

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Representative(s) Mack and Alexander offered the following:

**Amendment to Amendment (955409) (with title amendment)**

On page 40, between lines 1 and 2,

insert:

Section 20. Effective July 1, 2002, subsections (3) and (4), paragraph (b) of subsection (5), paragraph (a) of subsection (6), paragraphs (a), (c), (d), (e), (f), (g), and (h) of subsection (7), paragraph (a) of subsection (8), paragraphs (a) and (b) of subsection (9), paragraphs (b) and (f) of subsection (10), and subsection (11) of section 288.99, Florida Statutes, are amended, paragraph (i) is added to subsection (7) of that section, and subsection (17) is added to that section, to read:

288.99 Certified Capital Company Act.--

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

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

- 1. Any person directly or indirectly beneficially owning, whether through rights, options, convertible interests, or otherwise, controlling, or holding power to vote

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

1 15 ~~10~~ percent or more of the outstanding voting securities or  
2 other voting ownership interests of the insurance company;

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

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

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

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

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

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

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

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

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

30         (d) "Certified investor" means any insurance company  
31 subject to premium tax liability pursuant to s. 624.509 that

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

1 ~~invests~~ ~~contributes~~ certified capital.

2 (e) "Department" means the Department of Financial  
3 Services ~~Banking and Finance~~.

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

6 (g) "Early stage technology business" means a  
7 qualified business that is:

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

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

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

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

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

26 (h) "Office" means the Office of Tourism, Trade, and  
27 Economic Development.

28 (i) "Premium tax liability" means any liability  
29 incurred by an insurance company under the provisions of s.  
30 624.509 and s. 624.5091.

31 (j) "Principal" means an executive officer of a

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

1 corporation, partner of a partnership, manager of a limited  
2 liability company, or any other person with equivalent  
3 executive functions.

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

8 1. The business is headquartered in this state and its  
9 principal business operations are located in this state or at  
10 least 75 percent of the employees are employed in this state.

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

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

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

28 b. The business plan for the business projects that  
29 the business is reasonably expected to achieve in excess of  
30 \$25 million in sales revenue within 5 years after the initial  
31 investment, or the business is located in a designated Front

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

1 Porch community, enterprise zone, urban high crime area, rural  
2 job tax credit county, or nationally recognized historic  
3 district;

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

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

19 4. The term does not include:

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

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

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

30 d. Any company that has a strategic plan to grow  
31 through the acquisition of firms with substantially similar

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

1 business which would result in the planned net loss of  
2 Florida-based jobs over a 12-month period after the  
3 acquisition as determined by the department.

4  
5 ~~A business predominantly engaged in retail sales, real estate~~  
6 ~~development, insurance, banking, lending, oil and gas~~  
7 ~~exploration, or engaged in professional services provided by~~  
8 ~~accountants, lawyers, or physicians does not constitute a~~  
9 ~~qualified business.~~

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

20 (m) "Qualified distribution" means any distribution or  
21 payment by ~~to equity holders~~ of a certified capital company  
22 for:

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

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

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

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

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

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

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

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

1 participation instruments such as options or warrants.

2 2. The term does not include:

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

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

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

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

24 (p) "Program Two" means the \$150 million in premium  
25 tax credits to be issued under subsection (17), the allocation  
26 of such credits under this section, and the regulation of  
27 certified capital companies and investments made by them  
28 hereunder.

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

31 (a) To operate as a certified capital company, a



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

1 corporation, partnership, or limited liability company must be  
2 certified by the department pursuant to this act.

3 (b) An applicant for certification as a certified  
4 capital company must file a verified application with the  
5 department on or before December 1, 1998, or a date determined  
6 in rules adopted pursuant to subsection (17) in the case of  
7 applicants for Program Two, in a form which the department may  
8 prescribe by rule. The applicant shall submit a nonrefundable  
9 application fee of \$7,500 to the department. The applicant  
10 shall provide:

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

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

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

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

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

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

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

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

14 (c) Within 60 days after receipt of a verified  
15 application ~~On December 31, 1998~~, the department shall grant  
16 or deny certification as a certified capital company. If the  
17 department denies certification within the time period  
18 specified, the department shall inform the applicant of the  
19 grounds for the denial. If the department has not granted or  
20 denied certification within the time specified, the  
21 application shall be deemed approved. The department shall  
22 approve the application if the department finds that:

23 1. The applicant satisfies the requirements of  
24 paragraph (b).

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

27 3. At least two of the principals have a minimum of 5  
28 years of experience making venture capital investments out of  
29 private equity funds, with not less than \$20 million being  
30 provided by third-party investors for investment in the early  
31 stage of operating businesses. At least one full-time manager

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

1 or principal of the certified capital company who has such  
2 experience must be primarily located in an office of the  
3 certified capital company which is based in this state.

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

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

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

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

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

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

1 or

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

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

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

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

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

1 violated, the state may require forfeiture of unused premium  
2 tax credits and repayment of used premium tax credits by the  
3 certified investor."

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

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

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

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

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

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

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

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

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

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

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

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

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. Any  
28 premium tax credits not used by certified investors in any  
29 single year may be carried forward and applied against the  
30 premium tax liabilities of such investors for subsequent  
31 calendar years. ~~The carryforward credit may be applied~~



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

1 ~~against subsequent premium tax filings through calendar year~~  
2 ~~2017.~~

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

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

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

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

1           (d) ~~On or before April 1, 1999,~~The office shall  
2 inform each certified capital company of its share of total  
3 premium tax credits available for allocation to each of its  
4 potential investors.

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

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

26  
27   A/B = X/>\$150,000,000  
28

29 where the letter "A" represents the total amount of certified  
30 capital certified investors have agreed to invest in any one  
31 certified capital company under Program Two, the letter "B"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (10) DECERTIFICATION.--

12 (b) Nothing contained in this subsection shall be  
13 construed to limit the department's ~~Comptroller's~~ authority to  
14 conduct audits of certified capital companies as deemed  
15 appropriate and necessary.

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

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

31 2. When a certified capital company meets all

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

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

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

31 4. If a certified capital company has met all

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

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

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

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



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

1 who:

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

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

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

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

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

22 (17) Notwithstanding the limitations set forth in  
23 paragraph (7)(a), in the first fiscal year in which the total  
24 insurance premium tax collections as determined by the Revenue  
25 Estimating Conference exceed collections for fiscal year  
26 2000-2001 by more than the total amount of tax credits issued  
27 pursuant to this section which were used by certified  
28 investors in that year, the department may allocate to  
29 certified investors in accordance with paragraph (7)(a) tax  
30 credits for Program Two. The department shall establish, by  
31 rule, a date and procedures by which certified capital

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

1 companies must file applications for allocations of such  
2 additional premium tax credits, which date shall be no later  
3 than 180 days from the date of determination by the Revenue  
4 Estimating Conference. With respect to new certified capital  
5 invested and premium tax credits earned pursuant to this  
6 subsection, the schedule specified in subparagraphs  
7 (5)(a)1.-4. is satisfied by investments by December 31 of the  
8 2nd, 3rd, 4th, and 5th calendar year, respectively, after the  
9 date established by the department for applications of  
10 additional premium tax credits. The department shall adopt  
11 rules by which an entity not already certified as a certified  
12 capital company may apply for certification as a certified  
13 capital company for participation in this additional  
14 allocation. The insurance premium tax credit authorized by  
15 Program Two may not be used by certified investors until the  
16 annual return due March 1, 2004, and may be used on all  
17 subsequent returns and estimated payments; however,  
18 notwithstanding the provisions of s. 624.5092(2)(b), the  
19 installments of taxes due and payable on April 15, 2004, and  
20 June 15, 2004, shall be based on the net tax due in 2003 not  
21 taking into account credits granted pursuant to this section  
22 for Program Two.

23  
24 (Renumber subsequent section)

25  
26  
27 ===== T I T L E    A M E N D M E N T =====

28 And the title is amended as follows:  
29            On page 44, line 23, after the semicolon  
30  
31 insert:

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

1           amending s. 288.99, F.S., relating to the  
2           Certified Capital Company Act; redefining the  
3           terms "early stage technology business" and  
4           "qualified distribution"; defining the terms  
5           "Program One" and "Program Two"; revising  
6           procedures and dates for certification and  
7           decertification under Program One and Program  
8           Two; revising the process for earning premium  
9           tax credits; providing a limitation on tax  
10          credits under Program Two; providing for  
11          distributions under both programs; requiring  
12          rules; providing for additional premium

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31