

1 A bill to be entitled
 2 An act relating to review under the Open Government Sunset
 3 Review Act; amending s. 288.99, F.S., the "Certified
 4 Capital Company Act"; removing the October 2, 2005, repeal
 5 of information relating to an active investigation or
 6 office review of a certified capital company scheduled
 7 under the Open Government Sunset Review Act; narrowing the
 8 exemption; eliminating the exemption from public records
 9 requirements for social security numbers of any customers
 10 of a certified capital company, complainants, or persons
 11 associated with a certified capital company or qualified
 12 business; eliminating references to specified premium tax
 13 credits under the act designated as "Program One" and
 14 "Program Two"; providing editorial and conforming changes;
 15 providing for the future repeal of the Certified Capital
 16 Company Act; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 288.99, Florida Statutes, is amended to
 21 read:

22 288.99 Certified Capital Company Act.--

23 (1) SHORT TITLE.--This section may be cited as the
 24 "Certified Capital Company Act."

25 (2) PURPOSE.--The primary purpose of this act is to
 26 stimulate a substantial increase in venture capital investments
 27 in this state by providing an incentive for insurance companies
 28 to invest in certified capital companies in this state which, in

29 | turn, will make investments in new businesses or in expanding
 30 | businesses, including minority-owned or minority-operated
 31 | businesses and businesses located in a designated Front Porch
 32 | community, enterprise zone, urban high-crime area, rural job tax
 33 | credit county, or nationally recognized historic district. The
 34 | increase in investment capital flowing into new or expanding
 35 | businesses is intended to contribute to employment growth,
 36 | create jobs which exceed the average wage for the county in
 37 | which the jobs are created, and expand or diversify the economic
 38 | base of this state.

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

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

41 | 1. Any person directly or indirectly beneficially owning,
 42 | whether through rights, options, convertible interests, or
 43 | otherwise, controlling, or holding power to vote 15 percent or
 44 | more of the outstanding voting securities or other voting
 45 | ownership interests of the insurance company;

46 | 2. Any person 15 percent or more of whose outstanding
 47 | voting securities or other voting ownership interest is directly
 48 | or indirectly beneficially owned, whether through rights,
 49 | options, convertible interests, or otherwise, controlled, or
 50 | held with power to vote by the insurance company;

51 | 3. Any person directly or indirectly controlling,
 52 | controlled by, or under common control with the insurance
 53 | company;

54 | 4. A partnership in which the insurance company is a
 55 | general partner; or

56 5. Any person who is a principal, director, employee, or
 57 agent of the insurance company or an immediate family member of
 58 the principal, director, employee, or agent.

59 (b) "Certified capital" means an investment of cash by a
 60 certified investor in a certified capital company which fully
 61 funds the purchase price of either or both its equity interest
 62 in the certified capital company or a qualified debt instrument
 63 issued by the certified capital company.

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

- 66 1. Is certified by the office in accordance with this act.
- 67 2. Receives investments of certified capital from two or
 68 more unaffiliated certified investors.
- 69 3. Makes qualified investments as its primary activity.

70 (d) "Certified investor" means any insurance company
 71 subject to premium tax liability pursuant to s. 624.509 that
 72 invests certified capital.

73 (e) "Commission" means the Financial Services Commission.

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

- 76 1. Involved, at the time of the certified capital
 77 company's initial investment in such business, in activities
 78 related to developing initial product or service offerings, such
 79 as prototype development or the establishment of initial
 80 production or service processes;

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

84 certified capital company on a consolidated basis, as determined
 85 in accordance with generally accepted accounting principles;

86 3. The Florida Black Business Investment Board;

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

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

92 (g) "Office" means the Office of Financial Regulation of
 93 the commission.

94 (h) "Premium tax liability" means any liability incurred
 95 by an insurance company under the provisions of ss. 624.509 and
 96 624.5091.

97 (i) "Principal" means an executive officer of a
 98 corporation, partner of a partnership, manager of a limited
 99 liability company, or any other person with equivalent executive
 100 functions.

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

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

108 2. At the time a certified capital company makes an
 109 initial investment in a business, the business would qualify for
 110 investment under 13 C.F.R. s. 121.301(c), which is involved in

111 manufacturing, processing or assembling products, conducting
112 research and development, or providing services.

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

116 a. The business is unable to obtain conventional
117 financing, which means that the business has failed in an
118 attempt to obtain funding for a loan from a bank or other
119 commercial lender or that the business cannot reasonably be
120 expected to qualify for such financing under the standards of
121 commercial lending;

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

129 c. The business will maintain its headquarters in this
130 state for the next 10 years and any new manufacturing facility
131 financed by a qualified investment will remain in this state for
132 the next 10 years, or the business is located in a designated
133 Front Porch community, enterprise zone, urban high crime area,
134 rural job tax credit county, or nationally recognized historic
135 district; and

136 d. The business has fewer than 200 employees and at least
137 75 percent of the employees are employed in this state. For
138 purposes of this subsection, the term also includes the Florida

139 Black Business Investment Board, any entity majority owned by
140 the Florida Black Business Investment Board, or any entity in
141 which the Florida Black Business Investment Board holds a
142 majority voting interest on the board of directors.

143 4. The term does not include:

144 a. Any business predominantly engaged in retail sales,
145 real estate development, insurance, banking, lending, or oil and
146 gas exploration.

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

149 c. Any company that has no historical revenues and either
150 has no specific business plan or purpose or has indicated that
151 its business plan is solely to engage in a merger or acquisition
152 with any unidentified company or other entity.

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

158 (k) "Qualified debt instrument" means a debt instrument,
159 or a hybrid of a debt instrument, issued by a certified capital
160 company, at par value or a premium, with an original maturity
161 date of at least 5 years after the date of issuance, a repayment
162 schedule which is no faster than a level principal amortization
163 over a 5-year period, and interest, distribution, or payment
164 features which are not related to the profitability of the
165 certified capital company or the performance of the certified
166 capital company's investment portfolio.

167 (1) "Qualified distribution" means any distribution or
168 payment by a certified capital company for:

169 1. Reasonable costs and expenses, including, but not
170 limited to, professional fees, of forming and syndicating the
171 certified capital company, if no such costs or expenses are paid
172 to a certified investor, except as provided in subparagraph
173 (4)(f)2., and the total cash, cash equivalents, and other
174 current assets permitted by sub-subparagraph (5)(b)3.g. that can
175 be converted into cash within 5 business days available to the
176 certified capital company at the time of receipt of certified
177 capital from certified investors, after deducting the costs and
178 expenses of forming and syndicating the certified capital
179 company, including any payments made over time for obligations
180 incurred at the time of receipt of certified capital but
181 excluding other future qualified distributions and payments made
182 under paragraph (9)(a), are an amount equal to or greater than
183 50 percent of the total certified capital allocated to the
184 certified capital pursuant to subsection (7);

185 2. Reasonable costs of managing and operating the
186 certified capital company, not exceeding 5 percent of the
187 certified capital in any single year, including an annual
188 management fee in an amount that does not exceed 2.5 percent of
189 the certified capital of the certified capital company;

190 3. Reasonable and necessary fees in accordance with
191 industry custom for professional services, including, but not
192 limited to, legal and accounting services, related to the
193 operation of the certified capital company; or

194 4. Any projected increase in federal or state taxes,
195 including penalties and interest related to state and federal
196 income taxes, of the equity owners of a certified capital
197 company resulting from the earnings or other tax liability of
198 the certified capital company to the extent that the increase is
199 related to the ownership, management, or operation of a
200 certified capital company.

201 (m)1. "Qualified investment" means the investment of cash
202 by a certified capital company in a qualified business for the
203 purchase of any debt, equity, or hybrid security, including a
204 debt instrument or security that has the characteristics of debt
205 but which provides for conversion into equity or equity
206 participation instruments such as options or warrants.

207 2. The term does not include:

208 a. Any investment made after the effective date of this
209 act the contractual terms of which require the repayment of any
210 portion of the principal in instances, other than default as
211 determined by commission rule, within 12 months following the
212 initial investment by the certified capital company unless such
213 investment has a repayment schedule no faster than a level
214 principal amortization of at least 2 years;

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

220 c. Any investment in a qualified business or affiliate of
 221 a qualified business that exceeds 15 percent of certified
 222 capital.

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

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

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

233 (a) To operate as a certified capital company, a
 234 corporation, partnership, or limited liability company must be
 235 certified by the Department of Banking and Finance or the office
 236 pursuant to this act.

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

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

247 2. The applicant's form and place of organization and the
248 relevant organizational documents, bylaws, and amendments or
249 restatements of such documents, bylaws, or amendments.

250 3. Evidence from the Department of State that the
251 applicant is registered with the Department of State as required
252 by law, maintains an active status with the Department of State,
253 and has not been dissolved or had its registration revoked,
254 canceled, or withdrawn.

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

256 5. The applicant's financial condition and history,
257 including an audit report on the financial statements prepared
258 in accordance with generally accepted accounting principles. The
259 applicant must have, at the time of application for
260 certification, an equity capitalization of at least \$500,000 in
261 the form of cash or cash equivalents. The applicant must
262 maintain this equity capitalization until the applicant receives
263 an allocation of certified capital pursuant to this act. If the
264 date of the application is more than 90 days after preparation
265 of the applicant's fiscal year-end financial statements, the
266 applicant may file financial statements reviewed by an
267 independent certified public accountant for the period
268 subsequent to the audit report, together with the audited
269 financial statement for the most recent fiscal year. If the
270 applicant has been in business less than 12 months, and has not
271 prepared an audited financial statement, the applicant may file
272 a financial statement reviewed by an independent certified
273 public accountant.

274 6. Copies of any offering materials used or proposed to be
275 used by the applicant in soliciting investments of certified
276 capital from certified investors.

277 (c) Within 60 days after receipt of a verified
278 application, the office shall grant or deny certification as a
279 certified capital company. If the office denies certification
280 within the time period specified, the office shall inform the
281 applicant of the grounds for the denial. If the office has not
282 granted or denied certification within the time specified, the
283 application shall be deemed approved. The office shall approve
284 the application if the office finds that:

285 1. The applicant satisfies the requirements of paragraph
286 (b).

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

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

297 4. The applicant's proposed method of doing business and
298 raising certified capital as described in its offering materials
299 and other materials submitted to the office conforms with the
300 requirements of this section.

301 (d) The office may deny certification or decertify a
302 certified capital company if the grounds for decertification are
303 not removed or corrected within 90 days after the notice of such
304 grounds is received by the certified capital company. The office
305 may deny certification or decertify a certified capital company
306 if the certified capital company fails to maintain common stock
307 or paid-in capital of at least \$500,000, or if the office
308 determines that the applicant, or any principal or director of
309 the certified capital company, has:

- 310 1. Violated any provision of this section;
- 311 2. Made a material misrepresentation or false statement or
312 concealed any essential or material fact from any person during
313 the application process or with respect to information and
314 reports required of certified capital companies under this
315 section;
- 316 3. Been convicted of, or entered a plea of guilty or nolo
317 contendere to, a crime against the laws of this state or any
318 other state or of the United States or any other country or
319 government, including a fraudulent act in connection with the
320 operation of a certified capital company, or in connection with
321 the performance of fiduciary duties in another capacity;
- 322 4. Been adjudicated liable in a civil action on grounds of
323 fraud, embezzlement, misrepresentation, or deceit; or
- 324 5.a. Been the subject of any decision, finding,
325 injunction, suspension, prohibition, revocation, denial,
326 judgment, or administrative order by any court of competent
327 jurisdiction, administrative law judge, or any state or federal
328 agency, national securities, commodities, or option exchange, or

329 national securities, commodities, or option association,
 330 involving a material violation of any federal or state
 331 securities or commodities law or any rule or regulation adopted
 332 under such law, or any rule or regulation of any national
 333 securities, commodities, or options exchange, or national
 334 securities, commodities, or options association; or

335 b. Been the subject of any injunction or adverse
 336 administrative order by a state or federal agency regulating
 337 banking, insurance, finance or small loan companies, real
 338 estate, mortgage brokers, or other related or similar
 339 industries.

340 (e) Any offering material involving the sale of securities
 341 of the certified capital company shall include the following
 342 statement: "By authorizing the formation of a certified capital
 343 company, the State of Florida does not endorse the quality of
 344 management or the potential for earnings of such company and is
 345 not liable for damages or losses to a certified investor in the
 346 company. Use of the word 'certified' in an offering does not
 347 constitute a recommendation or endorsement of the investment by
 348 the State of Florida. Investments in a certified capital company
 349 prior to the time such company is certified are not eligible for
 350 premium tax credits. If applicable provisions of law are
 351 violated, the state may require forfeiture of unused premium tax
 352 credits and repayment of used premium tax credits by the
 353 certified investor."

354 (f)1. No insurance company or any affiliate of an
 355 insurance company shall, directly or indirectly, own, whether
 356 through rights, options, convertible interests, or otherwise, 15

357 | percent or more of the voting equity interests of or manage or
 358 | control the direction of investments of a certified capital
 359 | company. This prohibition does not preclude a certified
 360 | investor, insurance company, or any other party from exercising
 361 | its legal rights and remedies, which may include interim
 362 | management of a certified capital company, if a certified
 363 | capital company is in default of its obligations under law or
 364 | its contractual obligations to such certified investor,
 365 | insurance company, or other party. Nothing in this subparagraph
 366 | shall limit an insurance company's ownership of nonvoting equity
 367 | interests in a certified capital company.

368 | 2. A certified capital company may obtain a guaranty,
 369 | indemnity, bond, insurance policy or other payment undertaking
 370 | in favor of all of the certified investors of the certified
 371 | capital company and its affiliates; provided that the entity
 372 | from which such guaranty, indemnity, bond, insurance policy or
 373 | other payment undertaking is obtained may not be a certified
 374 | investor of, or be affiliated with more than one certified
 375 | investor of, the certified capital company.

376 | (g) On or before December 31 of each year, each certified
 377 | capital company shall pay to the office an annual, nonrefundable
 378 | renewal certification fee of \$5,000. If a certified capital
 379 | company fails to pay its renewal fee by the specified deadline,
 380 | the company must pay a late fee of \$5,000 in addition to the
 381 | renewal fee on or by January 31 of each year in order to
 382 | continue its certification ~~in the program~~. On or before April 30
 383 | of each year, each certified capital company shall file audited
 384 | financial statements with the office. No renewal fees shall be

385 required within 6 months after the date of initial
 386 certification.

387 (h) The commission and office shall administer and provide
 388 for the enforcement of certification requirements for certified
 389 capital companies as provided in this act. The commission may
 390 adopt any rules necessary to carry out its duties, obligations,
 391 and powers related to certification, renewal of certification,
 392 or decertification of certified capital companies and the
 393 commission and office may perform any other acts necessary for
 394 the proper administration and enforcement of such duties,
 395 obligations, and powers.

396 (i) Decertification of a certified capital company under
 397 this subsection does not affect the ability of certified
 398 investors in such certified capital company from claiming future
 399 premium tax credits earned as a result of an investment in the
 400 certified capital company during the period in which it was duly
 401 certified.

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

403 (a) To remain certified, a certified capital company must
 404 make qualified investments according to the following schedule:

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

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

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

411 4. At least 50 percent of its certified capital must be
 412 invested in qualified investments by December 31, 2003. At least

413 50 percent of such qualified investments must be invested in
 414 early stage technology businesses.

415 (b) All capital not invested in qualified investments by
 416 the certified capital company:

417 1. Must be held in a financial institution as defined by
 418 s. 655.005(1)(h) or held by a broker-dealer registered under s.
 419 517.12, except as set forth in sub-subparagraph 3.g.

420 2. Must not be invested in a certified investor of the
 421 certified capital company or any affiliate of the certified
 422 investor of the certified capital company, except for an
 423 investment permitted by sub-subparagraph 3.g., provided
 424 repayment terms do not permit the obligor to directly or
 425 indirectly manage or control the investment decisions of the
 426 certified capital company.

427 3. Must be invested only in:

428 a. Any United States Treasury obligations;

429 b. Certificates of deposit or other obligations, maturing
 430 within 3 years after acquisition of such certificates or
 431 obligations, issued by any financial institution or trust
 432 company incorporated under the laws of the United States;

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

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

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

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

448 g. Obligations that are issued by an insurance company
 449 that is not a certified investor of the certified capital
 450 company making the investment, that has provided a guarantee
 451 indemnity bond, insurance policy, or other payment undertaking
 452 in favor of the certified capital company's certified investors
 453 as permitted by subparagraph (3)(1)1. or an affiliate of such
 454 insurance company as defined by subparagraph (3)(a)3. that is
 455 not a certified investor of the certified capital company making
 456 the investment, provided that such obligations are:

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

461 (II) Not subordinated to other unsecured indebtedness of
 462 the issuer or the guarantor.

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

465 (IV) Readily convertible into cash within 5 business days
 466 for the purpose of making a qualified investment unless such
 467 obligations are held to provide a guarantee, indemnity bond,

468 insurance policy, or other payment undertaking in favor of the
 469 certified capital company's certified investors as permitted by
 470 subparagraph (3)(1)1.

471 (c) The aggregate amount of all qualified investments made
 472 by the certified capital company from the date of its
 473 certification shall be considered in the calculation of the
 474 percentage requirements under paragraph (a).

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

476 (a) Any certified investor who makes an investment of
 477 certified capital shall earn a vested credit against premium tax
 478 liability equal to 100 percent of the certified capital invested
 479 by the certified investor. Certified investors shall be entitled
 480 to use no more than 10 percentage points of the vested premium
 481 tax credit ~~earned under a particular program~~, including any
 482 carryforward credits ~~from such program~~ under this act, per year
 483 beginning with premium tax filings for calendar year 2000 ~~for~~
 484 ~~credits earned under Program One~~. Any premium tax credits not
 485 used by certified investors in any single year may be carried
 486 forward and applied against the premium tax liabilities of such
 487 investors for subsequent calendar years.

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

491 (c) A certified investor claiming a credit against premium
 492 tax liability earned through an investment in a certified
 493 capital company shall not be required to pay any additional
 494 retaliatory tax levied pursuant to s. 624.5091 as a result of
 495 claiming such credit. Because credits under this section are

496 available to a certified investor, s. 624.5091 does not limit
 497 such credit in any manner.

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

501 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
 502 PROCESS.--

503 (a) The total amount of tax credits which may be allocated
 504 by the Office of Tourism, Trade, and Economic Development shall
 505 not exceed \$150 million ~~with respect to Program One and \$150~~
 506 ~~million with respect to Program Two~~. The total amount of tax
 507 credits which may be used by certified investors under this act
 508 shall not exceed \$15 million annually ~~with respect to credits~~
 509 ~~earned under Program One and \$15 million annually with respect~~
 510 ~~to credits earned under Program Two~~.

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

514 (c) Each certified capital company must apply to the
 515 Office of Tourism, Trade, and Economic Development for an
 516 allocation of premium tax credits for potential certified
 517 investors on a form developed by the Office of Tourism, Trade,
 518 and Economic Development with the cooperation of the Department
 519 of Revenue. The form shall be accompanied by an affidavit from
 520 each potential certified investor confirming that the potential
 521 certified investor has agreed to make an investment of certified
 522 capital in a certified capital company up to a specified amount,
 523 subject only to the receipt of a premium tax credit allocation

524 pursuant to this subsection. No certified capital company shall
 525 submit premium tax allocation claims on behalf of certified
 526 investors that in the aggregate would exceed the total dollar
 527 amount appropriated by the Legislature ~~for the specific program~~.
 528 No allocation shall be made to the potential investors of a
 529 certified capital company ~~under Program Two~~ unless such
 530 certified capital company has filed premium tax allocation
 531 claims of not less than \$15 million in the aggregate.

532 (d) The Office of Tourism, Trade, and Economic Development
 533 shall inform each certified capital company of its share of
 534 total premium tax credits available for allocation to each of
 535 its potential investors.

536 (e) If a certified capital company does not receive
 537 certified capital equaling the amount of premium tax credits
 538 allocated to a potential certified investor for which the
 539 investor filed a premium tax allocation claim within 10 business
 540 days after the investor received a notice of allocation, the
 541 certified capital company shall notify the Office of Tourism,
 542 Trade, and Economic Development by overnight common carrier
 543 delivery service of the company's failure to receive the
 544 capital. That portion of the premium tax credits allocated to
 545 the certified capital company shall be forfeited. If the Office
 546 of Tourism, Trade, and Economic Development must make a pro rata
 547 allocation under paragraph (f), that office shall reallocate
 548 such available credits among the other certified capital
 549 companies on the same pro rata basis as the initial allocation.

550 (f) If the total amount of capital committed by all
 551 certified investors to certified capital companies in premium

552 tax allocation claims ~~under Program Two~~ exceeds the aggregate
 553 cap on the amount of credits that may be awarded ~~under Program~~
 554 ~~Two~~, the premium tax credits that may be allowed to any one
 555 certified investor ~~under Program Two~~ shall be allocated using
 556 the following ratio:

557
 558 $A/B = X / > \$150,000,000$
 559

560 where the letter "A" represents the total amount of certified
 561 capital certified investors have agreed to invest in any one
 562 certified capital company ~~under Program Two~~, the letter "B"
 563 represents the aggregate amount of certified capital that all
 564 certified investors have agreed to invest in all certified
 565 capital companies ~~under Program Two~~, the letter "X" is the
 566 numerator and represents the total amount of premium tax credits
 567 and certified capital that may be allocated to a certified
 568 capital company ~~on a date determined by rule adopted by the~~
 569 ~~commission pursuant to subsection (17)~~, and \$150 million is the
 570 denominator and represents the total amount of premium tax
 571 credits and certified capital that may be allocated to all
 572 certified investors ~~under Program Two~~. Any such premium tax
 573 credits are not first available for utilization until annual
 574 filings are made in 2001 for calendar year 2000 ~~in the case of~~
 575 ~~Program One~~, and the tax credits may be used at a rate not to
 576 exceed 10 percent annually ~~per program~~.

577 (g) The maximum amount of certified capital for which
 578 premium tax allocation claims may be filed on behalf of any
 579 certified investor and its affiliates by one or more certified

580 capital companies may not exceed \$15 million ~~for Program One and~~
 581 ~~\$22.5 million for Program Two.~~

582 (h) To the extent that less than \$150 million in certified
 583 capital is raised in connection with the procedure set forth in
 584 paragraphs (c)-(g), the commission may adopt rules to allow a
 585 subsequent allocation of the remaining premium tax credits
 586 authorized under this section.

587 (i) The Office of Tourism, Trade, and Economic Development
 588 shall issue a certification letter for each certified investor,
 589 showing the amount invested in the certified capital company
 590 ~~under each program.~~ The applicable certified capital company
 591 shall attest to the validity of the certification letter.

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

593 (a) On an annual basis, on or before January 31, each
 594 certified capital company shall file with the office and the
 595 Office of Tourism, Trade, and Economic Development, in
 596 consultation with the office, on a form prescribed by the Office
 597 of Tourism, Trade, and Economic Development, for each calendar
 598 year:

599 1. The total dollar amount the certified capital company
 600 received from certified investors, the identity of the certified
 601 investors, and the amount received from each certified investor
 602 during the immediately preceding calendar year.

603 2. The total dollar amount the certified capital company
 604 invested and the amount invested in qualified businesses,
 605 together with the identity and location of those businesses and
 606 the amount invested in each qualified business during the
 607 immediately preceding calendar year.

608 3. For informational purposes only, the total number of
 609 permanent, full-time jobs either created or retained by the
 610 qualified business during the immediately preceding calendar
 611 year, the average wage of the jobs created or retained, the
 612 industry sectors in which the qualified businesses operate, and
 613 any additional capital invested in qualified businesses from
 614 sources other than certified capital companies.

615 (b) The form shall be verified by one or more principals
 616 of the certified capital company submitting the form.
 617 Verification shall be accomplished as provided in s.
 618 92.525(1)(b) and subject to the provisions of s. 92.525(3).

619 (c) The Office of Tourism, Trade, and Economic Development
 620 shall review the form, and any supplemental documentation,
 621 submitted by each certified capital company for the purpose of
 622 verifying:

623 1. That the businesses in which certified capital has been
 624 invested by the certified capital company are in fact qualified
 625 businesses, and that the amount of certified capital invested by
 626 the certified capital company is as represented in the form.

627 2. The amount of certified capital invested in the
 628 certified capital company by the certified investors.

629 3. The amount of premium tax credit available to certified
 630 investors.

631 (d) The Department of Revenue is authorized to audit and
 632 examine the accounts, books, or records of certified capital
 633 companies and certified investors for the purpose of
 634 ascertaining the correctness of any report and financial return
 635 which has been filed, and to ascertain a certified capital

636 company's compliance with the tax-related provisions of this
 637 act.

638 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
 639 PARTICIPATION.--

640 (a) A certified capital company may make qualified
 641 distributions at any time. In order to make a distribution to
 642 its equity holders, other than a qualified distribution ~~from~~
 643 ~~funds related to a particular program~~, a certified capital
 644 company must have invested an amount cumulatively equal to 100
 645 percent of its certified capital ~~raised under such program~~ in
 646 qualified investments. Payments to debt holders of a certified
 647 capital company, however, may be made without restriction with
 648 respect to repayments of principal and interest on indebtedness
 649 owed to them by a certified capital company, including
 650 indebtedness of the certified capital company on which certified
 651 investors earned premium tax credits. A debt holder that is also
 652 a certified investor or equity holder of a certified capital
 653 company may receive payments with respect to such debt without
 654 restrictions.

655 (b) Cumulative distributions from a certified capital
 656 company ~~from funds related to a particular program~~ to its
 657 certified investors and equity holders ~~under such program~~, other
 658 than qualified distributions, in excess of the certified capital
 659 company's original certified capital ~~raised under such program~~
 660 and any additional capital contributions to the certified
 661 capital company ~~with respect to such program~~ may be audited by a
 662 nationally recognized certified public accounting firm
 663 acceptable to the office, at the expense of the certified

664 capital company, if the office directs such audit be conducted.
665 The audit shall determine whether aggregate cumulative
666 distributions from the ~~funds related to a particular program~~
667 ~~made by the~~ certified capital company to all certified investors
668 and equity holders ~~under such program~~, other than qualified
669 distributions, have equaled the sum of the certified capital
670 company's original certified capital ~~raised under such program~~
671 and any additional capital contributions to the certified
672 capital company ~~with respect to such program~~. If at the time of
673 any such distribution made by the certified capital company,
674 such distribution taken together with all other such
675 distributions ~~from the funds related to such program~~ made by the
676 certified capital company, other than qualified distributions,
677 exceeds in the aggregate the sum of the certified capital
678 company's original certified capital ~~raised under such program~~
679 and any additional capital contributions to the certified
680 capital company ~~with respect to such program~~, as determined by
681 the audit, the certified capital company shall pay to the
682 Department of Revenue 10 percent of the portion of such
683 distribution in excess of such amount. Payments to the
684 Department of Revenue by a certified capital company pursuant to
685 this paragraph shall not exceed the aggregate amount of tax
686 credits used by all certified investors in such certified
687 capital company ~~for such program~~.

688 (10) DECERTIFICATION.--

689 (a) The office shall conduct an annual review of each
690 certified capital company to determine if the certified capital
691 company is abiding by the requirements of certification, to

692 advise the certified capital company as to the eligibility
 693 status of its qualified investments, and to ensure that no
 694 investment has been made in violation of this act. The cost of
 695 the annual review shall be paid by each certified capital
 696 company.

697 (b) Nothing contained in this subsection shall be
 698 construed to limit the Chief Financial Officer's or the office's
 699 authority to conduct audits of certified capital companies as
 700 deemed appropriate and necessary.

701 (c) Any material violation of this section, or a finding
 702 that the certified capital company or any principal or director
 703 thereof has committed any act specified in paragraph (4)(d),
 704 shall be grounds for decertification of the certified capital
 705 company. If the office determines that a certified capital
 706 company is no longer in compliance with the certification
 707 requirements of this act, the office shall, by written notice,
 708 inform the officers of such company that the company may be
 709 subject to decertification 90 days after the date of mailing of
 710 the notice, unless the deficiencies are corrected and such
 711 company is again found to be in compliance with all
 712 certification requirements.

713 (d) At the end of the 90-day grace period, if the
 714 certified capital company is still not in compliance with the
 715 certification requirements, the office may issue a notice to
 716 revoke or suspend the certification or to impose an
 717 administrative fine. The office shall advise each respondent of
 718 the right to an administrative hearing under chapter 120 prior
 719 to final action by the office.

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

723 (f) Decertification of a certified capital company for
724 failure to meet all requirements for continued certification
725 under paragraph (5)(a) ~~with respect to the certified capital~~
726 ~~raised under a particular program~~ may cause the recapture of
727 premium tax credits previously claimed by such company ~~under~~
728 ~~such program~~ and the forfeiture of future premium tax credits to
729 be claimed by certified investors ~~under such program~~ with
730 respect to such certified capital company, as follows:

731 1. Decertification of a certified capital company within 3
732 years after its certification date ~~with respect to a particular~~
733 ~~program~~ shall cause the recapture of all premium tax credits
734 ~~earned under such program~~ and previously claimed by such company
735 and the forfeiture of all future premium tax credits ~~earned~~
736 ~~under such program which are~~ to be claimed by certified
737 investors with respect to such company.

738 2. When a certified capital company meets all requirements
739 for continued certification under subparagraph (5)(a)1. ~~with~~
740 ~~respect to certified capital raised under a particular program~~
741 and subsequently fails to meet the requirements for continued
742 certification under the provisions of subparagraph (5)(a)2. ~~with~~
743 ~~respect to certified capital raised under such program~~, those
744 premium tax credits ~~earned under such program~~ which have been or
745 will be taken by certified investors within 3 years after the
746 certification date of the certified capital company ~~with respect~~
747 ~~to such program~~ shall not be subject to recapture or forfeiture;

748 however, all premium tax credits ~~earned under such program~~ that
749 have been or will be taken by certified investors after the
750 third anniversary of the certification date of the certified
751 capital company ~~for such program~~ shall be subject to recapture
752 or forfeiture.

753 3. When a certified capital company meets all requirements
754 for continued certification under subparagraphs (5)(a)1. and 2.
755 ~~with respect to a particular program~~ and subsequently fails to
756 meet the requirements for continued certification under
757 subparagraph (5)(a)3. ~~with respect to such program~~, those
758 premium tax credits ~~earned under such program~~ which have been or
759 will be taken by certified investors within 4 years after the
760 certification date of the certified capital company ~~with respect~~
761 ~~to such program~~ shall not be subject to recapture or forfeiture;
762 however, all premium tax credits ~~earned under such program~~ that
763 have been or will be taken by certified investors after the
764 fourth anniversary of the certification date of the certified
765 capital company ~~with respect to such program~~ shall be subject to
766 recapture and forfeiture.

767 4. If a certified capital company has met all requirements
768 for continued certification under paragraph (5)(a) ~~with respect~~
769 ~~to certified capital raised under a particular program~~, but such
770 company is subsequently decertified, those premium tax credits
771 ~~earned under such program~~ which have been or will be taken by
772 certified investors within 5 years after the certification date
773 of such company ~~with respect to such program~~ shall not be
774 subject to recapture or forfeiture. Those premium tax credits
775 ~~earned under such program~~ to be taken subsequent to the 5th year

776 of certification ~~with respect to such program~~ shall be subject
 777 to forfeiture only if the certified capital company is
 778 decertified within 5 years after its certification date ~~with~~
 779 ~~respect to such program~~.

780 5. If a certified capital company has invested an amount
 781 cumulatively equal to 100 percent of its certified capital
 782 ~~raised under a particular program~~ in qualified investments, all
 783 premium tax credits claimed or to be claimed by its certified
 784 investors ~~under such program~~ shall not be subject to recapture
 785 or forfeiture.

786 (g) Decertification of a certified capital company
 787 pursuant to subsection (4) or this subsection does not affect
 788 the ability of certified investors in such certified capital
 789 company to continue to claim future premium tax credits earned
 790 as an investment in the certified capital company during the
 791 period in which it was duly certified.

792 (h) The Office of Tourism, Trade, and Economic Development
 793 shall send written notice to the address of each certified
 794 investor whose premium tax credit has been subject to recapture
 795 or forfeiture, using the address last shown on the last premium
 796 tax filing.

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

801 (j) The certified investor shall file with the Department
 802 of Revenue an amended return or such other report as the
 803 commission may prescribe by rule and pay any required tax, not

804 later than 60 days after such decertification has been agreed to
 805 or finally determined, whichever shall first occur.

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

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

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

811
 812 In either case, the amount of any proposed assessment set forth
 813 in such notice shall be limited to the amount of any deficiency
 814 resulting under this act from the recomputation of the certified
 815 investor's insurance premium tax and, if applicable, its
 816 retaliatory tax for the taxable year giving effect only to the
 817 item or items reflected in the decertification adjustment.

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

823 (m) When any taxpayer fails to pay any amount due as a
 824 result of the forfeiture of its insurance premium tax credit as
 825 provided for in this subsection, on or before the due date as
 826 specified in this subsection, interest shall be due on any
 827 insurance premium or retaliatory tax deficiency resulting from
 828 such forfeiture, at the rate of 12 percent per year from the due
 829 date of such amended return until paid.

830 (11) TRANSFERABILITY.--The premium tax credit established
 831 pursuant to this act may be transferred or sold. The Department

832 of Revenue shall adopt rules to facilitate the transfer or sale
833 of such premium tax credits. A transfer or sale shall not affect
834 the time schedule for taking the premium tax credit as provided
835 in this act. Any premium tax credits recaptured shall be the
836 liability of the taxpayer who actually claimed the premium tax
837 credits. The claim of a transferee of a certified investor's
838 unused premium tax credit shall be permitted in the same manner
839 and subject to the same provisions and limitations of this act
840 as the original certified investor.

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

845 (a) The total dollar amount each certified capital company
846 received from all certified investors and any other investor,
847 the identity of the certified investors, and the total amount of
848 premium tax credit used by each certified investor for the
849 previous calendar year.

850 (b) The total dollar amount invested by each certified
851 capital company and that portion invested in qualified
852 businesses, the identity and location of those businesses, the
853 amount invested in each qualified business, and the total number
854 of permanent, full-time jobs created or retained by each
855 qualified business.

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

858 1. Certified capital company investments have contributed
859 to employment growth.

860 2. The wage level of businesses in which certified capital
861 companies have invested exceed the average wage for the county
862 in which the jobs are located.

863 3. The investments of the certified capital companies in
864 qualified businesses have contributed to expanding or
865 diversifying the economic base of the state.

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

869 (14) RULEMAKING AUTHORITY.--

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

874 (b) The commission and the Office of Tourism, Trade, and
875 Economic Development may adopt any rules necessary to carry out
876 their respective duties, obligations, and powers related to the
877 administration, review, and reporting provisions of this section
878 and may perform any other acts necessary for the proper
879 administration and enforcement of such duties, obligations, and
880 powers.

881 (15)(a) PUBLIC RECORDS EXEMPTION; CONFIDENTIALITY OF
882 INVESTIGATION AND REVIEW INFORMATION.--Except as otherwise
883 provided by this section, ~~any~~ information relating to an
884 investigation or office review of a certified capital company,
885 ~~including any consumer complaint,~~ is confidential and exempt
886 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
887 State Constitution until the investigation or review is complete

888 or ceases to be active. Such information shall remain
 889 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
 890 s. 24(a), Art. I of the State Constitution after the
 891 investigation or review is complete or ceases to be active if
 892 the information is submitted to any law enforcement or
 893 administrative agency for further investigation, and shall
 894 remain confidential and exempt from ~~the provisions of~~ s.
 895 119.07(1) and s. 24(a), Art. I of the State Constitution until
 896 that agency's investigation is complete or ceases to be active.
 897 For purposes of this subsection, an investigation or review
 898 shall be considered "active" so long as the office, a law
 899 enforcement agency, or an administrative agency is proceeding
 900 with reasonable dispatch and has a reasonable good faith belief
 901 that the investigation may lead to the filing of an
 902 administrative, civil, or criminal proceeding. ~~This section~~
 903 ~~shall not be construed to prohibit disclosure of information~~
 904 ~~which is required by law to be filed with the office and which,~~
 905 ~~but for the investigation, would otherwise be subject to s.~~
 906 ~~119.07(1).~~

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

- 913 1. Reveal a trade secret as defined in s. 688.002 or s.
 914 812.081.

915 2. Jeopardize the integrity of another active
916 investigation or review.

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

918 4. Disclose investigative techniques or procedures.

919 (c) Nothing in this section shall be construed to prohibit
920 the office from providing information to any law enforcement or
921 administrative agency. Any law enforcement or administrative
922 agency receiving such confidential and exempt information in
923 connection with its official duties shall maintain the
924 confidential and exempt status ~~confidentiality~~ of the
925 information so long as it would otherwise be confidential and
926 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
927 Constitution.

928 ~~(d) In the event office personnel are or have been~~
929 ~~involved in an investigation or review of such nature as to~~
930 ~~endanger their lives or physical safety or that of their~~
931 ~~families, the home addresses, telephone numbers, places of~~
932 ~~employment, and photographs of such personnel, together with the~~
933 ~~home addresses, telephone numbers, photographs, and places of~~
934 ~~employment of spouses and children of such personnel and the~~
935 ~~names and locations of schools and day care facilities attended~~
936 ~~by the children of such personnel are confidential and exempt~~
937 ~~from s. 119.07(1).~~

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

943 ~~to be filed with the office or which is otherwise subject to s.~~
 944 ~~119.07(1).~~

945 ~~(f) If information subject to this subsection is offered~~
 946 ~~in evidence in any administrative, civil, or criminal~~
 947 ~~proceeding, the presiding officer may, in his or her discretion,~~
 948 ~~prevent the disclosure of information which would be~~
 949 ~~confidential pursuant to paragraph (b).~~

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

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

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

959 ~~(16) CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS.~~ ~~The~~
 960 ~~social security number of any customer of a certified capital~~
 961 ~~company, complainant, or person associated with a certified~~
 962 ~~capital company or qualified business, is exempt from s.~~
 963 ~~119.07(1). This subsection is subject to the Open Government~~
 964 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and~~
 965 ~~shall stand repealed on October 2, 2005, unless reviewed and~~
 966 ~~saved from repeal through reenactment by the Legislature.~~

967 ~~(17) Notwithstanding the limitations set forth in~~
 968 ~~paragraph (7)(a), in the first fiscal year in which the total~~
 969 ~~insurance premium tax collections as determined by the Revenue~~
 970 ~~Estimating Conference exceed collections for fiscal year 2000-~~

971 ~~2001 by more than the total amount of tax credits issued~~
 972 ~~pursuant to this section which were used by certified investors~~
 973 ~~in that year, the Office of Tourism, Trade, and Economic~~
 974 ~~Development may allocate to certified investors in accordance~~
 975 ~~with paragraph (7)(a) tax credits for Program Two. The~~
 976 ~~commission shall establish, by rule, a date and procedures by~~
 977 ~~which certified capital companies must file applications for~~
 978 ~~allocations of such additional premium tax credits, which date~~
 979 ~~shall be no later than 180 days from the date of determination~~
 980 ~~by the Revenue Estimating Conference. With respect to new~~
 981 ~~certified capital invested and premium tax credits earned~~
 982 ~~pursuant to this subsection, the schedule specified in~~
 983 ~~subparagraphs (5)(a)1.-4. is satisfied by investments by~~
 984 ~~December 31 of the 2nd, 3rd, 4th, and 5th calendar year,~~
 985 ~~respectively, after the date established by the commission for~~
 986 ~~applications of additional premium tax credits. The commission~~
 987 ~~shall adopt rules by which an entity not already certified as a~~
 988 ~~certified capital company may apply for certification as a~~
 989 ~~certified capital company for participation in this additional~~
 990 ~~allocation. The insurance premium tax credit authorized by~~
 991 ~~Program Two may not be used by certified investors until the~~
 992 ~~annual return due March 1, 2004, and may be used on all~~
 993 ~~subsequent returns and estimated payments; however,~~
 994 ~~notwithstanding the provisions of s. 624.5092(2)(b), the~~
 995 ~~installments of taxes due and payable on April 15, 2004, and~~
 996 ~~June 15, 2004, shall be based on the net tax due in 2003 not~~
 997 ~~taking into account credits granted pursuant to this section for~~
 998 ~~Program Two.~~

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999

Section 2. This act shall take effect upon becoming a law.