

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Kottkamp offered the following:

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3 **Amendment (with title amendment)**

4 Remove lines 661 through 1105, and insert:

5

6 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
7 PARTICIPATION.--

8 (a) A certified capital company may make qualified
9 distributions at any time. In order to make a distribution to
10 its equity holders, other than a qualified distribution ~~from~~
11 ~~funds related to a particular program~~, a certified capital
12 company must have invested an amount cumulatively equal to 100
13 percent of its certified capital ~~raised under such program~~ in
14 qualified investments. Payments to debt holders of a certified
15 capital company, however, may be made without restriction with

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16 respect to repayments of principal and interest on indebtedness
17 owed to them by a certified capital company, including
18 indebtedness of the certified capital company on which certified
19 investors earned premium tax credits. A debt holder that is also
20 a certified investor or equity holder of a certified capital
21 company may receive payments with respect to such debt without
22 restrictions.

23 (b) Cumulative distributions from a certified capital
24 company ~~from funds related to a particular program~~ to its
25 certified investors and equity holders ~~under such program~~, other
26 than qualified distributions, in excess of the certified capital
27 company's original certified capital ~~raised under such program~~
28 and any additional capital contributions to the certified
29 capital company ~~with respect to such program~~ may be audited by a
30 nationally recognized certified public accounting firm
31 acceptable to the office, at the expense of the certified
32 capital company, if the office directs such audit be conducted.
33 The audit shall determine whether aggregate cumulative
34 distributions from the ~~funds related to a particular program~~
35 ~~made by the~~ certified capital company to all certified investors
36 and equity holders ~~under such program~~, other than qualified
37 distributions, have equaled the sum of the certified capital
38 company's original certified capital ~~raised under such program~~
39 and any additional capital contributions to the certified
40 capital company ~~with respect to such program~~. If at the time of
41 any such distribution made by the certified capital company,
42 such distribution taken together with all other such

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43 | distributions ~~from the funds related to such program~~ made by the
44 | certified capital company, other than qualified distributions,
45 | exceeds in the aggregate the sum of the certified capital
46 | company's original certified capital ~~raised under such program~~
47 | and any additional capital contributions to the certified
48 | capital company ~~with respect to such program~~, as determined by
49 | the audit, the certified capital company shall pay to the
50 | Department of Revenue 10 percent of the portion of such
51 | distribution in excess of such amount. Payments to the
52 | Department of Revenue by a certified capital company pursuant to
53 | this paragraph shall not exceed the aggregate amount of tax
54 | credits used by all certified investors in such certified
55 | capital company ~~for such program~~.

56 | (10) DECERTIFICATION.--

57 | (a) The office shall conduct an annual review of each
58 | certified capital company to determine if the certified capital
59 | company is abiding by the requirements of certification, to
60 | advise the certified capital company as to the eligibility
61 | status of its qualified investments, and to ensure that no
62 | investment has been made in violation of this act. The cost of
63 | the annual review shall be paid by each certified capital
64 | company.

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

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69 (c) Any material violation of this section, or a finding
70 that the certified capital company or any principal or director
71 thereof has committed any act specified in paragraph (4)(d),
72 shall be grounds for decertification of the certified capital
73 company. If the office determines that a certified capital
74 company is no longer in compliance with the certification
75 requirements of this act, the office shall, by written notice,
76 inform the officers of such company that the company may be
77 subject to decertification 90 days after the date of mailing of
78 the notice, unless the deficiencies are corrected and such
79 company is again found to be in compliance with all
80 certification requirements.

81 (d) At the end of the 90-day grace period, if the
82 certified capital company is still not in compliance with the
83 certification requirements, the office may issue a notice to
84 revoke or suspend the certification or to impose an
85 administrative fine. The office shall advise each respondent of
86 the right to an administrative hearing under chapter 120 prior
87 to final action by the office.

88 (e) If the office revokes a certification, such revocation
89 shall also deny, suspend, or revoke the certifications of all
90 affiliates of the certified capital company.

91 (f) Decertification of a certified capital company for
92 failure to meet all requirements for continued certification
93 under paragraph (5)(a) ~~with respect to the certified capital~~
94 ~~raised under a particular program~~ may cause the recapture of
95 premium tax credits previously claimed by such company ~~under~~

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96 ~~such program~~ and the forfeiture of future premium tax credits to
97 be claimed by certified investors ~~under such program~~ with
98 respect to such certified capital company, as follows:

99 1. Decertification of a certified capital company within 3
100 years after its certification date ~~with respect to a particular~~
101 ~~program~~ shall cause the recapture of all premium tax credits
102 ~~earned under such program~~ and previously claimed by such company
103 and the forfeiture of all future premium tax credits ~~earned~~
104 ~~under such program~~ which are to be claimed by certified
105 investors with respect to such company.

106 2. When a certified capital company meets all requirements
107 for continued certification under subparagraph (5)(a)1. ~~with~~
108 ~~respect to certified capital raised under a particular program~~
109 and subsequently fails to meet the requirements for continued
110 certification under the provisions of subparagraph (5)(a)2. ~~with~~
111 ~~respect to certified capital raised under such program~~, those
112 premium tax credits ~~earned under such program~~ which have been or
113 will be taken by certified investors within 3 years after the
114 certification date of the certified capital company ~~with respect~~
115 ~~to such program~~ shall not be subject to recapture or forfeiture;
116 however, all premium tax credits ~~earned under such program~~ that
117 have been or will be taken by certified investors after the
118 third anniversary of the certification date of the certified
119 capital company ~~for such program~~ shall be subject to recapture
120 or forfeiture.

121 3. When a certified capital company meets all requirements
122 for continued certification under subparagraphs (5)(a)1. and 2.

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123 ~~with respect to a particular program~~ and subsequently fails to
124 meet the requirements for continued certification under
125 subparagraph (5)(a)3. ~~with respect to such program~~, those
126 premium tax credits ~~earned under such program~~ which have been or
127 will be taken by certified investors within 4 years after the
128 certification date of the certified capital company ~~with respect~~
129 ~~to such program~~ shall not be subject to recapture or forfeiture;
130 however, all premium tax credits ~~earned under such program~~ that
131 have been or will be taken by certified investors after the
132 fourth anniversary of the certification date of the certified
133 capital company ~~with respect to such program~~ shall be subject to
134 recapture and forfeiture.

135 4. If a certified capital company has met all requirements
136 for continued certification under paragraph (5)(a) ~~with respect~~
137 ~~to certified capital raised under a particular program~~, but such
138 company is subsequently decertified, those premium tax credits
139 ~~earned under such program~~ which have been or will be taken by
140 certified investors within 5 years after the certification date
141 of such company ~~with respect to such program~~ shall not be
142 subject to recapture or forfeiture. Those premium tax credits
143 ~~earned under such program~~ to be taken subsequent to the 5th year
144 of certification ~~with respect to such program~~ shall be subject
145 to forfeiture only if the certified capital company is
146 decertified within 5 years after its certification date ~~with~~
147 ~~respect to such program~~.

148 5. If a certified capital company has invested an amount
149 cumulatively equal to 100 percent of its certified capital

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150 ~~raised under a particular program~~ in qualified investments, all
151 premium tax credits claimed or to be claimed by its certified
152 investors ~~under such program~~ shall not be subject to recapture
153 or forfeiture.

154 (g) Decertification of a certified capital company
155 pursuant to subsection (4) or this subsection does not affect
156 the ability of certified investors in such certified capital
157 company to continue to claim future premium tax credits earned
158 as an investment in the certified capital company during the
159 period in which it was duly certified.

160 (h) The Office of Tourism, Trade, and Economic Development
161 shall send written notice to the address of each certified
162 investor whose premium tax credit has been subject to recapture
163 or forfeiture, using the address last shown on the last premium
164 tax filing.

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

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

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

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

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

179
180 In either case, the amount of any proposed assessment set forth
181 in such notice shall be limited to the amount of any deficiency
182 resulting under this act from the recomputation of the certified
183 investor's insurance premium tax and, if applicable, its
184 retaliatory tax for the taxable year giving effect only to the
185 item or items reflected in the decertification adjustment.

186 (1) Any certified investor who fails to report and timely
187 pay any tax due as a result of the forfeiture of its insurance
188 premium tax credit is in violation of this subsection and is
189 subject to a penalty of 10 percent of any underpayment or
190 delinquent taxes due and payable.

191 (m) When any taxpayer fails to pay any amount due as a
192 result of the forfeiture of its insurance premium tax credit as
193 provided for in this subsection, on or before the due date as
194 specified in this subsection, interest shall be due on any
195 insurance premium or retaliatory tax deficiency resulting from
196 such forfeiture, at the rate of 12 percent per year from the due
197 date of such amended return until paid.

198 (11) TRANSFERABILITY.--The premium tax credit established
199 pursuant to this act may be transferred or sold. The Department
200 of Revenue shall adopt rules to facilitate the transfer or sale
201 of such premium tax credits. A transfer or sale shall not affect
202 the time schedule for taking the premium tax credit as provided
203 in this act. Any premium tax credits recaptured shall be the

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204 liability of the taxpayer who actually claimed the premium tax
205 credits. The claim of a transferee of a certified investor's
206 unused premium tax credit shall be permitted in the same manner
207 and subject to the same provisions and limitations of this act
208 as the original certified investor.

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

213 (a) The total dollar amount each certified capital company
214 received from all certified investors and any other investor,
215 the identity of the certified investors, and the total amount of
216 premium tax credit used by each certified investor for the
217 previous calendar year.

218 (b) The total dollar amount invested by each certified
219 capital company and that portion invested in qualified
220 businesses, the identity and location of those businesses, the
221 amount invested in each qualified business, and the total number
222 of permanent, full-time jobs created or retained by each
223 qualified business.

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

226 1. Certified capital company investments have contributed
227 to employment growth.

228 2. The wage level of businesses in which certified capital
229 companies have invested exceed the average wage for the county
230 in which the jobs are located.

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231 3. The investments of the certified capital companies in
232 qualified businesses have contributed to expanding or
233 diversifying the economic base of the state.

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

237 (14) RULEMAKING AUTHORITY.--

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

242 (b) The commission and the Office of Tourism, Trade, and
243 Economic Development may adopt any rules necessary to carry out
244 their respective duties, obligations, and powers related to the
245 administration, review, and reporting provisions of this section
246 and may perform any other acts necessary for the proper
247 administration and enforcement of such duties, obligations, and
248 powers.

249 (15)(a) PUBLIC RECORDS EXEMPTION; CONFIDENTIALITY OF
250 INVESTIGATION AND REVIEW INFORMATION.--Except as otherwise
251 provided by this section, ~~any~~ information relating to an
252 investigation or office review of a certified capital company,
253 ~~including any consumer complaint,~~ is confidential and exempt
254 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
255 State Constitution until the investigation or review is complete
256 or ceases to be active. Such information shall remain
257 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and

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258 s. 24(a), Art. I of the State Constitution after the
259 investigation or review is complete or ceases to be active if
260 the information is submitted to any law enforcement or
261 administrative agency for further investigation, and shall
262 remain confidential and exempt from ~~the provisions of s.~~
263 119.07(1) and s. 24(a), Art. I of the State Constitution until
264 that agency's investigation is complete or ceases to be active.
265 For purposes of this subsection, an investigation or review
266 shall be considered "active" so long as the office, a law
267 enforcement agency, or an administrative agency is proceeding
268 with reasonable dispatch and has a reasonable good faith belief
269 that the investigation may lead to the filing of an
270 administrative, civil, or criminal proceeding. ~~This section~~
271 ~~shall not be construed to prohibit disclosure of information~~
272 ~~which is required by law to be filed with the office and which,~~
273 ~~but for the investigation, would otherwise be subject to s.~~
274 ~~119.07(1).~~

275 (b) Except as necessary to enforce the provisions of this
276 chapter, ~~a consumer complaint or~~ information relating to an
277 investigation or review shall remain confidential and exempt
278 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
279 after an investigation or review is complete or ceases to be
280 active to the extent disclosure would:

281 1. Reveal a trade secret as defined in s. 688.002 or s.
282 812.081.

283 2. Jeopardize the integrity of another active
284 investigation or review.

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

286 4. Disclose investigative techniques or procedures.

287 (c) Nothing in this section shall be construed to prohibit
288 the office from providing information to any law enforcement or
289 administrative agency. Any law enforcement or administrative
290 agency receiving such confidential and exempt information in
291 connection with its official duties shall maintain the
292 confidential and exempt status ~~confidentiality~~ of the
293 information so long as it would otherwise be confidential and
294 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
295 Constitution.

296 ~~(d) In the event office personnel are or have been~~
297 ~~involved in an investigation or review of such nature as to~~
298 ~~endanger their lives or physical safety or that of their~~
299 ~~families, the home addresses, telephone numbers, places of~~
300 ~~employment, and photographs of such personnel, together with the~~
301 ~~home addresses, telephone numbers, photographs, and places of~~
302 ~~employment of spouses and children of such personnel and the~~
303 ~~names and locations of schools and day care facilities attended~~
304 ~~by the children of such personnel are confidential and exempt~~
305 ~~from s. 119.07(1).~~

306 ~~(e) All information obtained by the office from any person~~
307 ~~which is only made available to the office on a confidential or~~
308 ~~similarly restricted basis shall be confidential and exempt from~~
309 ~~s. 119.07(1). This exemption shall not be construed to prohibit~~
310 ~~disclosure of information which is specifically required by law~~

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311 ~~to be filed with the office or which is otherwise subject to s.~~
312 ~~119.07(1).~~

313 ~~(f) If information subject to this subsection is offered~~
314 ~~in evidence in any administrative, civil, or criminal~~
315 ~~proceeding, the presiding officer may, in his or her discretion,~~
316 ~~prevent the disclosure of information which would be~~
317 ~~confidential pursuant to paragraph (b).~~

318 (16) CIVIL LIABILITY. ~~--(g)~~ A privilege against civil
319 liability is granted to a person with regard to information or
320 evidence furnished to the office, unless such person acts in bad
321 faith or with malice in providing such information or evidence.

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

323
324
325 ===== T I T L E A M E N D M E N T =====

326 Remove lines 19 through 36, and insert:

327
328 "Program Two"; providing editorial and