2003 ASSEMBLY BILL 531

September 18, 2003 – Introduced by Representatives WARD, MCCORMICK, NISCHKE, TURNER, JENSEN, HUEBSC, VRKAS, BERCEAU, LADWIG, STASKUNAS, ALBERS, M. LEHMAN, TOWNS, PLOUFF, HAHN, TAYLOR, GRONEMUS, OTT, JESKIEWITZ, GIELOW, MUSSER, HINES, J. FITZGERALD, RICHARDS, COGGS, POCAN and KRUG, cosponsored by Senators KANAVAS, MOORE, STEPPE, LEIBHAM, DARLING, ERPNBACH, M. MEYER, ROBSON, HARSDORF, KEDZIE, BROWN, LASSE, PLEALE, JAUCH, WIRCH, HANSEN and ROESSLER. Referred to Committee on Economic Development.

1 AN ACT to repeal 560.37 (3m) (a) 1.; to renumber 560.32 (2) (c); to renumber and amend 560.32 (2) (b), 560.33 (1) (b), 560.34 (1) (d) and 560.34 (2); to consolidate, renumber and amend 560.37 (3m) (a) (intro.) and 2.; to amend 71.45 (2) (a) 10., 560.30 (3), 560.30 (10) (d), 560.31 (1), 560.31 (2) (b), 560.33 (1) (intro.), 560.33 (2), 560.34 (1) (c), 560.34 (1) (e), 560.34 (1m) (b), 560.35 (2) (intro.), 560.35 (2) (a), 560.35 (2) (c), 560.35 (3), 560.37 (4) and 560.37 (5); and to create 71.47 (7), 71.49 (1) (dm), 560.30 (10) (e), 560.31 (2) (g), 560.32 (2) (b) 2., 560.32 (2) (c) 2., 560.33 (1) (b) 2., 560.34 (1) (d) 2., 560.34 (2) (a) to (k), 560.34 (5), 560.35 (1c) and 560.35 (1r) of the statutes; relating to: certified capital investment limitations, qualified business requirements, creating a certified capital company income and franchise tax credit for insurers, certified capital company office, qualified distributions of certified capital companies, certified capital company net worth, certified capital company investment reporting requirements, treatment of qualified investments that become nonqualified,
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 $300,000,000 in certified capital investments and to certify, in certified capital investments per certified investor, up to the greater of $10,000,000 or 15% of the total certified investments that the department may certify over and above the original $50,000,000 that the department was authorized to certify. In addition, this bill allows any insurer that is subject to state income or franchise taxes to claim a tax credit for a certified capital investment against the insurer's income or franchise tax liability.

Reporting requirements

Current law requires a certified capital company to ensure that each of its investment pools makes qualified investments according to a specified schedule. The schedule depends upon the “investment date,” which is the date on which the last certified capital that is part of a particular investment pool was invested in the certified capital company. Under the schedule, a certified capital company must ensure that at least 30% of each investment pool is placed in qualified investments
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.
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.
The bill, though, permits the department to grant an exception to the requirements under items 3. to 6. above and not reduce the amount of the qualified investment that is counted toward the certified capital company’s satisfaction of the applicable percentage requirements, if the qualified business violates the conditions requiring the qualified business to maintain at least 75% of its employees in this state, to pay at least 75% of its total payroll to employees in this state, or to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made. The department may not grant an exception if the department determines that the qualified business is locating employees at new sites to take advantage of lower wage rates in the areas where those sites are located.

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

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

Performance evaluation audit

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

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

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

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

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

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

1. “Certified capital company” has the meaning given in s. 560.30 (2).
2. “Certified capital investment” has the meaning given in s. 560.30 (4).
3. “Investment date” has the meaning given in s. 560.30 (6).
4. “Investment pool” has the meaning given in s. 560.30 (7).
5. “Qualified investment” has the meaning given in s. 560.30 (11).

(b) An insurer who makes a certified capital investment may claim as a credit against the tax imposed under s. 71.43, for 10 years beginning with the year of the investment, an amount equal to either 10% of that investment or 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 under this section, whichever is less.

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

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

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

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

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

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

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

560.30 (3) “Certified capital company tax credit” means the tax credit under
s. ss. 71.47 (7) and 76.635.

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

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

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

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

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

560.31 (1) APPLICATION. The department shall promulgate rules establishing procedures under which a person may apply to become a certified capital company for receiving certified capital investments under s. 560.32 (2) (b) 1. or a certified capital company for receiving certified capital investments under s. 560.32 (2) (b) 2. The department shall grant or deny an application for certification under this section within 30 days of the date of application. If the department denies certification, the department shall include with the denial a detailed description of the grounds for the refusal, including suggestions for removal of those grounds.

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. 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:

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

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

1. At least 75% of those employees are employed in this state.
SECTION 16. 560.33 (1) (b) 2. of the statutes is created to read:

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

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

560.33 (2) DEPARTMENT OPINIONS AND EXCEPTIONS. A certified capital company may shall, prior to making an investment in a specific business, request a written opinion from the department that a business in which it proposes to invest is a qualified business. If the department determines that the business meets the requirements under sub. (1), the department shall issue a written opinion stating that the business is a qualified business. 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).

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

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

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

560.34 (1) (d) (intro.) As a condition of the investment, the qualified business agrees, as long as the certified capital corporation continues to hold the investment, to maintain do any of the following:
1. Maintain at least 75% of its employees in this state.

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

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

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

560.34 (1) (e) As a condition of the investment, the qualified business agrees, as long as the certified capital corporation continues to hold the investment, 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, unless the qualified business obtains an exemption from the department under this paragraph. The department may grant an exemption unless it determines that the qualified business is locating the employees at new sites to take advantage of lower wage rates in the areas where the new sites are located.

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

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

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

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

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

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

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

(c) 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.

(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.

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

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

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

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

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

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

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

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

4. 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 requirements under ss. 560.36 (3) and 560.37 (3m) (a).

5. If the violation occurs more than 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 under ss. 560.36 (3) and 560.37 (3m) (a).

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

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

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

(a) The name of the qualified business in which the qualified investment was made.
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(b) The amount of the qualified investment.

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

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

560.35 (1r) Qualified Investment Schedule Report. Within 30 days after the conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital company shall report to the department, in the format and substance prescribed by the department, information required by the department for determining whether the certified capital company is in compliance with the percentage requirements under s. 560.34 (1m) (a).

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

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

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

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

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

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

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

560.35 (3) Financial Statements. Within 90 days of the end of the certified capital company’s fiscal year, the certified capital company shall provide to the
department a copy of its annual audited financial statements, including the opinion of an independent certified public accountant, and a copy of a report on agreed-upon procedures prepared by an independent certified public accountant. The audit shall address agreed-upon-procedures report shall identify the procedures performed 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 this subchapter and the rules promulgated under this subchapter, including whether certified capital has been invested in the manner required under s. 560.34. The financial statements and agreed-upon-procedures report provided under this subsection shall be segregated by investment pool and shall be separately audited on that basis to allow the department to determine whether the certified capital company is in compliance with s. 560.34 (1m) this subchapter and the rules promulgated under this subchapter.

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

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

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

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

560.37 (4) Effect of Decertification. Decertification of a certified capital company or an investment pool has the effects specified in s. ss. 71.47 (7) (d) and 76.635 (4).
SECTION 35. 560.37 (5) of the statutes is amended to read:

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

SECTION 36. Nonstatutory provisions.

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

SECTION 37. Initial applicability.

(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.

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

(END)