

By Senator Ring

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1                                   A bill to be entitled  
2           An act relating to Florida ports investments; creating  
3           s. 311.23, F.S.; providing a short title; providing a  
4           purpose; providing definitions; providing requirements  
5           for certification to operate as a certified capital  
6           company; providing application requirements; providing  
7           for an application fee and annual certification  
8           renewal fees; providing application review and  
9           approval and certification administration and  
10          enforcement duties and responsibilities of the  
11          Department of Financial Services; providing grounds  
12          for denial of certification or decertification;  
13          providing for investments by the Office of Tourism,  
14          Trade, and Economic Development in port-related  
15          activities; specifying allocations for certain port  
16          activities and investments; providing requirements for  
17          capital allocation and investment; providing for a  
18          premium tax credit; providing for carryforward of the  
19          credit; providing limitations on the credit; providing  
20          limitations on the amount of tax credits; providing  
21          requirements for the office to administer the  
22          allocation of tax credits; providing requirements and  
23          procedures for a credit claim process; providing  
24          penalties for perjury for false written declaration  
25          involving verification of certain documentation;  
26          authorizing the Department of Revenue to conduct  
27          audits; providing investment requirements; providing  
28          for state participation; providing requirements and  
29          procedures for decertification; preserving audit

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30 authority of the Chief Financial Officer; providing  
31 criteria for deficiency assessments; providing  
32 penalties for failure to report and timely pay any tax  
33 due; providing for transferability of unused credits;  
34 providing a definition; providing reporting  
35 requirements; providing for deposit of fees;  
36 authorizing the Department of Revenue to adopt rules;  
37 authorizing the Office of Tourism, Trade, and Economic  
38 Development to adopt rules; providing an effective  
39 date.

40  
41 Be It Enacted by the Legislature of the State of Florida:

42  
43 Section 1. Section 311.23, Florida Statutes, is created to  
44 read:

45 311.23 Florida Ports Investment Act.-

46 (1) SHORT TITLE.-This section may be cited as the "Florida  
47 Ports Investment Act."

48 (2) PURPOSE.-The primary purpose of this section is to  
49 stimulate a substantial increase in the state's port  
50 infrastructure by providing an incentive for insurance companies  
51 to invest in certified port activities in this state which, in  
52 turn, will generate investments in new port businesses or in  
53 expanding port businesses. The increase in investment capital  
54 flowing into new or expanding port activities and businesses is  
55 intended to contribute to employment growth, create jobs that  
56 exceed the average wage for the county in which the jobs are  
57 created, and expand or diversify the economic base of this  
58 state.

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

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

61 1. Any person directly or indirectly beneficially owning,  
62 whether through rights, options, convertible interests, or  
63 otherwise, controlling, or holding power to vote 10 percent or  
64 more of the outstanding voting securities or other voting  
65 ownership interests of the insurance company;

66 2. Any person 10 percent or more of whose outstanding  
67 voting securities or other voting ownership interest is directly  
68 or indirectly beneficially owned, whether through rights,  
69 options, convertible interests, or otherwise, controlled, or  
70 held with power to vote by the insurance company;

71 3. Any person directly or indirectly controlling,  
72 controlled by, or under common control with the insurance  
73 company;

74 4. A partnership in which the insurance company is a  
75 general partner; or

76 5. Any person who is a principal, director, employee, or  
77 agent of the insurance company or an immediate family member of  
78 the principal, director, employee, or agent.

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

84 (c) "Certified capital company" means a corporation,  
85 partnership, or limited liability company that:

86 1. Is certified by the office under this section;

87 2. Receives investments of certified capital from two or

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88 more unaffiliated certified investors; and

89 3. Makes investments in qualified port businesses as its  
90 primary activity.

91 (d) "Certified investor" means any insurance company  
92 subject to premium tax liability under s. 624.509 that  
93 contributes certified capital.

94 (e) "Department" means the Department of Financial  
95 Services.

96 (f) "Office" means the Office of Tourism, Trade, and  
97 Economic Development.

98 (g) "Premium tax liability" means any liability incurred by  
99 an insurance company under s. 624.509.

100 (h) "Principal" means an executive officer of a  
101 corporation, partner of a partnership, manager of a limited  
102 liability company, or any other person with equivalent executive  
103 functions.

104 (i) "Qualified port business" means the ports and  
105 associated facilities listed in s. 403.021(9)(b) which meet the  
106 following qualifications:

107 1. The port is headquartered in this state and its  
108 principal business operations are located in this state.

109 2. Regional projects use the port's foreign trade zone for  
110 purposes involving manufacturing, processing or assembling of  
111 products, or conducting or providing services.

112 3. The port has applied and qualified for investment  
113 funding under paragraph (5)(d).

114 (j) "Qualified debt instrument" means a debt instrument, or  
115 a hybrid of a debt instrument, issued by a certified capital  
116 company, at par value or a premium, with an original maturity

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117 date of at least 5 years after the date of issuance, a repayment  
118 schedule that is no faster than a level principal amortization  
119 over a 5-year period, and interest, distribution, or payment  
120 features that are not related to the profitability of the  
121 certified capital company or the performance of the certified  
122 capital company's investment portfolio.

123 (k) "Qualified distribution" means any distribution or  
124 payment to equity holders of a certified capital company for:

125 1. Costs and expenses of forming, syndicating, managing,  
126 and operating the certified capital company, including an annual  
127 management fee in an amount that does not exceed 2.5 percent of  
128 the certified capital of the certified capital company, plus  
129 reasonable and necessary fees in accordance with industry custom  
130 for professional services, including, but not limited to, legal  
131 and accounting services, related to the operation of the  
132 certified capital company; or

133 2. Any projected increase in federal or state taxes,  
134 including penalties and interest related to state and federal  
135 income taxes, of the equity owners of a certified capital  
136 company resulting from the earnings or other tax liability of  
137 the certified capital company to the extent that the increase is  
138 related to the ownership, management, or operation of a  
139 certified capital company.

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

141 (a) To operate as a certified capital company, a  
142 corporation, partnership, or limited liability company must be  
143 certified by the department pursuant to this section.

144 (b) An applicant for certification as a certified capital  
145 company must file a verified application with the department on

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146 or before December 1, 2010, in a form that the department may  
147 prescribe by rule. The applicant shall submit a nonrefundable  
148 application fee of \$7,500 to the department. The applicant shall  
149 provide:

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

152 2. The applicant's form and place of organization and the  
153 relevant organizational documents, bylaws, and amendments or  
154 restatements of such documents, bylaws, or amendments.

155 3. Evidence from the Department of State that the applicant  
156 is registered with the Department of State as required by law,  
157 maintains an active status with the Department of State, and has  
158 not been dissolved or had its registration revoked, canceled, or  
159 withdrawn.

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

161 5. The applicant's financial condition and history,  
162 including an audit report on the financial statements prepared  
163 in accordance with generally accepted accounting principles  
164 showing net capital of not less than \$500,000 within 90 days  
165 after the date the application is submitted to the department.  
166 If the date of the application is more than 90 days after the  
167 preparation of the applicant's fiscal year-end financial  
168 statements, the applicant may file financial statements reviewed  
169 by an independent certified public accountant for the period  
170 subsequent to the audit report, together with the audited  
171 financial statement for the most recent fiscal year. If the  
172 applicant has been in business less than 12 months and has not  
173 prepared an audited financial statement, the applicant may file  
174 a financial statement reviewed by an independent certified

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175 public accountant.

176 (c) On or before December 31, 2010, the department shall  
177 grant or deny certification as a certified capital company. If  
178 the department denies certification within the time period  
179 specified, the department shall inform the applicant of the  
180 grounds for the denial. If the department has not granted or  
181 denied certification within the time specified, the application  
182 shall be deemed approved. The department shall approve the  
183 application if the department finds that:

184 1. The applicant satisfies the requirements of paragraph  
185 (b).

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

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

196 (d) The department may deny certification or decertify a  
197 certified capital company if the grounds for decertification are  
198 not removed or corrected within 90 days after the notice of such  
199 grounds is received by the certified capital company. The  
200 department may deny certification or decertify a certified  
201 capital company if the certified capital company fails to  
202 maintain common stock or paid-in capital of at least \$500,000,  
203 or if the department determines that the applicant, or any

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204 principal or director of the certified capital company, has:

205 1. Violated any provision of this section;

206 2. Made a material misrepresentation or false statement or  
207 concealed any essential or material fact from any person during  
208 the application process or with respect to information and  
209 reports required of certified capital companies under this  
210 section;

211 3. Been convicted of, or entered a plea of guilty or nolo  
212 contendere to, a crime against the laws of this state or any  
213 other state or of the United States or any other country or  
214 government, including a fraudulent act in connection with the  
215 operation of a certified capital company, or in connection with  
216 the performance of fiduciary duties in another capacity;

217 4. Been adjudicated liable in a civil action on grounds of  
218 fraud, embezzlement, misrepresentation, or deceit; or

219 5.a. Been the subject of any decision, finding, injunction,  
220 suspension, prohibition, revocation, denial, judgment, or  
221 administrative order by any court of competent jurisdiction,  
222 administrative law judge, or any state or federal agency,  
223 national securities, commodities, or option exchange, or  
224 national securities, commodities, or option association,  
225 involving a material violation of any federal or state  
226 securities or commodities law or any rule or regulation adopted  
227 under such law, or any rule or regulation of any national  
228 securities, commodities, or options exchange, or national  
229 securities, commodities, or options association; or

230 b. Been the subject of any injunction or adverse  
231 administrative order by a state or federal agency regulating  
232 banking, insurance, finance or small loan companies, real



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233 estate, mortgage brokers, or other related or similar  
234 industries.

235 (e) The certified capital company shall file a copy of its  
236 certification with the department by January 31, 2011.

237 (f) Any offering material involving the sale of securities  
238 of the certified capital company shall include the following  
239 statement: "By authorizing the formation of a certified capital  
240 company, the State of Florida does not endorse the quality of  
241 management or the potential for earnings of such company and is  
242 not liable for damages or losses to a certified investor in the  
243 company. Use of the word 'certified' in an offering does not  
244 constitute a recommendation or endorsement of the investment by  
245 the State of Florida. Investments in a certified capital company  
246 prior to the time such company is certified are not eligible for  
247 premium tax credits. If applicable provisions of law are  
248 violated, the state may require forfeiture of unused premium tax  
249 credits and repayment of used premium tax credits by the  
250 certified investor."

251 (g) An insurance company or any affiliate of an insurance  
252 company may not manage or control, directly or indirectly, the  
253 direction of investments of a certified capital company. This  
254 prohibition does not preclude a certified investor, insurance  
255 company, or any other party from exercising its legal rights and  
256 remedies, which may include interim management of a certified  
257 capital company, if a certified capital company is in default of  
258 its obligations under law or its contractual obligations to such  
259 certified investor, insurance company, or other party.

260 (h) On or before December 31 of each year, each certified  
261 capital company shall pay to the department an annual,

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262 nonrefundable renewal certification fee of \$5,000. Renewal fees  
263 may not be required within 6 months after the date of initial  
264 certification.

265 (i) The department shall administer and provide for the  
266 enforcement of certification requirements for certified capital  
267 companies as provided in this section. The department may adopt  
268 any rules necessary to carry out its duties, obligations, and  
269 powers related to certification, renewal of certification, or  
270 decertification of certified capital companies and may perform  
271 any other acts necessary for the proper administration and  
272 enforcement of such duties, obligations, and powers.

273 (j) Decertification of a certified capital company under  
274 this subsection does not affect the ability of certified  
275 investors in the certified capital company from claiming future  
276 premium tax credits earned as a result of an investment in the  
277 certified capital company during the period in which it was duly  
278 certified.

279 (5) INVESTMENTS BY THE OFFICE IN PORT-RELATED ACTIVITIES.-

280 (a)1. The office shall seek to maintain the state's  
281 advantage in ports and related industries. In order to maintain  
282 that advantage, the office shall:

283 a. Allocate at least 60 percent of the capital to direct  
284 port activities as described in s. 402.021(9).

285 b. Allocate at least 20 percent of the capital to port-  
286 related activities as specified in s. 403.021(9).

287 c. Allocate at least 20 percent of the capital to education  
288 related to ports and port-related studies under the New Florida  
289 Initiative developed by the Florida Board of Governors of the  
290 State University System.

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291       2. The capital raised under this section shall be allocated  
292 by July 1, 2012.

293       3. An individual port project may not consume more than 15  
294 percent of the total revenues of the corporation's intake.

295       (b) All capital not invested in qualified port businesses:

296       1. Must be held in a financial institution as defined by s.  
297 655.005(1) (h) or held by a broker-dealer registered under s.  
298 517.12.

299       2. Must be invested only in:

300       a. United States Treasury obligations;

301       b. Certificates of deposit or other obligations, maturing  
302 within 3 years after acquisition of such certificates or  
303 obligations, issued by any financial institution or trust  
304 company incorporated under the laws of the United States;

305       c. Marketable obligations, maturing within 5 years or less  
306 after the acquisition of such obligations, which are rated "A"  
307 or better by any nationally recognized credit rating agency;

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

312       e. Collateralized mortgage obligations and real estate  
313 mortgage investment conduits that are direct obligations of an  
314 agency of the Federal Government; are not private-label issues;  
315 are in book-entry form; and do not include the classes of  
316 interest only, principal only, residual, or zero; or

317       f. Interests in money market funds, the portfolio of which  
318 is limited to cash and obligations described in sub-  
319 subparagraphs a.-d.

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320 (c) The aggregate amount of all investments in qualified  
321 port businesses made by the certified capital company from the  
322 date of its certification shall be considered in the calculation  
323 of the percentage requirements under paragraph (a).

324 (d) When an investment in a qualified port business is  
325 ready, the port must petition the office to receive funding and  
326 certify that the investment is of a beneficial nature to the  
327 port, is ready to proceed within 60 days for design,  
328 construction, and permitting, and will create a lasting economic  
329 impact as defined by the office. Applications for funding must  
330 be made to the office under rules adopted by the office.

331 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.—

332 (a) Any certified investor who makes an investment of  
333 certified capital shall earn a vested credit against premium tax  
334 liability equal to 100 percent of the certified capital invested  
335 by the certified investor. Certified investors shall be entitled  
336 to use no more than 10 percentage points of the vested premium  
337 tax credit, including any carryforward credits under this  
338 section, per year beginning with premium tax filings for  
339 calendar year 2012. Any premium tax credits not used by  
340 certified investors in any single year may be carried forward  
341 and applied against the premium tax liabilities of such  
342 investors for subsequent calendar years. The carryforward credit  
343 may be applied against subsequent premium tax filings through  
344 calendar year 2029.

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

348 (c) A certified investor claiming a credit against premium

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349 tax liability earned through an investment in a certified  
350 capital company shall not be required to pay any additional  
351 retaliatory tax levied pursuant to s. 624.5091 as a result of  
352 claiming such credit. Because credits under this section are  
353 available to a certified investor, s. 624.5091 does not limit  
354 such credit in any manner.

355 (d) The amount of tax credits vested under this section  
356 shall not be considered in ratemaking proceedings involving a  
357 certified investor.

358 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION PROCESS.—

359 (a) The total amount of tax credits which may be allocated  
360 by the office shall not exceed \$500 million. The total amount of  
361 tax credits which may be used by certified investors under this  
362 section shall not exceed \$25 million annually.

363 (b) The office shall be responsible for allocating premium  
364 tax credits as provided for in this section to certified capital  
365 companies.

366 (c) Each certified capital company must apply to the office  
367 for an allocation of premium tax credits for potential certified  
368 investors by March 15, 2011, on a form developed by the office  
369 with the cooperation of the Department of Revenue. The form  
370 shall be accompanied by an affidavit from each potential  
371 certified investor confirming that the potential certified  
372 investor has agreed to make an investment of certified capital  
373 in a certified capital company up to a specified amount, subject  
374 only to the receipt of a premium tax credit allocation pursuant  
375 to this subsection. No allocation shall be made to the potential  
376 investors of a certified capital company unless such certified  
377 capital company has filed premium tax allocation claims that

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378 would result in an allocation to the potential investors in such  
379 certified capital company of not less than \$15 million in the  
380 aggregate.

381 (d) On or before April 1, 2011, the office shall inform  
382 each certified capital company of its share of total premium tax  
383 credits available for allocation to each of its potential  
384 investors.

385 (e) If a certified capital company does not receive  
386 certified capital equaling the amount of premium tax credits  
387 allocated to a potential certified investor for which the  
388 investor filed a premium tax allocation claim within 10 business  
389 days after the investor received a notice of allocation, the  
390 certified capital company shall notify the office by overnight  
391 common carrier delivery service of the company's failure to  
392 receive the capital. That portion of the premium tax credits  
393 allocated to the certified capital company shall be forfeited.  
394 If the office must make a pro rata allocation under paragraph  
395 (f), it shall reallocate such available credits among the other  
396 certified capital companies on the same pro rata basis as the  
397 initial allocation.

398 (f) If the total amount of capital committed by all  
399 certified investors to certified capital companies in premium  
400 tax allocation claims exceeds the aggregate cap on the amount of  
401 credits that may be awarded, the premium tax credits that may be  
402 allowed to any one certified investor shall be allocated using  
403 the following ratio:

$$\text{A/B} = \text{X} / >\$500,000,000$$

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407 Where the letter "A" represents the total amount of certified  
408 capital that certified investors have agreed to invest in any  
409 one certified capital company, the letter "B" represents the  
410 aggregate amount of certified capital that all certified  
411 investors have agreed to invest in all certified capital  
412 companies, the letter "X" is the numerator and represents the  
413 total amount of premium tax credits and certified capital that  
414 may be allocated to a certified capital company in calendar year  
415 2011, and \$500 million is the denominator and represents the  
416 total amount of premium tax credits and certified capital that  
417 may be allocated to all certified investors in calendar year  
418 2011. Any such premium tax credits are not first available for  
419 utilization until annual filings are made in 2012 for calendar  
420 year 2011, and the tax credits may be used at a rate not to  
421 exceed 10 percent annually.

422 (g) The maximum amount of certified capital for which  
423 premium tax allocation claims may be filed on behalf of any  
424 certified investor and its affiliates by one or more certified  
425 capital companies may not exceed \$25 million.

426 (h) To the extent that less than \$500 million in certified  
427 capital is raised in connection with the procedure set forth in  
428 paragraphs (c)-(g), the department may adopt rules to allow a  
429 subsequent allocation of the remaining premium tax credits  
430 authorized under this section.

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

432 (a) On an annual basis, on or before December 31, each  
433 certified capital company shall file with the department and the  
434 office, in consultation with the department, on a form  
435 prescribed by the office, for each calendar year:

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436 1. The total dollar amount the certified capital company  
437 received from certified investors, the identity of the certified  
438 investors, and the amount received from each certified investor  
439 during the immediately preceding calendar year.

440 2. The total dollar amount the certified capital company  
441 invested and the amount invested in qualified port businesses,  
442 together with the identity and location of those businesses and  
443 the amount invested in each qualified port business during the  
444 immediately preceding calendar year.

445 3. For informational purposes only, the total number of  
446 permanent, full-time jobs created or retained by the qualified  
447 port business during the immediately preceding calendar year,  
448 the average wage of the jobs created or retained, the industry  
449 sectors in which the qualified port businesses operate, and any  
450 additional capital invested in qualified port businesses from  
451 sources other than certified capital companies.

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

456 (c) The office shall review the form, and any supplemental  
457 documentation, submitted by each certified capital company for  
458 the purpose of verifying:

459 1. That the businesses in which certified capital has been  
460 invested by the certified capital company are in fact qualified  
461 port businesses and that the amount of certified capital  
462 invested by the certified capital company is as represented in  
463 the form.

464 2. The amount of certified capital invested in the



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465 certified capital company by the certified investors.

466 3. The amount of premium tax credit available to certified  
467 investors.

468 (d) The Department of Revenue may audit and examine the  
469 accounts, books, or records of certified capital companies and  
470 certified investors to ascertain the correctness of any report  
471 and financial return that has been filed and to ascertain a  
472 certified capital company's compliance with the tax-related  
473 provisions of this section.

474 (e) This subsection shall take effect January 1, 2011.

475 (9) REQUIREMENT FOR FULL INVESTMENT; STATE PARTICIPATION.-

476 (a) A certified capital company may make qualified  
477 distributions at any time. In order to make a distribution to  
478 its equity holders, other than a qualified distribution, a  
479 certified capital company must have invested an amount  
480 cumulatively equal to 100 percent of its certified capital in  
481 investments in qualified port businesses. Payments to debt  
482 holders of a certified capital company, however, may be made  
483 without restriction with respect to repayments of principal and  
484 interest on indebtedness owed to them by a certified capital  
485 company, including indebtedness of the certified capital company  
486 on which certified investors earned premium tax credits. A debt  
487 holder that is also a certified investor or equity holder of a  
488 certified capital company may receive payments with respect to  
489 such debt without restrictions.

490 (b) Cumulative distributions from a certified capital  
491 company to its certified investors and equity holders, other  
492 than qualified distributions, in excess of the certified capital  
493 company's original certified capital and any additional capital

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494 contributions to the certified capital company may be audited by  
495 a nationally recognized certified public accounting firm  
496 acceptable to the office, at the expense of the certified  
497 capital company, if the department directs such an audit to be  
498 conducted. The audit shall determine whether aggregate  
499 cumulative distributions from the certified capital company to  
500 all certified investors and equity holders, other than qualified  
501 distributions, have equaled the sum of the certified capital  
502 company's original certified capital and any additional capital  
503 contributions to the certified capital company. If at the time  
504 of any such distribution made by the certified capital company,  
505 such distribution taken together with all other such  
506 distributions made by the certified capital company, other than  
507 qualified distributions, exceeds in the aggregate the sum of the  
508 certified capital company's original certified capital and any  
509 additional capital contributions to the certified capital  
510 company, as determined by the audit, the certified capital  
511 company shall pay to the Department of Revenue 10 percent of the  
512 portion of such distribution in excess of such amount. Payments  
513 to the Department of Revenue by a certified capital company  
514 pursuant to this paragraph may not exceed the aggregate amount  
515 of tax credits used by all certified investors in such certified  
516 capital company.

517 (10) DECERTIFICATION.—

518 (a) The department shall conduct an annual review of each  
519 certified capital company to determine if the certified capital  
520 company is abiding by the requirements of certification, to  
521 advise the certified capital company as to the eligibility  
522 status of its investments in qualified port businesses, and to

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523 ensure that no investment has been made in violation of this  
524 section. The cost of the annual review shall be paid by each  
525 certified capital company.

526 (b) This subsection does not limit the Chief Financial  
527 Officer's authority to conduct audits of certified capital  
528 companies as deemed appropriate and necessary.

529 (c) Any material violation of this section, or a finding  
530 that the certified capital company or any principal or director  
531 thereof has committed any act specified in paragraph (4) (d),  
532 constitutes grounds for decertification of the certified capital  
533 company. If the department determines that a certified capital  
534 company is no longer in compliance with the certification  
535 requirements of this section, the department shall, by written  
536 notice, inform the officers of such company that the company may  
537 be subject to decertification 90 days after the date of mailing  
538 of the notice, unless the deficiencies are corrected and the  
539 company is again found to be in compliance with all  
540 certification requirements.

541 (d) At the end of the 90-day grace period, if the certified  
542 capital company is still not in compliance with the  
543 certification requirements, the department may issue a notice to  
544 revoke or suspend the certification or to impose an  
545 administrative fine. The department shall advise each respondent  
546 of the right to an administrative hearing under chapter 120  
547 prior to final action by the department.

548 (e) If the department revokes a certification, such  
549 revocation shall also deny, suspend, or revoke the  
550 certifications of all affiliates of the certified capital  
551 company.

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552       (f) Decertification of a certified capital company for  
553 failure to meet all requirements for continued certification  
554 under paragraph (5) (a) may cause the recapture of premium tax  
555 credits previously claimed by such company and the forfeiture of  
556 future premium tax credits to be claimed by certified investors  
557 with respect to such certified capital company, as follows:

558       1. Decertification of a certified capital company within 3  
559 years after its certification date shall cause the recapture of  
560 all premium tax credits previously claimed by such company and  
561 the forfeiture of all future premium tax credits to be claimed  
562 by certified investors with respect to such company.

563       2. When a certified capital company meets all requirements  
564 for continued certification under subparagraph (5) (a)1. and  
565 subsequently fails to meet the requirements for continued  
566 certification under subparagraph (5) (a)2., the premium tax  
567 credits that have been or will be taken by certified investors  
568 within 3 years after the certification date of the certified  
569 capital company are not subject to recapture or forfeiture;  
570 however, all premium tax credits that have been or will be taken  
571 by certified investors after the third anniversary of the  
572 certification date of the certified capital company are subject  
573 to recapture or forfeiture.

574       3. When a certified capital company meets all requirements  
575 for continued certification under subparagraphs (5) (a)1. and 2.  
576 and subsequently fails to meet the requirements for continued  
577 certification under subparagraph (5) (a)3., the premium tax  
578 credits that have been or will be taken by certified investors  
579 within 4 years after the certification date of the certified  
580 capital company are not subject to recapture or forfeiture;

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581 however, all premium tax credits that have been or will be taken  
582 by certified investors after the fourth anniversary of the  
583 certification date of the certified capital company are subject  
584 to recapture and forfeiture.

585 4. If a certified capital company has met all requirements  
586 for continued certification under paragraph (5) (a), but the  
587 company is subsequently decertified, the premium tax credits  
588 that have been or will be taken by certified investors within 5  
589 years after the certification date of the company are not  
590 subject to recapture or forfeiture. Premium tax credits to be  
591 taken after the 5th year of certification are subject to  
592 forfeiture only if the certified capital company is decertified  
593 within 5 years after its certification date.

594 5. If a certified capital company has invested an amount  
595 cumulatively equal to 100 percent of its certified capital in  
596 investments in qualified port businesses, all premium tax  
597 credits claimed or to be claimed by its certified investors are  
598 not subject to recapture or forfeiture.

599 (g) Decertification of a certified capital company pursuant  
600 to subsection (4) or this subsection does not affect the ability  
601 of certified investors in such certified capital company to  
602 continue to claim future premium tax credits earned as an  
603 investment in the certified capital company during the period in  
604 which it was duly certified.

605 (h) The office shall send written notice to the address of  
606 each certified investor whose premium tax credit has been  
607 subject to recapture or forfeiture, using the address last shown  
608 on the last premium tax filing.

609 (i) The certified investor is responsible for returning to

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610 the Department of Revenue any forfeited insurance premium tax  
611 credits, and such funds shall be paid into the General Revenue  
612 Fund.

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

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

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

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

623  
624 In either case, the amount of any proposed assessment set forth  
625 in such notice shall be limited to the amount of any deficiency  
626 resulting under this section from the recomputation of the  
627 certified investor's insurance premium tax and, if applicable,  
628 its retaliatory tax for the taxable year giving effect only to  
629 the item or items reflected in the decertification adjustment.

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

635 (m) When any taxpayer fails to pay any amount due as a  
636 result of the forfeiture of its insurance premium tax credit as  
637 provided for in this subsection, on or before the due date as  
638 specified in this subsection, interest shall be due on any

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639 insurance premium or retaliatory tax deficiency resulting from  
640 such forfeiture, at the rate of 12 percent per year from the due  
641 date of such amended return until paid.

642 (11) TRANSFERABILITY.—The claim of a transferee of a  
643 certified investor's unused premium tax credit shall be  
644 permitted in the same manner and subject to the same provisions  
645 and limitations of this section as the original certified  
646 investor. The term "transferee" means any person who:

647 (a) Through the voluntary sale, assignment, or other  
648 transfer of the business or control of the business of the  
649 certified investor, including the sale or other transfer of  
650 stocks or assets by merger, consolidation, or dissolution,  
651 succeeds to all or substantially all of the business and  
652 property of the certified investor;

653 (b) Becomes by operation of law or otherwise the parent  
654 company of the certified investor;

655 (c) Directly or indirectly owns, whether through rights,  
656 options, convertible interests, or otherwise, controls, or holds  
657 power to vote 10 percent or more of the outstanding voting  
658 securities or other ownership interest of the certified  
659 investor;

660 (d) Is a subsidiary of the certified investor or has 10  
661 percent or more of its outstanding voting securities or other  
662 ownership interests directly or indirectly owned, whether  
663 through rights, options, convertible interests, or otherwise, by  
664 the certified investor; or

665 (e) Directly or indirectly controls, is controlled by, or  
666 is under common control with the certified investor.

667 (12) REPORTING REQUIREMENTS.—The office shall report on an

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668 annual basis to the Governor, the President of the Senate, and  
669 the Speaker of the House of Representatives on or before April  
670 1:

671 (a) The total dollar amount each certified capital company  
672 received from all certified investors and any other investor,  
673 the identity of the certified investors, and the total amount of  
674 premium tax credit used by each certified investor for the  
675 previous calendar year.

676 (b) The total dollar amount invested by each certified  
677 capital company and that portion invested in qualified port  
678 businesses, the identity and location of those businesses, the  
679 amount invested in each qualified port business, and the total  
680 number of permanent, full-time jobs created or retained by each  
681 qualified port business.

682 (c) The return for the state as a result of the certified  
683 capital company investments in qualified port businesses,  
684 including the extent to which:

685 1. Certified capital company investments have contributed  
686 to employment growth.

687 2. The wage level of businesses in which certified capital  
688 companies have invested exceeds the average wage for the county  
689 in which the jobs are located.

690 3. The investments of the certified capital companies in  
691 qualified port businesses have contributed to expanding or  
692 diversifying the economic base of the state.

693 (13) FEES.—All fees and charges of any nature collected by  
694 the department under this section shall be paid into the State  
695 Treasury and credited to the General Revenue Fund.

696 (14) RULEMAKING AUTHORITY.—



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

701       (b) The office may adopt any rules necessary to carry out  
702 its respective duties, obligations, and powers related to the  
703 administration, review, and reporting provisions of this section  
704 and may perform any other acts necessary for the proper  
705 administration and enforcement of such duties, obligations, and  
706 powers.

707       Section 2. This act shall take effect July 1, 2010.