

By the Committees on Government Efficiency Appropriations; and
Commerce and Consumer Services

593-2339-05

1 A bill to be entitled

2 An act relating to a review under the Open

3 Government Sunset Review Act; amending s.

4 288.99, F.S., the "Certified Capital Company

5 Act"; removing the October 2, 2005, repeal of

6 information relating to an active investigation

7 or office review of a certified capital company

8 scheduled under the Open Government Sunset

9 Review Act; narrowing the exemption;

10 eliminating the exemption from public-records

11 requirements for social security numbers of any

12 customers of a certified capital company,

13 complainants, or persons associated with a

14 certified capital company or qualified

15 business; eliminating references to specified

16 premium tax credits under the act designated as

17 "Program One" and "Program Two"; providing

18 editorial and conforming changes; providing for

19 the future repeal of the Certified Capital

20 Company Act; providing an effective date.

21

22 Be It Enacted by the Legislature of the State of Florida:

23

24 Section 1. Section 288.99, Florida Statutes, is

25 amended to read:

26 288.99 Certified Capital Company Act.--

27 (1) SHORT TITLE.--This section may be cited as the

28 "Certified Capital Company Act."

29 (2) PURPOSE.--The primary purpose of this act is to

30 stimulate a substantial increase in venture capital

31 investments in this state by providing an incentive for

1 insurance companies to invest in certified capital companies
2 in this state which, in turn, will make investments in new
3 businesses or in expanding businesses, including
4 minority-owned or minority-operated businesses and businesses
5 located in a designated Front Porch community, enterprise
6 zone, urban high-crime area, rural job tax credit county, or
7 nationally recognized historic district. The increase in
8 investment capital flowing into new or expanding businesses is
9 intended to contribute to employment growth, create jobs which
10 exceed the average wage for the county in which the jobs are
11 created, and expand or diversify the economic base of this
12 state.

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

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

15 1. Any person directly or indirectly beneficially
16 owning, whether through rights, options, convertible
17 interests, or otherwise, controlling, or holding power to vote
18 15 percent or more of the outstanding voting securities or
19 other voting ownership interests of the insurance company;

20 2. Any person 15 percent or more of whose outstanding
21 voting securities or other voting ownership interest is
22 directly or indirectly beneficially owned, whether through
23 rights, options, convertible interests, or otherwise,
24 controlled, or held with power to vote by the insurance
25 company;

26 3. Any person directly or indirectly controlling,
27 controlled by, or under common control with the insurance
28 company;

29 4. A partnership in which the insurance company is a
30 general partner; or
31

1 5. Any person who is a principal, director, employee,
2 or agent of the insurance company or an immediate family
3 member of the principal, director, employee, or agent.

4 (b) "Certified capital" means an investment of cash by
5 a certified investor in a certified capital company which
6 fully funds the purchase price of either or both its equity
7 interest in the certified capital company or a qualified debt
8 instrument issued by the certified capital company.

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

11 1. Is certified by the office in accordance with this
12 act.

13 2. Receives investments of certified capital from two
14 or more unaffiliated certified investors.

15 3. Makes qualified investments as its primary
16 activity.

17 (d) "Certified investor" means any insurance company
18 subject to premium tax liability pursuant to s. 624.509 that
19 invests certified capital.

20 (e) "Commission" means the Financial Services
21 Commission.

22 (f) "Early stage technology business" means a
23 qualified business that is:

24 1. Involved, at the time of the certified capital
25 company's initial investment in such business, in activities
26 related to developing initial product or service offerings,
27 such as prototype development or the establishment of initial
28 production or service processes;

29 2. Less than 2 years old and has, together with its
30 affiliates, less than \$3 million in annual revenues for the
31 fiscal year immediately preceding the initial investment by

1 | the certified capital company on a consolidated basis, as
2 | determined in accordance with generally accepted accounting
3 | principles;

4 | 3. The Florida Black Business Investment Board;

5 | 4. Any entity that is majority owned by the Florida
6 | Black Business Investment Board; or

7 | 5. Any entity in which the Florida Black Business
8 | Investment Board holds a majority voting interest on the board
9 | of directors.

10 | (g) "Office" means the Office of Financial Regulation
11 | of the commission.

12 | (h) "Premium tax liability" means any liability
13 | incurred by an insurance company under the provisions of ss.
14 | 624.509 and 624.5091.

15 | (i) "Principal" means an executive officer of a
16 | corporation, partner of a partnership, manager of a limited
17 | liability company, or any other person with equivalent
18 | executive functions.

19 | (j) "Qualified business" means the Digital Divide
20 | Trust Fund established under the State of Florida Technology
21 | Office or a business that meets the following conditions as
22 | evidenced by documentation required by commission rule:

23 | 1. The business is headquartered in this state and its
24 | principal business operations are located in this state or at
25 | least 75 percent of the employees are employed in the state.

26 | 2. At the time a certified capital company makes an
27 | initial investment in a business, the business would qualify
28 | for investment under 13 C.F.R. s. 121.301(c), which is
29 | involved in manufacturing, processing or assembling products,
30 | conducting research and development, or providing services.

31 |

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

4 a. The business is unable to obtain conventional
5 financing, which means that the business has failed in an
6 attempt to obtain funding for a loan from a bank or other
7 commercial lender or that the business cannot reasonably be
8 expected to qualify for such financing under the standards of
9 commercial lending;

10 b. The business plan for the business projects that
11 the business is reasonably expected to achieve in excess of
12 \$25 million in sales revenue within 5 years after the initial
13 investment, or the business is located in a designated Front
14 Porch community, enterprise zone, urban high crime area, rural
15 job tax credit county, or nationally recognized historic
16 district;

17 c. The business will maintain its headquarters in this
18 state for the next 10 years and any new manufacturing facility
19 financed by a qualified investment will remain in this state
20 for the next 10 years, or the business is located in a
21 designated Front Porch community, enterprise zone, urban high
22 crime area, rural job tax credit county, or nationally
23 recognized historic district; and

24 d. The business has fewer than 200 employees and at
25 least 75 percent of the employees are employed in this state.
26 For purposes of this subsection, the term also includes the
27 Florida Black Business Investment Board, any entity majority
28 owned by the Florida Black Business Investment Board, or any
29 entity in which the Florida Black Business Investment Board
30 holds a majority voting interest on the board of directors.

31 4. The term does not include:

1 a. Any business predominantly engaged in retail sales,
2 real estate development, insurance, banking, lending, or oil
3 and gas exploration.

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

6 c. Any company that has no historical revenues and
7 either has no specific business plan or purpose or has
8 indicated that its business plan is solely to engage in a
9 merger or acquisition with any unidentified company or other
10 entity.

11 d. Any company that has a strategic plan to grow
12 through the acquisition of firms with substantially similar
13 business which would result in the planned net loss of
14 Florida-based jobs over a 12-month period after the
15 acquisition as determined by the office.

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

26 (l) "Qualified distribution" means any distribution or
27 payment by a certified capital company for:

28 1. Reasonable costs and expenses, including, but not
29 limited to, professional fees, of forming and syndicating the
30 certified capital company, if no such costs or expenses are
31 paid to a certified investor, except as provided in

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

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

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

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

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

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

6 2. The term does not include:

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

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

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

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

28 ~~(o) "Program Two" means the \$150 million in premium~~
29 ~~tax credits to be issued under subsection (17), the allocation~~
30 ~~of such credits under this section, and the regulation of~~

31

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

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

5 (a) To operate as a certified capital company, a
6 corporation, partnership, or limited liability company must be
7 certified by the Department of Banking and Finance or the
8 office pursuant to this act.

9 (b) An applicant for certification as a certified
10 capital company must file a verified application with the
11 Department of Banking and Finance on or before December 1,
12 1998, ~~a date determined in rules adopted pursuant to~~
13 ~~subsection (17) in the case of applicants for Program Two,~~ in
14 a form which the commission may prescribe by rule. The
15 applicant shall submit a nonrefundable application fee of
16 \$7,500 to the office. The applicant shall provide:

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

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

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

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

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

31 The applicant must have, at the time of application for

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

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

18 (c) Within 60 days after receipt of a verified
19 application, the office shall grant or deny certification as a
20 certified capital company. If the office denies certification
21 within the time period specified, the office shall inform the
22 applicant of the grounds for the denial. If the office has not
23 granted or denied certification within the time specified, the
24 application shall be deemed approved. The office shall approve
25 the application if the office finds that:

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

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

30 3. At least two of the principals have a minimum of 5
31 years of experience making venture capital investments out of

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

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

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

20 1. Violated any provision of this section;

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

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

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

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

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

20 (e) 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 word
27 '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

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

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

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

15 | (i) 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 | (a) To remain certified, a certified capital company
23 | must make qualified investments according to the following
24 | schedule:

25 | 1. At least 20 percent of its certified capital must
26 | be invested in qualified investments by December 31, 2000.

27 | 2. At least 30 percent of its certified capital must
28 | be invested in qualified investments by December 31, 2001.

29 | 3. At least 40 percent of its certified capital must
30 | be invested in qualified investments by December 31, 2002.

31 |

1 4. At least 50 percent of its certified capital must
2 be invested in qualified investments by December 31, 2003. At
3 least 50 percent of such qualified investments must be
4 invested in early stage technology businesses.

5 (b) All capital not invested in qualified investments
6 by the certified capital company:

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

10 2. Must not be invested in a certified investor of the
11 certified capital company or any affiliate of the certified
12 investor of the certified capital company, except for an
13 investment permitted by sub-subparagraph 3.g., provided
14 repayment terms do not permit the obligor to directly or
15 indirectly manage or control the investment decisions of the
16 certified capital company.

17 3. Must be invested only in:

18 a. Any United States Treasury obligations;

19 b. Certificates of deposit or other obligations,
20 maturing within 3 years after acquisition of such certificates
21 or obligations, issued by any financial institution or trust
22 company incorporated under the laws of the United States;

23 c. Marketable obligations, maturing within 10 years or
24 less after the acquisition of such obligations, which are
25 rated "A" or better by any nationally recognized credit rating
26 agency;

27 d. Mortgage-backed securities, with an average life of
28 5 years or less, after the acquisition of such securities,
29 which are rated "A" or better by any nationally recognized
30 credit rating agency;

31

1 e. Collateralized mortgage obligations and real estate
2 mortgage investment conduits that are direct obligations of an
3 agency of the United States Government; are not private-label
4 issues; are in book-entry form; and do not include the classes
5 of interest only, principal only, residual, or zero;

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

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

19 (I) Issued or guaranteed as to principal by an entity
20 whose senior debt is rated "AA" or better by Standard & Poor's
21 Ratings Group or such other nationally recognized credit
22 rating agency as the commission may by rule determine.

23 (II) Not subordinated to other unsecured indebtedness
24 of the issuer or the guarantor.

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

27 (IV) Readily convertible into cash within 5 business
28 days for the purpose of making a qualified investment unless
29 such obligations are held to provide a guarantee, indemnity
30 bond, insurance policy, or other payment undertaking in favor
31

1 of the certified capital company's certified investors as
2 permitted by subparagraph (3)(1)1.

3 (c) The aggregate amount of all qualified investments
4 made by the certified capital company from the date of its
5 certification shall be considered in the calculation of the
6 percentage requirements under paragraph (a).

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

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

21 (b) The credit to be applied against premium tax
22 liability in any single year may not exceed the premium tax
23 liability of the certified investor for that taxable year.

24 (c) A certified investor claiming a credit against
25 premium tax liability earned through an investment in a
26 certified capital company shall not be required to pay any
27 additional retaliatory tax levied pursuant to s. 624.5091 as a
28 result of claiming such credit. Because credits under this
29 section are available to a certified investor, s. 624.5091
30 does not limit such credit in any manner.

31

1 (d) The amount of tax credits vested under the
2 Certified Capital Company Act shall not be considered in
3 ratemaking proceedings involving a certified investor.

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 of Tourism, Trade, and Economic
8 Development shall not exceed \$150 million ~~with respect to~~
9 ~~Program One and \$150 million with respect to Program Two.~~ The
10 total amount of tax credits which may be used by certified
11 investors under this act shall not exceed \$15 million annually
12 ~~with respect to credits earned under Program One and \$15~~
13 ~~million annually with respect to credits earned under Program~~
14 ~~Two.~~

15 (b) The Office of Tourism, Trade, and Economic
16 Development shall be responsible for allocating premium tax
17 credits as provided for in this act to certified capital
18 companies.

19 (c) Each certified capital company must apply to the
20 Office of Tourism, Trade, and Economic Development for an
21 allocation of premium tax credits for potential certified
22 investors on a form developed by the Office of Tourism, Trade,
23 and Economic Development with the cooperation of the
24 Department of Revenue. The form shall be accompanied by an
25 affidavit from each potential certified investor confirming
26 that the potential certified investor has agreed to make an
27 investment of certified capital in a certified capital company
28 up to a specified amount, subject only to the receipt of a
29 premium tax credit allocation pursuant to this subsection. No
30 certified capital company shall submit premium tax allocation
31 claims on behalf of certified investors that in the aggregate

1 would exceed the total dollar amount appropriated by the
2 Legislature ~~for the specific program~~. No allocation shall be
3 made to the potential investors of a certified capital company
4 ~~under Program Two~~ unless such certified capital company has
5 filed premium tax allocation claims of not less than \$15
6 million in the aggregate.

7 (d) The Office of Tourism, Trade, and Economic
8 Development shall inform each certified capital company of its
9 share of total premium tax credits available for allocation to
10 each of its potential investors.

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

26 (f) If the total amount of capital committed by all
27 certified investors to certified capital companies in premium
28 tax allocation claims ~~under Program Two~~ exceeds the aggregate
29 cap on the amount of credits that may be awarded ~~under Program~~
30 ~~Two~~, the premium tax credits that may be allowed to any one
31

1 certified investor ~~under Program Two~~ shall be allocated using
2 the following ratio:

3
4 $A/B = X / >\$150,000,000$

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

24 (g) The maximum amount of certified capital for which
25 premium tax allocation claims may be filed on behalf of any
26 certified investor and its affiliates by one or more certified
27 capital companies may not exceed \$15 million ~~for Program One~~
28 ~~and \$22.5 million for Program Two~~.

29 (h) To the extent that less than \$150 million in
30 certified capital is raised in connection with the procedure
31 set forth in paragraphs (c)-(g), the commission may adopt

1 rules to allow a subsequent allocation of the remaining
2 premium tax credits authorized under this section.

3 (i) The Office of Tourism, Trade, and Economic
4 Development shall issue a certification letter for each
5 certified investor, showing the amount invested in the
6 certified capital company ~~under each program~~. The applicable
7 certified capital company shall attest to the validity of the
8 certification letter.

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

10 (a) On an annual basis, on or before January 31, each
11 certified capital company shall file with the office and the
12 Office of Tourism, Trade, and Economic Development, in
13 consultation with the office, on a form prescribed by the
14 Office of Tourism, Trade, and Economic Development, for each
15 calendar year:

16 1. The total dollar amount the certified capital
17 company received from certified investors, the identity of the
18 certified investors, and the amount received from each
19 certified investor during the immediately preceding calendar
20 year.

21 2. The total dollar amount the certified capital
22 company invested and the amount invested in qualified
23 businesses, together with the identity and location of those
24 businesses and the amount invested in each qualified business
25 during the immediately preceding calendar year.

26 3. For informational purposes only, the total number
27 of permanent, full-time jobs either created or retained by the
28 qualified business during the immediately preceding calendar
29 year, the average wage of the jobs created or retained, the
30 industry sectors in which the qualified businesses operate,
31

1 and any additional capital invested in qualified businesses
2 from sources other than certified capital companies.

3 (b) The form shall be verified by one or more
4 principals of the certified capital company submitting the
5 form. Verification shall be accomplished as provided in s.
6 92.525(1)(b) and subject to the provisions of s. 92.525(3).

7 (c) The Office of Tourism, Trade, and Economic
8 Development shall review the form, and any supplemental
9 documentation, submitted by each certified capital company for
10 the purpose of verifying:

11 1. That the businesses in which certified capital has
12 been invested by the certified capital company are in fact
13 qualified businesses, and that the amount of certified capital
14 invested by the certified capital company is as represented in
15 the form.

16 2. The amount of certified capital invested in the
17 certified capital company by the certified investors.

18 3. The amount of premium tax credit available to
19 certified investors.

20 (d) The Department of Revenue is authorized to audit
21 and examine the accounts, books, or records of certified
22 capital companies and certified investors for the purpose of
23 ascertaining the correctness of any report and financial
24 return which has been filed, and to ascertain a certified
25 capital company's compliance with the tax-related provisions
26 of this act.

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

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

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

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

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

15 | (10) DECERTIFICATION.--

16 | (a) The office shall conduct an annual review of each
17 | certified capital company to determine if the certified
18 | capital company is abiding by the requirements of
19 | certification, to advise the certified capital company as to
20 | the eligibility status of its qualified investments, and to
21 | ensure that no investment has been made in violation of this
22 | act. The cost of the annual review shall be paid by each
23 | certified capital company.

24 | (b) Nothing contained in this subsection shall be
25 | construed to limit the Chief Financial Officer's or the
26 | office's authority to conduct audits of certified capital
27 | companies as deemed appropriate and necessary.

28 | (c) Any material violation of this section, or a
29 | finding that the certified capital company or any principal or
30 | director thereof has committed any act specified in paragraph
31 | (4)(d), shall be grounds for decertification of the certified

1 capital company. If the office determines that a certified
2 capital company is no longer in compliance with the
3 certification requirements of this act, the office shall, by
4 written notice, inform the officers of such company that the
5 company may be subject to decertification 90 days after the
6 date of mailing of the notice, unless the deficiencies are
7 corrected and such company is again found to be in compliance
8 with all certification requirements.

9 (d) At the end of the 90-day grace period, if the
10 certified capital company is still not in compliance with the
11 certification requirements, the office may issue a notice to
12 revoke or suspend the certification or to impose an
13 administrative fine. The office shall advise each respondent
14 of the right to an administrative hearing under chapter 120
15 prior to final action by the office.

16 (e) If the office revokes a certification, such
17 revocation shall also deny, suspend, or revoke the
18 certifications of all affiliates of the certified capital
19 company.

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

28 1. Decertification of a certified capital company
29 within 3 years after its certification date ~~with respect to a~~
30 ~~particular program~~ shall cause the recapture of all premium
31 tax credits ~~earned under such program and~~ previously claimed

1 by such company and the forfeiture of all future premium tax
2 credits ~~earned under such program which are~~ to be claimed by
3 certified investors with respect to such company.

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

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

1 certification date of the certified capital company ~~with~~
2 ~~respect to such program~~ shall be subject to recapture and
3 forfeiture.

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

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

24 (g) Decertification of a certified capital company
25 pursuant to subsection (4) or this subsection does not affect
26 the ability of certified investors in such certified capital
27 company to continue to claim future premium tax credits earned
28 as an investment in the certified capital company during the
29 period in which it was duly certified.

30 (h) The Office of Tourism, Trade, and Economic
31 Development shall send written notice to the address of each

1 certified investor whose premium tax credit has been subject
2 to recapture or forfeiture, using the address last shown on
3 the last premium tax filing.

4 (i) The certified investor is responsible for
5 returning to the Department of Revenue any forfeited insurance
6 premium tax credits, and such funds shall be paid into the
7 General Revenue Fund of the state.

8 (j) The certified investor shall file with the
9 Department of Revenue an amended return or such other report
10 as the commission may prescribe by rule and pay any required
11 tax, not later than 60 days after such decertification has
12 been agreed to or finally determined, whichever shall first
13 occur.

14 (k) A notice of deficiency may be issued:

15 1. At any time within 5 years after the date such
16 notification is given; or

17 2. At any time if a certified investor fails to notify
18 the Department of Revenue.

19

20 In either case, the amount of any proposed assessment set
21 forth in such notice shall be limited to the amount of any
22 deficiency resulting under this act from the recomputation of
23 the certified investor's insurance premium tax and, if
24 applicable, its retaliatory tax for the taxable year giving
25 effect only to the item or items reflected in the
26 decertification adjustment.

27 (l) Any certified investor who fails to report and
28 timely pay any tax due as a result of the forfeiture of its
29 insurance premium tax credit is in violation of this
30 subsection and is subject to a penalty of 10 percent of any
31 underpayment or delinquent taxes due and payable.

1 (m) When any taxpayer fails to pay any amount due as a
2 result of the forfeiture of its insurance premium tax credit
3 as provided for in this subsection, on or before the due date
4 as specified in this subsection, interest shall be due on any
5 insurance premium or retaliatory tax deficiency resulting from
6 such forfeiture, at the rate of 12 percent per year from the
7 due date of such amended return until paid.

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

20 (12) REPORTING REQUIREMENTS.--The Office of Tourism,
21 Trade, and Economic Development shall report on an annual
22 basis to the Governor, the President of the Senate, and the
23 Speaker of the House of Representatives on or before April 1:

24 (a) The total dollar amount each certified capital
25 company received from all certified investors and any other
26 investor, the identity of the certified investors, and the
27 total amount of premium tax credit used by each certified
28 investor for the previous calendar year.

29 (b) The total dollar amount invested by each certified
30 capital company and that portion invested in qualified
31 businesses, the identity and location of those businesses, the

1 amount invested in each qualified business, and the total
2 number of permanent, full-time jobs created or retained by
3 each qualified business.

4 (c) The return for the state as a result of the
5 certified capital company investments, including the extent to
6 which:

7 1. Certified capital company investments have
8 contributed to employment growth.

9 2. The wage level of businesses in which certified
10 capital companies have invested exceed the average wage for
11 the county in which the jobs are located.

12 3. The investments of the certified capital companies
13 in qualified businesses have contributed to expanding or
14 diversifying the economic base of the state.

15 (13) FEES.--All fees and charges of any nature
16 collected by the office pursuant to this act shall be paid
17 into the State Treasury and credited to the General Revenue
18 Fund.

19 (14) RULEMAKING AUTHORITY.--

20 (a) The Department of Revenue may by rule prescribe
21 forms and procedures for the tax credit filings, audits, and
22 forfeiture of premium tax credits described in this section,
23 and for certified capital company payments under paragraph
24 (9)(b).

25 (b) The commission and the Office of Tourism, Trade,
26 and Economic Development may adopt any rules necessary to
27 carry out their respective duties, obligations, and powers
28 related to the administration, review, and reporting
29 provisions of this section and may perform any other acts
30 necessary for the proper administration and enforcement of
31 such duties, obligations, and powers.

1 (15)(a) PUBLIC RECORDS EXEMPTION; CONFIDENTIALITY OF
2 INVESTIGATION AND REVIEW INFORMATION.--Except as otherwise
3 provided by this section, ~~any~~ information relating to an
4 investigation or office review of a certified capital company,
5 ~~including any consumer complaint,~~ is confidential and exempt
6 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of
7 the State Constitution until the investigation or review is
8 complete or ceases to be active. Such information shall remain
9 confidential and exempt from ~~the provisions of~~ s. 119.07(1)
10 and s. 24(a), Art. I of the State Constitution after the
11 investigation or review is complete or ceases to be active if
12 the information is submitted to any law enforcement or
13 administrative agency for further investigation, and shall
14 remain confidential and exempt from ~~the provisions of~~ s.
15 119.07(1) and s. 24(a), Art. I of the State Constitution until
16 that agency's investigation is complete or ceases to be
17 active. For purposes of this subsection, an investigation or
18 review shall be considered "active" so long as the office, a
19 law enforcement agency, or an administrative agency is
20 proceeding with reasonable dispatch and has a reasonable good
21 faith belief that the investigation may lead to the filing of
22 an administrative, civil, or criminal proceeding. ~~This section~~
23 ~~shall not be construed to prohibit disclosure of information~~
24 ~~which is required by law to be filed with the office and~~
25 ~~which, but for the investigation, would otherwise be subject~~
26 ~~to s. 119.07(1).~~

27 (b) Except as necessary to enforce the provisions of
28 this chapter, ~~a consumer complaint or~~ information relating to
29 an investigation or review shall remain confidential and
30 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
31

1 Constitution after an investigation or review is complete or
2 ceases to be active to the extent disclosure would:

3 1. Reveal a trade secret as defined in s. 688.002 or
4 s. 812.081.

5 2. Jeopardize the integrity of another active
6 investigation or review.

7 3. Disclose the identity of a confidential source. ~~or~~

8 4. Disclose investigative techniques or procedures.

9 (c) Nothing in this section shall be construed to
10 prohibit the office from providing information to any law
11 enforcement or administrative agency. Any law enforcement or
12 administrative agency receiving such confidential and exempt
13 information in connection with its official duties shall
14 maintain the confidential and exempt status ~~confidentiality~~ of
15 the information so long as it would otherwise be confidential
16 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
17 Constitution.

18 ~~(d) In the event office personnel are or have been~~
19 ~~involved in an investigation or review of such nature as to~~
20 ~~endanger their lives or physical safety or that of their~~
21 ~~families, the home addresses, telephone numbers, places of~~
22 ~~employment, and photographs of such personnel, together with~~
23 ~~the home addresses, telephone numbers, photographs, and places~~
24 ~~of employment of spouses and children of such personnel and~~
25 ~~the names and locations of schools and day care facilities~~
26 ~~attended by the children of such personnel are confidential~~
27 ~~and exempt from s. 119.07(1).~~

28 ~~(e) All information obtained by the office from any~~
29 ~~person which is only made available to the office on a~~
30 ~~confidential or similarly restricted basis shall be~~
31 ~~confidential and exempt from s. 119.07(1). This exemption~~

1 ~~shall not be construed to prohibit disclosure of information~~
2 ~~which is specifically required by law to be filed with the~~
3 ~~office or which is otherwise subject to s. 119.07(1).~~

4 ~~(f) If information subject to this subsection is~~
5 ~~offered in evidence in any administrative, civil, or criminal~~
6 ~~proceeding, the presiding officer may, in his or her~~
7 ~~discretion, prevent the disclosure of information which would~~
8 ~~be confidential pursuant to paragraph (b).~~

9 (16) CIVIL LIABILITY.--(g) A privilege against civil
10 liability is granted to a person with regard to information or
11 evidence furnished to the office, unless such person acts in
12 bad faith or with malice in providing such information or
13 evidence.

14 (17) This section shall stand repealed December 31,
15 2010.

16 ~~(h) This subsection is subject to the Open Government~~
17 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and~~
18 ~~shall stand repealed on October 2, 2005, unless reviewed and~~
19 ~~saved from repeal through reenactment by the Legislature.~~

20 ~~(16) CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS. The~~
21 ~~social security number of any customer of a certified capital~~
22 ~~company, complainant, or person associated with a certified~~
23 ~~capital company or qualified business, is exempt from s.~~
24 ~~119.07(1). This subsection is subject to the Open Government~~
25 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and~~
26 ~~shall stand repealed on October 2, 2005, unless reviewed and~~
27 ~~saved from repeal through reenactment by the Legislature.~~

28 ~~(17) Notwithstanding the limitations set forth in~~
29 ~~paragraph (7)(a), in the first fiscal year in which the total~~
30 ~~insurance premium tax collections as determined by the Revenue~~
31 ~~Estimating Conference exceed collections for fiscal year~~

1 ~~2000-2001 by more than the total amount of tax credits issued~~
2 ~~pursuant to this section which were used by certified~~
3 ~~investors in that year, the Office of Tourism, Trade, and~~
4 ~~Economic Development may allocate to certified investors in~~
5 ~~accordance with paragraph (7)(a) tax credits for Program Two.~~
6 ~~The commission shall establish, by rule, a date and procedures~~
7 ~~by which certified capital companies must file applications~~
8 ~~for allocations of such additional premium tax credits, which~~
9 ~~date shall be no later than 180 days from the date of~~
10 ~~determination by the Revenue Estimating Conference. With~~
11 ~~respect to new certified capital invested and premium tax~~
12 ~~credits earned pursuant to this subsection, the schedule~~
13 ~~specified in subparagraphs (5)(a)1. 4. is satisfied by~~
14 ~~investments by December 31 of the 2nd, 3rd, 4th, and 5th~~
15 ~~calendar year, respectively, after the date established by the~~
16 ~~commission for applications of additional premium tax credits.~~
17 ~~The commission shall adopt rules by which an entity not~~
18 ~~already certified as a certified capital company may apply for~~
19 ~~certification as a certified capital company for participation~~
20 ~~in this additional allocation. The insurance premium tax~~
21 ~~credit authorized by Program Two may not be used by certified~~
22 ~~investors until the annual return due March 1, 2004, and may~~
23 ~~be used on all subsequent returns and estimated payments;~~
24 ~~however, notwithstanding the provisions of s. 624.5092(2)(b),~~
25 ~~the installments of taxes due and payable on April 15, 2004,~~
26 ~~and June 15, 2004, shall be based on the net tax due in 2003~~
27 ~~not taking into account credits granted pursuant to this~~
28 ~~section for Program Two.~~

29 Section 2. This act shall take effect upon becoming a
30 law.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1024

The committee substitute removes all reference to CAPCO Program Two, thus immediately repealing the program, which has not been funded or implemented. It provides for the future repeal of CAPCO Program One by repealing the Certified Capital Company Act in 2010.