

By Senator Miller

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A bill to be entitled

An act relating to certified capital companies;
amending s. 288.99, F.S.; expanding the types
of investment that such companies may make to
include certain low-income communities;
defining the term "qualified investing entity";
providing guidelines for investments made by
such an entity; revising certain investment
requirements; providing an effective date.

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

Section 1. Paragraphs (f), (j), (m), (n), and (o) of
subsection (3), Paragraph (a) of subsection (9), and
paragraphs (a), (b), and (f) of subsection (10) of section
288.99, Florida Statutes, are amended to read:

288.99 Certified Capital Company Act.--

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

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

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

2. Less than 2 years old and has, together with its
affiliates, less than \$3 million in annual revenues for the
fiscal year immediately preceding the initial investment by
the certified capital company or qualified investing entity on
a consolidated basis, as determined in accordance with
generally accepted accounting principles;

1 3. The Florida Black Business Investment Board;

2 4. Any entity that is majority owned by the Florida
3 Black Business Investment Board; or

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

7 (j) "Qualified business" means the Digital Divide
8 Trust Fund established under the State of Florida Technology
9 Office or a business that meets the following conditions as
10 evidenced by documentation required by commission rule:

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

14 2. At the time a certified capital company or
15 qualified investing entity makes an initial investment in a
16 business, the business would qualify for investment under 13
17 C.F.R. s. 121.301(c), which is involved in manufacturing,
18 processing or assembling products, conducting research and
19 development, or providing services.

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

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

29 b. The business plan for the business projects that
30 the business is reasonably expected to achieve in excess of
31 \$25 million in sales revenue within 5 years after the initial

1 investment, or the business is located in a designated Front
2 Porch community, enterprise zone, urban high crime area, rural
3 job tax credit county, ~~or~~ nationally recognized historic
4 district, or low-income community as defined under the federal
5 New Markets Tax Credit Program;

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

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

21 4. The term does not include:

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

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

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

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

6 (m) "Qualified investing entity" means any
7 partnership, corporation, trust, or limited liability company
8 that:

9 1. Is registered to do business in this state;

10 2. Is a wholly owned subsidiary of a certified capital
11 company or otherwise affiliated with and under common control
12 of a certified capital company; and

13 3. Has been designated as a qualified investing entity
14 by the certified capital company.

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16 The designation is effective upon delivery of written notice
17 of the designation to the Department of Banking and Finance or
18 the office. A qualified investing entity may raise debt or
19 equity capital for investment, but such capital shall not be
20 considered certified capital. Any qualified investment made by
21 a qualified investing entity after July 1, 2005, shall be
22 deemed to have been made by the certified capital company that
23 designated the qualified investing entity as such. However, a
24 qualified investment may not be deemed to have been made by
25 more than one certified capital company.

26 (n)~~(m)~~1. "Qualified investment" means the investment
27 of cash by a certified capital company or a qualified
28 investing entity in a qualified business for the purchase of
29 any debt, equity, or hybrid security, including a debt
30 instrument or security that has the characteristics of debt
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1 but which provides for conversion into equity or equity
2 participation instruments such as options or warrants.

3 2. The term does not include:

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

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

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

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

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

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1 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
2 PARTICIPATION.--

3 (a) A certified capital company may make qualified
4 distributions at any time. In order to make a distribution to
5 its equity holders, other than a qualified distribution from
6 funds related to a particular program, a certified capital
7 company must have made cumulative qualified investments,
8 including those made through a qualified investing entity, in
9 ~~invested~~ an amount cumulatively equal to at least 100 percent
10 of its certified capital raised under such program in
11 qualified investments. Payments to debt holders of a certified
12 capital company, however, may be made without restriction with
13 respect to repayments of principal and interest on
14 indebtedness owed to them by a certified capital company,
15 including indebtedness of the certified capital company on
16 which certified investors earned premium tax credits. A debt
17 holder that is also a certified investor or equity holder of a
18 certified capital company may receive payments with respect to
19 such debt without restrictions.

20 (10) DECERTIFICATION.--

21 (a) The office shall conduct an annual review of each
22 certified capital company to determine if the certified
23 capital company is abiding by the requirements of
24 certification, to advise the certified capital company as to
25 the eligibility status of its qualified investments and any
26 qualified investments made by a qualified investing entity
27 which are deemed to have been made by the certified capital
28 company, and to ensure that no investment has been made in
29 violation of this act. The cost of the annual review shall be
30 paid by each certified capital company.

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1 (b) Nothing contained in this subsection shall be
2 construed to limit the Chief Financial Officer's or the
3 office's authority to conduct audits of certified capital
4 companies and qualified investing entities as deemed
5 appropriate and necessary.

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

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

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

1 | however, all premium tax credits earned under such program
2 | that have been or will be taken by certified investors after
3 | the third anniversary of the certification date of the
4 | certified capital company for such program shall be subject to
5 | recapture or forfeiture.

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

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

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

4 5. If a certified capital company has invested an
5 amount cumulatively equal to 100 percent of its certified
6 capital raised under a particular program in qualified
7 investments, including qualified investments made by a
8 qualified investing entity which are deemed to have been made
9 by the certified capital company, all premium tax credits
10 claimed or to be claimed by its certified investors under such
11 program shall not be subject to recapture or forfeiture.

12 Section 2. This act shall take effect July 1, 2005.

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SENATE SUMMARY

Revises provisions related to certified capital companies. (See bill for details.)