

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 249**

November 12, 2003 – Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT** *to repeal* 560.30 (10) (c) and 560.37 (3m) (a) 1.; *to renumber* 560.32 (2)
2 (c); *to renumber and amend* 76.635 (2), 560.30 (9), 560.31 (1), 560.32 (2) (b),
3 560.32 (3), 560.33 (1) (b), 560.33 (2), 560.34 (1) (d), 560.34 (1m) (a) 2., 560.34 (2),
4 560.36 (intro.) and 560.36 (1) to (4); *to consolidate, renumber and amend*
5 560.37 (3m) (a) (intro.) and 2.; *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2)
6 (a), 71.34 (1) (g), 71.45 (2) (a) 10., 77.92 (4), subchapter II (title) of chapter
7 [precedes 560.30], 560.30 (3), 560.30 (10) (intro.), 560.30 (10) (a), 560.30 (10) (b),
8 560.30 (10) (d), 560.31 (2) (intro.), 560.31 (2) (b), 560.32 (2) (d), 560.33 (1)
9 (intro.), 560.33 (1) (a), 560.33 (1) (e), 560.33 (1) (g), 560.34 (1) (intro.), 560.34 (1)
10 (a) 1., 560.34 (1) (a) 2. a., 560.34 (1) (a) 2. b., 560.34 (1) (b), 560.34 (1) (c), 560.34
11 (1) (e), 560.34 (1m) (b), 560.34 (4), 560.35 (2) (intro.), 560.35 (2) (a), 560.35 (2)
12 (c), 560.35 (3), 560.37 (4) and 560.37 (5); and *to create* 71.07 (7m), 71.10 (4) (cp),
13 71.28 (7m), 71.30 (3) (dm), 71.47 (7), 71.47 (7m), 71.49 (1) (dm), 71.49 (1) (dn),

1 76.635 (2) (b), 560.30 (5g), 560.30 (5r), 560.30 (9) (d), 560.30 (10) (e), 560.31 (2)
2 (g), 560.31 (2) (h), 560.31 (2) (i), 560.31 (2) (j), 560.31 (2) (k), 560.32 (2) (b) 2.,
3 560.32 (2) (c) 2., 560.32 (3) (b), 560.33 (1) (b) 2., 560.33 (1) (h), 560.33 (1) (i),
4 560.33 (1) (j), 560.33 (1) (k), 560.33 (2) (b) and (c), 560.34 (1) (d) 2., 560.34 (1)
5 (f), 560.34 (1e), 560.34 (1g), 560.34 (1m) (a) 2. b., 560.34 (2) (a) to (k), 560.34 (5),
6 560.35 (1c), 560.35 (1r), 560.35 (2) (d), 560.36 (2m) and 560.37 (1m) of the
7 statutes; **relating to:** certified capital companies, creating a certified capital
8 company income and franchise tax credit, requesting a performance audit,
9 providing an exemption from emergency rule procedures, and requiring the
10 exercise of rule-making authority.

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

11 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

12 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
13 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s).~~ and (7m) and not passed
14 through by a partnership, limited liability company, or tax-option corporation that
15 has added that amount to the partnership's, company's, or tax-option corporation's
16 income under s. 71.21 (4) or 71.34 (1) (g).

17 **SECTION 2.** 71.07 (7m) of the statutes is created to read:

18 71.07 **(7m)** CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

19 1. "Certified capital company" has the meaning given in s. 560.30 (2).

20 2. "Certified capital investment" has the meaning given in s. 560.30 (4).

21 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
22 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under

1 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
2 under ch. 221.

3 4. “Investment date” has the meaning given in s. 560.30 (6).

4 5. “Investment pool” has the meaning given in s. 560.30 (7).

5 6. “Qualified investment” has the meaning given in s. 560.30 (11).

6 (b) A claimant who makes a certified capital investment of at least \$1,000,000
7 may claim as a credit against the tax imposed under ss. 71.02 and 71.08, up to the
8 amount of those taxes, for 10 years beginning with the year of the investment, an
9 amount equal to either 7.5 percent of that investment for the first 2 taxable years and
10 10.625 percent of that investment for the remaining 8 taxable years or the amount
11 by which the sum of the claimant’s certified capital investments and the claimant’s
12 qualified investments exceeds the claimant’s qualified investments in the taxable
13 year before the claimant first claimed the credit under this subsection, whichever is
14 less.

15 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
16 (4), applies to the credit under this subsection.

17 (d) Partnerships, limited liability companies, and tax–option corporations may
18 not claim the credit under this subsection, but the eligibility for, and the amount of,
19 the credit are based on their payment of a certified capital investment. A
20 partnership, limited liability company, or tax–option corporation shall compute the
21 amount of credit that each of its partners, members, or shareholders may claim and
22 shall provide that information to each of them. Partners, members of limited liability
23 companies, and shareholders of tax–option corporations may claim the credit in
24 proportion to their ownership interest.

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

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

17 **SECTION 3.** 71.10 (4) (cp) of the statutes is created to read:

18 71.10 (4) (cp) The certified capital company credit under s. 71.07 (7m).

19 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

20 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
21 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), and (3s), and (7m) and passed through to
22 partners shall be added to the partnership's income.

23 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

24 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
25 the gross income as computed under the Internal Revenue Code as modified under

1 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
2 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
3 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g), and (7m)~~
4 and not passed through by a partnership, limited liability company, or tax-option
5 corporation that has added that amount to the partnership's, limited liability
6 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
7 the amount of losses from the sale or other disposition of assets the gain from which
8 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
9 otherwise disposed of at a gain and minus deductions, as computed under the
10 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
11 amount equal to the difference between the federal basis and Wisconsin basis of any
12 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
13 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

14 **SECTION 6.** 71.28 (7m) of the statutes is created to read:

15 **71.28 (7m) CERTIFIED CAPITAL COMPANY CREDIT.** (a) In this subsection:

- 16 1. "Certified capital company" has the meaning given in s. 560.30 (2).
- 17 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
- 18 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
19 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
20 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
21 under ch. 221.
- 22 4. "Investment date" has the meaning given in s. 560.30 (6).
- 23 5. "Investment pool" has the meaning given in s. 560.30 (7).
- 24 6. "Qualified investment" has the meaning given in s. 560.30 (11).

1 (b) A claimant who makes a certified capital investment of at least \$1,000,000
2 may claim as a credit against the tax imposed under s. 71.23, up to the amount of
3 those taxes, for 10 years beginning with the year of the investment, an amount equal
4 to either 7.5 percent of that investment for the first 2 taxable years and 10.625
5 percent of that investment for the remaining 8 taxable years or the amount by which
6 the sum of the claimant's certified capital investments and the claimant's qualified
7 investments exceeds the claimant's qualified investments in the taxable year before
8 the claimant first claimed the credit under this subsection, whichever is less.

9 (c) Subsection (4) (e), (f), (g), and (h), as it applies to the credit under sub. (4),
10 applies to the credit under this subsection.

11 (d) Partnerships, limited liability companies, and tax-option corporations may
12 not claim the credit under this subsection, but the eligibility for, and the amount of,
13 the credit are based on their payment of a certified capital investment. A
14 partnership, limited liability company, or tax-option corporation shall compute the
15 amount of credit that each of its partners, members, or shareholders may claim and
16 shall provide that information to each of them. Partners, members of limited liability
17 companies, and shareholders of tax-option corporations may claim the credit in
18 proportion to their ownership interest.

19 (e) 1. If a certified capital company is decertified, or an investment pool is
20 disqualified, under s. 560.37 before the certified capital company fulfills the
21 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
22 pool, any claimant that has received a credit under this subsection with respect to
23 that investment pool shall repay that credit to the department of revenue and may
24 not claim more credit in respect to that investment pool.

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

11 **SECTION 7.** 71.30 (3) (dm) of the statutes is created to read:

12 71.30 **(3)** (dm) The certified capital company credit under s. 71.28 (7m).

13 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

14 71.34 **(1)** (g) An addition shall be made for credits computed by a tax-option
15 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
16 (3g), and (7m) and passed through to shareholders.

17 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

18 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
19 computed under s. 71.47 (1dd) to (1dx), (7) and (7m) and not passed through by a
20 partnership, limited liability company, or tax-option corporation that has added that
21 amount to the partnership's, limited liability company's, or tax-option corporation's
22 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
23 s. 71.47 (1), (3), (4), and (5).

24 **SECTION 10.** 71.47 (7) of the statutes is created to read:

25 71.47 **(7)** CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

1 1. “Certified capital company” has the meaning given in s. 560.30 (2).

2 2. “Certified capital investment” has the meaning given in s. 560.30 (4).

3 3. “Investment date” has the meaning given in s. 560.30 (6).

4 4. “Investment pool” has the meaning given in s. 560.30 (7).

5 5. “Qualified investment” has the meaning given in s. 560.30 (11).

6 (b) An insurer who makes a certified capital investment of at least \$1,000,000
7 may claim as a credit against the tax imposed under s. 71.43, for 10 years beginning
8 with the year of the investment, an amount equal to either 7.5 percent of that
9 investment for the first 2 taxable years and 10.625 percent of that investment for the
10 remaining 8 taxable years or the amount by which the sum of the insurer’s certified
11 capital investments and the insurer’s qualified investments exceeds the insurer’s
12 qualified investments in the taxable year before the insurer first claimed the credit
13 under this section, whichever is less.

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

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

22 2. If a certified capital company fulfills the investment requirement under s.
23 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
24 company is decertified, or an investment pool is disqualified, under s. 560.37 before
25 the certified capital company fulfills the investment requirement under s. 560.34

1 (1m) (a) 2. for that investment pool, any insurer that has received a credit under this
2 subsection with respect to that investment pool shall repay all credits that were
3 claimed for taxable years after the taxable year that includes the 3rd anniversary of
4 the investment date of the investment pool and may claim no more credits for taxable
5 years after the taxable year that includes the 3rd anniversary of the investment date
6 of the investment pool.

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

11 **SECTION 11.** 71.47 (7m) of the statutes is created to read:

12 71.47 (7m) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 13 1. “Certified capital company” has the meaning given in s. 560.30 (2).
- 14 2. “Certified capital investment” has the meaning given in s. 560.30 (4).
- 15 3. “Claimant” means a person who is subject to taxation under subchs. I, II, and
16 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
17 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
18 under ch. 221.
- 19 4. “Investment date” has the meaning given in s. 560.30 (6).
- 20 5. “Investment pool” has the meaning given in s. 560.30 (7).
- 21 6. “Qualified investment” has the meaning given in s. 560.30 (11).

22 (b) A claimant who makes a certified capital investment of at least \$1,000,000
23 may claim as a credit against the tax imposed under s. 71.43, up to the amount of
24 those taxes, for 10 years beginning with the year of the investment, an amount equal
25 to either 7.5 percent of that investment for the first 2 taxable years and 10.625

1 percent of that investment for the remaining 8 taxable years or the amount by which
2 the sum of the claimant's certified capital investments and the claimant's qualified
3 investments exceeds the claimant's qualified investments in the taxable year before
4 the claimant first claimed the credit under this subsection, whichever is less.

5 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
6 (4), applies to the credit under this subsection.

7 (d) Partnerships, limited liability companies, and tax–option corporations may
8 not claim the credit under this subsection, but the eligibility for, and the amount of,
9 the credit are based on their payment of a certified capital investment. A
10 partnership, limited liability company, or tax–option corporation shall compute the
11 amount of credit that each of its partners, members, or shareholders may claim and
12 shall provide that information to each of them. Partners, members of limited liability
13 companies, and shareholders of tax–option corporations may claim the credit in
14 proportion to their ownership interest.

15 (e) 1. If a certified capital company is decertified, or an investment pool is
16 disqualified, under s. 560.37 before the certified capital company fulfills the
17 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
18 pool, any claimant that has received a credit under this subsection with respect to
19 that investment pool shall repay that credit to the department of revenue and may
20 not claim more credit in respect to that investment pool.

21 2. If a certified capital company fulfills the investment requirement under s.
22 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
23 company is decertified, or an investment pool is disqualified, under s. 560.37 before
24 the certified capital company fulfills the investment requirement under s. 560.34
25 (1m) (a) 2. for that investment pool, any claimant that has received a credit under

1 this subsection with respect to that investment pool shall repay all credits that were
2 claimed for taxable years after the taxable year that includes the 3rd anniversary of
3 the investment date of the investment pool and may claim no more credits for taxable
4 years after the taxable year that includes the 3rd anniversary of the investment date
5 of the investment pool.

6 **SECTION 12.** 71.49 (1) (dm) of the statutes is created to read:

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

8 **SECTION 13.** 71.49 (1) (dn) of the statutes is created to read:

9 71.49 (1) (dn) The certified capital company credit under s. 71.47 (7m).

10 **SECTION 14.** 76.635 (2) of the statutes is renumbered 76.635 (2) (a) and
11 amended to read:

12 76.635 (2) (a) ~~An~~ For taxable years beginning before July 1, 2005, an insurer
13 that makes a certified capital investment may credit against the fees due under s.
14 76.60, 76.63, 76.65, 76.66 or 76.67, for 10 years beginning with the year of the
15 investment, either ~~10%~~ 10 percent of that investment or the amount by which the
16 sum of the insurer's certified capital investments and the insurer's qualified
17 investments exceeds the insurer's qualified investments in the taxable year before
18 the insurer first claimed the credit under this section, whichever is less.

19 **SECTION 15.** 76.635 (2) (b) of the statutes is created to read:

20 76.635 (2) (b) For taxable years beginning after June 30, 2005, an insurer that
21 makes a certified capital investment may credit against the fees due under s. 76.60,
22 76.63, 76.65, 76.66 or 76.67, for 10 years beginning with the year of the investment,
23 either 7.5 percent of that investment for the first 2 taxable years and 10.625 percent
24 of that investment for the remaining 8 taxable years or the amount by which the sum
25 of the insurer's certified capital investments and the insurer's qualified investments

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

3 **SECTION 16.** 77.92 (4) of the statutes is amended to read:

4 77.92 (4) "Net business income", with respect to a partnership, means taxable
5 income as calculated under section 703 of the Internal Revenue Code; plus the items
6 of income and gain under section 702 of the Internal Revenue Code, including taxable
7 state and municipal bond interest and excluding nontaxable interest income or
8 dividend income from federal government obligations; minus the items of loss and
9 deduction under section 702 of the Internal Revenue Code, except items that are not
10 deductible under s. 71.21; plus guaranteed payments to partners under section 707
11 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
12 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s),~~ and (7m); and plus or
13 minus, as appropriate, transitional adjustments, depreciation differences, and basis
14 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
15 loss, and deductions from farming. "Net business income", with respect to a natural
16 person, estate, or trust, means profit from a trade or business for federal income tax
17 purposes and includes net income derived as an employee as defined in section 3121
18 (d) (3) of the Internal Revenue Code.

19 **SECTION 17.** Subchapter II (title) of chapter [precedes 560.30] of the statutes
20 is amended to read:

21 **CHAPTER 560**

22 **SUBCHAPTER II**

23 **CERTIFIED WISCONSIN CAPITAL COMPANIES**

24 **SECTION 18.** 560.30 (3) of the statutes is amended to read:

1 560.30 (3) “Certified capital company tax credit” means the tax credit under
2 s. ss. 71.07 (7m), 71.28 (7m), 71.47 (7) and (7m), and 76.635.

3 **SECTION 19.** 560.30 (5g) of the statutes is created to read:

4 560.30 (5g) “Early stage business” means a qualified business that satisfies
5 any of the following criteria:

6 (a) At the time that a certified capital company makes an initial investment in
7 the business, the business is involved in activities related to prototype development,
8 establishment of initial production or service processes, or other development of
9 initial product or service offerings.

10 (b) During the fiscal year preceding the year in which a certified capital
11 company makes an initial investment in the business, the business had gross
12 revenues of less than \$2,000,000, on a consolidated basis, as determined in
13 accordance with generally accepted accounting principles.

14 (c) The business is approved as an early stage business by the department
15 under s. 560.33 (2).

16 **SECTION 20.** 560.30 (5r) of the statutes is created to read:

17 560.30 (5r) “Investment criteria” means the investment criteria submitted to
18 the department under s. 560.31 (2) (j), or any investment criteria subsequently
19 approved as provided under the rules of the department.

20 **SECTION 21.** 560.30 (9) of the statutes is renumbered 560.30 (9) (intro.) and
21 amended to read:

22 560.30 (9) (intro.) “Qualified debt instrument” means a debt instrument that
23 a certified capital company issues at par value or at a premium; ~~that has~~ and that
24 satisfies all of the following criteria:

1 (a) The debt instrument has an original maturity date of at least 5 years from
2 the date on which it was issued; ~~that,~~

3 (b) The debt instrument has a repayment schedule that is no faster than a level
4 principal amortization ~~and, until~~ over 5 years.

5 (c) Until the certified capital company may make distributions other than
6 qualified distributions, the interest, distribution or payment features of ~~which~~ the
7 debt instrument are not related to the certified capital company's profitability or the
8 performance of its investment portfolio.

9 **SECTION 22.** 560.30 (9) (d) of the statutes is created to read:

10 560.30 **(9)** (d) The debt instrument does not permit the certified investor to
11 receive prepayment of interest.

12 **SECTION 23.** 560.30 (10) (intro.) of the statutes is amended to read:

13 560.30 **(10)** (intro.) "Qualified distribution" means a distribution or payment
14 by a certified capital company ~~to its equity holders~~ for any of the following:

15 **SECTION 24.** 560.30 (10) (a) of the statutes is amended to read:

16 560.30 **(10)** (a) The costs of forming, and syndicating, ~~managing or operating~~
17 the certified capital company, up to \$750,000.

18 **SECTION 25.** 560.30 (10) (b) of the statutes is amended to read:

19 560.30 **(10)** (b) An annual management fee that does not exceed 2.5% of the
20 certified capital company's total certified capital or the cost of managing and
21 operating the certified capital company, whichever is less.

22 **SECTION 26.** 560.30 (10) (c) of the statutes is repealed.

23 **SECTION 27.** 560.30 (10) (d) of the statutes is amended to read:

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

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

3 **SECTION 28.** 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 29.** 560.31 (1) of the statutes is renumbered 560.31 (1) (a) and
7 amended to read:

8 560.31 (1) (a) The department shall promulgate rules establishing procedures
9 under which a person may apply to become a certified capital company for receiving
10 certified capital investments under s. 560.32 (2) (b) 1. or a certified capital company
11 for receiving certified capital investments under s. 560.32 (2) (b) 2. The department
12 shall grant or deny an application for certification under this section within 30 days
13 of the date of application.

14 (b) If the department denies certification, the department shall include with
15 the denial a detailed description of the grounds for the refusal, including suggestions
16 for removal of those grounds. A person may submit an amended application within
17 15 days of receipt of a notice of denial. The department shall grant or deny the
18 amended application within 15 days of the date of the amended application. If the
19 department denies certification based upon the amended application, the
20 department shall include with the denial a detailed description of the grounds for the
21 refusal. A person whose amended application is denied may, within 10 days after the
22 department's decision, request a contested case hearing under s. 227.42 from the
23 department. If the final administrative or judicial proceeding results in a
24 determination that the application was denied in error, the department shall revise
25 its determination accordingly.

1 **SECTION 30.** 560.31 (2) (intro.) of the statutes is amended to read:

2 560.31 (2) REQUIREMENTS FOR CERTIFICATION. (intro.) The department shall may
3 certify a person as a certified capital company if the department determines that all
4 of the following conditions have been met:

5 **SECTION 31.** 560.31 (2) (b) of the statutes is amended to read:

6 560.31 (2) (b) ~~The~~ At the time of application and on the date on which the person
7 is certified, the person has a net worth, at the time of application, of at least \$500,000
8 and ~~has~~ at least \$500,000 in cash, cash equivalents, and marketable securities.

9 **SECTION 32.** 560.31 (2) (g) of the statutes is created to read:

10 560.31 (2) (g) The person agrees to maintain in this state an investment office
11 and staff actively engaged in making investments until all investment pools have
12 been decertified.

13 **SECTION 33.** 560.31 (2) (h) of the statutes is created to read:

14 560.31 (2) (h) The person has provided the department with a list of all persons
15 that have an ownership interest in the person as provided under this paragraph. The
16 list shall include the percentage ownership interest of each owner and indicate
17 whether the interest is voting or nonvoting. If the person is an entity that is
18 registered under 15 USC 78l (g) or required to file reports under 15 USC 78o (d), the
19 person shall list only those persons having beneficial ownership of equity securities
20 of at least 5 percent. If a list contains the name of a business entity, the person shall
21 also include a list of all persons that have an ownership interest in the entity.

22 **SECTION 34.** 560.31 (2) (i) of the statutes is created to read:

23 560.31 (2) (i) The person has provided the department with a business plan
24 covering at least the 5-year period following the date of application.

25 **SECTION 35.** 560.31 (2) (j) of the statutes is created to read:

1 560.31 (2) (j) The person has provided the department with the person's
2 investment strategy, along with a description of the investment criteria the person
3 intends to follow.

4 **SECTION 36.** 560.31 (2) (k) of the statutes is created to read:

5 560.31 (2) (k) The person has provided the department with the person's
6 organizational chart.

7 **SECTION 37.** 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and
8 amended to read:

9 560.32 (2) (b) 1. The Prior to the effective date of this subdivision [revisor
10 inserts date], the department may certify an investment under this subsection only
11 if, after the certification, the department will not have certified a total of more than
12 \$50,000,000 in investments under this subsection.

13 **SECTION 38.** 560.32 (2) (b) 2. of the statutes is created to read:

14 560.32 (2) (b) 2. Beginning on the effective date of this subdivision [revisor
15 inserts date], the department shall certify investments for which notices have been
16 received under par. (a), subject to the limit specified in this subdivision. The
17 department may certify an investment under this subdivision only if, after the
18 certification, the department will not have certified a total of more than \$75,000,000
19 in investments under this subdivision.

20 **SECTION 39.** 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

21 **SECTION 40.** 560.32 (2) (c) 2. of the statutes is created to read:

22 560.32 (2) (c) 2. The department may not certify an investment under par. (b)
23 2. if, after the certification, the investor, together with all affiliates of the investor,
24 would have in certified capital investments under par. (b) 2. more than the greater

1 of \$10,000,000 or 15 percent of the total amount of investments that the department
2 may certify under par. (b) 2.

3 **SECTION 41.** 560.32 (2) (d) of the statutes is amended to read:

4 560.32 **(2)** (d) If, as a result of the limitations under par. (b) or (c), the
5 department may not certify the full amount requested in applications for certified
6 capital investments submitted under par. (a), the department shall allocate prorate
7 the amounts available for certification in order of priority based on the date on which
8 the application was filed. If the amounts available for certification are insufficient
9 to certify the full amount of all applications for certified capital investments that are
10 submitted on the same day, the department shall prorate the available amount on
11 the basis of the amount that the investor has committed to invest in the certified
12 capital company under par. (a) among eligible applicants, except as otherwise
13 provided in this paragraph. If the proration would result in a certified capital
14 company having less than \$10,000,000 in certified capital, the department may not
15 allocate any amount to that certified capital company. If the proration would result
16 in no certified capital company having \$10,000,000 or more in certified capital, the
17 department may promulgate rules to implement an alternative allocation procedure.
18 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to
19 provide evidence that promulgating a rule under this paragraph as an emergency
20 rule is necessary for the preservation of the public peace, health, safety, or welfare
21 and is not required to provide a finding of an emergency for a rule promulgated under
22 this paragraph.

23 **SECTION 42.** 560.32 (3) of the statutes is renumbered 560.32 (3) (a) and
24 amended to read:

1 560.32 (3) (a) A certified investor may not, individually, or with or through one
2 or more affiliates, own 10% or more of the equity securities in, be an affiliate, a
3 general partner, or a manager of, or otherwise control the investments of the certified
4 capital company. This subsection paragraph does not preclude ~~a certified investor~~
5 any person from exercising its legal rights and remedies, including interim
6 management of a certified capital company, in the event that a certified capital
7 company is in default of its statutory or contractual obligations to ~~the certified~~
8 investor that or any other person.

9 **SECTION 43.** 560.32 (3) (b) of the statutes is created to read:

10 560.32 (3) (b) Paragraph (a) does not preclude any person from establishing
11 controls to ensure that a certified capital company satisfies the requirements of s.
12 560.34 (1m).

13 **SECTION 44.** 560.33 (1) (intro.) of the statutes is amended to read:

14 560.33 (1) QUALIFICATIONS. (intro.) ~~A~~ Except as provided in sub. (2), a business
15 is a qualified business if all of the following requirements are met, as of the time that
16 a certified capital company, or any affiliate of the certified capital company, makes
17 its first investment in the business, all of the following requirements are met:

18 **SECTION 45.** 560.33 (1) (a) of the statutes is amended to read:

19 560.33 (1) (a) The business is headquartered in this state and its principal
20 business operations are located in this state or the business commits to relocate its
21 headquarters and its principal business operations to this state within 90 days after
22 the date on which the certified capital company makes its first investment in the
23 business.

24 **SECTION 46.** 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)

25 and amended to read:

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

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

4 **SECTION 47.** 560.33 (1) (b) 2. of the statutes is created to read:

5 560.33 (1) (b) 2. At least 75 percent of the total payroll of the business is paid
6 to employees who are employed in this state.

7 **SECTION 48.** 560.33 (1) (e) of the statutes is amended to read:

8 560.33 (1) (e) The business is not predominantly engaged in professional
9 services provided by accountants, business consultants, lawyers, or physicians.

10 **SECTION 49.** 560.33 (1) (g) of the statutes is amended to read:

11 560.33 (1) (g) The business is not engaged in banking ~~or~~, lending, lobbying, or
12 political consulting and does not make any loans to, or investments in, certified
13 capital companies.

14 **SECTION 50.** 560.33 (1) (h) of the statutes is created to read:

15 560.33 (1) (h) The business is not predominantly engaged in retail sales, unless
16 the business is approved by the department under sub. (2).

17 **SECTION 51.** 560.33 (1) (i) of the statutes is created to read:

18 560.33 (1) (i) The business was not organized by a certified capital company or
19 an affiliate of a certified capital company. This paragraph does not prohibit a
20 certified capital company from providing financial, technical, or similar advice to a
21 business before making an investment in the business.

22 **SECTION 52.** 560.33 (1) (j) of the statutes is created to read:

23 560.33 (1) (j) The business is engaged in at least one of the following activities:

24 1. Manufacturing, processing, or assembling products.

1 2. Providing services, unless the services are of such a nature that the
2 department disapproves of the business under sub. (2).

3 3. Conducting research and development.

4 4. Conducting any other business that is not excluded under this subsection
5 and that is approved by the department under sub. (2).

6 **SECTION 53.** 560.33 (1) (k) of the statutes is created to read:

7 560.33 (1) (k) The business does not have a financial relationship with a
8 certified capital company or any affiliate of a certified capital company before the
9 date on which the certified capital company makes its first investment in the
10 business, unless the business is approved under sub. (2) notwithstanding such a
11 financial relationship. This paragraph does not prohibit a certified capital company
12 from providing financial advice to a business before making an investment in the
13 business.

14 **SECTION 54.** 560.33 (2) of the statutes is renumbered 560.33 (2) (a) and
15 amended to read:

16 560.33 (2) (a) A certified capital company ~~may~~ shall, prior to making an
17 investment in a specific business, ~~request a written opinion from the department~~
18 ~~that a business in which it proposes to invest is a qualified business.~~ If the
19 department determines that the business meets the requirements under sub. (1), the
20 department shall issue a written opinion stating that the business is a qualified
21 business provide the department with a description of the proposed investment in
22 the form prescribed by the department. Within 15 business days of receiving the
23 description, the department shall determine whether the business is a qualified
24 business and the proposed investment is consistent with the certified capital
25 company's investment criteria and, if the business is not a qualified business or the

1 proposed investment is not consistent, notify the certified capital company in writing
2 of the determination and the reasons for the determination. If the department fails
3 to so notify the certified capital company within 15 business days of receiving the
4 request, the business shall be deemed a qualified business and the investment shall
5 be deemed consistent, notwithstanding any failure to satisfy sub. (1) or s. 560.34 (1)
6 (f).

7 **SECTION 55.** 560.33 (2) (b) and (c) of the statutes are created to read:

8 560.33 (2) (b) During the 15 business day period established under par. (a), the
9 department may make a determination that a business is a qualified business,
10 notwithstanding any failure to satisfy sub. (1), if the certified capital company's
11 proposed investment in the business will further the goals of this subchapter.

12 (c) If the department determines that a proposed investment is not consistent
13 with a certified capital company's investment criteria, the certified capital company
14 may, within 10 days after the department's decision, request a contested case hearing
15 under s. 227.42 from the department. If the final administrative or judicial
16 proceeding results in a determination that the investment is consistent, the
17 department shall issue a redetermination accordingly.

18 **SECTION 56.** 560.34 (1) (intro.) of the statutes is amended to read:

19 560.34 (1) QUALIFIED INVESTMENTS REQUIREMENTS. (intro.) In order for a
20 certified capital company to prevent disqualification under s. 560.37 of an
21 investment pool, the certified capital company shall ensure that the investment pool
22 makes qualified investments in accordance with the schedule under sub. (1m). ~~An~~
23 Except as provided in sub. (1g), an investment is a qualified investment if the
24 investment meets all of the following requirements:

25 **SECTION 57.** 560.34 (1) (a) 1. of the statutes is amended to read:

1 560.34 (1) (a) 1. ~~An equity security~~ Except as otherwise provided in this
2 subdivision, equity securities or options, warrants, or other equity participation
3 instruments of the qualified business, unless the certified capital company, after the
4 investment and assuming full conversion and exercise of any equity participation
5 instrument, owns more than 50 percent of the voting equity of the qualified business.
6 The department may grant an exception to this percentage limitation under s. 560.33
7 (2).

8 **SECTION 58.** 560.34 (1) (a) 2. a. of the statutes is amended to read:

9 560.34 (1) (a) 2. a. The debt is ~~unsecured~~ not secured by a first priority lien on
10 any of the assets of the qualified business at the time of the certified capital
11 company's qualified investment in the qualified business.

12 **SECTION 59.** 560.34 (1) (a) 2. b. of the statutes is amended to read:

13 560.34 (1) (a) 2. b. The ~~Except as otherwise provided in this subd. 2. b., the~~ debt
14 is convertible into equity securities or options, warrants, or other equity
15 participation instruments ~~such as options or warrants~~ or has attached equity
16 participation rights, unless the debt and the equity participation instruments, if
17 fully converted and exercised, would result in the certified capital company owning
18 more than 50 percent of the voting equity of the qualified business. The department
19 may grant an exception to this percentage limitation under s. 560.33 (2).

20 **SECTION 60.** 560.34 (1) (b) of the statutes is amended to read:

21 560.34 (1) (b) As a condition of the investment, the qualified business agrees
22 not to use the proceeds from the investment for the purpose of relocating its
23 operations other than to this state.

24 **SECTION 61.** 560.34 (1) (c) of the statutes is amended to read:

1 560.34 (1) (c) 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, not to relocate its headquarters out of this state.

4 **SECTION 62.** 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)
5 and amended to read:

6 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business
7 agrees, as long as the certified capital ~~corporation~~ company continues to hold the
8 investment, to ~~maintain~~ do any of the following:

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

10 **SECTION 63.** 560.34 (1) (d) 2. of the statutes is created to read:

11 560.34 (1) (d) 2. Pay at least 75 percent of its total payroll to employees who
12 are employed in this state.

13 **SECTION 64.** 560.34 (1) (e) of the statutes is amended to read:

14 560.34 (1) (e) As a condition of the investment, the qualified business agrees,
15 as long as the certified capital ~~corporation~~ company continues to hold the
16 investment, to maintain at least 75% of its employees at work sites that were
17 maintained by the qualified business at the time that the investment was made or
18 at work sites that are no more than 25 miles from the place where the headquarters
19 or principal business operations of the qualified business are located at the time of
20 the investment, unless the qualified business obtains an exemption from the
21 department under this paragraph. The department may grant an exemption unless
22 it determines that the qualified business is locating the employees at new sites to
23 take advantage of lower wage rates in the areas where the new sites are located.

24 **SECTION 65.** 560.34 (1) (f) of the statutes is created to read:

1 560.34 (1) (f) The investment is consistent with the certified capital company's
2 investment criteria.

3 **SECTION 66.** 560.34 (1e) of the statutes is created to read:

4 560.34 (1e) USE OF CERTIFIED INVESTMENTS FOR PARTICULAR PURPOSES. (a) Except
5 as provided in pars. (b) and (c), a certified capital company may expend moneys in
6 an investment pool to purchase, for the benefit of its certified investors, U.S. treasury
7 securities, other investment-grade securities, a guaranty, indemnity, bond,
8 insurance policy, or other payment undertaking, or any combination thereof.

9 (b) No more than one of the certified investors of the certified capital company,
10 or affiliate of such a certified investor, may provide a guaranty, indemnity, bond,
11 insurance policy, or other payment undertaking under par. (a).

12 (c) With respect to a certified capital company that receives certified capital
13 investments under s. 560.32 (2) (b) 2., no more than 25 percent of any particular
14 investment pool may be expended under par. (a).

15 **SECTION 67.** 560.34 (1g) of the statutes is created to read:

16 560.34 (1g) DISCRETIONARY EXEMPTIONS. The department may grant an
17 exemption from any requirement under sub. (1) if the certified capital company is in
18 substantial compliance with the requirement.

19 **SECTION 68.** 560.34 (1m) (a) 2. of the statutes is renumbered 560.34 (1m) (a)
20 2. a. and amended to read:

21 560.34 (1m) (a) 2. a. Within With respect to a certified capital company that
22 receives certified capital investments under s. 560.32 (2) (b) 1., within 5 years after
23 the investment date for a particular investment pool, at least 50% 50 percent of the
24 investment pool shall be placed in qualified investments.

25 **SECTION 69.** 560.34 (1m) (a) 2. b. of the statutes is created to read:

1 560.34 **(1m)** (a) 2. b. With respect to a certified capital company that receives
2 certified capital investments under s. 560.32 (2) (b) 2., within 5 years after the
3 investment date for a particular investment pool, at least 50 percent of the
4 investment pool shall be placed in qualified investments and, of such 50 percent, at
5 least 50 percent shall be placed in qualified investments in early stage businesses.

6 **SECTION 70.** 560.34 (1m) (b) of the statutes is amended to read:

7 560.34 **(1m)** (b) The proceeds of all capital of a qualified investment returned
8 to a certified capital company by a qualified business may be placed in new qualified
9 investments, which shall count toward the percentage requirements under par. (a)
10 and s. 560.36 ~~(3)~~ (1) (c). The department shall promulgate rules governing the extent
11 to which a reinvestment of proceeds from the sale of a qualified investment in a
12 qualified business may be counted toward the percentage requirements under par.
13 (a) and ss. 560.36 ~~(3)~~ (1) (c) and 560.37 (3m) (a) 2. These rules may provide that
14 reinvested proceeds from the sale of short-term investments shall be only partially
15 counted toward the percentage requirements under par. (a) and ss. 560.36 ~~(3)~~ (1) (c)
16 and 560.37 (3m) (a) 2. The rules may also provide that proceeds from the sale of an
17 investment in a qualified business that are reinvested in that qualified business, or
18 an affiliate of that qualified business, shall be only partially counted toward the
19 percentage requirements under par. (a) and ss. 560.36 ~~(3)~~ (1) (c) and 560.37 (3m) (a)
20 2.

21 **SECTION 71.** 560.34 (2) of the statutes is renumbered 560.34 (2) (intro.) and
22 amended to read:

23 560.34 **(2)** (intro.) NONQUALIFIED INVESTMENTS. All certified capital investments
24 in a certified capital company that are not invested in qualified investments may be
25 held or invested by the certified capital company ~~as it considers appropriate, except~~

1 ~~that a certified capital company may not invest certified capital investments in an~~
2 ~~insurance company or in an affiliate of an insurance company. only in any of the~~
3 ~~following:~~

4 **SECTION 72.** 560.34 (2) (a) to (k) of the statutes are created to read:

5 560.34 **(2)** (a) Deposits with a federally insured financial institution, as defined
6 in s. 705.01 (3).

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

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

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

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

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

20 (g) Swaps designed to realize or protect the value of a qualified investment, if
21 the counterparty is rated at least “A” or its equivalent by a nationally recognized
22 credit rating organization.

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

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

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

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

3 **SECTION 73.** 560.34 (4) of the statutes is amended to read:

4 560.34 (4) RESTRICTIONS ON MANAGEMENT. No certified capital company may be
5 managed or controlled by, or have a general partner that is, an insurance company,
6 a person who is subject to taxation under subchs. I, II, and IV of ch. 76, a credit union
7 organized under ch. 186, a savings bank organized under ch. 214, a savings and loan
8 association organized under ch. 215, or a bank organized under ch. 221, or an affiliate
9 of an insurance company any such entity and that is a certified investor in the
10 certified capital company.

11 **SECTION 74.** 560.34 (5) of the statutes is created to read:

12 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED. (a) If a certified
13 capital company makes an investment authorized under s. 560.32 (2) (b) 2. in a
14 qualified business and during the time that the certified capital company still holds
15 the investment, the qualified business violates an agreement made under sub. (1) (b)
16 to (e), all of the following apply:

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

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

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

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

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

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

20 **SECTION 75.** 560.35 (1c) of the statutes is created to read:

21 560.35 (1c) QUALIFIED INVESTMENTS. Within 3 business days after making a
22 qualified investment, a certified capital company shall report all of the following to
23 the department:

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

1 (b) The amount of the qualified investment.

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

3 **SECTION 76.** 560.35 (1r) of the statutes is created to read:

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

10 **SECTION 77.** 560.35 (2) (intro.) of the statutes is amended to read:

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

16 **SECTION 78.** 560.35 (2) (a) of the statutes is amended to read:

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

19 **SECTION 79.** 560.35 (2) (c) of the statutes is amended to read:

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

23 **SECTION 80.** 560.35 (2) (d) of the statutes is created to read:

24 **560.35 (2) (d)** All amounts that the certified capital company has expended
25 under s. 560.34 (1e) (a), the investment pool from which each such expenditure was

1 made, and the percentage of the total amount of the investment pool which each such
2 expenditure represents.

3 **SECTION 81.** 560.35 (3) of the statutes is amended to read:

4 560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified
5 capital company's fiscal year, the certified capital company shall provide to the
6 department a copy of its annual audited financial statements, including the opinion
7 of an independent certified public accountant, and a copy of a report on agreed-upon
8 procedures prepared by an independent certified public accountant. The ~~audit shall~~
9 ~~address~~ agreed-upon-procedures report shall identify the procedures performed by
10 the certified capital company, as prescribed by the department, that relate to the
11 methods of operation and conduct of the business of the certified capital company to
12 enable the department to determine whether the certified capital company is
13 complying with this subchapter and the rules promulgated under this subchapter,
14 including whether certified capital has been invested in the manner required under
15 s. 560.34. The financial statements and agreed-upon-procedures report provided
16 under this subsection shall be segregated by investment pool ~~and shall be separately~~
17 ~~audited on that basis~~ to allow the department to determine whether the certified
18 capital company is in compliance with s. 560.34 (1m) this subchapter and the rules
19 promulgated under this subchapter.

20 **SECTION 82.** 560.36 (intro.) of the statutes is renumbered 560.36 (1) (intro.) and
21 amended to read:

22 560.36 (1) (intro.) ~~A~~ Except as provided in sub. (2), a certified capital company
23 may make a distribution only if one of the following conditions is met:

24 **SECTION 83.** 560.36 (1) to (4) of the statutes are renumbered 560.36 (1) (a) to
25 (d) and 560.36 (1) (c), as renumbered, is amended to read:

1 560.36 (1) (c) *Placement of ~~100%~~ 100 percent of investments in qualified*
2 *investments.* The certified capital company has placed in qualified investments an
3 amount equal to ~~100%~~ 100 percent of the certified capital investments in the
4 investment pool and at least 60 percent of the total amount of such investments
5 purchased equity securities; options, warrants, or other equity participation
6 instruments; or debt that is convertible into equity securities or options, warrants,
7 or other equity participation instruments.

8 **SECTION 84.** 560.36 (2m) of the statutes is created to read:

9 560.36 (2m) STATE PARTICIPATION. A certified capital company that receives
10 certified capital investments under s. 560.32 (2) (b) 2. shall pay to the department,
11 for deposit into the general fund, 30 percent of the net profits and gains realized by
12 the certified capital company on qualified investments resulting from those certified
13 capital investments, except that the payment required under this subsection is 20
14 percent of those net profits and gains if the certified capital company, either
15 concurrently with or after receiving certified capital investments under s. 560.32 (2)
16 (b) 2., raises an additional pool of venture capital that does not contain certified
17 capital investments and that is of a sufficient size and is sufficiently focused on
18 investing in Wisconsin businesses, as determined by the department. A certified
19 capital company shall make all payments required under this subsection
20 concurrently with distributions of profits and gains to owners of the certified capital
21 company.

22 **SECTION 85.** 560.37 (1m) of the statutes is created to read:

23 560.37 (1m) REDUCED MANAGEMENT FEE. If a certified capital company violates
24 s. 560.34 (1e) (c) or (1m) (a), the department may order the certified capital company
25 to reduce its annual management fee to the percentage of the certified capital

1 company's total certified capital, or the total dollar amount, specified in that order.
2 A certified capital company may, within 10 days after receiving an order under this
3 subsection, request a contested case hearing under s. 227.42 from the department.
4 If the final administrative or judicial proceeding results in a determination that the
5 order was issued in error or was unreasonable, the department shall rescind or revise
6 the order accordingly.

7 **SECTION 86.** 560.37 (3m) (a) (intro.) and 2. of the statutes are consolidated,
8 renumbered 560.37 (3m) (a) and amended to read:

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

14 **SECTION 87.** 560.37 (3m) (a) 1. of the statutes is repealed.

15 **SECTION 88.** 560.37 (4) of the statutes is amended to read:

16 560.37 **(4)** EFFECT OF DECERTIFICATION. Decertification of a certified capital
17 company or an investment pool has the effects specified in ~~s. ss. 71.07 (7m) (e), 71.28~~
18 (7m) (e), 71.47 (7) (d) and (7m) (e), and 76.635 (4).

19 **SECTION 89.** 560.37 (5) of the statutes is amended to read:

20 560.37 **(5)** NOTICES TO CERTIFIED INVESTORS. The department shall notify a
21 certified investor when the certified capital company tax credit arising from a
22 certified investment is no longer subject to recapture and forfeiture under ~~s. ss. 71.07~~
23 (7m) (e), 71.28 (7m) (e), 71.47 (7) (d) and (7m) (e), and 76.635 (4).

24 **SECTION 90. Nonstatutory provisions.**

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

8 (2) EXISTING CONTRACTS.

9 (a) *Definition.* In this subsection, “certified capital company” has the meaning
10 given in section 560.30 (2) of the statutes.

11 (b) *Effect on existing contracts.* If a certified capital company is party to a
12 contract that is in effect on the effective date of this paragraph and that contains
13 provisions that are inconsistent with subchapter II of chapter 560 of the statutes, as
14 affected by this act, but that are not inconsistent with any applicable law in effect
15 immediately before the effective date of this paragraph, then, notwithstanding
16 subchapter II of chapter 560 of the statutes, as affected by this act, the parties to the
17 contract may perform their obligations, and exercise their rights, under those
18 provisions of the contract until the contract expires or is extended, modified, or
19 renewed, whichever occurs first.

20 **SECTION 91. Initial applicability.**

21 (1) The treatment of sections 71.05 (6) (a) 15., 71.07 (7m), 71.10 (4) (cp), 71.21
22 (4), 71.26 (2) (a), 71.28 (7m), 71.30 (3) (dm), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (7)
23 and (7m), 71.49 (1) (dm) and (dn), 77.92 (4), 560.30 (3), and 560.37 (4) and (5) of the
24 statutes first applies to taxable years beginning on July 1, 2005.

