

CHAMBER ACTION

1 The State Administration Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5  
6 A bill to be entitled

7 An act relating to review under the Open Government Sunset  
8 Review Act; amending s. 288.99, F.S., the "Certified  
9 Capital Company Act"; removing the October 2, 2005, repeal  
10 of information relating to an active investigation or  
11 office review of a certified capital company scheduled  
12 under the Open Government Sunset Review Act; narrowing the  
13 exemption; eliminating the exemption from public records  
14 requirements for social security numbers of any customers  
15 of a certified capital company, complainants, or persons  
16 associated with a certified capital company or qualified  
17 business; eliminating references to specified premium tax  
18 credits under the act designated as "Program One" and  
19 "Program Two"; removing the requirement that a certified  
20 capital company must invest 100 percent of its certified  
21 capital prior to making a distribution to its equity  
22 holders; requiring a certified capital company to obtain  
23 an audit to verify that any proposed distributions will be

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24 | made in compliance with the law; requiring a certified  
 25 | capital company to submit audits to the Office of  
 26 | Financial Regulation of the Financial Services Commission  
 27 | prior to the end of the fiscal year; prohibiting a  
 28 | certified capital company from making a distribution to  
 29 | its equity holders until the annual audit has been  
 30 | reviewed and approved by the office; providing  
 31 | requirements and procedures of the office subsequent to  
 32 | review of proposed distributions; authorizing voluntary  
 33 | decertification of a certified capital company; providing  
 34 | procedures and requirements with respect thereto; allowing  
 35 | tax credits earned under the program to be carried forward  
 36 | through December 31, 2017; providing editorial and  
 37 | conforming changes; providing for the future repeal of the  
 38 | Certified Capital Company Act; providing an effective  
 39 | date.

40 |

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

42 |

43 | Section 1. Section 288.99, Florida Statutes, is amended to  
 44 | read:

45 | 288.99 Certified Capital Company Act.--

46 | (1) SHORT TITLE.--This section may be cited as the  
 47 | "Certified Capital Company Act."

48 | (2) PURPOSE.--The primary purpose of this act is to  
 49 | stimulate a substantial increase in venture capital investments  
 50 | in this state by providing an incentive for insurance companies  
 51 | to invest in certified capital companies in this state which, in

52 | turn, will make investments in new businesses or in expanding  
 53 | businesses, including minority-owned or minority-operated  
 54 | businesses and businesses located in a designated Front Porch  
 55 | community, enterprise zone, urban high-crime area, rural job tax  
 56 | credit county, or nationally recognized historic district. The  
 57 | increase in investment capital flowing into new or expanding  
 58 | businesses is intended to contribute to employment growth,  
 59 | create jobs which exceed the average wage for the county in  
 60 | which the jobs are created, and expand or diversify the economic  
 61 | base of this state.

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

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

64 | 1. Any person directly or indirectly beneficially owning,  
 65 | whether through rights, options, convertible interests, or  
 66 | otherwise, controlling, or holding power to vote 15 percent or  
 67 | more of the outstanding voting securities or other voting  
 68 | ownership interests of the insurance company;

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

74 | 3. Any person directly or indirectly controlling,  
 75 | controlled by, or under common control with the insurance  
 76 | company;

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

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79 | 5. Any person who is a principal, director, employee, or  
80 | agent of the insurance company or an immediate family member of  
81 | the principal, director, employee, or agent.

82 | (b) "Certified capital" means an investment of cash by a  
83 | certified investor in a certified capital company which fully  
84 | funds the purchase price of either or both its equity interest  
85 | in the certified capital company or a qualified debt instrument  
86 | issued by the certified capital company.

87 | (c) "Certified capital company" means a corporation,  
88 | partnership, or limited liability company which:

89 | 1. Is certified by the office in accordance with this act.

90 | 2. Receives investments of certified capital from two or  
91 | more unaffiliated certified investors.

92 | 3. Makes qualified investments as its primary activity.

93 | (d) "Certified investor" means any insurance company  
94 | subject to premium tax liability pursuant to s. 624.509 that  
95 | invests certified capital.

96 | (e) "Commission" means the Financial Services Commission.

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

99 | 1. Involved, at the time of the certified capital  
100 | company's initial investment in such business, in activities  
101 | related to developing initial product or service offerings, such  
102 | as prototype development or the establishment of initial  
103 | production or service processes;

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

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

109 3. The Florida Black Business Investment Board;

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

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

115 (g) "Office" means the Office of Financial Regulation of  
116 the commission.

117 (h) "Premium tax liability" means any liability incurred  
118 by an insurance company under the provisions of ss. 624.509 and  
119 624.5091.

120 (i) "Principal" means an executive officer of a  
121 corporation, partner of a partnership, manager of a limited  
122 liability company, or any other person with equivalent executive  
123 functions.

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

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

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

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134 manufacturing, processing or assembling products, conducting  
135 research and development, or providing services.

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

139 a. The business is unable to obtain conventional  
140 financing, which means that the business has failed in an  
141 attempt to obtain funding for a loan from a bank or other  
142 commercial lender or that the business cannot reasonably be  
143 expected to qualify for such financing under the standards of  
144 commercial lending;

145 b. The business plan for the business projects that the  
146 business is reasonably expected to achieve in excess of \$25  
147 million in sales revenue within 5 years after the initial  
148 investment, or the business is located in a designated Front  
149 Porch community, enterprise zone, urban high crime area, rural  
150 job tax credit county, or nationally recognized historic  
151 district;

152 c. The business will maintain its headquarters in this  
153 state for the next 10 years and any new manufacturing facility  
154 financed by a qualified investment will remain in this state for  
155 the next 10 years, or the business is located in a designated  
156 Front Porch community, enterprise zone, urban high crime area,  
157 rural job tax credit county, or nationally recognized historic  
158 district; and

159 d. The business has fewer than 200 employees and at least  
160 75 percent of the employees are employed in this state. For  
161 purposes of this subsection, the term also includes the Florida

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162 Black Business Investment Board, any entity majority owned by  
 163 the Florida Black Business Investment Board, or any entity in  
 164 which the Florida Black Business Investment Board holds a  
 165 majority voting interest on the board of directors.

166 4. The term does not include:

167 a. Any business predominantly engaged in retail sales,  
 168 real estate development, insurance, banking, lending, or oil and  
 169 gas exploration.

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

172 c. Any company that has no historical revenues and either  
 173 has no specific business plan or purpose or has indicated that  
 174 its business plan is solely to engage in a merger or acquisition  
 175 with any unidentified company or other entity.

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

181 (k) "Qualified debt instrument" means a debt instrument,  
 182 or a hybrid of a debt instrument, issued by a certified capital  
 183 company, at par value or a premium, with an original maturity  
 184 date of at least 5 years after the date of issuance, a repayment  
 185 schedule which is no faster than a level principal amortization  
 186 over a 5-year period, and interest, distribution, or payment  
 187 features which are not related to the profitability of the  
 188 certified capital company or the performance of the certified  
 189 capital company's investment portfolio.

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

192 1. Reasonable costs and expenses, including, but not  
193 limited to, professional fees, of forming and syndicating the  
194 certified capital company, if no such costs or expenses are paid  
195 to a certified investor, except as provided in subparagraph  
196 (4)(f)2., and the total cash, cash equivalents, and other  
197 current assets permitted by sub-subparagraph (5)(b)3.g. that can  
198 be converted into cash within 5 business days available to the  
199 certified capital company at the time of receipt of certified  
200 capital from certified investors, after deducting the costs and  
201 expenses of forming and syndicating the certified capital  
202 company, including any payments made over time for obligations  
203 incurred at the time of receipt of certified capital but  
204 excluding other future qualified distributions and payments made  
205 under paragraph (9)(a), are an amount equal to or greater than  
206 50 percent of the total certified capital allocated to the  
207 certified capital pursuant to subsection (7);

208 2. Reasonable costs of managing and operating the  
209 certified capital company, not exceeding 5 percent of the  
210 certified capital in any single year, including an annual  
211 management fee in an amount that does not exceed 2.5 percent of  
212 the certified capital of the certified capital company;

213 3. Reasonable and necessary fees in accordance with  
214 industry custom for professional services, including, but not  
215 limited to, legal and accounting services, related to the  
216 operation of the certified capital company; or



217 4. Any projected increase in federal or state taxes,  
 218 including penalties and interest related to state and federal  
 219 income taxes, of the equity owners of a certified capital  
 220 company resulting from the earnings or other tax liability of  
 221 the certified capital company to the extent that the increase is  
 222 related to the ownership, management, or operation of a  
 223 certified capital company.

224 (m)1. "Qualified investment" means the investment of cash  
 225 by a certified capital company in a qualified business for the  
 226 purchase of any debt, equity, or hybrid security, including a  
 227 debt instrument or security that has the characteristics of debt  
 228 but which provides for conversion into equity or equity  
 229 participation instruments such as options or warrants.

230 2. The term does not include:

231 a. Any investment made after the effective date of this  
 232 act the contractual terms of which require the repayment of any  
 233 portion of the principal in instances, other than default as  
 234 determined by commission rule, within 12 months following the  
 235 initial investment by the certified capital company unless such  
 236 investment has a repayment schedule no faster than a level  
 237 principal amortization of at least 2 years;

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

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243 c. Any investment in a qualified business or affiliate of  
244 a qualified business that exceeds 15 percent of certified  
245 capital.

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

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

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

256 (a) To operate as a certified capital company, a  
257 corporation, partnership, or limited liability company must be  
258 certified by the Department of Banking and Finance or the office  
259 pursuant to this act.

260 (b) An applicant for certification as a certified capital  
261 company must file a verified application with the Department of  
262 Banking and Finance on or before December 1, 1998, a date  
263 ~~determined in rules adopted pursuant to subsection (17) in the~~  
264 ~~ease of applicants for Program Two,~~ in a form which the  
265 commission may prescribe by rule. The applicant shall submit a  
266 nonrefundable application fee of \$7,500 to the office. The  
267 applicant shall provide:

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

270           2. The applicant's form and place of organization and the  
271 relevant organizational documents, bylaws, and amendments or  
272 restatements of such documents, bylaws, or amendments.

273           3. Evidence from the Department of State that the  
274 applicant is registered with the Department of State as required  
275 by law, maintains an active status with the Department of State,  
276 and has not been dissolved or had its registration revoked,  
277 canceled, or withdrawn.

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

279           5. The applicant's financial condition and history,  
280 including an audit report on the financial statements prepared  
281 in accordance with generally accepted accounting principles. The  
282 applicant must have, at the time of application for  
283 certification, an equity capitalization of at least \$500,000 in  
284 the form of cash or cash equivalents. The applicant must  
285 maintain this equity capitalization until the applicant receives  
286 an allocation of certified capital pursuant to this act. If the  
287 date of the application is more than 90 days after preparation  
288 of the applicant's fiscal year-end financial statements, the  
289 applicant may file financial statements reviewed by an  
290 independent certified public accountant for the period  
291 subsequent to the audit report, together with the audited  
292 financial statement for the most recent fiscal year. If the  
293 applicant has been in business less than 12 months, and has not  
294 prepared an audited financial statement, the applicant may file  
295 a financial statement reviewed by an independent certified  
296 public accountant.

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297           6. Copies of any offering materials used or proposed to be  
298 used by the applicant in soliciting investments of certified  
299 capital from certified investors.

300           (c) Within 60 days after receipt of a verified  
301 application, the office shall grant or deny certification as a  
302 certified capital company. If the office denies certification  
303 within the time period specified, the office shall inform the  
304 applicant of the grounds for the denial. If the office has not  
305 granted or denied certification within the time specified, the  
306 application shall be deemed approved. The office shall approve  
307 the application if the office finds that:

308           1. The applicant satisfies the requirements of paragraph  
309 (b).

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

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

320           4. The applicant's proposed method of doing business and  
321 raising certified capital as described in its offering materials  
322 and other materials submitted to the office conforms with the  
323 requirements of this section.

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324 (d) The office may deny certification or decertify a  
 325 certified capital company if the grounds for decertification are  
 326 not removed or corrected within 90 days after the notice of such  
 327 grounds is received by the certified capital company. The office  
 328 may deny certification or decertify a certified capital company  
 329 if the certified capital company fails to maintain common stock  
 330 or paid-in capital of at least \$500,000, or if the office  
 331 determines that the applicant, or any principal or director of  
 332 the certified capital company, has:

- 333 1. Violated any provision of this section;
- 334 2. Made a material misrepresentation or false statement or  
 335 concealed any essential or material fact from any person during  
 336 the application process or with respect to information and  
 337 reports required of certified capital companies under this  
 338 section;
- 339 3. Been convicted of, or entered a plea of guilty or nolo  
 340 contendere to, a crime against the laws of this state or any  
 341 other state or of the United States or any other country or  
 342 government, including a fraudulent act in connection with the  
 343 operation of a certified capital company, or in connection with  
 344 the performance of fiduciary duties in another capacity;
- 345 4. Been adjudicated liable in a civil action on grounds of  
 346 fraud, embezzlement, misrepresentation, or deceit; or
- 347 5.a. Been the subject of any decision, finding,  
 348 injunction, suspension, prohibition, revocation, denial,  
 349 judgment, or administrative order by any court of competent  
 350 jurisdiction, administrative law judge, or any state or federal  
 351 agency, national securities, commodities, or option exchange, or

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352 national securities, commodities, or option association,  
 353 involving a material violation of any federal or state  
 354 securities or commodities law or any rule or regulation adopted  
 355 under such law, or any rule or regulation of any national  
 356 securities, commodities, or options exchange, or national  
 357 securities, commodities, or options association; or

358       b. Been the subject of any injunction or adverse  
 359 administrative order by a state or federal agency regulating  
 360 banking, insurance, finance or small loan companies, real  
 361 estate, mortgage brokers, or other related or similar  
 362 industries.

363       (e) Any offering material involving the sale of securities  
 364 of the certified capital company shall include the following  
 365 statement: "By authorizing the formation of a certified capital  
 366 company, the State of Florida does not endorse the quality of  
 367 management or the potential for earnings of such company and is  
 368 not liable for damages or losses to a certified investor in the  
 369 company. Use of the word 'certified' in an offering does not  
 370 constitute a recommendation or endorsement of the investment by  
 371 the State of Florida. Investments in a certified capital company  
 372 prior to the time such company is certified are not eligible for  
 373 premium tax credits. If applicable provisions of law are  
 374 violated, the state may require forfeiture of unused premium tax  
 375 credits and repayment of used premium tax credits by the  
 376 certified investor."

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

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380 | percent or more of the voting equity interests of or manage or  
 381 | control the direction of investments of a certified capital  
 382 | company. This prohibition does not preclude a certified  
 383 | investor, insurance company, or any other party from exercising  
 384 | its legal rights and remedies, which may include interim  
 385 | management of a certified capital company, if a certified  
 386 | capital company is in default of its obligations under law or  
 387 | its contractual obligations to such certified investor,  
 388 | insurance company, or other party. Nothing in this subparagraph  
 389 | shall limit an insurance company's ownership of nonvoting equity  
 390 | interests in a certified capital company.

391 |         2. A certified capital company may obtain a guaranty,  
 392 | indemnity, bond, insurance policy or other payment undertaking  
 393 | in favor of all of the certified investors of the certified  
 394 | capital company and its affiliates; provided that the entity  
 395 | from which such guaranty, indemnity, bond, insurance policy or  
 396 | other payment undertaking is obtained may not be a certified  
 397 | investor of, or be affiliated with more than one certified  
 398 | investor of, the certified capital company.

399 |         (g) On or before December 31 of each year, each certified  
 400 | capital company shall pay to the office an annual, nonrefundable  
 401 | renewal certification fee of \$5,000. If a certified capital  
 402 | company fails to pay its renewal fee by the specified deadline,  
 403 | the company must pay a late fee of \$5,000 in addition to the  
 404 | renewal fee on or by January 31 of each year in order to  
 405 | continue its certification ~~in the program~~. On or before April 30  
 406 | of each year, each certified capital company shall file audited  
 407 | financial statements with the office. No renewal fees shall be

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408 required within 6 months after the date of initial  
409 certification.

410 (h) The commission and office shall administer and provide  
411 for the enforcement of certification requirements for certified  
412 capital companies as provided in this act. The commission may  
413 adopt any rules necessary to carry out its duties, obligations,  
414 and powers related to certification, renewal of certification,  
415 or decertification of certified capital companies and the  
416 commission and office may perform any other acts necessary for  
417 the proper administration and enforcement of such duties,  
418 obligations, and powers.

419 (i) Decertification of a certified capital company under  
420 this subsection does not affect the ability of certified  
421 investors in such certified capital company from claiming future  
422 premium tax credits earned as a result of an investment in the  
423 certified capital company during the period in which it was duly  
424 certified.

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

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

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

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

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

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



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436 50 percent of such qualified investments must be invested in  
437 early stage technology businesses.

438 (b) All capital not invested in qualified investments by  
439 the certified capital company:

440 1. Must be held in a financial institution as defined by  
441 s. 655.005(1)(h) or held by a broker-dealer registered under s.  
442 517.12, except as set forth in sub-subparagraph 3.g.

443 2. Must not be invested in a certified investor of the  
444 certified capital company or any affiliate of the certified  
445 investor of the certified capital company, except for an  
446 investment permitted by sub-subparagraph 3.g., provided  
447 repayment terms do not permit the obligor to directly or  
448 indirectly manage or control the investment decisions of the  
449 certified capital company.

450 3. Must be invested only in:

451 a. Any United States Treasury obligations;

452 b. Certificates of deposit or other obligations, maturing  
453 within 3 years after acquisition of such certificates or  
454 obligations, issued by any financial institution or trust  
455 company incorporated under the laws of the United States;

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

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

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

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

471 g. Obligations that are issued by an insurance company  
472 that is not a certified investor of the certified capital  
473 company making the investment, that has provided a guarantee  
474 indemnity bond, insurance policy, or other payment undertaking  
475 in favor of the certified capital company's certified investors  
476 as permitted by subparagraph (3)(1)1. or an affiliate of such  
477 insurance company as defined by subparagraph (3)(a)3. that is  
478 not a certified investor of the certified capital company making  
479 the investment, provided that such obligations are:

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

484 (II) Not subordinated to other unsecured indebtedness of  
485 the issuer or the guarantor.

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

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

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

494 (c) The aggregate amount of all qualified investments made  
495 by the certified capital company from the date of its  
496 certification shall be considered in the calculation of the  
497 percentage requirements under paragraph (a).

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

499 (a) Any certified investor who makes an investment of  
500 certified capital shall earn a vested credit against premium tax  
501 liability equal to 100 percent of the certified capital invested  
502 by the certified investor. Certified investors shall be entitled  
503 to use no more than 10 percentage points of the vested premium  
504 tax credit ~~earned under a particular program~~, including any  
505 carryforward credits ~~from such program~~ under this act, per year  
506 beginning with premium tax filings for calendar year 2000 ~~for~~  
507 ~~credits earned under Program One~~. Any premium tax credits not  
508 used by certified investors in any single year may be carried  
509 forward and applied against the premium tax liabilities of such  
510 investors for subsequent calendar years.

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

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

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519 | available to a certified investor, s. 624.5091 does not limit  
520 | such credit in any manner.

521 | (d) The amount of tax credits vested under the Certified  
522 | Capital Company Act shall not be considered in ratemaking  
523 | proceedings involving a certified investor.

524 | (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION  
525 | PROCESS.--

526 | (a) The total amount of tax credits which may be allocated  
527 | by the Office of Tourism, Trade, and Economic Development shall  
528 | not exceed \$150 million ~~with respect to Program One and \$150~~  
529 | ~~million with respect to Program Two~~. The total amount of tax  
530 | credits which may be used by certified investors under this act  
531 | shall not exceed \$15 million annually ~~with respect to credits~~  
532 | ~~earned under Program One and \$15 million annually with respect~~  
533 | ~~to credits earned under Program Two~~.

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

537 | (c) Each certified capital company must apply to the  
538 | Office of Tourism, Trade, and Economic Development for an  
539 | allocation of premium tax credits for potential certified  
540 | investors on a form developed by the Office of Tourism, Trade,  
541 | and Economic Development with the cooperation of the Department  
542 | of Revenue. The form shall be accompanied by an affidavit from  
543 | each potential certified investor confirming that the potential  
544 | certified investor has agreed to make an investment of certified  
545 | capital in a certified capital company up to a specified amount,  
546 | subject only to the receipt of a premium tax credit allocation

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547 | pursuant to this subsection. No certified capital company shall  
 548 | submit premium tax allocation claims on behalf of certified  
 549 | investors that in the aggregate would exceed the total dollar  
 550 | amount appropriated by the Legislature ~~for the specific program~~.  
 551 | No allocation shall be made to the potential investors of a  
 552 | certified capital company ~~under Program Two~~ unless such  
 553 | certified capital company has filed premium tax allocation  
 554 | claims of not less than \$15 million in the aggregate.

555 |         (d) The Office of Tourism, Trade, and Economic Development  
 556 | shall inform each certified capital company of its share of  
 557 | total premium tax credits available for allocation to each of  
 558 | its potential investors.

559 |         (e) If a certified capital company does not receive  
 560 | certified capital equaling the amount of premium tax credits  
 561 | allocated to a potential certified investor for which the  
 562 | investor filed a premium tax allocation claim within 10 business  
 563 | days after the investor received a notice of allocation, the  
 564 | certified capital company shall notify the Office of Tourism,  
 565 | Trade, and Economic Development by overnight common carrier  
 566 | delivery service of the company's failure to receive the  
 567 | capital. That portion of the premium tax credits allocated to  
 568 | the certified capital company shall be forfeited. If the Office  
 569 | of Tourism, Trade, and Economic Development must make a pro rata  
 570 | allocation under paragraph (f), that office shall reallocate  
 571 | such available credits among the other certified capital  
 572 | companies on the same pro rata basis as the initial allocation.

573 |         (f) If the total amount of capital committed by all  
 574 | certified investors to certified capital companies in premium

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575 tax allocation claims ~~under Program Two~~ exceeds the aggregate  
 576 cap on the amount of credits that may be awarded ~~under Program~~  
 577 ~~Two~~, the premium tax credits that may be allowed to any one  
 578 certified investor ~~under Program Two~~ shall be allocated using  
 579 the following ratio:

580  
 581  $A/B = X / > \$150,000,000$

582  
 583 where the letter "A" represents the total amount of certified  
 584 capital certified investors have agreed to invest in any one  
 585 certified capital company ~~under Program Two~~, the letter "B"  
 586 represents the aggregate amount of certified capital that all  
 587 certified investors have agreed to invest in all certified  
 588 capital companies ~~under Program Two~~, the letter "X" is the  
 589 numerator and represents the total amount of premium tax credits  
 590 and certified capital that may be allocated to a certified  
 591 capital company ~~on a date determined by rule adopted by the~~  
 592 ~~commission pursuant to subsection (17)~~, and \$150 million is the  
 593 denominator and represents the total amount of premium tax  
 594 credits and certified capital that may be allocated to all  
 595 certified investors ~~under Program Two~~. Any such premium tax  
 596 credits are not first available for utilization until annual  
 597 filings are made in 2001 for calendar year 2000 ~~in the case of~~  
 598 ~~Program One~~, and the tax credits may be used at a rate not to  
 599 exceed 10 percent annually ~~per program~~.

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

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603 capital companies may not exceed \$15 million ~~for Program One and~~  
604 ~~\$22.5 million for Program Two.~~

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

610 (i) The Office of Tourism, Trade, and Economic Development  
611 shall issue a certification letter for each certified investor,  
612 showing the amount invested in the certified capital company  
613 ~~under each program.~~ The applicable certified capital company  
614 shall attest to the validity of the certification letter.

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

616 (a) On an annual basis, on or before January 31, each  
617 certified capital company shall file with the office and the  
618 Office of Tourism, Trade, and Economic Development, in  
619 consultation with the office, on a form prescribed by the Office  
620 of Tourism, Trade, and Economic Development, for each calendar  
621 year:

622 1. The total dollar amount the certified capital company  
623 received from certified investors, the identity of the certified  
624 investors, and the amount received from each certified investor  
625 during the immediately preceding calendar year.

626 2. The total dollar amount the certified capital company  
627 invested and the amount invested in qualified businesses,  
628 together with the identity and location of those businesses and  
629 the amount invested in each qualified business during the  
630 immediately preceding calendar year.

631           3. For informational purposes only, the total number of  
632 permanent, full-time jobs either created or retained by the  
633 qualified business during the immediately preceding calendar  
634 year, the average wage of the jobs created or retained, the  
635 industry sectors in which the qualified businesses operate, and  
636 any additional capital invested in qualified businesses from  
637 sources other than certified capital companies.

638           (b) The form shall be verified by one or more principals  
639 of the certified capital company submitting the form.  
640 Verification shall be accomplished as provided in s.  
641 92.525(1)(b) and subject to the provisions of s. 92.525(3).

642           (c) The Office of Tourism, Trade, and Economic Development  
643 shall review the form, and any supplemental documentation,  
644 submitted by each certified capital company for the purpose of  
645 verifying:

646           1. That the businesses in which certified capital has been  
647 invested by the certified capital company are in fact qualified  
648 businesses, and that the amount of certified capital invested by  
649 the certified capital company is as represented in the form.

650           2. The amount of certified capital invested in the  
651 certified capital company by the certified investors.

652           3. The amount of premium tax credit available to certified  
653 investors.

654           (d) The Department of Revenue is authorized to audit and  
655 examine the accounts, books, or records of certified capital  
656 companies and certified investors for the purpose of  
657 ascertaining the correctness of any report and financial return  
658 which has been filed, and to ascertain a certified capital



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659 | company's compliance with the tax-related provisions of this  
660 | act.

661 |       (9) ~~REQUIREMENT FOR 100 PERCENT INVESTMENT;~~ STATE  
662 | PARTICIPATION. --

663 |       (a) A certified capital company may make qualified  
664 | distributions at any time. In order to make a distribution to  
665 | its equity holders, other than a qualified distribution, such  
666 | distribution shall be made in accordance with the provisions of  
667 | paragraph (d) or subsection (10) from funds related to a  
668 | particular program, a certified capital company must have  
669 | invested an amount cumulatively equal to 100 percent of its  
670 | certified capital raised under such program in qualified  
671 | investments. Payments to debt holders of a certified capital  
672 | company, however, may be made without restriction with respect  
673 | to repayments of principal and interest on indebtedness owed to  
674 | them by a certified capital company, including indebtedness of  
675 | the certified capital company on which certified investors  
676 | earned premium tax credits. A debt holder that is also a  
677 | certified investor or equity holder of a certified capital  
678 | company may receive payments with respect to such debt without  
679 | restrictions.

680 |       (b) Cumulative distributions from a certified capital  
681 | company ~~from funds related to a particular program~~ to its  
682 | certified investors and equity holders ~~under such program~~, other  
683 | than qualified distributions, in excess of the certified capital  
684 | company's original certified capital ~~raised under such program~~  
685 | and any additional capital contributions to the certified  
686 | capital company shall ~~with respect to such program~~ may be

687 | audited annually by a nationally recognized certified public  
 688 | accounting firm acceptable to the office, at the expense of the  
 689 | certified capital company, ~~if the office directs such audit be~~  
 690 | ~~conducted~~. The audit shall determine whether proposed aggregate  
 691 | cumulative distributions ~~from the funds related to a particular~~  
 692 | ~~program~~ made by the certified capital company to all certified  
 693 | investors and equity holders ~~under such program~~, other than  
 694 | qualified distributions, have equaled the sum of the certified  
 695 | capital company's original certified capital ~~raised under such~~  
 696 | ~~program~~ and any additional capital contributions to the  
 697 | certified capital company ~~with respect to such program~~. The  
 698 | audit also shall express an opinion as to the estimated fair  
 699 | market value of all investments in qualified businesses for  
 700 | which the certified capital company has a debt or equity  
 701 | interest. The office may object, in writing, within 30 days of  
 702 | receipt as to the qualifications of the individual or entity  
 703 | engaged by the certified capital company to perform the  
 704 | appraisal. If the office objects to the qualifications of the  
 705 | appraiser, the office shall, within 90 days, hire an appraiser  
 706 | at the certified capital company's expense to perform the  
 707 | appraisal in question. In such instance, the fair market value  
 708 | for purposes of calculating the amount due to the state shall be  
 709 | the appraisal commissioned by the office. If at the time of any  
 710 | such distribution made by the certified capital company, such  
 711 | distribution taken together with all other such distributions  
 712 | ~~from the funds related to such program~~ made by the certified  
 713 | capital company, other than qualified distributions, exceeds in  
 714 | the aggregate the sum of the certified capital company's

715 original certified capital ~~raised under such program~~ and any  
 716 additional capital contributions to the certified capital  
 717 company ~~with respect to such program~~, as determined by the  
 718 audit, the certified capital company shall pay to the Department  
 719 of Revenue 10 percent of the portion of such distribution in  
 720 excess of such amount. Payments to the Department of Revenue by  
 721 a certified capital company pursuant to this paragraph shall not  
 722 exceed the aggregate amount of tax credits used by all certified  
 723 investors in such certified capital company ~~for such program~~.

724 (c) The audit shall be submitted to the office within 90  
 725 days of the end of the certified capital company's fiscal year.

726 (d) A certified capital company may not make a  
 727 distribution to its equity holders, other than a qualified  
 728 distribution, until the annual audit has been reviewed and  
 729 approved by the office. The office shall review each proposed  
 730 distribution in accordance with the business plan submitted by  
 731 the certified capital company pursuant to paragraph (10)(a) and  
 732 provide written notice to the certified capital company within  
 733 60 days of receipt with respect to the approval of any such  
 734 distribution. In making its determination, the office shall take  
 735 into consideration the annual audit from the certified public  
 736 accountant, the projected liability to the state received in  
 737 conjunction with the annual audit, and the findings of the  
 738 office's most recently completed annual review. The office shall  
 739 not approve a distribution to equity holders that would  
 740 jeopardize the potential for the ultimate collection of the  
 741 projected liability to the state. The certified capital company

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742 shall pay to the Department of Revenue all moneys owed to the  
 743 state prior to any such distributions.

744 (10) VOLUNTARY DECERTIFICATION.--

745 (a) On or before December 31, 2005, the certified capital  
 746 company shall submit a detailed business plan to the office. The  
 747 business plan shall outline the certified capital company's plan  
 748 to voluntarily decertify by no later than December 31, 2010. The  
 749 business plan shall include projections regarding the potential  
 750 liability to the state under the participation provisions of  
 751 paragraph (9)(b) and a reduction in the allowable expense  
 752 provision from 5 percent to 2 percent of certified capital,  
 753 effective January 1, 2006.

754 (b) Any transaction that results in the sale of any  
 755 beneficial interest in a qualified business must be submitted to  
 756 the office at least 30 days prior to the consummation of such  
 757 sale. The certified capital company shall provide all contracts  
 758 surrounding the sale including the names of all parties to the  
 759 transaction, the audited financial statements for the most  
 760 recently completed fiscal year of the qualified business, and  
 761 the most recent independent valuation that assesses the fair  
 762 market value of the beneficial interest in the qualified  
 763 business being sold. Any individual or corporation that proposes  
 764 to acquire more than a 10-percent beneficial interest in the  
 765 beneficial interest being sold by the certified capital company  
 766 shall be identified. No principal or affiliate of a certified  
 767 capital company may purchase more than a 10-percent beneficial  
 768 interest in the beneficial interest being sold, unless the

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769 amount exceeds 90 percent of the fair market value of such  
770 interest.

771 (c) All sales of beneficial interests in a qualified  
772 business shall be for an amount that is not less than 90 percent  
773 of the most recently completed independent appraisal on file  
774 with the office. The appraisal may not be more than 180 days old  
775 at the time of the proposed sale. If a sale is consummated for  
776 an amount that is less than 90 percent of the fair market value  
777 of the qualified business, then for the purposes of calculating  
778 the liability to the state pursuant to paragraph (9)(b), the  
779 amount included shall be 90 percent of the fair market value on  
780 the most recent appraisal submitted to the office. Nothing in  
781 this section shall preclude a certified capital company from  
782 obtaining a more recent appraisal of the fair market value. If  
783 the office determines that the value of the proposed sale will  
784 trigger the penalty provision in this section, then the office  
785 shall notify the certified capital company in writing prior to  
786 the effective date of such sale.

787 (d) A certified capital company may apply to the office  
788 for decertification at any time after December 31, 2005,  
789 provided that:

790 1. A complete audit has been performed by a certified  
791 public accountant and submitted to the office in accordance with  
792 paragraph (9)(b). The audit may be conducted at any time during  
793 the year; however, such financial statements shall be dated not  
794 more than 60 days prior to the receipt of the application by the  
795 office. The audit shall be accompanied by an independent  
796 appraisal of the fair market value of all qualified businesses

797 in which the certified capital company has a beneficial  
798 interest;

799 2. The certified capital company has paid the Department  
800 of Revenue all money owed to the state pursuant to paragraph  
801 (9)(b). Such calculation shall be based on the appraised fair  
802 market value of the beneficial interests in qualified businesses  
803 within 180 days of the application; and

804 3. A cover letter executed by the principals of the  
805 certified capital company requesting the decertification of the  
806 certified capital company and sent via certified mail, return  
807 receipt requested, has been received by the office.

808 (e) The office shall have 90 days from the date of receipt  
809 of an application for voluntary decertification to review the  
810 application to ensure that all money owed to the state has been  
811 paid. The office shall notify the certified capital company of  
812 its determination in writing within 90 days from the date of  
813 receipt. Nothing in this section shall preclude the office from  
814 making reasonable requests for additional information or  
815 conducting onsite reviews as it deems appropriate. The office  
816 shall deny an application for voluntary decertification if money  
817 is owed to the state pursuant to paragraph (9)(b). In making its  
818 determination regarding the decertification of a certified  
819 capital company, the office shall consider the fair market value  
820 of all interests in qualified businesses held at the time of the  
821 request for decertification.

822 (f) If the certified capital company has not been  
823 voluntarily decertified on or before September 30, 2010, and  
824 money is owed to the state pursuant to paragraph (9)(b), then

825 | the office shall make a demand for the funds owed by the  
 826 | certified capital company. If the demand is not satisfied by the  
 827 | certified capital company, then the parties shall enter into  
 828 | binding arbitration to determine the amount that the certified  
 829 | capital company may owe to the state. All costs associated with  
 830 | the arbitration shall be paid by the certified capital company.  
 831 | No distributions shall be made by the certified capital company  
 832 | during the arbitration proceedings.

833 | ~~(11)~~~~(10)~~ DECERTIFICATION.--

834 | (a) The office shall conduct an annual review of each  
 835 | certified capital company to determine if the certified capital  
 836 | company is abiding by the requirements of certification, to  
 837 | advise the certified capital company as to the eligibility  
 838 | status of its qualified investments, and to ensure that no  
 839 | investment has been made in violation of this act. The cost of  
 840 | the annual review shall be paid by each certified capital  
 841 | company.

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

846 | (c) Any material violation of this section, or a finding  
 847 | that the certified capital company or any principal or director  
 848 | thereof has committed any act specified in paragraph (4)(d),  
 849 | shall be grounds for decertification of the certified capital  
 850 | company. If the office determines that a certified capital  
 851 | company is no longer in compliance with the certification  
 852 | requirements of this act, the office shall, by written notice,

853 | inform the officers of such company that the company may be  
 854 | subject to decertification 90 days after the date of mailing of  
 855 | the notice, unless the deficiencies are corrected and such  
 856 | company is again found to be in compliance with all  
 857 | certification requirements.

858 |         (d) At the end of the 90-day grace period, if the  
 859 | certified capital company is still not in compliance with the  
 860 | certification requirements, the office may issue a notice to  
 861 | revoke or suspend the certification or to impose an  
 862 | administrative fine. The office shall advise each respondent of  
 863 | the right to an administrative hearing under chapter 120 prior  
 864 | to final action by the office.

865 |         (e) If the office revokes a certification, such revocation  
 866 | shall also deny, suspend, or revoke the certifications of all  
 867 | affiliates of the certified capital company.

868 |         (f) Decertification of a certified capital company for  
 869 | failure to meet all requirements for continued certification  
 870 | under paragraph (5)(a) ~~with respect to the certified capital~~  
 871 | ~~raised under a particular program~~ may cause the recapture of  
 872 | premium tax credits previously claimed by such company ~~under~~  
 873 | ~~such program~~ and the forfeiture of future premium tax credits to  
 874 | be claimed by certified investors ~~under such program~~ with  
 875 | respect to such certified capital company, as follows:

876 |             1. Decertification of a certified capital company within 3  
 877 | years after its certification date ~~with respect to a particular~~  
 878 | ~~program~~ shall cause the recapture of all premium tax credits  
 879 | ~~earned under such program and~~ previously claimed by such company  
 880 | and the forfeiture of all future premium tax credits ~~earned~~



881 ~~under such program which~~ are to be claimed by certified  
 882 investors with respect to such company.

883         2. When a certified capital company meets all requirements  
 884 for continued certification under subparagraph (5)(a)1. ~~with~~  
 885 ~~respect to certified capital raised under a particular program~~  
 886 and subsequently fails to meet the requirements for continued  
 887 certification under the provisions of subparagraph (5)(a)2. ~~with~~  
 888 ~~respect to certified capital raised under such program,~~ those  
 889 premium tax credits ~~earned under such program~~ which have been or  
 890 will be taken by certified investors within 3 years after the  
 891 certification date of the certified capital company ~~with respect~~  
 892 ~~to such program~~ shall not be subject to recapture or forfeiture;  
 893 however, all premium tax credits ~~earned under such program~~ that  
 894 have been or will be taken by certified investors after the  
 895 third anniversary of the certification date of the certified  
 896 capital company ~~for such program~~ shall be subject to recapture  
 897 or forfeiture.

898         3. When a certified capital company meets all requirements  
 899 for continued certification under subparagraphs (5)(a)1. and 2.  
 900 ~~with respect to a particular program~~ and subsequently fails to  
 901 meet the requirements for continued certification under  
 902 subparagraph (5)(a)3. ~~with respect to such program,~~ those  
 903 premium tax credits ~~earned under such program~~ which have been or  
 904 will be taken by certified investors within 4 years after the  
 905 certification date of the certified capital company ~~with respect~~  
 906 ~~to such program~~ shall not be subject to recapture or forfeiture;  
 907 however, all premium tax credits ~~earned under such program~~ that  
 908 have been or will be taken by certified investors after the

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909 fourth anniversary of the certification date of the certified  
910 capital company ~~with respect to such program~~ shall be subject to  
911 recapture and forfeiture.

912 4. If a certified capital company has met all requirements  
913 for continued certification under paragraph (5)(a) ~~with respect~~  
914 ~~to certified capital raised under a particular program~~, but such  
915 company is subsequently decertified, those premium tax credits  
916 ~~earned under such program~~ which have been or will be taken by  
917 certified investors within 5 years after the certification date  
918 of such company ~~with respect to such program~~ shall not be  
919 subject to recapture or forfeiture. Those premium tax credits  
920 ~~earned under such program~~ to be taken subsequent to the 5th year  
921 of certification ~~with respect to such program~~ shall be subject  
922 to forfeiture only if the certified capital company is  
923 decertified within 5 years after its certification date ~~with~~  
924 ~~respect to such program~~.

925 5. If a certified capital company has invested an amount  
926 cumulatively equal to 100 percent of its certified capital  
927 ~~raised under a particular program~~ in qualified investments, all  
928 premium tax credits claimed or to be claimed by its certified  
929 investors ~~under such program~~ shall not be subject to recapture  
930 or forfeiture.

931 (g) Decertification of a certified capital company  
932 pursuant to subsection (4) or this subsection does not affect  
933 the ability of certified investors in such certified capital  
934 company to continue to claim future premium tax credits earned  
935 as an investment in the certified capital company during the  
936 period in which it was duly certified.

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937 (h) The Office of Tourism, Trade, and Economic Development  
 938 shall send written notice to the address of each certified  
 939 investor whose premium tax credit has been subject to recapture  
 940 or forfeiture, using the address last shown on the last premium  
 941 tax filing.

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

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

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

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

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

956  
 957 In either case, the amount of any proposed assessment set forth  
 958 in such notice shall be limited to the amount of any deficiency  
 959 resulting under this act from the recomputation of the certified  
 960 investor's insurance premium tax and, if applicable, its  
 961 retaliatory tax for the taxable year giving effect only to the  
 962 item or items reflected in the decertification adjustment.

963 (l) Any certified investor who fails to report and timely  
 964 pay any tax due as a result of the forfeiture of its insurance

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965 premium tax credit is in violation of this subsection and is  
 966 subject to a penalty of 10 percent of any underpayment or  
 967 delinquent taxes due and payable.

968 (m) When any taxpayer fails to pay any amount due as a  
 969 result of the forfeiture of its insurance premium tax credit as  
 970 provided for in this subsection, on or before the due date as  
 971 specified in this subsection, interest shall be due on any  
 972 insurance premium or retaliatory tax deficiency resulting from  
 973 such forfeiture, at the rate of 12 percent per year from the due  
 974 date of such amended return until paid.

975 (12)~~(11)~~ TRANSFERABILITY.--The premium tax credit  
 976 established pursuant to this act may be transferred or sold. The  
 977 Department of Revenue shall adopt rules to facilitate the  
 978 transfer or sale of such premium tax credits. A transfer or sale  
 979 shall not affect the time schedule for taking the premium tax  
 980 credit as provided in this act. Any premium tax credits  
 981 recaptured shall be the liability of the taxpayer who actually  
 982 claimed the premium tax credits. The claim of a transferee of a  
 983 certified investor's unused premium tax credit shall be  
 984 permitted in the same manner and subject to the same provisions  
 985 and limitations of this act as the original certified investor.

986 (13)~~(12)~~ REPORTING REQUIREMENTS.--The Office of Tourism,  
 987 Trade, and Economic Development shall report on an annual basis  
 988 to the Governor, the President of the Senate, and the Speaker of  
 989 the House of Representatives on or before April 1:

990 (a) The total dollar amount each certified capital company  
 991 received from all certified investors and any other investor,  
 992 the identity of the certified investors, and the total amount of

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993 premium tax credit used by each certified investor for the  
994 previous calendar year.

995 (b) The total dollar amount invested by each certified  
996 capital company and that portion invested in qualified  
997 businesses, the identity and location of those businesses, the  
998 amount invested in each qualified business, and the total number  
999 of permanent, full-time jobs created or retained by each  
1000 qualified business.

1001 (c) The return for the state as a result of the certified  
1002 capital company investments, including the extent to which:

1003 1. Certified capital company investments have contributed  
1004 to employment growth.

1005 2. The wage level of businesses in which certified capital  
1006 companies have invested exceed the average wage for the county  
1007 in which the jobs are located.

1008 3. The investments of the certified capital companies in  
1009 qualified businesses have contributed to expanding or  
1010 diversifying the economic base of the state.

1011 (14)~~(13)~~ FEES.--All fees and charges of any nature  
1012 collected by the office pursuant to this act shall be paid into  
1013 the State Treasury and credited to the General Revenue Fund.

1014 (15)~~(14)~~ RULEMAKING AUTHORITY.--

1015 (a) The Department of Revenue may by rule prescribe forms  
1016 and procedures for the tax credit filings, audits, and  
1017 forfeiture of premium tax credits described in this section, and  
1018 for certified capital company payments under paragraph (9)(b).

1019 (b) The commission and the Office of Tourism, Trade, and  
1020 Economic Development may adopt any rules necessary to carry out

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1021 their respective duties, obligations, and powers related to the  
 1022 administration, review, and reporting provisions of this section  
 1023 and may perform any other acts necessary for the proper  
 1024 administration and enforcement of such duties, obligations, and  
 1025 powers.

1026 (16)~~(15)~~(a) PUBLIC RECORDS EXEMPTION; CONFIDENTIALITY OF  
 1027 INVESTIGATION AND REVIEW INFORMATION.--Except as otherwise  
 1028 provided by this section, ~~any~~ information relating to an  
 1029 investigation or office review of a certified capital company,  
 1030 ~~including any consumer complaint,~~ is confidential and exempt  
 1031 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the  
 1032 State Constitution until the investigation or review is complete  
 1033 or ceases to be active. Such information shall remain  
 1034 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and  
 1035 s. 24(a), Art. I of the State Constitution after the  
 1036 investigation or review is complete or ceases to be active if  
 1037 the information is submitted to any law enforcement or  
 1038 administrative agency for further investigation, and shall  
 1039 remain confidential and exempt from ~~the provisions of~~ s.  
 1040 119.07(1) and s. 24(a), Art. I of the State Constitution until  
 1041 that agency's investigation is complete or ceases to be active.  
 1042 For purposes of this subsection, an investigation or review  
 1043 shall be considered "active" so long as the office, a law  
 1044 enforcement agency, or an administrative agency is proceeding  
 1045 with reasonable dispatch and has a reasonable good faith belief  
 1046 that the investigation may lead to the filing of an  
 1047 administrative, civil, or criminal proceeding. ~~This section~~  
 1048 ~~shall not be construed to prohibit disclosure of information~~

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1049 ~~which is required by law to be filed with the office and which,~~  
 1050 ~~but for the investigation, would otherwise be subject to s.~~  
 1051 ~~119.07(1).~~

1052 (b) Except as necessary to enforce the provisions of this  
 1053 chapter, ~~a consumer complaint or~~ information relating to an  
 1054 investigation or review shall remain confidential and exempt  
 1055 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 1056 after an investigation or review is complete or ceases to be  
 1057 active to the extent disclosure would:

1058 1. Reveal a trade secret as defined in s. 688.002 or s.  
 1059 812.081.

1060 2. Jeopardize the integrity of another active  
 1061 investigation or review.

1062 3. Disclose the identity of a confidential source. ~~or~~

1063 4. Disclose investigative techniques or procedures.

1064 (c) Nothing in this section shall be construed to prohibit  
 1065 the office from providing information to any law enforcement or  
 1066 administrative agency. Any law enforcement or administrative  
 1067 agency receiving such confidential and exempt information in  
 1068 connection with its official duties shall maintain the  
 1069 confidential and exempt status ~~confidentiality~~ of the  
 1070 information so long as it would otherwise be confidential and  
 1071 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 1072 Constitution.

1073 ~~(d) In the event office personnel are or have been~~  
 1074 ~~involved in an investigation or review of such nature as to~~  
 1075 ~~endanger their lives or physical safety or that of their~~  
 1076 ~~families, the home addresses, telephone numbers, places of~~

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1077 ~~employment, and photographs of such personnel, together with the~~  
 1078 ~~home addresses, telephone numbers, photographs, and places of~~  
 1079 ~~employment of spouses and children of such personnel and the~~  
 1080 ~~names and locations of schools and day care facilities attended~~  
 1081 ~~by the children of such personnel are confidential and exempt~~  
 1082 ~~from s. 119.07(1).~~

1083 ~~(e) All information obtained by the office from any person~~  
 1084 ~~which is only made available to the office on a confidential or~~  
 1085 ~~similarly restricted basis shall be confidential and exempt from~~  
 1086 ~~s. 119.07(1). This exemption shall not be construed to prohibit~~  
 1087 ~~disclosure of information which is specifically required by law~~  
 1088 ~~to be filed with the office or which is otherwise subject to s.~~  
 1089 ~~119.07(1).~~

1090 ~~(f) If information subject to this subsection is offered~~  
 1091 ~~in evidence in any administrative, civil, or criminal~~  
 1092 ~~proceeding, the presiding officer may, in his or her discretion,~~  
 1093 ~~prevent the disclosure of information which would be~~  
 1094 ~~confidential pursuant to paragraph (b).~~

1095 (17) CIVIL LIABILITY.--

1096 ~~(g)~~ A privilege against civil liability is granted to a  
 1097 person with regard to information or evidence furnished to the  
 1098 office, unless such person acts in bad faith or with malice in  
 1099 providing such information or evidence.

1100 (18) Notwithstanding the provisions of subsection (19),  
 1101 tax credits provided by this act for which a certified investor  
 1102 has been vested through the efforts of the certified capital  
 1103 company may be carried forward pursuant to paragraph (6)(a) only  
 1104 through calendar years ending December 31, 2017.



1105 (19) This section shall stand repealed December 31, 2010.

1106 ~~(h) This subsection is subject to the Open Government~~  
 1107 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and~~  
 1108 ~~shall stand repealed on October 2, 2005, unless reviewed and~~  
 1109 ~~saved from repeal through reenactment by the Legislature.~~

1110 ~~(16) CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS.—The~~  
 1111 ~~social security number of any customer of a certified capital~~  
 1112 ~~company, complainant, or person associated with a certified~~  
 1113 ~~capital company or qualified business, is exempt from s.~~  
 1114 ~~119.07(1). This subsection is subject to the Open Government~~  
 1115 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and~~  
 1116 ~~shall stand repealed on October 2, 2005, unless reviewed and~~  
 1117 ~~saved from repeal through reenactment by the Legislature.~~

1118 ~~(17) Notwithstanding the limitations set forth in~~  
 1119 ~~paragraph (7)(a), in the first fiscal year in which the total~~  
 1120 ~~insurance premium tax collections as determined by the Revenue~~  
 1121 ~~Estimating Conference exceed collections for fiscal year 2000-~~  
 1122 ~~2001 by more than the total amount of tax credits issued~~  
 1123 ~~pursuant to this section which were used by certified investors~~  
 1124 ~~in that year, the Office of Tourism, Trade, and Economic~~  
 1125 ~~Development may allocate to certified investors in accordance~~  
 1126 ~~with paragraph (7)(a) tax credits for Program Two. The~~  
 1127 ~~commission shall establish, by rule, a date and procedures by~~  
 1128 ~~which certified capital companies must file applications for~~  
 1129 ~~allocations of such additional premium tax credits, which date~~  
 1130 ~~shall be no later than 180 days from the date of determination~~  
 1131 ~~by the Revenue Estimating Conference. With respect to new~~  
 1132 ~~certified capital invested and premium tax credits earned~~

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1133 ~~pursuant to this subsection, the schedule specified in~~  
 1134 ~~subparagraphs (5)(a)1.-4. is satisfied by investments by~~  
 1135 ~~December 31 of the 2nd, 3rd, 4th, and 5th calendar year,~~  
 1136 ~~respectively, after the date established by the commission for~~  
 1137 ~~applications of additional premium tax credits. The commission~~  
 1138 ~~shall adopt rules by which an entity not already certified as a~~  
 1139 ~~certified capital company may apply for certification as a~~  
 1140 ~~certified capital company for participation in this additional~~  
 1141 ~~allocation. The insurance premium tax credit authorized by~~  
 1142 ~~Program Two may not be used by certified investors until the~~  
 1143 ~~annual return due March 1, 2004, and may be used on all~~  
 1144 ~~subsequent returns and estimated payments; however,~~  
 1145 ~~notwithstanding the provisions of s. 624.5092(2)(b), the~~  
 1146 ~~installments of taxes due and payable on April 15, 2004, and~~  
 1147 ~~June 15, 2004, shall be based on the net tax due in 2003 not~~  
 1148 ~~taking into account credits granted pursuant to this section for~~  
 1149 ~~Program Two.~~

1150           Section 2. This act shall take effect upon becoming a law.