

**2003 DRAFTING REQUEST**

**Bill**

Received: **04/10/2003**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **jeremey**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Econ. Development - bus. dev.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**  
**joseph.kreye@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

CAPCO changes

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 04/21/2003	kfollett 04/23/2003		_____			State
	jkreye 04/22/2003	kfollett 04/29/2003		_____			
/1	rmarchan	kfollett	pgreensl	_____	amentkow		State

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	09/04/2003	09/04/2003	04/30/2003	_____	04/30/2003		
/2			rschluet	_____	lemery	sbasford	
			09/05/2003	_____	09/05/2003	09/05/2003	
				_____		sbasford	
				_____		09/05/2003	

FE Sent For:

<END>

At Intro.

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			09/05/2003	_____	09/05/2003		

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	jkreye 04/22/2003	kfollett 04/29/2003		_____			
/1		12 lgy 9/4	pgreensl 04/30/2003		amentkow 04/30/2003		

*[Handwritten signatures and initials: "pb", "9-43"]*

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

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/?	rmarchan	1/1 kjf 4/29	1/30 ps	4/30 ps/90			

FE Sent For:

<END>

## Marchant, Robert

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**From:** Kahler, Pam  
**Sent:** Thursday, April 10, 2003 9:40 AM  
**To:** Marchant, Robert  
**Subject:** FW: Senator Kanavas Drafting Request - CAPCOS

Rob:

Here is a drafting request for you - one of those good ones that is mostly all drafted already!

Pam

-----Original Message-----

**From:** Shepherd, Jeremy  
**Sent:** Wednesday, April 09, 2003 5:54 PM  
**To:** Kahler, Pam  
**Cc:** Kreye, Joseph  
**Subject:** Senator Kanavas Drafting Request - CAPCOS

Pam,

Senator Kanavas requests 2001 LRBs0320/2 (Sen Sub amendment to 2001 SB 284), relating to certified capital companies, to be drafted with the following changes.

- 1.) Section 27: Initial Applicability Date for the taxes would be July 1, 2005, instead of July 1, 2003
- 2.) Section 9: Certify up to \$500 Million instead of \$100 Million.

Also, please feel free to speak with Tim Elverman about this issue, should he ask to speak to you about the changes.

Thanks!

JEREMEY J SHEPHERD  
Legislative Aide  
Office of Senator Ted Kanavas  
6-9174



*Sen*

*RSM*

- 2516/1  
LRB 4/22/03

WV&JK:mas

*KJF*  
*RWHR*

**SENATE SUBSTITUTE AMENDMENT,  
TO 2001 SENATE BILL 284**

*PWF*

*in 4-22-03*

*Regen*

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

INDEBT ANALYSIS

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

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

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

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

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

13 71.47 (7) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 14 1. "Certified capital company" has the meaning given in s. 560.30 (2).
- 15 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
- 16 3. "Investment date" has the meaning given in s. 560.30 (6).
- 17 4. "Investment pool" has the meaning given in s. 560.30 (7).
- 18 5. "Qualified investment" has the meaning given in s. 560.30 (11).

19 (b) An insurer who makes a certified capital investment may claim as a credit  
20 against the tax imposed under s. 71.43, for 10 years beginning with the year of the  
21 investment, an amount equal to either 10% of that investment or the amount by  
22 which the sum of the insurer's certified capital investments and the insurer's

1 qualified investments exceeds the insurer's qualified investments in the taxable year  
2 before the insurer first claimed the credit under this section, whichever is less.

3 (c) ~~Subsection~~ 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under <sup>s.</sup> 71.28  
4 (4), applies to the credit under this subsection.

5 (d) 1. If a certified capital company is decertified, or an investment pool is  
6 disqualified, under s. 560.37 before the certified capital company fulfills the  
7 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment  
8 pool, any insurer that has received a credit under this subsection with respect to that  
9 investment pool shall repay that credit to the department of revenue and may not  
10 claim more credit in respect to that investment pool.

11 2. If a certified capital company fulfills the investment requirement under s.  
12 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital  
13 company is decertified, or an investment pool is disqualified, under s. 560.37 before  
14 the certified capital company fulfills the investment requirement under s. 560.34  
15 (1m) (a) 2. for that investment pool, any insurer that has received a credit under this  
16 subsection with respect to that investment pool shall repay all credits that were  
17 claimed for taxable years after the taxable year that includes the 3rd anniversary of  
18 the investment date of the investment pool and may claim no more credits for taxable  
19 years after the taxable year that includes the 3rd anniversary of the investment date  
20 of the investment pool.

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

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

1 71.49 (1) (dm) Certified capital company credit under s. 71.47<sup>✓</sup> (7).

2 SECTION 4. 560.30<sup>✓</sup> (3) of the statutes is amended to read:

3 560.30 (3) “Certified capital company tax credit” means the tax credit under  
4 s. 71.47<sup>✓</sup> (7) and 76.635.

5 SECTION 5. 560.30<sup>✓</sup> (10) (d) of the statutes is amended to read:

6 560.30 (10) (d) A projected increase in federal or state taxes, including  
7 excluding penalties and interest on those taxes, of the equity owners of the certified  
8 capital company if those amounts are related to the certified capital company’s  
9 ownership, management, or operation.

10 SECTION 6. 560.30<sup>✓</sup> (10) (e) of the statutes is created to read:

11 560.30 (10) (e) Reasonable costs associated with applying for qualified federal  
12 funding programs, as determined by the department<sup>✓</sup>.

13 SECTION 7. 560.31<sup>✓</sup> (1) of the statutes is amended to read:

14 560.31 (1) APPLICATION. The department shall promulgate rules establishing  
15 procedures under which a person may apply to become a certified capital company  
16 for receiving certified capital investments under s. 560.32 (2) (b)<sup>✓</sup> 1. or a certified  
17 capital company for receiving certified capital investments under s. 560.32<sup>✓</sup> (2) (b) 2.

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

22 SECTION 8. 560.31<sup>✓</sup> (2) (b) of the statutes is amended to read:

23 560.31 (2) (b) The At the time of application and on the date on which the person  
24 is certified, the person has a net worth, at the time of application, of at least \$500,000  
25 and has at least \$500,000 in cash, cash equivalents, and marketable securities.

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

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

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

6           560.32 (2) (b) 1. ~~The~~ Prior to the effective date of this subdivision ... [revisor  
7 inserts date], the department may certify an investment under this subsection only  
8 if, after the certification, the department will not have certified a total of more than  
9 \$50,000,000 in investments under this subsection.

\$500,000,000

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

11           560.32 (2) (b) 2. The department may, beginning on the effective date of this  
12 subdivision ... [revisor inserts date], certify up to ~~\$100,000,000~~ in investments under  
13 this subsection, excluding any investments certified under subd. 1.

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

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

16           560.32 (2) (c) 2. The department may not certify an investment under par. (b)  
17 2. if, after the certification, the investor, together with all affiliates of the investor,  
18 would have in certified capital investments under par. (b) 2. more than the greater  
19 of \$10,000,000 or 15% of the total amount of investments that the department may  
20 certify under par. (b) 2.

21           **SECTION 14.** 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.

1           **SECTION 15.** 560.33<sup>✓</sup> (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 16.** 560.33<sup>✓</sup> (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.

11           **SECTION 17.** 560.34<sup>✓</sup> (1) (c) of the statutes is amended to read:

12           560.34 (1) (c) As a condition of the investment, the qualified business agrees,  
13 as long as the certified capital ~~corporation~~ company continues to hold the  
14 investment, not to relocate its headquarters out of this state.

15           **SECTION 18.** 560.34<sup>✗</sup> (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)  
16 and amended to read:

17           560.34 (1) (d) (intro.) As a condition of the investment, the qualified business  
18 agrees, as long as the certified capital ~~corporation~~ company continues to hold the  
19 investment, to ~~maintain~~ do any of the following:

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

21           **SECTION 19.** 560.34<sup>✓</sup> (1) (d) 2. of the statutes is created to read:

22           560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are  
23 employed in this state.

24           **SECTION 20.** 560.34<sup>✓</sup> (1) (e) of the statutes is amended to read:

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

9           **SECTION 21.** 560.34 (1<sup>✓</sup>m) (b) of the statutes is amended to read:

10           560.34 (1<sup>✓</sup>m) (b) The proceeds of all capital of a qualified investment returned  
11           to a certified capital company by a qualified business may be placed in new qualified  
12           investments, which shall count toward the percentage requirements under par. (a)  
13           and s. 560.36 (3). The department shall promulgate rules governing the extent to  
14           which a reinvestment of proceeds from the sale of a qualified investment in a  
15           qualified business may be counted toward the percentage requirements under par.  
16           (a) and ss. 560.36 (3) and 560.37 (3<sup>✓</sup>m) (a) 2. These rules may provide that reinvested  
17           proceeds from the sale of short-term investments shall be only partially counted  
18           toward the percentage requirements under par. (a) and ss. 560.36 (3) and 560.37 (3<sup>✓</sup>m)  
19           (a) 2. The rules may also provide that proceeds from the sale of an investment in a  
20           qualified business that are reinvested in that qualified business, or an affiliate of  
21           that qualified business, shall be only partially counted toward the percentage  
22           requirements under par. (a) and ss. 560.36 (3) and 560.37 (3<sup>✓</sup>m) (a) 2.

23           **SECTION 22.** 560.34 (2<sup>✓</sup>) of the statutes is renumbered 560.34 (2) (intro.) and  
24           amended to read:

1           560.34 (2) (intro.) NONQUALIFIED INVESTMENTS. All certified capital investments  
2 in a certified capital company that are not invested in qualified investments may be  
3 held or invested by the certified capital company as it considers appropriate, except  
4 that a certified capital company may not invest certified capital investments in an  
5 insurance company or in an affiliate of an insurance company. only in any of the  
6 following:

7           **SECTION 23.** 560.34<sup>✓</sup> (2) (a) to (h) of the statutes are created to read:

8           560.34 (2) (a) Cash that is deposited in a federally insured financial institution,  
9 as defined in s. 705.01<sup>✓</sup> (3).

10          (b) Certificates of deposit in a federally insured financial institution, as defined  
11 in s. 705.01<sup>✓</sup> (3).

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

15          (d) Debt instruments to which any of the following applies:

16           1. The debt instruments are rated at least “AA,” “A1,” or “P1,” or the equivalent,  
17 by a nationally recognized credit rating organization.

18           2. The debt instruments are issued by, or guaranteed with respect to payment  
19 by, an entity whose unsecured indebtedness is rated at least “AA” or the equivalent  
20 by a nationally recognized credit rating organization and are not subordinated to  
21 other unsecured indebtedness of the issuer or guarantor.

22          (e) Obligations of the state or any political subdivision of the state.

23          (f) Interests in money market funds, the portfolios of which are limited to cash  
24 and obligations described in this subsection.<sup>✓</sup>

25          (g) A small business investment company that is approved by the department.<sup>✓</sup>



1 (h) Any other investments approved in advance in writing by the department. ✓

2 SECTION 24. 560.34 (5) of the statutes is created to read:

3 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED. (a) If a certified  
4 capital company makes an investment in a qualified business and the qualified  
5 business thereafter violates an agreement made under sub. (1) (b) to (e) during the  
6 time that the certified capital company still holds the investment in the qualified  
7 business, all of the following apply:

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

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

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

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

24 5. If the violation occurs more than 5 years after the qualified investment was  
25 made, 90% of the amount of the qualified investment shall be counted toward the

1 certified capital company's satisfaction of the percentage requirements under ss.  
2 560.36 (3) and 560.37 (3m) (a).

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

10 SECTION 25. 560.35 (1c) of the statutes is created to read: CS  
INVESTMENTS

11 560.35 (1c) ~~INVESTMENT IN QUALIFIED BUSINESS~~. Within 15 days after making a  
12 qualified investment in a qualified business, a certified capital company shall report  
13 all of the following to the department:

- 14 (a) The name of the qualified business. in which the qualified investment  
was made
- 15 (b) The amount of the qualified investment.
- 16 (c) The type of investment, as specified in s. 560.34 (1) (a) 1. or 2. a. or b.

17 SECTION 26. 560.35 (1r) of the statutes is created to read:

18 560.35 (1r) QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the  
19 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital  
20 company shall report to the department, in the format and substance prescribed by  
21 the department, information required by the department for determining whether  
22 the certified capital company is in compliance with the percentage requirements  
23 under s. 560.34 (1m) (a).

24 SECTION 27. 560.35 (2) (intro.) of the statutes is amended to read:

1           560.35 (2) ANNUAL SEMIANNUAL REPORTS. (intro.) On Each year, on or before  
2           January 31 annually, for the preceding 6-month period ending on December 31, and  
3           on or before July 31, for the preceding 6-month period ending on June 30, a certified  
4           capital company shall report, in the format and substance prescribed by the  
5           department, all of the following to the department:

6           **SECTION 28.** 560.35<sup>✓</sup> (2) (a) of the statutes is amended to read:

7           560.35 (2) (a) The amount of the certified capital company's certified capital at  
8           the end of the preceding year 6-month period.

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

10          560.35 (2) (c) All qualified investments that the certified capital company has  
11          made during the ~~previous calendar year~~ preceding 6-month period and the  
12          investment pool from which each qualified investment was made.

13          **SECTION 30.** 560.35<sup>✓</sup> (3) of the statutes is amended to read:

14          560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified  
15          capital company's fiscal year, the certified capital company shall provide to the  
16          department a copy of its annual audited financial statements, including the opinion  
17          of an independent certified public accountant, and a copy of a report on agreed-upon  
18          procedures prepared by an independent certified public accountant. The audit shall  
19          address ~~agreed-upon~~<sup>ok</sup> procedures report shall identify the procedures performed by  
20          the certified capital company, as prescribed by the department, that relate to the  
21          methods of operation and conduct of the business of the certified capital company to  
22          enable the department to determine whether the certified capital company is  
23          complying with this subchapter and the rules promulgated under this subchapter,  
24          including whether certified capital has been invested in the manner required under  
25          s. 560.34. The financial statements and agreed-upon-procedures report provided

1 under this subsection shall be segregated by investment pool and shall be separately  
2 audited on that basis to allow the department to determine whether the certified  
3 capital company is in compliance with s. ~~560.34 (1m)~~ this subchapter and the rules  
4 promulgated under this subchapter.

5 **SECTION 31.** 560.37 (3m) (a) (intro.) and 2. of the statutes are consolidated,  
6 renumbered 560.37 (3m) (a) and amended to read:

7 560.37 (3m) (a) A certified capital company may voluntary decertify itself as  
8 a certified capital company if any of the following conditions are met: 2. The only  
9 if the certified capital company has placed in qualified investments an amount equal  
10 to 100% of the certified capital investment in the certified capital company.

11 **SECTION 32.** 560.37 (3m) (a) 1. of the statutes is repealed.

12 **SECTION 33.** 560.37 (4) of the statutes is amended to read:

13 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital  
14 company or an investment pool has the effects specified in s. ss. 71.47 (7) (d) and  
15 76.635 (4).

16 **SECTION 34.** 560.37 (5) of the statutes is amended to read:

17 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a  
18 certified investor when the certified capital company tax credit arising from a  
19 certified investment is no longer subject to recapture and forfeiture under s. ss. 71.47  
20 (7) (d) and 76.635 (4).

21 **SECTION 35. Nonstatutory provisions.**

22 (1) PERFORMANCE EVALUATION AUDIT. The joint legislative audit committee is  
23 requested to, and may, direct the legislative audit bureau to perform a performance  
24 evaluation audit of the program under subchapter II of chapter 560 of the statutes,  
25 which shall include evaluating the overall effectiveness of the program. If the

1 committee directs the legislative audit bureau to perform an audit under this  
2 subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the  
3 statutes by January 1, ~~2005~~ 2005

4 **SECTION 36. Initial applicability.**

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

8 (2) The treatment of sections 560.31 (2) (b) and (g), 560.33 (2), 560.35 (1c), and  
9 560.37 (3m) (a) (intro.), 1., and 2. of the statutes, the renumbering and amendment  
10 of sections 560.33 (1) (b) and 560.34 (1) (d) and (2) of the statutes, and the creation  
11 of sections 560.33 (1) (b) 2. and 560.34 (1) (d) 2. and (2) (a) to (h) of the statutes first  
12 apply to certified capital companies for which certified capital investments are  
13 certified, and to certified capital investments that are certified, on the effective date  
14 of this subsection.

15 (END)

INSERT ANALYSIS

## 2001 SENATE BILL 284

October 18, 2001 - Introduced by Senators MOORE, PLACHE, BURKE, M. MEYER, KANAVAS, ERPENBACH, HANSEN, WIRCH, DARLING, GEORGE, SHIBILSKI, BRESKE, ROESSLER, WELCH, HUELSMAN, SCHULTZ and S. FITZGERALD, cosponsored by Representatives WARD, LIPPERT, VRAKAS, TOWNSEND, HUNDERTMARK, GRONEMUS, HAHN, SYKORA, WALKER, DUFF, LADWIG, OWENS, D. MEYER, KRAWCZYK, BOYLE, OLSEN, M. LEHMAN, MILLER, STASKUNAS, PLALE, GUNDRUM, OTT, BALOW, COLON, STARZYK, SERATTI, BERCEAU, LA FAVE, JENSEN, TURNER, YOUNG, KRUG, SHILLING, WASSERMAN, WILLIAMS, FREESE, SUDER, KEDZIE, KESTELL, PETTIS, RICHARDS, HUEBSCH, JESKEWITZ, MUSSER and RILEY. Referred to Committee on Economic Development and Corrections.

1 AN ACT *to renumber* 560.32 (2) (c) and 560.35 (1m); *to renumber and amend*  
 2 560.32 (2) (b), 560.33 (1) (b) and 560.34 (1) (d); *to amend* 560.33 (1) (c) and  
 3 560.35 (3); and *to create* 560.32 (2) (b) 2., 560.32 (2) (c) 2., 560.33 (1) (b) 2.,  
 4 560.34 (1) (d) 2. and 560.35 (1m) (b) of the statutes; **relating to:** certified capital  
 5 investment limitations, qualified business requirements, and reviews of  
 6 certified capital company financial statements.

### *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

Sub-Subs

Cap on certified capital investments.

Significant changes include the following:

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. 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 \$100,000,000 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.

\$500,000,000

Currently, at least 75% of the employees of a qualified business must be employed in this state. The 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 qualified business must have an average annual net income, after federal income taxes and excluding any carry-over losses, of not more than \$2,000,000. The bill provides that a qualified business that is a partnership, limited liability company, or tax option corporation shall calculate its net annual income based on the net annual income, after federal income taxes and excluding any carry-over losses, of its partners, members, or shareholders that is related to the economic activity of the partnership, limited liability company, or tax option corporation.

Currently, a certified capital company must have its financial statements annually audited by a certified public accountant to ensure compliance with the statutory requirements. The bill allows the financial statements to be annually reviewed by a certified public accountant to ensure compliance, without the necessity of an actual audit.

The bill also provides that, if a qualified business violates any condition that it agreed to as a condition of a qualified investment, the qualified investment will be valued at one-half of the actual amount invested. This provision affects whether the certified capital company that made the qualified investment is in compliance with requirements to make a specified level of qualified investments, which in turn affects whether the qualified investor that made the certified capital investment in the certified capital company is entitled to the tax credit that applies to a certified investor that is a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business.

TASK ANALYSIS

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:**

No. 11  
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.

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2516/1insRM  
RJM:.....

INSERT ANALYSIS C

**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 <sup>three</sup> within 3 years after the investment date and that at least 50% of each investment pool is placed in qualified investments within 5 years after the investment date. <sup>five</sup>

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 semi-annual 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. <sup>X</sup>

**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 described in ~~the~~ item 1

as

**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:

One hundred percent

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

2. ~~100%~~ ~~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 ~~3~~ 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 ~~3~~ years, but ~~5~~ 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

spell out

items 3. to 6.

requirements that trigger the authority of the certified capital company to make distributions or decertify.

6. ~~(M)~~ If the violation occurs more than <sup>five</sup> 5 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.

The bill, though, permits the department to grant an exception to the requirements under ~~(M)~~ 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. ~~(M)~~ Cash that is deposited in a federally insured financial institution.
2. ~~(M)~~ Certificates of deposit in a federally insured financial institution.
3. ~~(M)~~ 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. ~~(M)~~ Debt instruments that are rated at least "AA," "A1," or "P1," or the equivalent, by a nationally recognized credit rating organization.
5. ~~(M)~~ 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. ~~(M)~~ Obligations of the state or any political subdivision of the state.
7. ~~(M)~~ 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. ~~(M)~~ A small business investment company that is approved by the department.
9. ~~(M)~~ 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 ~~investment~~ company program.

X

## Marchant, Robert

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**From:** Marchant, Robert  
**Sent:** Friday, August 01, 2003 10:54 AM  
**To:** Shepherd, Jeremy  
**Subject:** RE: Changes to LRB 2516 or CAPCO

Hi, Jeremy--

I have been working on these revisions and encountered some issues concerning the requested changes to the initial applicability provisions. Please review the issues below and get back to me concerning how I should proceed.

1. Regarding item (2) in Rider D, as I understand it the intent is to apply the listed sections prospectively, both to capco's and those that are newly certified. This is the default rule and, as a result, the draft does not need to say anything about it. I think this item can be deleted.
2. Regarding item (3), it looks like the intent is to exempt existing capco's from the listed statutes. If that is your intent, it must be accomplished in a different, more complex way. The exemption from the new application requirements in proposed s. 560.31 (2) (b) and (g) can be accomplished with a non-statutory provision that says the new treatment first applies to new applications. The exemption from the new investment limit under proposed s. 560.32 (2) (b) 2. is already accomplished by the language that excludes existing investments from the new limit. The exemption from the new investment limit under proposed s. 560.32 (2) (c) 2. and the exemption from provisions dealing with qualified investments becoming nonqualified in proposed s. 560.34 (5) will similarly need to appear in the statutes (with language something like "this statute does not apply to certified capital companies that are certified before the effective date of this act"). Please let me know if your intent is to exempt existing capco's from these statutes.

Also, if you have any questions, please feel free to call.

Rob

-----Original Message-----

**From:** Shepherd, Jeremy  
**Sent:** Tuesday, July 29, 2003 4:06 PM  
**To:** Marchant, Robert  
**Subject:** Changes to LRB 2516 or CAPCO

Rob,

Regarding Senator Kanavas' LRB 2516, Tim Elverman of Broydrick, 414.224.9393, has requested the attached changes to the CAPCO bill. We would like all the changes drafted except (Page 13, Line 23 - 25). We would like that to stay in the bill.

If you have specific questions or concerns with ANY of these changes, please feel free to contact me or Mr. Elverman directly.

Thank you!

Jeremy Shepherd  
Office of Senator Ted Kanavas  
6-9174

<< File: Scan of Bill 7-24.pdf >>

## Marchant, Robert

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**From:** Shepherd, Jeremy  
**Sent:** Tuesday, July 29, 2003 4:06 PM  
**To:** Marchant, Robert  
**Subject:** Changes to LRB 2516 or CAPCO

Rob,

Regarding Senator Kanavas' LRB 2516, Tim Elverman of Broydrick, 414.224.9393, has requested the attached changes to the CAPCO bill. We would like all the changes drafted except (Page 13, Line 23 - 25). We would like that to stay in the bill.

If you have specific questions or concerns with ANY of these changes, please feel free to contact me or Mr. Elverman directly.

Thank you!

Jeremy Shepherd  
Office of Senator Ted Kanavas  
6-9174



Scan of Bill 7-24.pdf

7.15.03  
Comments

2003 - 2004 LEGISLATURE

LRB-2516/1  
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→ Riders attached

2003 BILL

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

2003 - 2004 Legislature

- 2 -

LRB-2516/1  
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1 nonqualified investments, reviews of certified capital company financial  
2 statements, requesting a performance audit, and requiring the exercise of  
3 rule-making authority.

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***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 capital 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 \$500,000,000 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

2003 - 2004 Legislature

- 3 -

LRB-2516/1  
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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.

2003 - 2004 Legislature

- 4 -

LRB-2516/1  
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***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.



2003 - 2004 Legislature

- 5 -

LRB-2516/1  
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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.

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***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:

2003 - 2004 Legislature

- 6 -

**BILL**

LRB-2516/1  
RJM&JK:kjfp  
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

2003 - 2004 Legislature

- 7 -

LRB-2516/1  
RJM&JK:kjf:pg  
SECTION 2

**BILL**

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

2003 - 2004 Legislature

- 8 -

LRB-2516/1  
RJM&JK:kjf:pg  
SECTION 5

**BILL**

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

2003 - 2004 Legislature

- 9 -

LRB-2516/1  
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SECTION 10

**BILL**

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. Insert RodeLA

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

4 560.32 (2) (b) 2. ~~The department may, beginning on the effective date of this~~  
5 subdivision .... [revisor inserts date], certify up to \$500,000,000 in investments under  
6 this subsection, excluding any investments certified under subd 1

7 SECTION 12. 560.32 (2) (c) of the statutes is renumbered 560 32 (2) (c) 1.

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

9 560.32 (2) (c) 2. The department may not certify an investment under par. (b)  
10 2 if, after the certification, the investor, together with all affiliates of the investor,  
11 would have in certified capital investments under par. (b) 2. more than the greater  
12 of \$10,000,000 or 15% of the total amount of investments that the department may  
13 certify under par. (b) 2.

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

16 560.33 (1) (b) (intro.) The business has no more than 100 employees, at and any  
17 of the following applies:

- 18 1. At least 75% of ~~whom~~ those employees are employed in this state.

19 SECTION 15. 560.33 (1) (b) 2. of the statutes is created to read:

20 560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to  
21 employees who are employed in this state.

22 SECTION 16. 560.33 (2) of the statutes is amended to read:

23 560.33 (2) DEPARTMENT OPINIONS AND EXCEPTIONS A certified capital company  
24 ~~may shall~~, prior to making an investment in a specific business, request a written  
25 opinion from the department that a business in which it proposes to invest is a

2003 - 2004 Legislature

- 10 -

LRB-2516/1  
RJM&JK:kjf:pg  
SECTION 16

BILL

Insert Rider B

1 qualified business, ~~if the department determines that the business meets the~~  
2 ~~requirements under sub. (1), the department shall issue a written opinion stating~~  
3 ~~that the business is a qualified business.~~

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

5 560.34 (1) (c) As a condition of the investment, the qualified business agrees,  
6 as long as the certified capital corporation company continues to hold the  
7 investment, not to relocate its headquarters out of this state

8 SECTION 18. 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)  
9 and amended to read:

10 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business  
11 agrees, as long as the certified capital corporation company continues to hold the  
12 investment, to ~~maintain~~ do any of the following:

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

14 SECTION 19. 560.34 (1) (d) 2. of the statutes is created to read:

15 560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are  
16 employed in this state.

17 SECTION 20. 560.34 (1) (e) of the statutes is amended to read:

18 560.34 (1) (e) 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, to maintain at least 75% of its employees at work sites that were  
21 maintained by the qualified business at the time that the investment was made,  
22 unless the qualified business obtains an exemption from the department under this  
23 paragraph. The department may grant an exemption unless it determines that the  
24 qualified business is locating the employees at new sites to take advantage of lower  
25 wage rates in the areas where the new sites are located.

2003 - 2004 Legislature

- 11 -

LRB-2516/1  
RJM&JK:kjf:pg  
SECTION 21

**BILL**

1 SECTION 21. 560.34 (1m) (b) of the statutes is amended to read:

2 560.34 (1m) (b) The proceeds of all capital of a qualified investment returned  
3 to a certified capital company by a qualified business may be placed in new qualified  
4 investments, which shall count toward the percentage requirements under par. (a)  
5 and s. 560.36 (3). The department shall promulgate rules governing the extent to  
6 which a reinvestment of proceeds from the sale of a qualified investment in a  
7 qualified business may be counted toward the percentage requirements under par.  
8 (a) and ss. 560.36 (3) and 560.37 (3m) (a) 2. These rules may provide that reinvested  
9 proceeds from the sale of short-term investments shall be only partially counted  
10 toward the percentage requirements under par. (a) and ss. 560.36 (3) and 560.37 (3m)  
11 (a) 2. The rules may also provide that proceeds from the sale of an investment in a  
12 qualified business that are reinvested in that qualified business, or an affiliate of  
13 that qualified business, shall be only partially counted toward the percentage  
14 requirements under par. (a) and ss 560.36 (3) and 560.37 (3m) (a) 2.

15 SECTION 22. 560.34 (2) of the statutes is renumbered 560.34 (2) (intro.) and  
16 amended to read:

17 560.34 (2) (intro.) NONQUALIFIED INVESTMENTS All certified capital investments  
18 in a certified capital company that are not invested in qualified investments may be  
19 held or invested by the certified capital company ~~as it considers appropriate, except~~  
20 ~~that a certified capital company may not invest certified capital investments in an~~  
21 ~~insurance company or in an affiliate of an insurance company, only in any of the~~  
22 following:

23 SECTION 23. 560.34 (2) (a) to (h) of the statutes are created to read:

24 560.34 (2) (a) ~~Cash that is deposited in~~ a federally insured financial institution,  
25 as defined in s. 705.01 (3).

Deposits with

2003 - 2004 Legislature

- 12 -

BILL

LRB-2516/1  
RJM&JK:kjf:pg  
SECTION 23

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

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

6 (d) Debt instruments to which any of the following applies:  
7 1. The debt instruments are rated at least "AA," "A1," or "P1," or the equivalent,  
8 by a nationally recognized credit rating organization.  
9 2. The debt instruments are issued by, or guaranteed with respect to payment  
10 by, an entity whose unsecured indebtedness is rated at least "AA" or the equivalent  
11 by a nationally recognized credit rating organization and are not subordinated to  
12 other unsecured indebtedness of the issuer or guarantor.

13 (e) Obligations of the state or any political subdivision of the state.

14 (f) Interests in money market funds, the portfolios of which are limited to cash  
15 *insert rider C and obligations* described in this subsection. *or other mutual funds*

16 (g) A small business investment company that is approved by the department.

17 (h) Any other investments approved in advance in writing by the department.

18 *other permissible investments* SECTION 24. 560.34 (5) of the statutes is created to read:

19 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED (a) If a certified  
20 capital company makes an investment in a qualified business and the qualified  
21 business thereafter violates an agreement made under sub. (1) (b) to (e) during the  
22 time that the certified capital company still holds the investment in the qualified  
23 business, all of the following apply:

24 1. The violation does not affect the certified capital company's satisfaction of  
25 the percentage requirements under sub. (1m) (a) 1. or 2., and 100% of the amount of



2003 - 2004 Legislature - 13 -

LRB-2516/1  
RJM&JK:kjf:pg  
SECTION 24

**BILL**

1 the qualified investment shall be counted toward the certified capital company's  
2 satisfaction of those percentage requirements.

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

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

11 4. If the violation occurs more than 3 years, but 5 years or less, after the  
12 qualified investment was made, only 50% of the amount of the qualified investment  
13 shall be counted toward the certified capital company's satisfaction of the percentage  
14 requirements under ss 560.36 (3) and 560 37 (3m) (a).

15 5. If the violation occurs more than 5 years after the qualified investment was  
16 made, 90% of the amount of the qualified investment shall be counted toward the  
17 certified capital company's satisfaction of the percentage requirements under ss.  
18 560.36 (3) and 560.37 (3m) (a).

(b), (c)

19 (b) Notwithstanding par. (a), if a qualified business violates an agreement  
20 under sub. (1) (d) or (e), the department may grant an exception to the requirements  
21 under par. (a) 2. to 5. and not reduce the amount of the qualified investment that is  
22 counted toward the certified capital company's satisfaction of the percentage  
23 requirements under ss. 560.36 (3) and 560.37 (3m) (a) unless the department

24 determines that the qualified business is locating employees at new sites to take  
25 advantage of lower wage rates in the areas where those sites are located.

DON'T  
TAKE  
OUT

2003 - 2004 Legislature

- 14 -

BILL

LRB-2516/1  
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SECTION 25

1 SECTION 25. 560.35 (1c) of the statutes is created to read:

2 560.35 (1c) QUALIFIED INVESTMENTS. Within 15 days after making a qualified  
3 investment, a certified capital company shall report all of the following to the  
4 department:

5 (a) The name of the qualified business in which the qualified investment was  
6 made.

7 (b) The amount of the qualified investment.

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

9 SECTION 26. 560.35 (1r) of the statutes is created to read.

10 560.35 (1r) QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the  
11 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital  
12 company shall report to the department, in the format and substance prescribed by  
13 the department, information required by the department for determining whether  
14 the certified capital company is in compliance with the percentage requirements  
15 under s. 560.34 (1m) (a).

16 SECTION 27. 560.35 (2) (intro.) of the statutes is amended to read:

17 560.35 (2) ANNUAL SEMIANNUAL REPORTS. (intro.) On Each year on or before  
18 January 31 annually, for the preceding 6-month period ending on December 31, and  
19 on or before July 31, for the preceding 6-month period ending on June 30, a certified  
20 capital company shall report, in the format and substance prescribed by the  
21 department, all of the following to the department:

22 SECTION 28. 560.35 (2) (a) of the statutes is amended to read:

23 560.35 (2) (a) The amount of the certified capital company's certified capital at  
24 the end of the preceding year 6-month period.

25 SECTION 29. 560.35 (2) (c) of the statutes is amended to read:

2003 - 2004 Legislature  
**BILL**

LRB-2516/1  
 RJM&JK:kjf:pg  
 SECTION 29

1           560.35 (2) (c) All qualified investments that the certified capital company has  
 2           made during the ~~previous calendar year~~ preceding 6-month period and the  
 3           investment pool from which each qualified investment was made.

4           **SECTION 30.** 560.35 (3) of the statutes is amended to read:

5           560.35 (3) FINANCIAL STATEMENTS Within 90 days of the end of the certified  
 6           capital company's fiscal year, the certified capital company shall provide to the  
 7           department a copy of its annual audited financial statements, including the opinion  
 8           of an independent certified public accountant, and a copy of a report on agreed-upon  
 9           procedures prepared by an independent certified public accountant. The audit shall  
 10          address agreed-upon-procedures report shall identify the procedures performed by  
 11          the certified capital company, as prescribed by the department, that relate to the  
 12          methods of operation and conduct of the business of the certified capital company to  
 13          enable the department to determine whether the certified capital company is  
 14          complying with this subchapter and the rules promulgated under this subchapter,  
 15          including whether certified capital has been invested in the manner required under  
 16          s. 560.34. The financial statements and agreed-upon-procedures report provided  
 17          under this subsection shall be segregated by investment pool and shall be separately  
 18          audited on that basis to allow the department to determine whether the certified  
 19          capital company is in compliance with ~~s. 560.34 (1m)~~ this subchapter and the rules  
 20          promulgated under this subchapter.

21          **SECTION 31.** 560.37 (3m) (a) (Intro.) and 2. of the statutes are consolidated,  
 22          renumbered 560.37 (3m) (a) and amended to read:

23          560.37 (3m) (a) A certified capital company may voluntary decertify itself as  
 24          a certified capital company ~~if any of the following conditions are met.~~ 2. The only

2003 - 2004 Legislature

- 16 -

LRB-2516/1  
RJM&JK:ljf:pg  
SECTION 31

**BILL**

1 if the certified capital company has placed in qualified investments an amount equal  
2 to 100% of the certified capital investment in the certified capital company.

3 SECTION 32. 560.37 (3m) (a) 1. of the statutes is repealed.

4 SECTION 33. 560.37 (4) of the statutes is amended to read:

5 560.37 (4) EFFECT OF DECERTIFICATION Decertification of a certified capital  
6 company or an investment pool has the effects specified in s. ss. 71.47 (7) (d) and  
7 76.635 (4).

8 SECTION 34. 560.37 (5) of the statutes is amended to read:

9 560.37 (5) NOTICES TO CERTIFIED INVESTORS The department shall notify a  
10 certified investor when the certified capital company tax credit arising from a  
11 certified investment is no longer subject to recapture and forfeiture under s. ss. 71.47  
12 (7) (d) and 76.635 (4).

13 SECTION 35. Nonstatutory provisions.

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

21 SECTION 36. Initial applicability.

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

Insert Rider D

2003 - 2004 Legislature

- 17 -

**BILL**

LRB-2516/1  
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**SECTION 36**

1 (2) The treatment of sections 560.31 (2) (b) and (g), 560 33 (2), 560.35 (1c), and  
2 560.37 (3m) (a) (intro.), 1, and 2, of the statutes, the renumbering and amendment  
3 of sections 560.33 (1) (b) and 560.34 (1) (d) and (2) of the statutes, and the creation  
4 of sections 560.33 (1) (b) 2. and 560.34 (1) (d) 2. and (2) (a) to (h) of the statutes first  
5 apply to certified capital companies for which certified capital investments are  
6 certified, and to certified capital investments that are certified, on the effective date  
7 of this subsection.  
8

(END)

**RIDERS**

**Rider A**

*DATE*  
 ✓ The department shall, beginning on the effective date of this subdivision .... [revisor insert date], certify investments for which notices have been received under this subsection, excluding any investments certified under subd. 1, up to \$500,000,000.

**Rider B**

✓ The department shall have fifteen (15) business days from the receipt of such request to determine whether the business in which it proposes to invest is a qualified business and to notify the certified capital company of its determination and an explanation thereof. If the department fails to notify the certified capital company of its determination within fifteen (15) business days from the receipt of such request, then such business shall be deemed to be a qualified business. If the department determines that such business does not meet the definition of a qualified business, the department may nevertheless consider the business a qualified business if the department determines that the proposed investment in such business will further state economic development.

✓ **Rider C**

Commercial paper rated at least A1, P1 or its equivalent by at least one nationally recognized rating organization.

Debt instruments rated at least "AA" or its equivalent by a nationally recognized rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a nationally recognized credit rating organization, and which is not subordinated to other unsecured indebtedness of the issuer or the guarantor, as the case may be.

Swaps or other hedging transactions with a counterparty rated at least "A" or its equivalent by a nationally recognized rating agency designed to realize and/or protect the value of a qualified investment.

**Rider D**

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

*DATE  
 INSERT*

(2) The treatment of sections 560.30(10)(d), 560.30(10)(e), 560.33(1)(b)(intro.), 1., and 2., 560.33(2), 560.34(1)(c), 560.34(1)(d), 560.34(1)(e), 560.34(1m)(b), 560.34(2), 560.35(1c), 560.35(1r), 560.35(2), 560.35(3), and 560.37(3m)(a) of the statutes first applies on the effective date of this subsection to (i) certified capital companies for which certified capital investments were certified prior to the effective date of this subsection and (ii) certified capital investments that will be certified after the effective date of this subsection. With respect to certified capital companies for which certified capital investments were certified prior to the effective date of this subsection, the application of such sections shall be prospective only.

*DATE*

(3) The treatment of sections 560.31(2)(b), 560.31(2)(g), 560.32(2)(b)2., 560.32(2)(c)2., 560.34(5) of the statutes first applies on the effective date of this subsection to certified capital investments that will be certified after the effective date of this subsection and shall not apply to certified capital companies for which certified capital investments were certified prior to the effective date of this subsection.

D-note

9-8-03

fw NR

2003 BILL

NOTE

Regen

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

**BILL**

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

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***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 capital 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 ~~\$50,000,000~~ <sup>300,000,000</sup> 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



**BILL**

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.

**BILL*****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.

**BILL**

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.

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***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:

**BILL**

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

**BILL**

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<sup>✓</sup> (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<sup>✓</sup> (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<sup>✓</sup> (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

## BILL

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

**BILL**

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. <sup>LPs: move text (don't type these brackets)</sup> The department ~~may~~ <sup>shall</sup> beginning on the effective date of this  
5 subdivision .... [revisor inserts date], certify up to ~~\$500,000,000~~ <sup>\$300,000,000</sup> in investments ~~under~~  
6 ~~this subsection~~ excluding any investments certified under subd. 1.

for which notices have been received under par. (a),

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

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

9 560.32 (2) (c) 2. The department may not certify an investment under par. (b)  
10 2. if, after the certification, the investor, together with all affiliates of the investor,  
11 would have in certified capital investments under par. (b) 2. more than the greater  
12 of \$10,000,000 or 15% of the total amount of investments that the department may  
13 certify under par. (b) 2.

14 SECTION ~~14~~ 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)  
15 and amended to read:

16 560.33 (1) (b) (intro.) The business has no more than 100 employees, ~~at and any~~  
17 of the following applies:

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

19 SECTION ~~15~~ 560.33 (1) (b) 2. of the statutes is created to read:

20 560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to  
21 employees who are employed in this state.

22 SECTION ~~16~~ 560.33 (2) of the statutes is amended to read:

23 560.33 (2) DEPARTMENT OPINIONS AND EXCEPTIONS. A certified capital company  
24 may shall, prior to making an investment in a specific business, request a written  
25 opinion from the department that a business in which it proposes to invest is a

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## BILL

1 qualified business. ~~If the department determines that the business meets the~~  
2 ~~requirements under sub. (1), the department shall issue a written opinion stating~~  
3 ~~that the business is a qualified business.~~ INSERT 10-3

4 SECTION ~~17~~<sup>#</sup> 560.34 (1) (c) of the statutes is amended to read:

5 560.34 (1) (c) As a condition of the investment, the qualified business agrees,  
6 as long as the certified capital ~~corporation~~ company continues to hold the  
7 investment, not to relocate its headquarters out of this state.

8 SECTION ~~18~~<sup>#</sup> 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)  
9 and amended to read:

10 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business  
11 agrees, as long as the certified capital ~~corporation~~ company continues to hold the  
12 investment, to ~~maintain~~ do any of the following:

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

14 SECTION ~~19~~<sup>#</sup> 560.34 (1) (d) 2. of the statutes is created to read:

15 560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are  
16 employed in this state.

17 SECTION ~~20~~<sup>#</sup> 560.34 (1) (e) of the statutes is amended to read:

18 560.34 (1) (e) 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, to maintain at least 75% of its employees at work sites that were  
21 maintained by the qualified business at the time that the investment was made,  
22 unless the qualified business obtains an exemption from the department under this  
23 paragraph. The department may grant an exemption unless it determines that the  
24 qualified business is locating the employees at new sites to take advantage of lower  
25 wage rates in the areas where the new sites are located.



## BILL

1 SECTION ~~21~~<sup>#</sup> 560.34 (1m) (b) of the statutes is amended to read:

2 560.34 (1m) (b) The proceeds of all capital of a qualified investment returned  
3 to a certified capital company by a qualified business may be placed in new qualified  
4 investments, which shall count toward the percentage requirements under par. (a)  
5 and s. 560.36 (3). The department shall promulgate rules governing the extent to  
6 which a reinvestment of proceeds from the sale of a qualified investment in a  
7 qualified business may be counted toward the percentage requirements under par.  
8 (a) and ss. 560.36 (3) and 560.37 (3m) (a) 2. These rules may provide that reinvested  
9 proceeds from the sale of short-term investments shall be only partially counted  
10 toward the percentage requirements under par. (a) and ss. 560.36 (3) and 560.37 (3m)  
11 (a) 2. The rules may also provide that proceeds from the sale of an investment in a  
12 qualified business that are reinvested in that qualified business, or an affiliate of  
13 that qualified business, shall be only partially counted toward the percentage  
14 requirements under par. (a) and ss. 560.36 (3) and 560.37 (3m) (a) 2.

15 SECTION ~~22~~<sup>#</sup> 560.34 (2) of the statutes is renumbered 560.34 (2) (intro.) and  
16 amended to read:

17 560.34 (2) (intro.) NONQUALIFIED INVESTMENTS. All certified capital investments  
18 in a certified capital company that are not invested in qualified investments may be  
19 held or invested by the certified capital company ~~as it considers appropriate, except~~  
20 ~~that a certified capital company may not invest certified capital investments in an~~  
21 ~~insurance company or in an affiliate of an insurance company.~~ only in any of the  
22 following:

23 SECTION ~~23~~<sup>#</sup> 560.34 (2) (a) to (k) of the statutes are created to read:

24 560.34 (2) (a) Cash that is deposited in a federally insured financial institution,  
25 as defined in s. 705.01 (3).

**BILL**

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

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

6 (d) Debt instruments to which any of the following applies:

7 1. The debt instruments are rated at least "AA," "A1," or "P1," or the equivalent,  
8 by a nationally recognized credit rating organization.

9 2. The debt instruments are issued by, or guaranteed with respect to payment  
10 by, an entity whose unsecured indebtedness is rated at least "AA" or the equivalent  
11 by a nationally recognized credit rating organization and are not subordinated to  
12 other unsecured indebtedness of the issuer or guarantor.

13 (e) Obligations of the state or any political subdivision of the state.

14 (f) Interests in money market funds, the portfolios of which are limited to cash  
15 and obligations described in this subsection.

16 (g) A small business investment company that is approved by the department.

17 (h) Any other investments approved in advance in writing by the department.

18 SECTION 24 560.34 (5) of the statutes is created to read:

19 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED. (a) If a certified

20 capital company makes an investment in a qualified business and the qualified  
21 business thereafter violates an agreement made under sub. (1) (b) to (e) during the  
22 time that the certified capital company still holds the investment, in the qualified  
23 business, all of the following apply:

24 1. The violation does not affect the certified capital company's satisfaction of  
25 the percentage requirements under sub. (1m) (a) 1. or 2., and 100% of the amount of

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(h)  
(i)

(j)  
(k)

or other mutual

other permissible investments

, after the effective date of this paragraph ... [revisor inserts date],

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← in brackets

**BILL**

1 the qualified investment shall be counted toward the certified capital company's  
2 satisfaction of those percentage requirements.

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

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

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

15 5. If the violation occurs more than 5 years after the qualified investment was  
16 made, 90% of the amount of the qualified investment shall be counted toward the  
17 certified capital company's satisfaction of the percentage requirements under ss.  
18 560.36 (3) and 560.37 (3m) (a).

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

## BILL

1           SECTION ~~25~~ 560.35 (1c) of the statutes is created to read:

2           560.35 (1c) QUALIFIED INVESTMENTS. Within 15 days after making a qualified  
3 investment, a certified capital company shall report all of the following to the  
4 department:

5           (a) The name of the qualified business in which the qualified investment was  
6 made.

7           (b) The amount of the qualified investment.

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

9           SECTION ~~26~~ 560.35 (1r) of the statutes is created to read:

10          560.35 (1r) QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the  
11 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital  
12 company shall report to the department, in the format and substance prescribed by  
13 the department, information required by the department for determining whether  
14 the certified capital company is in compliance with the percentage requirements  
15 under s. 560.34 (1m) (a).

16          SECTION ~~27~~ 560.35 (2) (intro.) of the statutes is amended to read:

17          560.35 (2) ~~ANNUAL~~ SEMIANNUAL REPORTS. (intro.) ~~On Each year, on or before~~  
18 January 31 annually, for the preceding 6-month period ending on December 31, and  
19 on or before July 31, for the preceding 6-month period ending on June 30, a certified  
20 capital company shall report, in the format and substance prescribed by the  
21 department, all of the following to the department:

22          SECTION ~~28~~ 560.35 (2) (a) of the statutes is amended to read:

23          560.35 (2) (a) The amount of the certified capital company's certified capital at  
24 the end of the preceding year 6-month period.

25          SECTION ~~29~~ 560.35 (2) (c) of the statutes is amended to read:

## BILL

1           560.35 (2) (c) All qualified investments that the certified capital company has  
2           made during the ~~previous calendar year~~ preceding 6-month period and the  
3           investment pool from which each qualified investment was made.

4           ~~SECTION 30.~~ 560.35 (3) of the statutes is amended to read:

5           560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified  
6           capital company's fiscal year, the certified capital company shall provide to the  
7           department a copy of its annual audited financial statements, including the opinion  
8           of an independent certified public accountant, and a copy of a report on agreed-upon  
9           procedures prepared by an independent certified public accountant. The audit shall  
10          address agreed-upon-procedures report shall identify the procedures performed by  
11          the certified capital company, as prescribed by the department, that relate to the  
12          methods of operation and conduct of the business of the certified capital company to  
13          enable the department to determine whether the certified capital company is  
14          complying with this subchapter and the rules promulgated under this subchapter,  
15          including whether certified capital has been invested in the manner required under  
16          s. 560.34. The financial statements and agreed-upon-procedures report provided  
17          under this subsection shall be segregated by investment pool ~~and shall be separately~~  
18          ~~audited on that basis~~ to allow the department to determine whether the certified  
19          capital company is in compliance with s. ~~560.34 (1m)~~ this subchapter and the rules  
20          promulgated under this subchapter.

21          ~~SECTION 31.~~ 560.37 (3m) (a) (intro.) and 2. of the statutes are consolidated,  
22          renumbered 560.37 (3m) (a) and amended to read:

23          560.37 (3m) (a) A certified capital company may voluntary decertify itself as  
24          a certified capital company ~~if any of the following conditions are met:~~ 2. The only

**BILL**

1 if the certified capital company has placed in qualified investments an amount equal  
2 to 100% of the certified capital investment in the certified capital company.

3 ~~SECTION 32~~ 560.37 (3m) (a) 1. of the statutes is repealed.

4 ~~SECTION 33~~ 560.37 (4) of the statutes is amended to read:

5 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital  
6 company or an investment pool has the effects specified in ~~s.~~ ss. 71.47 (7) (d) and  
7 76.635 (4).

8 ~~SECTION 34~~ 560.37 (5) of the statutes is amended to read:

9 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a  
10 certified investor when the certified capital company tax credit arising from a  
11 certified investment is no longer subject to recapture and forfeiture under ~~s.~~ ss. 71.47  
12 (7) (d) and 76.635 (4).

13 ~~SECTION 35~~ **Nonstatutory provisions.**

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

21 ~~SECTION 36~~ **Initial applicability.**

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

**BILL**

1           (2) The treatment of sections 560.31 (2) (b) and (g) ~~560.33 (2), 560.35 (1c), and~~  
2 ~~560.37 (3m) (a) (intro.), 1., and 2.~~ of the statutes, the renumbering and amendment  
3 of sections 560.33 (1) (b) and 560.34 (1) (d) and (2) of the statutes, and the creation  
4 of sections 560.33 (1) (b) 2. and 560.34 (1) (d) 2. and (2) (a) to (h) of the statutes first  
5 apply to certified capital companies for which certified capital investments are <sup>first</sup>  
6 certified, and to certified capital investments that are <sup>first</sup> certified, on the effective date  
7 of this subsection.

(END)

D-Note

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2516/2ins  
RJM:.....

INSERT 9-13

SECTION ~~1~~ 560.33 (1) (intro.) of the statutes is amended to read:

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

History: 1997 a. 215.

INSERT 10-3

Within 15 days of receiving the request, the department shall determine whether the business is a qualified business and, if the business is not a qualified business, notify the certified capital company in writing of the determination and the reasons for the determination. If the department fails to so notify the certified capital company within 15 days of receiving the request, the business shall be deemed a qualified business, notwithstanding any failure to satisfy sub. (1)

INSERT 12-12

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

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

(f) Debt instruments issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a nationally recognized credit rating organization and which are not subordinated to other unsecured indebtedness of the issuer or guarantor, as applicable.



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

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2516/2dn

RJM: 

*Date*

Senator Kanavas:

Please review the attached draft to ensure that it satisfies your intent. In particular, the intent behind "Rider D" provided by Tim Elverman was not entirely clear to me. Much of the intent, as I understand it, was already accomplished in the draft, although I did make changes to proposed s. 560.34 (5)(a) and the Initial Applicability provision. If you have any questions or desire any additional changes, please feel free to call.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2516/2dn  
RJM:kjfrs

September 5, 2003

Senator Kanavas:

Please review the attached draft to ensure that it satisfies your intent. In particular, the intent behind "Rider D" provided by Tim Elverman was not entirely clear to me. Much of the intent, as I understand it, was already accomplished in the draft, although I did make changes to proposed s. 560.34 (5) (a) and the Initial Applicability provision. If you have any questions or desire any additional changes, please feel free to call.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

**Basford, Sarah**

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**From:** Pfaff, Bruce  
**Sent:** Friday, September 05, 2003 11:15 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-2516/2 Topic: CAPCO changes

It has been requested by <Pfaff, Bruce> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2516/2 Topic: CAPCO changes



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
REFERENCE SECTION: (608) 266-0341  
FAX: (608) 266-5648

STEPHEN R. MILLER  
CHIEF

LRB

September 23, 2003

## MEMORANDUM

**To:** Senator Kanavas

**From:** Robert J. Marchant, Legislative Attorney, (608) 261-4454

Joseph T. Kreye, Legislative Attorney, (608) 266-2263

**Subject:** Technical Memorandum to **2003 SB 249** (LRB-2516/2)

---

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

LRB



P. O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD #: (608) 264-8777  
<http://www.commerce.state.wi.us>  
<http://www.wisconsin.gov>  
Jim Doyle, Governor  
Cory L. Nettles, Secretary

**MEMORANDUM**

**DATE:** September 23, 2003  
**TO:** Louie Cornelius  
Wisconsin Department of Commerce  
**FROM:** Julie Keal  
Wisconsin Department of Commerce  
**SUBJECT:** 2003 Senate Bill 249

2003 Senate Bill 249 makes changes to the Certified Capital Company program of the Department of Commerce. In order to properly administer these changes, Commerce will require position authority for 1.0 FTE position. This position will be funded by existing fees paid by CAPCOs. Each CAPCO pays a fee of \$7,500 upon certification, and an annual fee of \$5,000. Commerce certified three CAPCOs in 1999; all three are still certified.

Commerce predicts that an additional six CAPCOs will be certified in the application round arising from the additional \$300 million tax credit allocation. The nine total CAPCOs will under current law generate \$45,000 in annual fees, which is not enough to fund the necessary position. In order to cover the position, the annual fee should be raised to \$8,000.

In addition, language added to 20.143 (1) (hm) in 2003 Wisconsin Act 33 should be deleted. That language requires Commerce, at the end of each fiscal year, to lapse the unencumbered balance in the appropriation of the general fund. When that language was added, Commerce had no positions and no ongoing expenses funded out of the CAPCO appropriation. With the addition of a position necessitated by this bill, Commerce will need the ability to carry balances across fiscal years.

LRB



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER  
CHIEF

September 29, 2003

## MEMORANDUM

**To:** Senator Kanavas

**From:** Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Robert J. Marchant, Legislative Attorney, (608) 261-4454

**Subject:** Technical Memorandum to **2003 SB 249** (LRB-2516/2)

---

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

**MEMORANDUM**

September 26, 2003

**TO:** Joseph Kreye  
Robert Marchant  
Legislative Reference Bureau

**FROM:** Dennis Collier  
Department of Revenue

**SUBJECT:** Technical Memorandum on SB 249: CAPCO Changes

Section 71.47(7)(b), relating to the amount of the credit makes reference to a claimant's qualified investments, but under the CAPCO program, a claimant does not have qualified investments. This provision states that the credit is equal to 10% of (a) the insurer's certified capital investment or (b) the amount by which the sum of the insurer's certified capital investments and the insurer's qualified investments exceeds the insurer's qualified investments in the taxable year before the insurer first claimed the credit, whichever is less. "Qualified investment" is defined as a certified capital company's investment in a qualified business. Thus, an insurer could not have "qualified investments."

Section 71.47(7)(d) requires an insurer to repay the credit if a certified capital company is decertified or an investment pool is disqualified. However, the language does not state how or when the claimant must repay the credit. The Department recommends language requiring the repayment to be included as tax due on the insurer's income or franchise tax return for the taxable year in which the event occurs that triggers the requirement to repay the credit.

Section 71.47(7)(e) permits an insurer to sell the tax credit but does not contain any administrative provisions. For example, language is needed to (a) provide that the insurer will derive taxable income from the sale of the credit and the computation of that income, (b) clarify how the carryover provisions will apply to the buyer, and (c) specify which party must repay the credit in the case of decertification or disqualification.

Having the credit first apply to taxable years beginning on July 1, 2005, greatly complicates the administration of the credit. Generally, tax credits first apply to taxable years beginning on January 1.

If you have questions regarding this technical memorandum, please contact Pam Walgren at 266-7817.