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ECONOMIC GROWTH

SENATE FILE 2104  
BY LAMBERTI and GRONSTAL

(COMPANION TO LSB 5939HH  
BY KURTENBACH)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to certified capital companies, providing for a  
2 certified capital company insurance premium tax credit, and  
3 providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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ECONOMIC GROWTH

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1 Section 1. NEW SECTION. 15E.401 SHORT TITLE.

2 This division shall be known and may be cited as the "Small  
3 Enterprise Employment Development Act".

4 Sec. 2. NEW SECTION. 15E.402 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, beneficially  
10 owns, whether through rights, options, convertible interests,  
11 or otherwise controls or holds power to vote, ten percent or  
12 more of the outstanding voting securities or other voting  
13 ownership interests of the certified capital company or  
14 certified investor, as applicable.

15 b. A person, ten percent of whose outstanding voting  
16 securities or other voting ownership interests are directly or  
17 indirectly beneficially owned, whether through rights,  
18 options, convertible interests, or otherwise controlled or  
19 held with power to vote by the certified capital company or  
20 certified investor, as applicable.

21 c. A person directly or indirectly controlling, controlled  
22 by, or under common control with the certified capital company  
23 or certified investor, as applicable.

24 d. A partnership in which the certified capital company or  
25 certified investor, as applicable, is a general partner.

26 e. A person who is an officer, director, or agent of the  
27 certified capital company or certified investor, as  
28 applicable, or is an immediate family member of such an  
29 officer, director, or agent.

30 2. "Certified capital company" means a person who is  
31 certified by the department pursuant to section 15E.403.

32 3. "Certified capital company tax credit" means the tax  
33 credit made available under section 15E.412.

34 4. "Certified capital investment" means an investment in a  
35 certified capital company that is certified pursuant to

1 section 15E.404, subsection 2, and that fully funds either the  
2 investor's equity interest in a certified capital company or a  
3 qualified debt instrument that a certified capital company  
4 issues.

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

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

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

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

18 9. "Qualified business" means a business which is a  
19 qualified business under section 15E.405.

20 10. "Qualified debt instrument" means a debt instrument  
21 that meets all of the following criteria:

22 a. A certified capital company issues the instrument at  
23 par value or at a premium.

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

26 c. The instrument has a repayment schedule that is no  
27 faster than a level principal amortization over five years.

28 d. The instrument does not contain an equity component or  
29 interest, distribution, or payment features which are related  
30 to the certified capital company's profitability or the  
31 performance of its investment portfolio, whether the component  
32 or features are part of or attached to the qualified debt  
33 instrument or are distributed or sold separately and purchased  
34 or obtained by the holder of the qualified debt instrument or  
35 any of its affiliates.

1 11. "Qualified distribution" means a distribution or  
2 payment by a certified capital company for any of the  
3 following:

4 a. The reasonable costs of forming, syndicating, managing,  
5 or operating the certified capital company, provided that all  
6 of the following apply:

7 (1) No such distribution or payment is made directly or  
8 indirectly to a certified investor or an affiliate thereof.

9 (2) At the time the certified capital company closes an  
10 investment pool and after deducting the aggregate of the costs  
11 of organizing, forming, syndicating, insuring, and terminating  
12 the certified capital company's obligations, the certified  
13 capital company has, not including investments from qualified  
14 investors, cash or permissible investments equal to at least  
15 fifty percent of the amount of certified capital company tax  
16 credit allocated to the certified capital company.

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

20 c. Reasonable and necessary fees paid for professional  
21 services related to the operation of the certified capital  
22 company.

23 d. A projected increase in federal or state taxes,  
24 including penalties and interest on those taxes, of the equity  
25 owners of the certified capital company if those amounts are  
26 related to the certified capital company's ownership,  
27 management, or operation.

28 12. "Qualified investment" means an investment in a  
29 qualified business by a certified capital company that meets  
30 the requirements under section 15E.406.

31 13. "Qualified investor" means a person who makes an  
32 investment in a certified capital company that is not a  
33 certified capital investment and that does not qualify for  
34 certified capital company tax credits. The department may  
35 establish by rule the requirements for a qualified investor.

1 14. "Targeted business" means a business that meets one or  
2 more of the following requirements:

3 a. Has its principal place of business in an enterprise  
4 zone certified pursuant to section 15E.195.

5 b. Has its principal place of business in an area  
6 designated as a revitalization area pursuant to section 404.1.

7 c. Is a participant in the business resource center  
8 program established pursuant to section 15E.21.

9 d. Has its principal place of business located in an area  
10 designated as an economic enterprise area pursuant to section  
11 15E.233.

12 e. Is a participant in a business accelerator program  
13 established pursuant to section 15E.351.

14 f. Is engaged in one or more of the following industries:

15 (1) Biotechnology.

16 (2) Advanced manufacturing.

17 (3) Information technology.

18 g. Meets other criteria established by the department.

19 Sec. 3. NEW SECTION. 15E.403 CERTIFICATION OF CERTIFIED  
20 CAPITAL COMPANIES.

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

28 2. The department shall certify a person as a certified  
29 capital company if the department determines that all of the  
30 following conditions have been met and the application is  
31 competitive with other applications:

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

1 b. The person has a net worth, at the time of application,  
2 of at least seven hundred fifty thousand dollars and possesses  
3 at least five million dollars in cash, cash equivalents, or  
4 marketable securities. The person shall submit with the  
5 initial application an audited balance sheet with an  
6 unqualified opinion from an independent certified public  
7 accountant as of a date not more than thirty-five days prior  
8 to the date the application is submitted.

9 c. The directors, officers, general partners, trustees,  
10 managers, members, or persons having a similar function are  
11 familiar with the requirements of this division.

12 d. At least two officers, directors, general partners,  
13 trustees, managers, or members each have at least four years  
14 of experience in the venture capital industry.

15 e. The person has included, in any offering material  
16 involving the sale of securities, the statements required  
17 under section 15E.404, subsection 1.

18 f. The person has paid a nonrefundable application fee of.  
19 seven thousand five hundred dollars.

20 g. The person has not engaged in dishonest or unethical  
21 practices as the department may define by rule adopted  
22 pursuant to chapter 17A.

23 3. The department may certify a person as a certified  
24 capital company if the company has been previously qualified  
25 under section 15E.208, has a net worth at the time of the  
26 application of at least five hundred thousand dollars, and has  
27 at least five hundred thousand dollars in cash, cash  
28 equivalents, or marketable securities. The company must  
29 include in any offering material involving the sale of  
30 securities relying upon this section the statements required  
31 under section 15E.404, subsection 1.

32 4. The department shall adopt rules pursuant to chapter  
33 17A relating to procedures for defining conflicts of  
34 interests.

35 Sec. 4. NEW SECTION. 15E.404 INVESTMENTS IN CERTIFIED

1 CAPITAL COMPANIES.

2 1. Any offering material involving the sale of securities  
3 of a certified capital company shall include all of the  
4 following statements:

5 a. "By authorizing the formation of a certified capital  
6 company, the state does not necessarily endorse the quality of  
7 management or the potential for earnings of the company and is  
8 not liable for damages or losses to a certified investor in  
9 the certified capital company. Use of the word "certified" in  
10 an offering is not a recommendation or endorsement of the  
11 investment by the Department of Economic Development."

12 b. "Investments in a prospective certified capital company  
13 prior to the time the company is certified are not eligible  
14 for a certified capital company tax credit under section  
15 15E.412 of the Iowa Code. Investments in a certified capital  
16 company are not eligible for a certified capital company tax  
17 credit under section 15E.412 of the Iowa Code, unless the  
18 proposed investment is certified under section 15E.404,  
19 subsection 2 of the Iowa Code, before the investment is made.  
20 In the event that certain statutory provisions are violated,  
21 the state may require forfeiture of unused certified capital  
22 company tax credits and repayment of used certified capital  
23 company tax credits."

24 2. Certification of capital investments shall occur  
25 according to the following procedure:

26 a. Application for certification of a capital investment  
27 shall be submitted by providing notice to the department on a  
28 form prescribed by the department. The notice shall include  
29 the name of the person applying for certification, the name of  
30 the certified capital company, the amount of the proposed  
31 investment, and any other information specified by the  
32 department. The notice shall also include an undertaking by  
33 the person to make the capital investment within five days  
34 after the department notifies the person that the capital  
35 investment has been certified.

1 b. The department may certify a capital investment under  
2 this subsection only if, after the certification, the  
3 department will not have certified a total of more than one  
4 hundred million dollars in certified capital investments under  
5 this subsection. The department shall not certify more than  
6 twenty-five percent of the total certified capital investments  
7 allowed under this paragraph for investments in a certified  
8 capital company that has been previously qualified under  
9 section 15E.208. A certified capital company, together with  
10 its affiliates, shall not file applications on behalf of its  
11 certified investors to make certified capital investments in  
12 excess of the maximum amount of investments that may be  
13 certified under this subsection.

14 c. Prior to the first day of the thirteenth month  
15 beginning after the effective date of this Act, the department  
16 shall not certify an investment under this subsection if,  
17 after the certification, the certified investor, together with  
18 all affiliates of the certified investor, would have invested  
19 more than fifteen million dollars in certified capital  
20 investments.

21 d. If, as a result of the limitations under paragraph "b"  
22 or "c", the department does not certify the full amount  
23 requested in applications for certified capital investments  
24 submitted under paragraph "a", the department shall allocate  
25 the amounts available for certification on a pro rata basis in  
26 accordance with this paragraph. The pro rata allocation for  
27 each certified investor shall be the product of both of the  
28 following:

29 (1) A fraction, the numerator of which is the amount of  
30 the certified capital company tax credit requested on behalf  
31 of the certified investor and the denominator of which is the  
32 total amount of all certified capital company tax credits  
33 requested on behalf of all certified investors.

34 (2) The total amount of investments for which certified  
35 capital tax credits may be allowed under paragraph "b".



1 3. An insurance company, group of insurance companies,  
2 affiliate of an insurance company, or group of such affiliates  
3 shall not beneficially own, directly or indirectly, whether  
4 through rights, options, convertible interests, or otherwise,  
5 ten percent or more of the equity securities in, be a general  
6 partner or manager of, or otherwise control the investments of  
7 a certified capital company. This subsection does not  
8 preclude such person from exercising such person's legal  
9 rights and remedies, including interim management of a  
10 certified capital company, in the event that a certified  
11 capital company is in default of its statutory or contractual  
12 obligations to such person.

13 4. Capital investments shall not be certified on behalf of  
14 the certified investors of a certified capital company unless  
15 the aggregate amount of capital certified on behalf of all of  
16 the certified investors of such certified capital company  
17 would be at least five million dollars, after giving effect to  
18 any allocation required by subsection 2, paragraph "d". Any  
19 capital investments that are not allocated to the certified  
20 investors of a certified capital company shall be reallocated  
21 to the other capital companies making applications for  
22 certified capital investments on the same day in accordance  
23 with the provisions of subsection 2, paragraph "d", as if the  
24 certified capital company which received no allocation  
25 pursuant to this subsection had never submitted applications  
26 for certified capital investments.

27 5. Capital investments shall not be certified on behalf of  
28 the certified investors of a certified capital company unless  
29 the certified capital company has received irrevocable written  
30 commitments from qualified investors stating that such  
31 qualified investors will invest amounts with the certified  
32 capital company which total at least fifty percent of the  
33 amount of capital investment for which the certified capital  
34 company receives certification. Such investments from  
35 qualified investors must be received within two years of the

1 date on which the certified capital company receives  
2 certification from the department.

3 Sec. 5. NEW SECTION. 15E.405 QUALIFIED BUSINESSES.

4 1. A business is a qualified business if the business is  
5 in need of venture capital and is unable to obtain sufficient  
6 conventional financing, as defined by the department, and if  
7 all of the following requirements are met at the time that a  
8 certified capital company, or any affiliate of the certified  
9 capital company, makes its first investment in the business:

10 a. The business is headquartered in this state and its  
11 principal business operations are located in this state.

12 b. The business has no more than one hundred employees, at  
13 least seventy-five percent of whom are employed in the state.

14 c. During the two most recent fiscal years of the  
15 business, the business had, together with all of the  
16 affiliates of the business, an average annual net income,  
17 after federal income taxes and excluding any carryover losses,  
18 of not more than five million dollars as determined in  
19 accordance with generally accepted accounting principles.

20 d. The business has, together with the affiliates of the  
21 business, a net worth that is not in excess of fifteen million  
22 dollars.

23 e. The business is not predominately engaged in the  
24 provision of professional services provided by accountants,  
25 attorneys, or physicians.

26 f. The business is not engaged in the development of real  
27 estate for resale.

28 g. The business is not engaged in banking or lending and  
29 does not make any loans to, or investments in, certified  
30 capital companies.

31 h. The business is predominantly engaged in any of the  
32 following:

33 (1) Manufacturing, processing, or assembling products.

34 (2) Conducting research and development.

35 (3) Providing services.

1 i. It is the intent of the business to provide long-term  
2 attractive compensation packages with many of the compensation  
3 packages for owners and employees to be risk and venture-based  
4 with a focus on future returns.

5 j. The business intends to retain its operations and  
6 employees in the state after receipt of investments from a  
7 certified capital company.

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

21 3. Upon approval by the department, any business which is  
22 classified as a qualified business at the time of the first  
23 investment in the business by a certified capital company  
24 shall remain classified as a qualified business and may  
25 receive follow-on investments from any certified capital  
26 company or any of its affiliates, and the follow-on  
27 investments shall be qualified investments even though the  
28 business does not meet the definition of a qualified business  
29 at the time of such follow-on investments, provided that at  
30 the time of the follow-on investment the business certifies in  
31 writing that it is unable to obtain conventional financing,  
32 which means that the business has failed in an attempt to  
33 obtain funding for a loan from a bank or other commercial  
34 lender or that the business cannot reasonably be expected to  
35 qualify for such financing under the standards of commercial

1 lending.

2 Sec. 6. NEW SECTION. 15E.406 OPERATION OF CERTIFIED  
3 CAPITAL COMPANIES.

4 1. In order for a certified capital company to prevent  
5 disqualification of an investment pool under section 15E.409,  
6 the certified capital company shall ensure that the investment  
7 pool makes qualified investments in accordance with the  
8 schedule under subsection 2. An investment is a qualified  
9 investment if the investment meets all of the following  
10 requirements:

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

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

14 (2) A debt security of the qualified business if the debt  
15 has a maturity of at least five years and if one of the  
16 following conditions is met:

17 (a) The debt is unsecured.

18 (b) The debt is convertible into equity securities or  
19 equity participation instruments such as options or warrants.

20 b. As a condition of the investment, the qualified  
21 business agrees not to use the proceeds from the investment  
22 for the purpose of relocating its operations.

23 c. As a condition of the investment, the qualified  
24 business agrees, as long as the certified capital company  
25 continues to hold the investment, not to relocate its  
26 headquarters out of this state.

27 d. As a condition of the investment, the qualified  
28 business agrees, as long as the certified capital company  
29 continues to hold the investment, to maintain at least  
30 seventy-five percent of its employees in this state.

31 e. As a condition of the investment, the qualified  
32 business agrees, as long as the certified capital company  
33 continues to hold the investment, to maintain at least  
34 seventy-five percent of its employees at work sites that were  
35 maintained by the qualified business at the time that the

1 investment was made, unless the qualified business obtains an  
2 exemption from the department under this paragraph. The  
3 department may grant an exemption unless it determines that  
4 the qualified business is locating the employees at new sites  
5 to take advantage of lower wage rates in the areas where the  
6 new sites are located.

7 f. As an alternative to a qualified business making the  
8 agreements set forth in paragraphs "c", "d", and "e", a  
9 certified capital company making the investment may agree that  
10 if, during the period in which its investment in such  
11 qualified business is outstanding or within three months after  
12 the termination or repayment of such investment, the qualified  
13 business relocates its headquarters outside of this state or  
14 fails to continue to satisfy the conditions set forth in  
15 paragraph "d" or "e", then the cumulative amount of qualified  
16 investments for the investment pool from which such qualified  
17 investments were made shall be reduced by the amount of the  
18 qualified investment in such business for the purposes of  
19 section 15E.408 only, unless either of the following apply:

20 (1) The certified capital company invests an amount, at  
21 least equal to the investment within six months of the  
22 relocation or failure to satisfy the conditions set forth in  
23 paragraph "d" or "e", as applicable.

24 (2) The qualified business demonstrates that it has  
25 returned its headquarters to this state or has reestablished  
26 compliance with the conditions set forth in paragraph "d" or  
27 "e", as applicable, within three months of such relocation or  
28 failure, as applicable.

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

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

1 (2) Within three years after the investment date for a  
2 particular investment pool, the certified capital company  
3 shall have made qualified investments cumulatively equal to at  
4 least forty percent of the investment pool.

5 (3) Within four years after the investment date for a  
6 particular investment pool, the certified capital company  
7 shall have made qualified investments cumulatively equal to at  
8 least fifty percent of the investment pool with at least ten  
9 percent of such qualified investments having been made in  
10 targeted businesses.

11 (4) Within seven years after the investment date for a  
12 particular investment pool, the certified capital company  
13 shall have made qualified investments cumulatively equal to at  
14 least one hundred percent of the investment pool with at least  
15 ten percent of such qualified investments having been made in  
16 targeted businesses.

17 b. The proceeds of all capital of a qualified investment  
18 returned to a certified capital company by a qualified  
19 business may be placed in new qualified investments, which  
20 shall count toward the percentage requirements under paragraph  
21 "a" and section 15E.408, subsection 2. The department shall  
22 adopt rules that provide that proceeds from the sale of an  
23 investment in a qualified business that are reinvested in that  
24 qualified business, or an affiliate of the qualified business,  
25 shall be only partially counted toward the percentage  
26 requirements under paragraph "a", section 15E.408, subsection  
27 2, and section 15E.409, subsection 4, paragraph "a",  
28 subparagraph (2).

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

35 4. A certified capital company shall not make a qualified

1 investment in a person if, at the time of the investment, more  
2 than fifteen percent of the total certified capital of the  
3 certified capital company would be invested in that person and  
4 affiliates of that person.

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

8 Sec. 7. NEW SECTION. 15E.407 REPORTING REQUIREMENTS AND  
9 FEES.

10 1. As soon as practical after the receipt of a certified  
11 capital investment, a certified capital company shall report  
12 all of the following to the department:

13 a. The name of the certified investor from which the  
14 certified capital investment was received, including the  
15 certified investor's tax identification number.

16 b. The amount of the certified capital investment.

17 c. The date on which the certified capital investment was  
18 received by the certified capital company.

19 2. As soon as practical after the receipt of information  
20 by the certified capital company that a qualified business has  
21 violated an agreement made under section 15E.406, subsection  
22 1, paragraphs "b" through "e", the certified capital company  
23 shall notify the department of the violation and the facts  
24 giving rise to the violation.

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

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

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

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

35 4. Within ninety days of the end of the certified capital

1 company's fiscal year, the certified capital company shall  
2 provide to the department a copy of its annual audited  
3 financial statements, including the opinion of an independent  
4 certified public accountant. The audit shall address the  
5 methods of operation and conduct of the business of the  
6 certified capital company to determine whether the certified  
7 capital company is complying with this division and the rules  
8 adopted pursuant to this division, including whether certified  
9 capital investments have been invested in the manner required  
10 under section 15E.406. The financial statements provided  
11 under this subsection shall be segregated by investment pool  
12 and shall be separately audited on that basis to allow the  
13 department to determine whether the certified capital company  
14 is in compliance with section 15E.406, subsection 2.

15 5. On or before January 31 of each year, a certified  
16 capital company shall pay a nonrefundable certification fee of  
17 five thousand dollars to the department, unless January 31 is  
18 within six months of the date on which the certified capital  
19 company was certified under section 15E.403. If a certified  
20 capital company fails to pay its certification fee on or  
21 before that date, the company must pay, in addition to the  
22 certification fee, a late fee of five thousand dollars to  
23 continue its certification.

24 6. If the department determines that a document submitted  
25 by a certified capital company under this section contains a  
26 trade secret as defined in section 550.2, the information  
27 shall be treated as a confidential trade secret not subject to  
28 release under section 22.7.

29 7. The department may impose an administrative penalty on  
30 a certified capital company that violates this division. The  
31 amount of the penalty shall not exceed twenty-five thousand  
32 dollars, and each day a violation continues or occurs is a  
33 separate violation for the purpose of imposing a penalty. The  
34 amount of the penalty shall be based on all of the following:

35 a. The seriousness of the violation, including the nature,



1 circumstances, extent, and gravity of the violation.

2 b. The economic harm caused by the violation.

3 c. The history of previous violations.

4 d. The amount necessary to deter a future violation.

5 e. Efforts to correct the violation.

6 f. Any other matter that justice may require.

7 A proceeding to impose the penalty is considered to be a  
8 contested case proceeding under chapter 17A.

9 Sec. 8. NEW SECTION. 15E.408 DISTRIBUTIONS.

10 1. A certified capital company may make a distribution or  
11 payment only if one of the following conditions is met:

12 a. The distribution or payment is a qualified  
13 distribution.

14 b. The department made a written determination that the  
15 distribution or payment may be made without adversely  
16 affecting the ability of the certified capital company to make  
17 qualified investments in an amount cumulatively equal in the  
18 aggregate to one hundred percent of the certified capital  
19 investment in the investment pool from which the distribution  
20 or payment is to be made.

21 c. The certified capital company has made qualified  
22 investments in an amount cumulatively equal in the aggregate  
23 to one hundred percent of the certified capital investments in  
24 the investment pool and has made investments in targeted  
25 businesses equal in the aggregate to at least ten percent of  
26 the certified capital investments in the investment pool.

27 d. The distribution or payment is payment of principal or  
28 interest owed to a debt holder of a certified capital company,  
29 even if the debt holder is also a holder of equity and even if  
30 the indebtedness is a certified capital investment.

31 2. At the time of making such a distribution after  
32 satisfying the requirements of subsection 1, the certified  
33 capital company shall pay to the department an amount equal to  
34 ten percent of all equity distributions which would be in  
35 excess of a fifteen percent return on investment on the

1 certified investment capital invested in the certified capital  
2 company.

3 Sec. 9. NEW SECTION. 15E.409 COMPLIANCE REVIEWS --  
4 DECERTIFICATION -- DISQUALIFICATION.

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

14 2. Any material violation of section 15E.406, subsection  
15 2, is a ground for disqualification of the noncomplying  
16 investment pool. If the department determines that the  
17 certified capital company is not in compliance with section  
18 15E.406, subsection 2, with respect to an investment pool, the  
19 department shall send a written notice to the certified  
20 capital company and the department of revenue stating that the  
21 investment pool has been disqualified.

22 3. Any material violation of section 15E.406, subsections  
23 2 through 4, or section 15E.407, subsections 1 through 4, is a  
24 ground for decertification of the noncomplying certified  
25 capital company. If the department determines that the  
26 certified capital company is not in compliance with section  
27 15E.406, subsections 2 through 4, or section 15E.407,  
28 subsections 1 through 4, the department shall send a written  
29 notice to the certified capital company that the certified  
30 capital company may be subject to decertification in one  
31 hundred twenty days from the date on which the notice was  
32 mailed, unless the certified capital company brings itself  
33 into full compliance. If at the end of the one-hundred-  
34 twenty-day period the certified capital company has not  
35 brought itself into full compliance, the department shall send

1 a notice to the certified capital company and the commissioner  
2 of insurance stating that the certified capital company has  
3 been decertified.

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

7 (1) It has been at least ten years since the last  
8 certified capital investment was made in the certified capital  
9 company.

10 (2) The certified capital company has made qualified  
11 investments in an amount cumulatively equal to at least one  
12 hundred percent of the certified capital investment in the  
13 certified capital company.

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

20 5. Approval by the department of a voluntary  
21 decertification of a certified capital company shall be  
22 required prior to the voluntary decertification if the  
23 decertification occurs within five years from the date the  
24 certified capital company was originally certified.

25 6. Decertification of a certified capital company or  
26 disqualification of an investment pool has the effects  
27 specified in section 15E.412.

28 7. The department shall notify a certified investor when  
29 the certified capital company tax credit arising from a  
30 certified investment is no longer subject to recapture and  
31 forfeiture under section 15E.412.

32 Sec. 10. NEW SECTION. 15E.410 DEPARTMENT EVALUATION OF  
33 THE PROGRAM.

34 Beginning on January 31, 2008, and on every January 31 of  
35 each even-numbered year thereafter, the department shall

1 submit a report to the general assembly regarding the program  
2 under this division. The report shall include all of the  
3 following:

4 1. The total amount of certified capital investments made  
5 during the previous two calendar years, as well as the total  
6 amount of certified capital investments made since July 1,  
7 2006.

8 2. Statistical information on the qualified investments  
9 made by certified capital companies during the previous two  
10 calendar years.

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

15 Sec. 11. NEW SECTION. 15E.411 RULES.

16 The department shall adopt rules pursuant to chapter 17A  
17 necessary to administer this division.

18 Sec. 12. NEW SECTION. 15E.412 CERTIFIED CAPITAL COMPANY  
19 INSURANCE PREMIUM TAX CREDIT.

20 1. A certified investor which is an insurance company  
21 organized under the laws of this state or admitted to do  
22 business in this state shall earn, two years after it makes a  
23 certified capital investment, a vested tax credit against the  
24 insurance premium tax liability of the certified investor  
25 under chapter 432, or similar taxes, equal to one hundred  
26 percent of the certified investor's certified capital  
27 investment. A certified investor shall be entitled to claim  
28 up to ten percent of the vested premium tax credit in any  
29 taxable year of the certified investor. The credit to be  
30 applied against a certified investor's premium tax liability  
31 in any one year shall not exceed such certified investor's  
32 premium tax liability for such taxable year. Any credit in  
33 excess of the tax liability for a taxable year may be credited  
34 to the tax liability for succeeding taxable years until  
35 depleted.

1 2. If a certified capital company is decertified, or an  
2 investment pool is disqualified, under section 15E.409, before  
3 the certified capital company fulfills the investment  
4 requirement under section 15E.406, subsection 2, paragraph  
5 "a", subparagraph (1), with respect to the investment pool, a  
6 certified investor that has received a tax credit under this  
7 section shall be subject to a recapture tax equal to the tax  
8 credit claimed with respect to the investment pool. A  
9 certified investor shall not claim any remaining tax credits  
10 with respect to that investment pool.

11 3. If a certified capital company fulfills the investment  
12 requirement under section 15E.406, subsection 2, paragraph  
13 "a", subparagraph (1), with respect to the investment pool but  
14 the certified capital company is decertified, or an investment  
15 pool is disqualified under section 15E.409, before the  
16 certified capital company fulfills the investment requirement  
17 under section 15E.406, subsection 2, paragraph "a",  
18 subparagraph (2), for that investment pool, a certified  
19 investor that has received a tax credit under this section  
20 with respect to that investment pool shall be subject to a  
21 recapture tax equivalent to all tax credits claimed under this  
22 section for taxable years after the taxable year that includes  
23 the second anniversary of the investment date of the  
24 investment pool. A certified investor shall not claim any  
25 remaining tax credits for taxable years after the taxable year  
26 that includes the second anniversary of the investment date of  
27 the investment pool.

28 4. If a certified capital company fulfills the investment  
29 requirement under section 15E.406, subsection 2, paragraph  
30 "a", subparagraphs (1) and (2), with respect to the investment  
31 pool but the certified capital company is decertified, or an  
32 investment pool is disqualified under section 15E.409, before  
33 the certified capital company fulfills the investment  
34 requirement under section 15E.406, subsection 2, paragraph  
35 "a", subparagraph (3), for that investment pool, a certified

1 investor that has received a tax credit under this section  
2 with respect to that investment pool shall be subject to a  
3 recapture tax equivalent to all tax credits claimed under this  
4 section for taxable years after the taxable year that includes  
5 the third anniversary of the investment date of the investment  
6 pool. A certified investor shall not claim any remaining tax  
7 credits for taxable years after the taxable year that includes  
8 the third anniversary of the investment date of the investment  
9 pool.

10 5. If a certified capital company satisfies the investment  
11 requirements under section 15E.406, subsection 2, paragraph  
12 "a", with respect to the investment pool, but the certified  
13 capital company is decertified, a certified investor that has  
14 received a tax credit under this section with respect to that  
15 investment pool shall not be subject to a recapture tax with  
16 respect to the tax credits previously utilized or forfeit any  
17 unused credits, provided that such decertification did not  
18 occur prior to the fourth anniversary of the investment date  
19 of the investment pool. If the decertification did occur  
20 prior to the fourth anniversary of the investment date of the  
21 investment pool, all tax credits claimed or to be claimed  
22 prior to such anniversary shall not be subject to recapture or  
23 forfeiture, but all credits to be taken after such anniversary  
24 shall be forfeited.

25 6. A certified investor may sell a certified capital  
26 company tax credit to another insurance company organized  
27 under the laws of this state or admitted to do business in  
28 this state if the certified investor notifies the department  
29 of revenue of the sale and includes with the notification a  
30 copy of the transfer documents.

31 7. Once a certified capital company has voluntarily  
32 decertified all investment pools under its control, the  
33 certified capital company shall not be subject to regulation  
34 by the department. However, after a certified capital company  
35 has voluntarily decertified, the department shall continue to

1 monitor any qualified business which received an investment  
2 from the decertified certified capital company and make an  
3 annual report to the general assembly by January 31 of each  
4 year regarding the monitoring of qualified businesses. The  
5 report shall include the number of jobs created by the  
6 qualified business, the average wage of the jobs in that  
7 qualified business, and other useful information as deemed  
8 appropriate by the department which would illustrate the  
9 impact the business has on the economy of the state. The  
10 department shall continue to monitor and report to the general  
11 assembly on the qualified business until all tax credits have  
12 been claimed by the certified investors of that decertified  
13 certified capital company or ten years have elapsed from the  
14 date the decertified certified capital company was certified,  
15 whichever is longer.

16 EXPLANATION

17 This bill relates to certified capital companies and  
18 providing for a certified capital company insurance premium  
19 tax credit.

20 The bill provides that a person applying to become a  
21 certified capital company shall submit an application to the  
22 department of economic development. The bill requires the  
23 department to certify a person as a certified capital company  
24 if the department determines that the person is a partnership,  
25 corporation, trust, or limited liability company, whether  
26 organized for profit or not for profit, that has as its  
27 primary business activity the investment of cash in qualified  
28 businesses; the person has a net worth, at the time of  
29 application, of at least \$750,000 and has at least \$5 million  
30 in cash, cash equivalents, or marketable securities; the  
31 directors, officers, general partners, trustees, managers,  
32 members, or persons having a similar function are familiar  
33 with the requirements of the bill; at least two officers,  
34 directors, general partners, trustees, managers, or members  
35 each have at least four years of experience in the venture

1 capital industry; proper notice requirements have been met in  
2 any offering material involving the sale of securities; the  
3 person has paid a nonrefundable application fee; and the  
4 person has not engaged in dishonest or unethical practices.  
5 The bill provides that the department may certify an Iowa  
6 agricultural industry finance corporation as a certified  
7 capital company provided that other criteria are met.

8 The bill provides that a certified capital investment is an  
9 investment in a certified capital company that is certified by  
10 the department and fully funds either the investor's equity  
11 interest in a certified capital company or a qualified debt  
12 instrument that a certified capital company issues. The bill  
13 provides that the department shall not certify a total of more  
14 than \$100 million in certified capital investments. The bill  
15 provides that the department shall not certify more than 25  
16 percent of the total certified capital investments allowed for  
17 investments in an agricultural industry finance corporation  
18 which is a certified capital company. The bill provides that  
19 prior to the first day of the 13th month beginning after the  
20 effective date of the bill, a certified investor, together  
21 with all affiliates of the certified investor, shall not have  
22 invested more than \$15 million in certified capital  
23 investments. The bill provides that, if, as a result of the  
24 investment limitations, the department does not certify the  
25 full amount requested in applications for certified capital  
26 investments, the department shall allocate the amounts  
27 available for certification on a pro rata basis. The bill  
28 provides that an insurance company, group of insurance  
29 companies, affiliate of an insurance company, or group of such  
30 affiliates shall not beneficially own 10 percent or more of  
31 the equity securities in, be a general partner or manager of,  
32 or otherwise control the investments of a certified capital  
33 company. The bill provides requirements for certification of  
34 capital investments relating to the aggregate amount of  
35 capital certified on behalf of all of the certified investors



1 of a certified capital company.

2 The bill provides a business is a qualified business if the  
3 business is in need of venture capital and is unable to obtain  
4 sufficient conventional financing, the business is  
5 headquartered in this state and its principal business  
6 operations are located in this state, the business has no more  
7 than 100 employees, at least 75 percent of whom are employed  
8 in the state, the business has an average annual net income of  
9 not more than \$5 million, the business has a net worth that is  
10 not in excess of \$15 million, the business is not  
11 predominately engaged in the provision of professional  
12 services provided by accountants, attorneys, or physicians,  
13 the business is not engaged in the development of real estate  
14 for resale, the business is not engaged in banking or lending  
15 and does not make any loans to, or investments in, certified  
16 capital companies, the business is predominantly engaged in  
17 certain industries, it is the intent of the business to  
18 provide long-term attractive compensation packages with many  
19 of the compensation packages, and the business intends to  
20 retain its operations and employees in the state after receipt  
21 of investments from a certified capital company. The bill  
22 allows certain qualified businesses to receive follow-on  
23 investments under certain circumstances.

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

1 requirements. The bill provides a schedule regarding the  
2 percentage of a certified capital company's investment pool  
3 that must be in qualified investments.

4 The bill requires a certified capital company to meet  
5 certain reporting requirements after the receipt of a  
6 certified capital investment, after the receipt of information  
7 by the certified capital company that a qualified business has  
8 violated an agreement, and regarding annual activities and  
9 audits. The bill allows the department to impose an  
10 administrative penalty on a certified capital company that  
11 violates the provisions of the bill. The bill provides that  
12 the amount of the penalty shall not exceed \$25,000, and each  
13 day a violation continues or occurs is a separate violation  
14 for the purpose of imposing a penalty.

15 The bill provides conditions under which a certified  
16 capital company may make distributions. The bill requires the  
17 department to conduct an annual review of each certified  
18 capital company. The bill provides for the voluntary and  
19 involuntary decertification of a certified capital company and  
20 the disqualification of a noncomplying investment pool. The  
21 bill requires the department to file a report with the general  
22 assembly every two years regarding certified capital companies  
23 and the department's assessment of the impact of certified  
24 capital companies.

25 The bill allows a certified investor to earn, two years  
26 after it makes a certified capital investment, a vested tax  
27 credit against the insurance premium tax liability of the  
28 certified investor equal to the total amount of the certified  
29 investor's certified capital investment. The bill provides  
30 that a certified investor shall be entitled to claim up to 10  
31 percent of the vested premium tax credit in any taxable year  
32 of the certified investor. The bill provides that the credit  
33 to be applied against a certified investor's premium tax  
34 liability in any one year shall not exceed such certified  
35 investor's premium tax liability for such taxable year and any

1 credit in excess of the tax liability for a taxable year may  
2 be credited to the tax liability for succeeding taxable years  
3 until depleted. The bill provides for a recapture tax in the  
4 case of decertification of a certified capital company or  
5 disqualification of an investment pool. The bill allows for  
6 the sale of a certified capital company tax credit. The bill  
7 provides that once a certified capital company has voluntarily  
8 decertified all investment pools under its control, the  
9 certified capital company shall not be subject to regulation  
10 by the department; however, the department shall continue to  
11 monitor any qualified business which received an investment  
12 from the decertified certified capital company and make an  
13 annual report to the general assembly by January 31 of each  
14 year regarding the monitoring of qualified businesses.

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