



2003 SENATE BILL 249

September 17, 2003 - Introduced by Senators KANAVAS, MOORE, STEPP, LEIBHAM, DARLING, ERPENBACH, M. MEYER, ROBSON, LAZICH, HARSDORF, BROWN, KEDZIE, JAUCH, LASSA, PLALE, WIRCH, HANSEN and ROESSLER, cosponsored by Representatives WARD, McCORMICK, NISCHKE, TURNER, BERCEAU, JENSEN, VRAKAS, HUEBSCH, LADWIG, STASKUNAS, ALBERS, M. LEHMAN, TOWNS, HINES, J. FITZGERALD, HAHN, PLOUFF, OTT, GUNDERSON, JESKEWITZ, MUSSER, TAYLOR, GRONEMUS, RICHARDS, GIELOW, POCAN, COGGS and KRUG. Referred to Select Committee on Job Creation.

1 **AN ACT** *to repeal* 560.37 (3m) (a) 1.; *to renumber* 560.32 (2) (c); *to renumber*
2 *and amend* 560.32 (2) (b), 560.33 (1) (b), 560.34 (1) (d) and 560.34 (2); *to*
3 *consolidate, renumber and amend* 560.37 (3m) (a) (intro.) and 2.; *to amend*
4 71.45 (2) (a) 10., 560.30 (3), 560.30 (10) (d), 560.31 (1), 560.31 (2) (b), 560.33 (1)
5 (intro.), 560.33 (2), 560.34 (1) (c), 560.34 (1) (e), 560.34 (1m) (b), 560.35 (2)
6 (intro.), 560.35 (2) (a), 560.35 (2) (c), 560.35 (3), 560.37 (4) and 560.37 (5); and
7 **to create** 71.47 (7), 71.49 (1) (dm), 560.30 (10) (e), 560.31 (2) (g), 560.32 (2) (b)
8 2., 560.32 (2) (c) 2., 560.33 (1) (b) 2., 560.34 (1) (d) 2., 560.34 (2) (a) to (k), 560.34
9 (5), 560.35 (1c) and 560.35 (1r) of the statutes; **relating to:** certified capital
10 investment limitations, qualified business requirements, creating a certified
11 capital company income and franchise tax credit for insurers, certified capital
12 company office, qualified distributions of certified capital companies, certified
13 capital company net worth, certified capital company investment reporting
14 requirements, treatment of qualified investments that become nonqualified,

SENATE BILL 249

1 permitted nonqualified investments, reviews of certified capital company
2 financial statements, requesting a performance audit, and requiring the
3 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Commerce (department) is authorized to certify investments (certified capital investments) made by investors (certified investors) in companies that have been certified by the department (certified capital companies). A certified capital company in which a certified capital investment is made must then invest the certified capital investment, according to a specified schedule, in a business in this state that fulfills certain requirements, including having no more than 100 employees and a net worth of no more than \$5,000,000 (qualified businesses). The investment in the qualified business must satisfy certain requirements, and the qualified business must agree to comply with certain requirements as a condition of the investment.

If a certified investor is a certain type of insurer, including a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business, the certified investor may claim a tax credit for the certified capital investment against license fees that are based on gross premiums and that are owed to the state instead of income or franchise taxes. The credit must be claimed over a ten-year period, with 10% of the investment used to offset the license fee that is due each year.

This bill makes various changes to the certified capital company program. Significant changes include the following:

Cap on certified capitol investments.

Current law allows the department to certify no more than \$10,000,000 in certified capital investments per certified investor and no more than \$50,000,000 in total certified capital investments. This bill authorizes the department to certify another \$300,000,000 in certified capital investments and to certify, in certified capital investments per certified investor, up to the greater of \$10,000,000 or 15% of the total certified investments that the department may certify over and above the original \$50,000,000 that the department was authorized to certify. In addition, this bill allows any insurer that is subject to state income or franchise taxes to claim a tax credit for a certified capital investment against the insurer's income or franchise tax liability.

Reporting requirements

Current law requires a certified capital company to ensure that each of its investment pools makes qualified investments according to a specified schedule. The schedule depends upon the "investment date," which is the date on which the last certified capital that is part of a particular investment pool was invested in the certified capital company. Under the schedule, a certified capital company must ensure that at least 30% of each investment pool is placed in qualified investments

SENATE BILL 249

within three years after the investment date and that at least 50% of each investment pool is placed in qualified investments within five years after the investment date.

This bill requires a certified capital company, within 30 days after each of these deadlines, to report to the department information necessary to determine whether the certified capital company is in compliance with these requirements. The bill also requires a certified capital company to report certain information to the department within 15 days after making any qualified investment.

Current law requires a certified capital company to file an annual report with the department by January 31 of each year. This bill provides, instead, for a semiannual report that must be filed by January 31 and July 31 of each year.

Currently, a certified capital company must file with the department a copy of its annual audited financial statements within 90 days after the end of the certified capital company's fiscal year. This bill requires a certified capital company to file, along with its financial statements, a listing of the procedures followed by the certified capital company, as prescribed by the department, that relate to the methods of operation and conduct of the business of the certified capital company, to enable the department to determine whether the certified capital company is complying with relevant laws. This listing must be prepared by an independent certified public accountant.

Distributions

Current law permits a certified capital company to make a distribution or payment to its equity holders for specified purposes. One such purpose is for a projected increase in federal or state taxes, including penalties and interest on those taxes, of the equity owners if those amounts are related to the certified capital company's ownership, management, or operation. This bill deletes the authority to make such a distribution for the payment of penalties and interest on these taxes. The bill also permits a certified capital company to make a distribution for the payment of reasonable costs associated with applying for qualified federal funding programs, as determined by the department.

Certification

Current law requires a person applying for certification as a certified capital company to have a net worth, at the time of application, of at least \$500,000 and at least \$500,000 in cash, cash equivalents, and marketable securities. This bill requires a person to meet these requirements both at the time of application and on the date on which the person is certified. The bill also requires the person to agree to maintain in this state an investment office and staff actively engaged in making investments.

Current law permits a certified capital company to voluntarily decertify in either of two circumstances: 1) At least ten years have passed since the last certified capital investment was made in the certified capital company; or 2) the certified capital company has placed in qualified investments an amount equal to 100% of the certified capital investments it received. This bill deletes the authority to voluntarily decertify as described in item 1.

SENATE BILL 249***Qualified businesses, qualified investments, and nonqualified investments***

Currently, at least 75% of the employees of a qualified business must be employed in this state. This bill provides that, alternatively, at least 75% of the total payroll of the qualified business must be paid to employees who are employed in this state.

Currently, a certified capital company is permitted to request a written opinion from the department that a business in which the certified capital company proposes to invest is a qualified business. This bill requires a certified capital company to obtain such an opinion before making an investment in any business.

Current law requires a qualified business to agree to certain conditions in order to receive an investment from a certified capital company. The qualified business must agree not to use the proceeds from the investment to relocate its operations; not to relocate its headquarters outside of this state as long as the certified capital company holds the investment; to maintain at least 75% of its employees in this state (or, under the bill, to pay at least 75% of its total payroll to employees in this state); and, with certain exceptions, to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made. This bill specifies the consequences that apply if a certified capital company makes an investment in a qualified business and the qualified business thereafter violates one of these conditions. Under the bill:

1. The violation does not affect the certified capital company's compliance with the deadlines for making qualifying investments.

2. One hundred percent of the amount of each qualified investment is counted toward the certified capital company's compliance with the deadlines for making qualifying investments.

3. If the violation occurs within the first year after the qualified investment was made, no amount of the qualified investment may be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

4. If the violation occurs more than one year, but three years or less, after the qualified investment was made, only 25% of the amount of the qualified investment shall be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

5. If the violation occurs more than three years, but five years or less, after the qualified investment was made, only 50% of the amount of the qualified investment shall be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

6. If the violation occurs more than five years after the qualified investment was made, 90% of the amount of the qualified investment shall be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

SENATE BILL 249

The bill, though, permits the department to grant an exception to the requirements under items 3. to 6. above and not reduce the amount of the qualified investment that is counted toward the certified capital company's satisfaction of the applicable percentage requirements, if the qualified business violates the conditions requiring the qualified business to maintain at least 75% of its employees in this state, to pay at least 75% of its total payroll to employees in this state, or to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made. The department may not grant an exception if the department determines that the qualified business is locating employees at new sites to take advantage of lower wage rates in the areas where those sites are located.

Currently, any certified capital investments in a certified capital company that are not invested in qualified investments may be held or invested as the certified capital company considers appropriate, except that the certified capital company may not invest the funds in an insurance company or an affiliate of an insurance company. This bill provides, instead, that a certified capital company may invest such funds only in the following:

1. Cash that is deposited in a federally insured financial institution.
2. Certificates of deposit in a federally insured financial institution.
3. Investment securities that are obligations of the United States or its agencies or instrumentalities, or that are obligations that are guaranteed fully as to principal and interest by the United States.
4. Debt instruments that are rated at least "AA," "A1," or "P1," or the equivalent, by a nationally recognized credit rating organization.
5. Debt instruments that are issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "AA" or the equivalent by a nationally recognized credit rating organization and are not subordinated to other unsecured indebtedness of the issuer or guarantor.
6. Obligations of the state or any political subdivision of the state.
7. Interests in money market funds, the portfolios of which are limited to cash and obligations in which the certified capital company could invest the funds directly.
8. A small business investment company that is approved by the department.
9. Any other investments approved in advance in writing by the department.

Performance evaluation audit

This bill requests the Joint Legislative Audit Committee to direct the Legislative Audit Bureau to perform a performance evaluation audit of the certified capital company program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.45 (2) (a) 10. of the statutes is amended to read:

SENATE BILL 249**SECTION 1**

1 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
2 computed under s. 71.47 (1dd) to (1dx) and (7) and not passed through by a
3 partnership, limited liability company, or tax-option corporation that has added that
4 amount to the partnership's, limited liability company's, or tax-option corporation's
5 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
6 s. 71.47 (1), (3), (4), and (5).

7 **SECTION 2.** 71.47 (7) of the statutes is created to read:

8 71.47 (7) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 9 1. "Certified capital company" has the meaning given in s. 560.30 (2).
- 10 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
- 11 3. "Investment date" has the meaning given in s. 560.30 (6).
- 12 4. "Investment pool" has the meaning given in s. 560.30 (7).
- 13 5. "Qualified investment" has the meaning given in s. 560.30 (11).

14 (b) An insurer who makes a certified capital investment may claim as a credit
15 against the tax imposed under s. 71.43, for 10 years beginning with the year of the
16 investment, an amount equal to either 10% of that investment or the amount by
17 which the sum of the insurer's certified capital investments and the insurer's
18 qualified investments exceeds the insurer's qualified investments in the taxable year
19 before the insurer first claimed the credit under this section, whichever is less.

20 (c) Section 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under s. 71.28
21 (4), applies to the credit under this subsection.

22 (d) 1. If a certified capital company is decertified, or an investment pool is
23 disqualified, under s. 560.37 before the certified capital company fulfills the
24 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
25 pool, any insurer that has received a credit under this subsection with respect to that

SENATE BILL 249

1 investment pool shall repay that credit to the department of revenue and may not
2 claim more credit in respect to that investment pool.

3 2. If a certified capital company fulfills the investment requirement under s.
4 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
5 company is decertified, or an investment pool is disqualified, under s. 560.37 before
6 the certified capital company fulfills the investment requirement under s. 560.34
7 (1m) (a) 2. for that investment pool, any insurer that has received a credit under this
8 subsection with respect to that investment pool shall repay all credits that were
9 claimed for taxable years after the taxable year that includes the 3rd anniversary of
10 the investment date of the investment pool and may claim no more credits for taxable
11 years after the taxable year that includes the 3rd anniversary of the investment date
12 of the investment pool.

13 (e) An insurer may sell a credit under this subsection to another insurer who
14 is subject to the tax imposed under s. 71.43 if the insurer notifies the commissioner
15 of insurance and the department of revenue of the sale and includes with such
16 notifications copies of the transfer documents.

17 **SECTION 3.** 71.49 (1) (dm) of the statutes is created to read:

18 71.49 (1) (dm) Certified capital company credit under s. 71.47 (7).

19 **SECTION 4.** 560.30 (3) of the statutes is amended to read:

20 560.30 (3) "Certified capital company tax credit" means the tax credit under
21 s. ss. 71.47 (7) and 76.635.

22 **SECTION 5.** 560.30 (10) (d) of the statutes is amended to read:

23 560.30 (10) (d) A projected increase in federal or state taxes, including
24 excluding penalties and interest on those taxes, of the equity owners of the certified

SENATE BILL 249

1 capital company if those amounts are related to the certified capital company's
2 ownership, management, or operation.

3 **SECTION 6.** 560.30 (10) (e) of the statutes is created to read:

4 560.30 (10) (e) Reasonable costs associated with applying for qualified federal
5 funding programs, as determined by the department.

6 **SECTION 7.** 560.31 (1) of the statutes is amended to read:

7 560.31 (1) APPLICATION. The department shall promulgate rules establishing
8 procedures under which a person may apply to become a certified capital company
9 for receiving certified capital investments under s. 560.32 (2) (b) 1. or a certified
10 capital company for receiving certified capital investments under s. 560.32 (2) (b) 2.

11 The department shall grant or deny an application for certification under this section
12 within 30 days of the date of application. If the department denies certification, the
13 department shall include with the denial a detailed description of the grounds for the
14 refusal, including suggestions for removal of those grounds.

15 **SECTION 8.** 560.31 (2) (b) of the statutes is amended to read:

16 560.31 (2) (b) The At the time of application and on the date on which the person
17 is certified, the person has a net worth, at the time of application, of at least \$500,000
18 and has at least \$500,000 in cash, cash equivalents, and marketable securities.

19 **SECTION 9.** 560.31 (2) (g) of the statutes is created to read:

20 560.31 (2) (g) The person agrees to maintain in this state an investment office
21 and staff actively engaged in making investments.

22 **SECTION 10.** 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and
23 amended to read:

24 560.32 (2) (b) 1. The Prior to the effective date of this subdivision [revisor
25 inserts date], the department may certify an investment under this subsection only

SENATE BILL 249

1 if, after the certification, the department will not have certified a total of more than
2 \$50,000,000 in investments under this subsection.

3 **SECTION 11.** 560.32 (2) (b) 2. of the statutes is created to read:

4 560.32 (2) (b) 2. Beginning on the effective date of this subdivision [revisor
5 inserts date], the department shall certify investments for which notices have been
6 received under par. (a), up to \$300,000,000, excluding any investments certified
7 under subd. 1.

8 **SECTION 12.** 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

9 **SECTION 13.** 560.32 (2) (c) 2. of the statutes is created to read:

10 560.32 (2) (c) 2. The department may not certify an investment under par. (b)
11 2. if, after the certification, the investor, together with all affiliates of the investor,
12 would have in certified capital investments under par. (b) 2. more than the greater
13 of \$10,000,000 or 15% of the total amount of investments that the department may
14 certify under par. (b) 2.

15 **SECTION 14.** 560.33 (1) (intro.) of the statutes is amended to read:

16 560.33 (1) QUALIFICATIONS. (intro.) A Except as provided in sub. (2), a business
17 is a qualified business if all of the following requirements are met, as of the time that
18 a certified capital company, or any affiliate of the certified capital company, makes
19 its first investment in the business, investment in the business will further economic
20 development in this state or all of the following requirements are met:

21 **SECTION 15.** 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)
22 and amended to read:

23 560.33 (1) (b) (intro.) The business has no more than 100 employees, at and any
24 of the following applies:

25 1. At least 75% of whom those employees are employed in this state.

SENATE BILL 249

1 **SECTION 16.** 560.33 (1) (b) 2. of the statutes is created to read:

2 560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to
3 employees who are employed in this state.

4 **SECTION 17.** 560.33 (2) of the statutes is amended to read:

5 560.33 (2) DEPARTMENT OPINIONS AND EXCEPTIONS. A certified capital company
6 ~~may~~ shall, prior to making an investment in a specific business, request a written
7 opinion from the department that a business in which it proposes to invest is a
8 qualified business. ~~If the department determines that the business meets the~~
9 ~~requirements under sub. (1), the department shall issue a written opinion stating~~
10 ~~that the business is a qualified business~~ Within 15 days of receiving the request, the
11 department shall determine whether the business is a qualified business and, if the
12 business is not a qualified business, notify the certified capital company in writing
13 of the determination and the reasons for the determination. If the department fails
14 to so notify the certified capital company within 15 days of receiving the request, the
15 business shall be deemed a qualified business, notwithstanding any failure to satisfy
16 sub. (1).

17 **SECTION 18.** 560.34 (1) (c) of the statutes is amended to read:

18 560.34 (1) (c) As a condition of the investment, the qualified business agrees,
19 as long as the certified capital ~~corporation~~ company continues to hold the
20 investment, not to relocate its headquarters out of this state.

21 **SECTION 19.** 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)
22 and amended to read:

23 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business
24 agrees, as long as the certified capital ~~corporation~~ company continues to hold the
25 investment, to ~~maintain~~ do any of the following:

SENATE BILL 249

1 1. Maintain at least 75% of its employees in this state.

2 **SECTION 20.** 560.34 (1) (d) 2. of the statutes is created to read:

3 560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are
4 employed in this state.

5 **SECTION 21.** 560.34 (1) (e) of the statutes is amended to read:

6 560.34 (1) (e) As a condition of the investment, the qualified business agrees,
7 as long as the certified capital ~~corporation~~ company continues to hold the
8 investment, to maintain at least 75% of its employees at work sites that were
9 maintained by the qualified business at the time that the investment was made,
10 unless the qualified business obtains an exemption from the department under this
11 paragraph. The department may grant an exemption unless it determines that the
12 qualified business is locating the employees at new sites to take advantage of lower
13 wage rates in the areas where the new sites are located.

14 **SECTION 22.** 560.34 (1m) (b) of the statutes is amended to read:

15 560.34 (1m) (b) The proceeds of all capital of a qualified investment returned
16 to a certified capital company by a qualified business may be placed in new qualified
17 investments, which shall count toward the percentage requirements under par. (a)
18 and s. 560.36 (3). The department shall promulgate rules governing the extent to
19 which a reinvestment of proceeds from the sale of a qualified investment in a
20 qualified business may be counted toward the percentage requirements under par.
21 (a) and ss. 560.36 (3) and 560.37 (3m) (a) 2. These rules may provide that reinvested
22 proceeds from the sale of short-term investments shall be only partially counted
23 toward the percentage requirements under par. (a) and ss. 560.36 (3) and 560.37 (3m)
24 (a) 2. The rules may also provide that proceeds from the sale of an investment in a
25 qualified business that are reinvested in that qualified business, or an affiliate of

SENATE BILL 249

1 that qualified business, shall be only partially counted toward the percentage
2 requirements under par. (a) and ss. 560.36 (3) and 560.37 (3m) (a) 2.

3 **SECTION 23.** 560.34 (2) of the statutes is renumbered 560.34 (2) (intro.) and
4 amended to read:

5 560.34 (2) (intro.) NONQUALIFIED INVESTMENTS. All certified capital investments
6 in a certified capital company that are not invested in qualified investments may be
7 held or invested by the certified capital company as it considers appropriate, except
8 that a certified capital company may not invest certified capital investments in an
9 insurance company or in an affiliate of an insurance company. only in any of the
10 following:

11 **SECTION 24.** 560.34 (2) (a) to (k) of the statutes are created to read:

12 560.34 (2) (a) Deposits with a federally insured financial institution, as defined
13 in s. 705.01 (3).

14 (b) Certificates of deposit in a federally insured financial institution, as defined
15 in s. 705.01 (3).

16 (c) Investment securities that are obligations of the United States or its
17 agencies or instrumentalities, or that are obligations that are guaranteed fully as to
18 principal and interest by the United States.

19 (d) Commercial paper rated at least "A1," "P1," or the equivalent, by a
20 nationally recognized credit rating organization.

21 (e) Debt instruments rated at least "AA" or its equivalent by a nationally
22 recognized credit rating organization.

23 (f) Debt instruments issued by, or guaranteed with respect to payment by, an
24 entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a

SENATE BILL 249

1 nationally recognized credit rating organization and which are not subordinated to
2 other unsecured indebtedness of the issuer or guarantor, as applicable.

3 (g) Swaps or other hedging transactions designed to realize or protect the value
4 of a qualified investment, if the counterparty is rated at least "A" or its equivalent
5 by a nationally recognized credit rating organization.

6 (h) Obligations of the state or any political subdivision of the state.

7 (i) Interests in money market or other mutual funds, the portfolios of which are
8 limited to cash and other permissible investments described in this subsection.

9 (j) A small business investment company that is approved by the department.

10 (k) Any other investments approved in advance in writing by the department.

11 **SECTION 25.** 560.34 (5) of the statutes is created to read:

12 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED. (a) If a certified
13 capital company makes an investment in a qualified business and, after the effective
14 date of this paragraph [revisor inserts date], and during the time that the certified
15 capital company still holds the investment, the qualified business violates an
16 agreement made under sub. (1) (b) to (e), all of the following apply:

17 1. The violation does not affect the certified capital company's satisfaction of
18 the percentage requirements under sub. (1m) (a) 1. or 2., and 100% of the amount of
19 the qualified investment shall be counted toward the certified capital company's
20 satisfaction of those percentage requirements.

21 2. If the violation occurs within the first year after the qualified investment was
22 made, no amount of the qualified investment shall be counted toward the certified
23 capital company's satisfaction of the percentage requirements under ss. 560.36 (3)
24 and 560.37 (3m) (a).

SENATE BILL 249

1 3. If the violation occurs more than one year, but 3 years or less, after the
2 qualified investment was made, only 25% of the amount of the qualified investment
3 shall be counted toward the certified capital company's satisfaction of the percentage
4 requirements under ss. 560.36 (3) and 560.37 (3m) (a).

5 4. If the violation occurs more than 3 years, but 5 years or less, after the
6 qualified investment was made, only 50% of the amount of the qualified investment
7 shall be counted toward the certified capital company's satisfaction of the percentage
8 requirements under ss. 560.36 (3) and 560.37 (3m) (a).

9 5. If the violation occurs more than 5 years after the qualified investment was
10 made, 90% of the amount of the qualified investment shall be counted toward the
11 certified capital company's satisfaction of the percentage requirements under ss.
12 560.36 (3) and 560.37 (3m) (a).

13 (b) Notwithstanding par. (a), if a qualified business violates an agreement
14 under sub. (1) (b), (c), (d), or (e), the department may grant an exception to the
15 requirements under par. (a) 2. to 5. and not reduce the amount of the qualified
16 investment that is counted toward the certified capital company's satisfaction of the
17 percentage requirements under ss. 560.36 (3) and 560.37 (3m) (a), unless the
18 department determines that the qualified business is locating employees at new sites
19 to take advantage of lower wage rates in the areas where those sites are located.

20 **SECTION 26.** 560.35 (1c) of the statutes is created to read:

21 560.35 (1c) QUALIFIED INVESTMENTS. Within 15 days after making a qualified
22 investment, a certified capital company shall report all of the following to the
23 department:

24 (a) The name of the qualified business in which the qualified investment was
25 made.

SENATE BILL 249

1 (b) The amount of the qualified investment.

2 (c) The type of investment, as specified in s. 560.34 (1) (a) 1. or 2. a. or b.

3 **SECTION 27.** 560.35 (1r) of the statutes is created to read:

4 560.35 (1r) QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the
5 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital
6 company shall report to the department, in the format and substance prescribed by
7 the department, information required by the department for determining whether
8 the certified capital company is in compliance with the percentage requirements
9 under s. 560.34 (1m) (a).

10 **SECTION 28.** 560.35 (2) (intro.) of the statutes is amended to read:

11 560.35 (2) ~~ANNUAL~~ SEMIANNUAL REPORTS. (intro.) ~~On Each year, on~~ or before
12 January 31 annually, for the preceding 6-month period ending on December 31, and
13 on or before July 31, for the preceding 6-month period ending on June 30, a certified
14 capital company shall report, in the format and substance prescribed by the
15 department, all of the following to the department:

16 **SECTION 29.** 560.35 (2) (a) of the statutes is amended to read:

17 560.35 (2) (a) The amount of the certified capital company's certified capital at
18 the end of the preceding year 6-month period.

19 **SECTION 30.** 560.35 (2) (c) of the statutes is amended to read:

20 560.35 (2) (c) All qualified investments that the certified capital company has
21 made during the ~~previous calendar year~~ preceding 6-month period and the
22 investment pool from which each qualified investment was made.

23 **SECTION 31.** 560.35 (3) of the statutes is amended to read:

24 560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified
25 capital company's fiscal year, the certified capital company shall provide to the

SENATE BILL 249**SECTION 31**

1 department a copy of its annual audited financial statements, including the opinion
2 of an independent certified public accountant, and a copy of a report on agreed-upon
3 procedures prepared by an independent certified public accountant. The audit shall
4 address agreed-upon-procedures report shall identify the procedures performed by
5 the certified capital company, as prescribed by the department, that relate to the
6 methods of operation and conduct of the business of the certified capital company to
7 enable the department to determine whether the certified capital company is
8 complying with this subchapter and the rules promulgated under this subchapter,
9 including whether certified capital has been invested in the manner required under
10 s. 560.34. The financial statements and agreed-upon-procedures report provided
11 under this subsection shall be segregated by investment pool and shall be separately
12 audited on that basis to allow the department to determine whether the certified
13 capital company is in compliance with ~~s. 560.34 (1m)~~ this subchapter and the rules
14 promulgated under this subchapter.

15 **SECTION 32.** 560.37 (3m) (a) (intro.) and 2. of the statutes are consolidated,
16 renumbered 560.37 (3m) (a) and amended to read:

17 560.37 (3m) (a) A certified capital company may voluntary decertify itself as
18 a certified capital company if any of the following conditions are met: ~~2.~~ The only
19 if the certified capital company has placed in qualified investments an amount equal
20 to 100% of the certified capital investment in the certified capital company.

21 **SECTION 33.** 560.37 (3m) (a) 1. of the statutes is repealed.

22 **SECTION 34.** 560.37 (4) of the statutes is amended to read:

23 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital
24 company or an investment pool has the effects specified in s. ss. 71.47 (7) (d) and
25 76.635 (4).

SENATE BILL 249

1 **SECTION 35.** 560.37 (5) of the statutes is amended to read:

2 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a
3 certified investor when the certified capital company tax credit arising from a
4 certified investment is no longer subject to recapture and forfeiture under ~~s. ss. 71.47~~
5 (7) (d) and 76.635 (4).

6 **SECTION 36. Nonstatutory provisions.**

7 (1) PERFORMANCE EVALUATION AUDIT. The joint legislative audit committee is
8 requested to, and may, direct the legislative audit bureau to perform a performance
9 evaluation audit of the program under subchapter II of chapter 560 of the statutes,
10 which shall include evaluating the overall effectiveness of the program. If the
11 committee directs the legislative audit bureau to perform an audit under this
12 subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the
13 statutes by January 1, 2005.

14 **SECTION 37. Initial applicability.**

15 (1) The treatment of sections 71.45 (2) (a) 10., 71.47 (7), 71.49 (1) (dm), 560.30
16 (3), and 560.37 (4) and (5) of the statutes first applies to taxable years beginning on
17 July 1, 2005.

18 (2) The treatment of sections 560.31 (2) (b) and (g) of the statutes, the
19 renumbering and amendment of sections 560.33 (1) (b) and 560.34 (1) (d) and (2) of
20 the statutes, and the creation of sections 560.33 (1) (b) 2. and 560.34 (1) (d) 2. and (2)
21 (a) to (h) of the statutes first apply to certified capital companies for which certified
22 capital investments are first certified, and to certified capital investments that are
23 first certified, on the effective date of this subsection.

24

(END)