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MAR 4 1999

ECONOMIC DEVELOPMENT

HOUSE FILE

513

BY TEIG, FALCK, JENKINS,
WISE, DOTZLER, O'BRIEN,
MAY, VAN FOSSEN, and
HEATON

WITHDRAWN

4/19/99 (P. 1393)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to certified capital companies and providing for
2 a certified capital company insurance premium tax credit.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4

HOUSE FILE 513

H-1104

1 Amend House File 513 as follows:
2 1. Page 7, by inserting after line 9 the
3 following:
4 "i. The business is predominantly engaged in a
5 targeted industry as described in section 15.329,
6 subsection 2, paragraph "b", with the exception of
7 subparagraph (2).
8 j. It is the intent of the business to provide
9 long-term attractive compensation packages with many
10 of the compensation packages for owners and employees
11 to be risk and venture based with a focus on future
12 returns."

By COMMITTEE ON ECONOMIC DEVELOPMENT
TEIG of Hamilton, CHAIRPERSON

H-1104 FILED MARCH 17, 1999

HFE 513

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1 Section 1. NEW SECTION. 15E.221 SHORT TITLE.

2 This division shall be known and may be cited as the
3 "Certified Capital Companies Act".

4 Sec. 2. NEW SECTION. 15E.222 DEFINITIONS.

5 As used in this division, unless the context otherwise
6 requires:

7 1. "Affiliate" means, with respect to a certified capital
8 company or a certified investor, any of the following:

9 a. A person who, directly or indirectly, owns, controls,
10 or holds power to vote, ten percent or more of the outstanding
11 voting securities or other voting ownership interests of the
12 certified capital company or certified investor.

13 b. A person, ten percent of whose outstanding voting
14 securities or other voting ownership interests are directly or
15 indirectly owned, controlled, or held with power to vote by
16 the certified capital company or certified investor.

17 c. A person directly or indirectly controlling, controlled
18 by, or under common control with, the certified capital
19 company or certified investor.

20 d. A partnership in which the certified capital company or
21 certified investor is a general partner.

22 e. A person who is an officer, director, or agent of the
23 certified capital company or certified investor, or is an
24 immediate family member of such an officer, director, or
25 agent.

26 2. "Certified capital company" means a person that is
27 certified by the department pursuant to section 15E.223.

28 3. "Certified capital company tax credit" means the tax
29 credit made available under section 15E.232.

30 4. "Certified capital investment" means an investment in a
31 certified capital company that is certified pursuant to
32 section 15E.224, subsection 2, and that fully funds either the
33 investor's equity interest in a certified capital company or a
34 qualified debt instrument that a certified capital company
35 issues.

1 5. "Certified investor" means a person who makes a
2 certified capital investment.

3 6. "Department" means the department of economic
4 development as created in section 15.101.

5 7. "Director" means the director of the department or the
6 director's designee.

7 8. "Investment date" means, with respect to each
8 investment pool, the date on which the last certified capital
9 investment that is part of that investment pool was invested
10 in the certified capital company.

11 9. "Investment pool" means the aggregate of all certified
12 capital investments in a certified capital company that are
13 made as part of the same transaction, except that investments
14 received more than thirty days apart shall not be considered
15 part of the same investment pool.

16 10. "Qualified business" means a business which is a
17 qualified business under section 15E.225.

18 11. "Qualified debt instrument" means a debt instrument
19 that meets all of the following criteria:

20 a. A certified capital company issues the instrument at
21 par value or at a premium.

22 b. The instrument has an original maturity date of at
23 least five years from the date on which it was issued.

24 c. The instrument has a repayment schedule that is no
25 faster than a level principal amortization and, until the
26 certified capital company may make distributions other than
27 qualified distributions, the interest, distribution, or
28 payment features of which are not related to the certified
29 capital company's profitability or the performance of its
30 investment portfolio.

31 12. "Qualified distribution" means a distribution or
32 payment by certified capital company to its equity holders for
33 any of the following:

34 a. The costs of forming, syndicating, managing, or
35 operating the certified capital company.

1 b. An annual management fee that does not exceed two and
2 one-half percent of the certified capital company's total
3 certified capital.

4 c. Reasonable and necessary fees paid for professional
5 services related to the operation of the certified capital
6 company.

7 d. A projected increase in federal or state taxes,
8 including penalties and interest on those taxes, of the equity
9 owners of the certified capital company if those amounts are
10 related to the certified capital company's ownership,
11 management, or operation.

12 13. "Qualified investment" means an investment in a
13 qualified business by a certified capital company that meets
14 the requirements under section 15E.226, subsection 1.

15 Sec. 3. NEW SECTION. 15E.223 CERTIFICATION OF CERTIFIED
16 CAPITAL COMPANIES.

17 1. A person applying to become a certified capital company
18 shall submit an application to the department. The department
19 shall grant or deny an application for certification within
20 thirty days of the date of application. If the department
21 denies the application, the department shall include with the
22 denial a detailed description of the grounds for the refusal,
23 including suggestions for removal of those grounds.

24 2. The department shall certify a person as a certified
25 capital company if the department determines that all of the
26 following conditions have been met and the application is
27 competitive with other applications:

28 a. The person is a partnership, corporation, trust, or
29 limited liability company, whether organized for profit or not
30 for profit, that has as its primary business activity the
31 investment of cash in qualified businesses.

32 b. The person has a net worth, at the time of application,
33 of at least five hundred thousand dollars and has at least
34 five hundred thousand dollars in cash, cash equivalents, or
35 marketable securities. The person shall submit with the

1 initial application an audited balance sheet as of a date not
2 more than thirty-five days prior to the date the application
3 is submitted.

4 | c. The directors, officers, general partners, trustees,
5 managers, members, or persons having a similar function are
6 familiar with the requirements of this division.

7 | d. At least two officers, directors, general partners,
8 trustees, managers, or members each have at least two years of
9 experience in the venture capital industry.

10 | e. The person has included, in any offering material
11 involving the sale of securities, the statements required
12 under section 15E.224, subsection 1.

13 | f. The person has paid a nonrefundable application fee of
14 seven thousand five hundred dollars.

15 | Sec. 4. NEW SECTION. 15E.224 INVESTMENTS IN CERTIFIED
16 CAPITAL COMPANIES.

17 | 1. Any offering material involving the sale of securities
18 of a certified capital company shall include all of the
19 following statements:

20 | a. "By authorizing the formation of a certified capital
21 company, the state does not necessarily endorse the quality of
22 management or the potential for earnings of the company and is
23 not liable for damages or losses to a certified investor in
24 the company. Use of the word "certified" in an offering is
25 not a recommendation or endorsement of the investment by the
26 Department of Economic Development."

27 | b. "Investments in a prospective certified capital company
28 prior to the time the company is certified are not eligible
29 for a certified capital company investment credit under
30 section 15E.232 of the Iowa Code. Investments in a certified
31 capital company are not eligible for a certified capital
32 company investment tax credit under section 15E.232 of the
33 Iowa Code, unless the proposed investment is certified under
34 section 15E.224, subsection 2 of the Iowa Code, before the
35 investment is made. In the event that certain statutory

1 provisions are violated, the state may require forfeiture of
2 unused certified capital company investment credits and
3 repayment of used certified capital company investment
4 credits."

5 2. Certification of certified capital investments shall
6 occur according to the following procedure:

7 a. Application to make a certified capital investment
8 shall be by providing notice to the department on a form
9 prescribed by the department. The notice shall include the
10 name of the person applying for certification, the name of the
11 certified capital company, the amount of the proposed
12 investment, and any other information specified by the
13 department. The notice shall also include an undertaking by
14 the person to make the investment within five days after the
15 department notifies the person that the investment has been
16 certified.

17 b. The department may certify an investment under this
18 subsection only if, after the certification, the department
19 will not have certified a total of more than one hundred
20 million in certified capital investments under this
21 subsection.

22 c. Prior to the first day of the thirteenth month
23 beginning after the effective date of this Act, the department
24 shall not certify an investment under this subsection if,
25 after the certification, the certified investor, together with
26 all affiliates of the certified investor, would have invested
27 more than ten million dollars in certified capital
28 investments.

29 d. If, as a result of the limitations under paragraph "b"
30 or "c", the department shall not certify the full amount
31 requested in applications for certified capital investments
32 submitted under paragraph "a", the department shall allocate
33 the amounts available for certification in order of priority
34 based on the date on which the application was submitted. If
35 the amounts available for certification are insufficient to

1 certify the full amount of all applications for certified
2 capital investments that are submitted on the same day, the
3 department shall prorate the available amount on the basis of
4 the amount that the investor has committed to invest in the
5 certified capital company under paragraph "a".

6 | 3. A certified investor shall not, individually or with or
7 through one or more affiliates, own ten percent or more of the
8 equity securities in, be a general partner or manager of, or
9 otherwise control the investments of a certified capital
10 company. This subsection does not preclude a certified
11 investor from exercising its legal rights and remedies,
12 including interim management of a certified capital company,
13 in the event that a certified capital company is in default of
14 its statutory or contractual obligations to the certified
15 investor.

16 | Sec. 5. NEW SECTION. 15E.225 QUALIFIED BUSINESSES. ✓

17 | 1. A business is a qualified business if all of the
18 following requirements are met at the time that a certified
19 capital company, or any affiliate of the certified capital
20 company, makes its first investment in the business:

21 | a. The business is headquartered in this state and its
22 principal business operations are located in this state.

23 | b. The business is in need of venture capital and is
24 unable to obtain conventional financing, as defined by the
25 department.

26 | c. The business has no more than one hundred employees, at
27 least seventy-five percent of whom are employed in the state.

28 | d. During the two most recent fiscal years of the
29 business, the business had, together with all of the
30 affiliates of the business, an average annual net income,
31 after federal income taxes and excluding any carry-over
32 losses, of not more than two million dollars as determined in
33 accordance with generally accepted accounting principles.

34 | e. The business has, together with the affiliates of the
35 business, a net worth that is not in excess of five million

1 dollars.

2 f. The business is not predominately engaged in the
3 provision of professional services provided by accountants,
4 attorneys, or physicians.

5 g. The business is not engaged in the development of real
6 estate for resale.

7 h. The business is not engaged in banking or lending and
8 does not make any loans to, or investments in, certified
9 capital companies.

10 2. A certified capital company may, prior to making an
11 investment in a specified business, request a written opinion
12 from the department that a business in which it proposes to
13 invest is a qualified business. If the department determines
14 that the business meets the requirements under subsection 1,
15 the department shall issue a written opinion stating that the
16 business is a qualified business. If the department
17 determines that the business in which the certified capital
18 company proposes to invest does not meet the requirements
19 under subsection 1, the department may consider the business a
20 qualified business and approve the investment if the
21 department determines that the proposed investment will
22 further economic development in this state.

23 Sec. 6. NEW SECTION. 15E.226 OPERATION OF CERTIFIED
24 CAPITAL COMPANIES.

25 1. In order for a certified capital company to prevent
26 disqualification of an investment pool under section 15E.229,
27 the certified capital company shall ensure that the investment
28 pool makes qualified investments in accordance with the
29 schedule under subsection 2. An investment is a qualified
30 investment if the investment meets all of the following
31 requirements:

32 a. The investment is a cash investment in a qualified
33 business for the purchase of any of the following:

34 (1) An equity security of the qualified business.

35 (2) A debt security of the qualified business if the debt

1 has a maturity of at least five years and if one of the
2 following conditions is met:

3 | (a) The debt is unsecured.

4 | (b) The debt is convertible into equity securities or
5 equity participation instruments such as options or warrants.

6 | b. As a condition of the investment, the qualified
7 business agrees not to use the proceeds from the investment
8 for the purpose of relocating its operations.

9 | c. As a condition of the investment, the qualified
10 business agrees, as long as the certified capital company
11 continues to hold the investment, not to relocate its
12 headquarters out of this state.

13 | d. As a condition of the investment, the qualified
14 business agrees, as long as the certified capital company
15 continues to hold the investment, to maintain at least
16 seventy-five percent of its employees in this state.

17 | e. As a condition of the investment, the qualified
18 business agrees, as long as the certified capital company
19 continues to hold the investment, to maintain at least
20 seventy-five percent of its employees at work sites that were
21 maintained by the qualified business at the time that the
22 investment was made, unless the qualified business obtains an
23 exemption from the department under this paragraph. The
24 department may grant an exemption unless it determines that
25 the qualified business is locating the employees at new sites
26 to take advantage of lower wage rates in the areas where the
27 new sites are located.

28 | 2. a. A certified capital company shall ensure that each
29 of its investment pools makes qualified investments according
30 to the following schedule:

31 | (1) Within two years after the investment date for a
32 particular investment pool, the certified capital company
33 shall have made qualified investments cumulatively equal to at
34 least twenty-five percent of the investment pool.

35 | (2) Within three years after the investment date for a

1 particular investment pool, the certified capital company
2 shall have made qualified investments cumulatively equal to at
3 least forty percent of the investment pool.

4 (3) Within four years after the investment date for a
5 particular investment pool, the certified capital company
6 shall have made qualified investments cumulatively equal to at
7 least fifty percent of the investment pool.

8 b. The proceeds of all capital of a qualified investment
9 returned to a certified capital company by a qualified
10 business may be placed in new qualified investments, which
11 shall count toward the percentage requirements under paragraph
12 "a" and section 15E.228, subsection 3. The department shall
13 adopt rules governing the extent to which a reinvestment of
14 proceeds from the sale of a qualified investment in a
15 qualified business may be counted toward the percentage
16 requirements under paragraph "a", section 15E.228, subsection
17 3, and section 15E.229, subsection 4, paragraph "a",
18 subparagraph (2). The rules may also provide that proceeds
19 from the sale of an investment in a qualified business that
20 are reinvested in that qualified business, or an affiliate of
21 the qualified business, shall be only partially counted toward
22 the percentage requirements under paragraph "a", section
23 15E.228, subsection 3, and section 15E.229, subsection 4,
24 paragraph "a", subparagraph (2).

25 3. All certified capital investments in a certified
26 capital company that are not invested in qualified investments
27 may be held or invested by the certified capital company as it
28 considers appropriate, except that a certified capital company
29 shall not invest certified capital investments in an insurance
30 company or in an affiliate of an insurance company.

31 4. A certified capital company shall not make a qualified
32 investment in a person if, at the time of the investment, more
33 than fifteen percent of the total certified capital of the
34 certified capital company would be invested in that person and
35 affiliates of that person.

1 5. A certified capital company shall not be managed or
2 controlled by, or have a general partner that is, an insurance
3 company or an affiliate of an insurance company.

4 Sec. 7. NEW SECTION. 15E.227 REPORTING REQUIREMENTS AND
5 FEES.

6 1. As soon as practical after the receipt of a certified
7 capital investment, a certified capital company shall report
8 all of the following to the department:

9 a. The name of the certified investor from which the
10 certified capital was received, including the certified
11 investor's tax identification number.

12 b. The amount of the certified capital investment.

13 c. The date on which the certified capital investment was
14 received by the certified capital company.

15 d. The investment date for the investment pool of which
16 the certified capital investment will be a part.

17 2. As soon as practical after the receipt of information
18 by the certified capital company that a qualified business has
19 violated an agreement made under section 15E.226, subsection
20 1, paragraphs "b" through "e", the certified capital company
21 shall notify the department of the violation and the facts
22 giving rise to the violation.

23 3. On or before January 31 each year, a certified capital
24 company shall report all of the following to the department:

25 a. The amount of the certified capital company's certified
26 capital at the end of the preceding calendar year.

27 b. Whether the certified capital company has invested more
28 than fifteen percent of its total certified capital in any one
29 person.

30 c. All qualified investments that the certified capital
31 company has made during the previous calendar year and the
32 investment pool from which each qualified investment was made.

33 4. Within ninety days of the end of the certified capital
34 company's fiscal year, the certified capital company shall
35 provide to the department a copy of its annual audited

1 financial statements, including the opinion of an independent
2 certified public accountant. The audit shall address the
3 methods of operation and conduct of the business of the
4 certified capital company to determine whether the certified
5 capital company is complying with this division and the rules
6 adopted under this division, including whether certified
7 capital investments have been invested in the manner required
8 under section 15E.226. The financial statements provided
9 under this subsection shall be segregated by investment pool
10 and shall be separately audited on that basis to allow the
11 department to determine whether the certified capital company
12 is in compliance with section 15E.226, subsection 2.

13 5. On or before January 31 of each year, a certified
14 capital company shall pay a nonrefundable certification fee of
15 five thousand dollars to the department, unless January 31 is
16 within six months of the date on which the certified capital
17 company was certified under section 15E.223.

18 6. If the department determines that a document submitted
19 by a certified capital company under this section contains a
20 trade secret as defined in section 550.2, the information
21 shall be treated as a confidential trade secret which is not
22 subject to release under section 22.7.

23 Sec. 8. NEW SECTION. 15E.228 DISTRIBUTIONS.

24 A certified capital company may make a distribution only if
25 one of the following conditions is met:

26 1. The distribution is a qualified distribution.

27 2. The department made a written determination that the
28 distribution may be made without adversely affecting the
29 ability of the certified capital company to make qualified
30 investments in an amount cumulatively equal in the aggregate
31 to one hundred percent of the certified capital investment in
32 the investment pool from which the distribution is to be made.

33 3. The certified capital company has made qualified
34 investments in an amount cumulatively equal in the aggregate
35 to one hundred percent of the certified capital investments in

1 the investment pool.

2 4. The distribution is payment of principal or interest
3 owed to a debt holder of a certified capital company, even if
4 the debt holder is also a holder of equity and even if the
5 indebtedness is a certified capital investment.

6 Sec. 9. NEW SECTION. 15E.229 COMPLIANCE REVIEWS --
7 DECERTIFICATION -- DISQUALIFICATION.

8 1. The department shall conduct an annual review of each
9 certified capital company to determine if the certified
10 capital company is complying with the requirements of this
11 division, to advise the certified capital company regarding
12 the status of its investments as qualified investments, and to
13 ensure that an investment has not been made in violation of
14 this division. The cost of the annual review shall be paid by
15 each certified capital company according to a reasonable fee
16 schedule adopted by the department.

17 2. Any material violation of section 15E.226, subsection
18 2, is a ground for disqualification of the noncomplying
19 investment pool. If the department determines that the
20 certified capital company is not in compliance with section
21 15E.226, subsection 2, with respect to an investment pool, the
22 department shall send a written notice to the certified
23 capital company and the department of revenue and finance
24 stating that the investment pool has been disqualified.

25 3. Any material violation of section 15E.226, subsections
26 2 through 4, or section 15E.227, subsections 1 through 4, is a
27 ground for decertification of the noncomplying certified
28 capital company. If the department determines that the
29 certified capital company is not in compliance with section
30 15E.226, subsections 2 through 4, or section 15E.227,
31 subsections 1 through 4, the department shall send a written
32 notice to the certified capital company that the certified
33 capital company may be subject to decertification in one
34 hundred twenty days from the date on which the notice was
35 mailed, unless the certified capital company brings itself

1 into full compliance. If at the end of the one hundred twenty
2 day period the certified capital company has not brought
3 itself into full compliance, the department shall send a
4 notice to the certified capital company and the commissioner
5 of insurance stating that the certified capital company has
6 been decertified.

7 4. a. A certified capital company may voluntarily
8 decertify itself as a certified capital company if any of the
9 following conditions are met:

10 (1) It has been at least ten years since the last
11 certified capital investment was made in the certified capital
12 company.

13 (2) The certified capital company has placed in qualified
14 investments an amount equal to one hundred percent of the
15 certified capital investment in the certified capital company.

16 b. A certified capital company wishing to decertify itself
17 under this subsection shall send a notice to the department
18 certifying that the certified capital company is eligible for
19 decertification under paragraph "a". The decertification is
20 effective on the date that the notice under this paragraph is
21 received by the department.

22 5. Decertification of a certified capital company or
23 disqualification of an investment pool has the effects
24 specified in section 15E.232.

25 6. The department shall notify a certified investor when
26 the certified capital company tax credit arising from a
27 certified investment is no longer subject to recapture and
28 forfeiture under section 15E.232.

29 Sec. 10. NEW SECTION. 15E.230 DEPARTMENT EVALUATION OF
30 THE PROGRAM.

31 Beginning on January 31, 2000, and on every January 31 of
32 each even-numbered year thereafter, the department shall
33 submit a report to the general assembly regarding the program
34 under this division. The report shall include all of the
35 following:

1 | 1. The total amount of certified capital investments made
2 during the previous two calendar years, as well as the total
3 amount of certified capital investments made since the
4 effective date of this Act.

5 | 2. Statistical information on the qualified investments
6 made by certified capital companies during the previous two
7 calendar years.

8 | 3. The department's assessment of the number of jobs
9 created in this state during the previous two calendar years
10 as a result of the certified capital company program under
11 this division.

12 | Sec. 11. NEW SECTION. 15E.231 RULES.

13 | The department shall adopt rules pursuant to chapter 17A
14 necessary to administer this division.

15 | Sec. 12. NEW SECTION. 15E.232 CERTIFIED CAPITAL COMPANY
16 INSURANCE PREMIUM TAX CREDIT.

17 | 1. A certified investor which is an insurance company
18 organized under the laws of this state or admitted to do
19 business in this state may claim a tax credit against the
20 insurance premium tax liability of the certified investor
21 under chapter 432, or similar taxes, up to ten percent of the
22 amount of the certified capital investment for the calendar
23 year in which the certified capital investment was made and up
24 to ten percent for each subsequent calendar year until the
25 total amount of the certified capital investment has been
26 offset against those taxes. Any credit in excess of the tax
27 liability for a calendar year may be credited to the tax
28 liability for succeeding calendar years until depleted.

29 | 2. If a certified capital company is decertified, or an
30 investment pool is disqualified, under section 15E.229, before
31 the certified capital company fulfills the investment
32 requirement under section 15E.226, subsection 2, paragraph
33 "a", subparagraph (1), with respect to the investment pool, a
34 certified investor that has received a tax credit under this
35 section shall be subject to a recapture tax equal to the tax

1 credit claimed with respect to the investment pool. A
2 certified investor shall not claim any remaining tax credits
3 with respect to that investment pool.

4 3. If a certified capital company fulfills the investment
5 requirement under section 15E.226, subsection 2, paragraph
6 "a", subparagraph (1), with respect to the investment pool but
7 the certified capital company is decertified, or an investment
8 pool is disqualified under section 15E.229, before the
9 certified capital company fulfills the investment requirement
10 under section 15E.226, subsection 2, paragraph "a",
11 subparagraph (2), for that investment pool, a certified
12 investor that has received a tax credit under this section
13 with respect to that investment pool shall be subject to a
14 recapture tax equivalent to all tax credits claimed under this
15 section for taxable years after the taxable year that includes
16 the second anniversary of the investment date of the
17 investment pool. A certified investor shall not claim any
18 remaining tax credits for taxable years after the taxable year
19 that includes the second anniversary of the investment date of
20 the investment pool.

21 4. If a certified capital company fulfills the investment
22 requirement under section 15E.226, subsection 2, paragraph
23 "a", subparagraphs (1) and (2), with respect to the investment
24 pool but the certified capital company is decertified, or an
25 investment pool is disqualified under section 15E.229, before
26 the certified capital company fulfills the investment
27 requirement under section 15E.226, subsection 2, paragraph
28 "a", subparagraph (3), for that investment pool, a certified
29 investor that has received a tax credit under this section
30 with respect to that investment pool shall be subject to a
31 recapture tax equivalent to all tax credits claimed under this
32 section for taxable years after the taxable year that includes
33 the third anniversary of the investment date of the investment
34 pool. A certified investor shall not claim any remaining tax
35 credits for taxable years after the taxable year that includes

1 the third anniversary of the investment date of the investment
2 pool.

3 5. A certified investor may sell a certified capital
4 company tax credit to another insurance company organized
5 under the laws of this state or admitted to do business in
6 this state if the certified investor notifies the department
7 of revenue and finance of the sale and includes with the
8 notification a copy of the transfer documents.

9 EXPLANATION

10 This bill provides for the creation of certified capital
11 companies to make qualified investments in qualified
12 businesses.

13 The bill provides that a person applying to become a
14 certified capital company shall submit an application to the
15 department of economic development. The bill provides that
16 the application shall be granted upon a finding that the
17 application is competitive with other applications, the person
18 is a partnership, corporation, trust, or limited liability
19 company with a primary business activity of investment of cash
20 in qualified businesses, that the person has a net worth of at
21 least \$500,000 and has at least \$500,000 in cash, cash
22 equivalents, or marketable securities, that the directors,
23 officers, general partners, trustees, managers, or members are
24 familiar with the requirements related to certified capital
25 companies, that at least two officers, directors, general
26 partners, trustees, managers, or members have at least two
27 years of experience in the venture capital industry, that
28 proper notice requirements have been met in any offering
29 material, and that an application fee has been paid.

30 The bill provides that a certified capital investment means
31 an investment in a certified capital company which is
32 certified by the department and fully funds either the
33 investor's equity interest in the certified capital company, a
34 qualified debt instrument that a certified capital company
35 issues, or both. The bill provides that the department shall

1 not certify more than \$100 million in certified capital
2 investments. The bill provides that prior to the first day of
3 the thirteenth month beginning after the effective date of the
4 bill, a certified investor shall not have invested more than
5 \$10 million in certified capital investments. The bill
6 provides that a certified investor shall not own 10 percent or
7 more of the equity securities in, be a general partner or
8 manager of, or otherwise control the investments of a
9 certified capital company.

10 The bill provides that a business is a qualified business
11 if the business is headquartered in the state and its
12 principal business operations are located in this state, the
13 business is in need of venture capital and is unable to obtain
14 conventional financing, the business has no more than 100
15 employees at least 75 percent of whom are employed in the
16 state, the business had a net income during the two most
17 recent fiscal years of not more than \$2 million, the business
18 has a net worth of not more than \$5 million, the business is
19 not predominately engaged in providing professional services
20 by accountants, attorneys, or physicians, the business is not
21 engaged in the development of real estate for resale, and the
22 business is not engaged in banking or lending.

23 The bill provides that an investment by a certified capital
24 company is a qualified investment in a qualified business if
25 the investment is a cash investment which meets certain
26 requirements, the qualified business agrees not to use the
27 proceeds for purposes of relocating its business, and the
28 qualified business agrees, as long as the certified capital
29 company continues to hold the investment, keep its
30 headquarters located in this state, maintain at least 75
31 percent of its employees in this state, and maintain at least
32 75 percent of its employees at work sites that were maintained
33 by the qualified business at the time that the investment was
34 made unless certain circumstances arise.

35 The bill requires certified capital companies to meet

1 certain reporting requirements after the receipt of a
2 certified capital investment, upon the receipt of information
3 that a qualified business has violated an agreement, and
4 regarding annual activities and annual audits. The bill
5 requires that the reports are to be made to the department of
6 economic development.

7 | The bill provides conditions under which a certified
8 capital company may make distributions. The bill requires the
9 department of economic development to conduct an annual review
10 of each certified capital company. The bill provides for the
11 decertification of a certified capital company and the
12 disqualification of a noncomplying investment pool. The bill
13 requires the department to file a report with the general
14 assembly every two years regarding certified capital companies
15 and the department's assessment of the impact of certified
16 capital companies.

17 | The bill allows a certified investor to claim an insurance
18 premium tax credit equal to the total amount of the certified
19 capital investment. The bill prohibits an annual tax credit
20 from being claimed that exceeds 10 percent of the total amount
21 of the certified capital investment. The bill allows any
22 excess credit to be carried over to future years until
23 depleted. The bill provides for a recapture tax in the case
24 of decertification of a certified capital company or
25 disqualification of an investment pool. The bill allows for
26 the sale of a certified capital company tax credit.

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