, a certified capital

1 company must have invested an amount cumulatively equal to 100
2 percent of its certified capital raised under such program in
3 qualified investments. Payments to debt holders of a certified
4 capital company, however, may be made without restriction with
5 respect to repayments of principal and interest on
6 indebtedness owed to them by a certified capital company,
7 including indebtedness of the certified capital company on
8 which certified investors earned premium tax credits. A debt
9 holder that is also a certified investor or equity holder of a
10 certified capital company may receive payments with respect to
11 such debt without restrictions.

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

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

14 (10) DECERTIFICATION.--

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

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

30 2. When a certified capital company meets all
31 requirements for continued certification under subparagraph

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

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

30 4. If a certified capital company has met all
31 requirements for continued certification under paragraph

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

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

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

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

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

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

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

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

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

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