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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

37

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

39

40 Section 1. Section 311.23, Florida Statutes, is created to  
 41 read:

42 311.23 Florida Ports Investment Act.—

43 (1) SHORT TITLE.—This section may be cited as the "Florida  
 44 Ports Investment Act."

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

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

57        (a) "Affiliate of an insurance company" means:  
 58        1. Any person directly or indirectly beneficially owning,  
 59        whether through rights, options, convertible interests, or  
 60        otherwise, controlling, or holding power to vote 10 percent or  
 61        more of the outstanding voting securities or other voting  
 62        ownership interests of the insurance company;  
 63        2. Any person 10 percent or more of whose outstanding  
 64        voting securities or other voting ownership interest is directly  
 65        or indirectly beneficially owned, whether through rights,  
 66        options, convertible interests, or otherwise, controlled, or  
 67        held with power to vote by the insurance company;  
 68        3. Any person directly or indirectly controlling,  
 69        controlled by, or under common control with the insurance  
 70        company;  
 71        4. A partnership in which the insurance company is a  
 72        general partner; or  
 73        5. Any person who is a principal, director, employee, or  
 74        agent of the insurance company or an immediate family member of  
 75        the principal, director, employee, or agent.  
 76        (b) "Certified capital" means an investment of cash by a  
 77        certified investor in a certified capital company which fully  
 78        funds the purchase price of either or both its equity interest  
 79        in the certified capital company or a qualified debt instrument  
 80        issued by the certified capital company.  
 81        (c) "Certified capital company" means a corporation,  
 82        partnership, or limited liability company that:  
 83        1. Is certified by the office under this section;  
 84        2. Receives investments of certified capital from two or

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85 more unaffiliated certified investors; and

86 3. Makes investments in qualified port businesses as its  
87 primary activity.

88 (d) "Certified investor" means any insurance company  
89 subject to premium tax liability under s. 624.509 that  
90 contributes certified capital.

91 (e) "Department" means the Department of Financial  
92 Services.

93 (f) "Office" means the Office of Tourism, Trade, and  
94 Economic Development.

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

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

101 (i) "Qualified port business" means the ports and  
102 associated facilities listed in s. 403.021(9)(b) that meet the  
103 following qualifications:

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

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

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

111 (j) "Qualified debt instrument" means a debt instrument,  
112 or a hybrid of a debt instrument, issued by a certified capital

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113 company, at par value or a premium, with an original maturity  
114 date of at least 5 years after the date of issuance, a repayment  
115 schedule that is no faster than a level principal amortization  
116 over a 5-year period, and interest, distribution, or payment  
117 features that are not related to the profitability of the  
118 certified capital company or the performance of the certified  
119 capital company's investment portfolio.

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

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

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

137 (4) CERTIFICATION; GROUNDS FOR DENIAL OR DECERTIFICATION.—

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

141       (b) An applicant for certification as a certified capital  
142 company must file a verified application with the department on  
143 or before December 1, 2010, in a form that the department may  
144 prescribe by rule. The applicant shall submit a nonrefundable  
145 application fee of \$7,500 to the department. The applicant shall  
146 provide:

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

149       2. The applicant's form and place of organization and the  
150 relevant organizational documents, bylaws, and amendments or  
151 restatements of such documents, bylaws, or amendments.

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

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

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

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169 applicant has been in business less than 12 months and has not  
170 prepared an audited financial statement, the applicant may file  
171 a financial statement reviewed by an independent certified  
172 public accountant.

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

181 1. The applicant satisfies the requirements of paragraph  
182 (b).

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

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

193 (d) The department may deny certification or decertify a  
194 certified capital company if the grounds for decertification are  
195 not removed or corrected within 90 days after the notice of such  
196 grounds is received by the certified capital company. The

197 department may deny certification or decertify a certified  
 198 capital company if the certified capital company fails to  
 199 maintain common stock or paid-in capital of at least \$500,000,  
 200 or if the department determines that the applicant, or any  
 201 principal or director of the certified capital company, has:

202 1. Violated any provision of this section;  
 203 2. Made a material misrepresentation or false statement or  
 204 concealed any essential or material fact from any person during  
 205 the application process or with respect to information and  
 206 reports required of certified capital companies under this  
 207 section;

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

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

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



225 securities, commodities, or options exchange, or national  
 226 securities, commodities, or options association; or

227 b. Been the subject of any injunction or adverse  
 228 administrative order by a state or federal agency regulating  
 229 banking, insurance, finance or small loan companies, real  
 230 estate, mortgage brokers, or other related or similar  
 231 industries.

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

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

248 (g) An insurance company or any affiliate of an insurance  
 249 company may not manage or control, directly or indirectly, the  
 250 direction of investments of a certified capital company. This  
 251 prohibition does not preclude a certified investor, insurance  
 252 company, or any other party from exercising its legal rights and

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253 remedies, which may include interim management of a certified  
254 capital company, if a certified capital company is in default of  
255 its obligations under law or its contractual obligations to such  
256 certified investor, insurance company, or other party.

257 (h) On or before December 31 of each year, each certified  
258 capital company shall pay to the department an annual,  
259 nonrefundable renewal certification fee of \$5,000. Renewal fees  
260 may not be required within 6 months after the date of initial  
261 certification.

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

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

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

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

280 a. Allocate at least 60 percent of the capital to direct

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281 port activities as described in s. 402.021(9).

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

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

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

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

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

293 1. Must be held in a financial institution as defined by  
294 s. 655.005(1)(h) or held by a broker-dealer registered under s.  
295 517.12.

296 2. Must be invested only in:

297 a. United States Treasury obligations;

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

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

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

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

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

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

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

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

329 (a) Any certified investor who makes an investment of  
330 certified capital shall earn a vested credit against premium tax  
331 liability equal to 100 percent of the certified capital invested  
332 by the certified investor. Certified investors shall be entitled  
333 to use no more than 10 percentage points of the vested premium  
334 tax credit, including any carryforward credits under this  
335 section, per year beginning with premium tax filings for  
336 calendar year 2012. Any premium tax credits not used by

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337 certified investors in any single year may be carried forward  
338 and applied against the premium tax liabilities of such  
339 investors for subsequent calendar years. The carryforward credit  
340 may be applied against subsequent premium tax filings through  
341 calendar year 2029.

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

345 (c) A certified investor claiming a credit against premium  
346 tax liability earned through an investment in a certified  
347 capital company shall not be required to pay any additional  
348 retaliatory tax levied pursuant to s. 624.5091 as a result of  
349 claiming such credit. Because credits under this section are  
350 available to a certified investor, s. 624.5091 does not limit  
351 such credit in any manner.

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

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

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

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

364 (c) Each certified capital company must apply to the

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365 office for an allocation of premium tax credits for potential  
366 certified investors by March 15, 2011, on a form developed by  
367 the office with the cooperation of the Department of Revenue.  
368 The form shall be accompanied by an affidavit from each  
369 potential certified investor confirming that the potential  
370 certified investor has agreed to make an investment of certified  
371 capital in a certified capital company up to a specified amount,  
372 subject only to the receipt of a premium tax credit allocation  
373 pursuant to this subsection. No allocation shall be made to the  
374 potential investors of a certified capital company unless such  
375 certified capital company has filed premium tax allocation  
376 claims that would result in an allocation to the potential  
377 investors in such certified capital company of not less than \$15  
378 million in the aggregate.

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

383 (e) If a certified capital company does not receive  
384 certified capital equaling the amount of premium tax credits  
385 allocated to a potential certified investor for which the  
386 investor filed a premium tax allocation claim within 10 business  
387 days after the investor received a notice of allocation, the  
388 certified capital company shall notify the office by overnight  
389 common carrier delivery service of the company's failure to  
390 receive the capital. That portion of the premium tax credits  
391 allocated to the certified capital company shall be forfeited.  
392 If the office must make a pro rata allocation under paragraph

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393 (f), it shall reallocate such available credits among the other  
394 certified capital companies on the same pro rata basis as the  
395 initial allocation.

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

$$402 \qquad \qquad \qquad \underline{A/B = X / >\$500,000,000}$$

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

420 (g) The maximum amount of certified capital for which

421 premium tax allocation claims may be filed on behalf of any  
 422 certified investor and its affiliates by one or more certified  
 423 capital companies may not exceed \$25 million.

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

429 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.—

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

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

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

443 3. For informational purposes only, the total number of  
 444 permanent, full-time jobs either created or retained by the  
 445 qualified port business during the immediately preceding  
 446 calendar year, the average wage of the jobs created or retained,  
 447 the industry sectors in which the qualified port businesses  
 448 operate, and any additional capital invested in qualified port



449 businesses from sources other than certified capital companies.

450 (b) The form shall be verified by one or more principals  
 451 of the certified capital company submitting the form.

452 Verification shall be accomplished as provided in s.  
 453 92.525(1)(b) and subject to the provisions of s. 92.525(3).

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

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

462 2. The amount of certified capital invested in the  
 463 certified capital company by the certified investors.

464 3. The amount of premium tax credit available to certified  
 465 investors.

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

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

473 (9) REQUIREMENT FOR FULL INVESTMENT; STATE PARTICIPATION.—

474 (a) A certified capital company may make qualified  
 475 distributions at any time. In order to make a distribution to  
 476 its equity holders, other than a qualified distribution, a

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

488 (b) Cumulative distributions from a certified capital  
 489 company to its certified investors and equity holders, other  
 490 than qualified distributions, in excess of the certified capital  
 491 company's original certified capital and any additional capital  
 492 contributions to the certified capital company may be audited by  
 493 a nationally recognized certified public accounting firm  
 494 acceptable to the office, at the expense of the certified  
 495 capital company, if the department directs such an audit to be  
 496 conducted. The audit shall determine whether aggregate  
 497 cumulative distributions from the certified capital company to  
 498 all certified investors and equity holders, other than qualified  
 499 distributions, have equaled the sum of the certified capital  
 500 company's original certified capital and any additional capital  
 501 contributions to the certified capital company. If at the time  
 502 of any such distribution made by the certified capital company,  
 503 such distribution taken together with all other such  
 504 distributions made by the certified capital company, other than

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505 qualified distributions, exceeds in the aggregate the sum of the  
506 certified capital company's original certified capital and any  
507 additional capital contributions to the certified capital  
508 company, as determined by the audit, the certified capital  
509 company shall pay to the Department of Revenue 10 percent of the  
510 portion of such distribution in excess of such amount. Payments  
511 to the Department of Revenue by a certified capital company  
512 pursuant to this paragraph may not exceed the aggregate amount  
513 of tax credits used by all certified investors in such certified  
514 capital company.

515 (10) DECERTIFICATION.—

516 (a) The department shall conduct an annual review of each  
517 certified capital company to determine if the certified capital  
518 company is abiding by the requirements of certification, to  
519 advise the certified capital company as to the eligibility  
520 status of its investments in qualified port businesses, and to  
521 ensure that no investment has been made in violation of this  
522 section. The cost of the annual review shall be paid by each  
523 certified capital company.

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

527 (c) Any material violation of this section, or a finding  
528 that the certified capital company or any principal or director  
529 thereof has committed any act specified in paragraph (4) (d),  
530 constitutes grounds for decertification of the certified capital  
531 company. If the department determines that a certified capital  
532 company is no longer in compliance with the certification

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533 requirements of this section, the department shall, by written  
534 notice, inform the officers of such company that the company may  
535 be subject to decertification 90 days after the date of mailing  
536 of the notice, unless the deficiencies are corrected and the  
537 company is again found to be in compliance with all  
538 certification requirements.

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

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

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

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

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

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

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

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589 taken after the 5th year of certification are subject to  
590 forfeiture only if the certified capital company is decertified  
591 within 5 years after its certification date.

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

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

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

607 (i) The certified investor is responsible for returning to  
608 the Department of Revenue any forfeited insurance premium tax  
609 credits, and such funds shall be paid into the General Revenue  
610 Fund.

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

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

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

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

621  
622 In either case, the amount of any proposed assessment set forth  
623 in such notice shall be limited to the amount of any deficiency  
624 resulting under this section from the recomputation of the  
625 certified investor's insurance premium tax and, if applicable,  
626 its retaliatory tax for the taxable year giving effect only to  
627 the item or items reflected in the decertification adjustment.

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

633 (m) When any taxpayer fails to pay any amount due as a  
634 result of the forfeiture of its insurance premium tax credit as  
635 provided for in this subsection, on or before the due date as  
636 specified in this subsection, interest shall be due on any  
637 insurance premium or retaliatory tax deficiency resulting from  
638 such forfeiture, at the rate of 12 percent per year from the due  
639 date of such amended return until paid.

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

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

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

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

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

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

665 (12) REPORTING REQUIREMENTS.—The office shall report on an  
666 annual basis to the Governor, the President of the Senate, and  
667 the Speaker of the House of Representatives on or before April  
668 1:

669 (a) The total dollar amount each certified capital company  
670 received from all certified investors and any other investor,  
671 the identity of the certified investors, and the total amount of  
672 premium tax credit used by each certified investor for the



673 previous calendar year.

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

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

683 1. Certified capital company investments have contributed  
 684 to employment growth.

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

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

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

694 (14) RULEMAKING AUTHORITY.—

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

699 (b) The office may adopt any rules necessary to carry out  
 700 its respective duties, obligations, and powers related to the

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701 administration, review, and reporting provisions of this section  
702 and may perform any other acts necessary for the proper  
703 administration and enforcement of such duties, obligations, and  
704 powers.

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