Legislative Fiscal Bureau

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November 12, 2003

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment LRB 0263/2 to Senate Bill 249 and Assembly Substitute Amendment LRB 0231/5 to Assembly Bill 531: Certified Capital Companies Program Expansion

Senate Substitute Amendment LRB 0263/2 to Senate Bill 249 and Assembly Substitute Amendment LRB 0231/5 to Assembly Bill 531, which are identical, would modify the state certified capital companies program. SB 249 was introduced on September 17, 2003, and referred to the Senate Select Committee on Job Creation. On September 23, 2003, the bill was withdrawn from that committee and referred to the Joint Committee on Finance. AB 531, which is a companion bill to SB 249, was introduced on September 18, 2003, and referred to the Assembly Committee on Economic Development. The bill was withdrawn from that committee and referred to the Joint Committee on Finance on October 23, 2003. However, the Co-Chairs of the Finance Committee have elected to take up the substitute amendments to these bills, which are addressed in this memorandum.

CURRENT LAW

The certified capital companies program was created by 1997 Wisconsin Act 215. Under the program, an insurance premiums tax credit is provided for insurance company investments in certified capital companies. The certified capital companies are required to use these funds to provide capital to certain small businesses. If the certified capital companies fail to make required investments in these small businesses, the insurance companies must repay all or part of the credit. The Department of Commerce administers the program.

State Taxation of Insurance Companies. Wisconsin's taxation of insurance companies is administered by two separate agencies. The Office of the Commissioner of Insurance (OCI) administers and collects the premiums tax on certain domestic and most foreign companies, as well as a gross investment income tax on certain domestic life insurers. The Department of Revenue (DOR) administers and collects the corporate franchise tax on certain domestic insurers. A company that writes multiple lines of insurance is subject to the tax that applies to each line. In addition, certain types of companies are allowed a partial or complete exemption from state and local taxes. (A separate 2% tax on fire insurance premiums is also imposed).

Table 1 outlines the tax provisions affecting different types of companies and lines of insurance. As shown in Table 1, foreign insurers of most types are taxed differently than similar Wisconsin companies.

TABLE 1

Wisconsin Taxation of Insurance Companies

Type of Insurance	Type of Company	Tax
Life	Foreign (non-Wisconsin-based)	2% of gross premiums
	Domestic (Wisconsin-based)	
	a. Total insurance of $750 million or less	Lesser of 2% of gross premiums or 3.5% of a portion of gross investment income
	b. Total insurance of more than $750 million	Greater of 2% of gross premiums or 3.5% of a portion of gross investment income
Accident & Health	Foreign	2% of gross premiums
	Domestic	Corporate franchise tax not to exceed 2% of gross premiums
Mortgage Guarantee	Foreign	2% of gross premiums
	Domestic	2% of gross premiums
Fire	Foreign	2.375% of gross premiums
	Domestic	Corporate franchise tax not to exceed 2% of gross premiums
Ocean Marine	Foreign	0.5% of gross premiums
	Domestic	Corporate franchise tax not to exceed 2% of gross premiums
Other Property & Casualty	Foreign	2% of gross premiums
	Domestic	Corporate franchise tax not to exceed 2% of gross premiums
Annuity/Life	All types of companies	Exempt
All types of insurance	Town mutual	Exempt
All types of insurance	Fraternal benefit society	Exempt
All types of insurance	Nonprofit cooperative	Exempt
All types of insurance	Self-insurers	Exempt

Insurance Premiums Tax. The tax base (taxable premiums) for companies subject to the premiums tax is equal to gross Wisconsin premiums for direct insurance minus return premiums and cancellations and returns from savings and gains on all insurance other than reinsurance by the insurer during the previous year.

Foreign insurers are subject to the premiums tax rate shown in Table 1. Domestic nonlife insurers pay the corporate franchise tax not to exceed the liability calculated under the 2% gross premiums tax. Domestic life companies with over $750 million of insurance are subject to a 3.5% tax on a portion of gross investment income or 2% of premiums, whichever is greater. Domestic life companies with $750 million or less of insurance in effect are subject to the 3.5% investment income tax or 2% premiums tax, whichever is less. The base for the life insurance gross investment income tax is total investment income from life insurance operations less a deduction for additions to reserves. Premiums and contracts for annuities are also excluded. Mortgage guarantee insurers, whether foreign or domestic, are subject to a 2% premiums tax.

Taxable insurers are required to make quarterly reports and payments of estimated tax, as well as filing a return at the close of the year.

Wisconsin taxes insurance premiums by employing both "reciprocal" and "retaliatory" provisions, intended to equalize the state tax treatment of insurers operating in more than one state. Most other states utilize retaliatory taxation but do not provide reciprocity. The reciprocal statute provides that foreign (non-Wisconsin) insurers doing business in the state shall pay no additional and no higher taxes, fees, or other charges than their home state imposes on similar Wisconsin insurers operating there. This provision allows a foreign insurer to be taxed at rates lower than those specified in the Wisconsin statutes, if its home state imposes a lower tax. The limitations on the reciprocal statute are that it does not apply to alien (non-U.S.) insurers; life insurance taxes may not be less than the Wisconsin statutory rates; and fire and ocean marine premiums may not be less than a minimum rate of 0.375%.

The retaliatory statute specifies that Wisconsin may impose higher taxes than its statutory rate on a foreign insurer doing business in the state, to the extent that the insurer's home state imposes a tax on Wisconsin firms operating there that is higher than Wisconsin's statutory rate. The retaliatory provision is intended to apply broadly, including alien insurers. However, due to practical enforcement problems and preemption by U.S. treaties with other countries, alien insurers are generally taxed at Wisconsin's statutory rate.

Due to the interaction of the reciprocal and retaliatory provisions, few foreign insurers are taxed at Wisconsin's statutory rates; instead, they are generally taxed at the rates imposed by their home states.

Insurance premiums tax collections were $114.9 million in 2002-03.

Corporate Franchise Tax. The Wisconsin corporate income and franchise tax is imposed on all corporations over which the state has taxing jurisdiction, including utility companies and financial institutions. However, most insurance companies are subject to the insurance premiums tax. Only certain domestic insurance companies are subject to the state corporate income and franchise tax. The Wisconsin corporate franchise tax is imposed on most domestic nonlife insurance companies and the nonlife insurance business of domestic life insurers. The tax is imposed at a flat rate of 7.9% on taxable income. However, an insurer's franchise tax liability may not exceed the liability calculated under the 2% gross premiums tax. Total corporate income and franchise tax revenues for 2002-03 were $526.5 million.

Insurance Premiums Tax Credit. The certified capital companies program provides a credit against insurance premiums taxes equal to the lesser of 10% of a certified capital investment or the amount by which the sum of the claimant's certified capital investments and qualified investments exceeds the claimant's qualified investments in the tax year prior to the year in which the credit was first claimed. The credit can be claimed for 10 years, beginning with the year of investment. Unused credit amounts can be carried forward to offset future premiums tax liabilities until the unused credit amounts are entirely offset against premiums tax liabilities. An insurer may sell credits to another insurer if the seller notifies OCI of the sale and provides a copy of the transfer papers with the notification.

Certified Capital Investments. A certified capital investment is an investment in a certified capital company that is certified by Commerce and that fully funds the investor's equity interest in a certified capital company or a qualified debt instrument issued by a certified capital company or both. The aggregate of all investments of certified capital in a certified capital company made as part of the same transaction is an investment pool. Investments received more than 30 days apart are not considered part of the same investment pool.

A qualified debt instrument means a debt instrument that the certified capital company issues at par value or at a premium that: (a) has an original maturity date of at least five years from the date on which it was issued; (b) has a repayment schedule that is no faster than a level principal amortization; and (c) until the certified capital company may make distributions other than qualified distributions, the interest, distribution, or payment features of the debt instrument are not related to the certified capital company's profitability or the performance of its investment portfolio.

The maximum amount of total certified capital investments that can be made is $50 million. Therefore, the maximum amount of insurance premiums tax credits that can be claimed in one year is $5 million, and the maximum amount of total credits that can be claimed over 10 years is $50 million.

A person may apply to make a certified capital investment in a certified capital company by notifying the Department of Commerce on a form prescribed by the Department. The notification includes the name of the person, the name of the certified capital company, the amount of the investment, other information specified by the Departments and a commitment by the person that the investment will be made within five days after the person is notified that the investment was certified.

As noted, the total amount of investment that can be certified by Commerce is $50 million. For the first year of the program, an investor, together with affiliates, cannot have more than $10 million in certified capital investments. Also, if, as a result of the total statewide ($50 million) or individual investor ($10 million) limits on certified capital investments, Commerce cannot certify the full amount of requested certified capital investments, the Department is required to allocate the available amount of certified capital investments (the difference between the current amount certified and maximum limits) based on the date of the application for certification of investments. If the available amount of certified capital investments is insufficient for all applications filed on the same day, Commerce prorates the available investment amounts based on the relative amount each investor has committed to invest in a certified capital company.

A certified investor cannot individually, or with or through one or more affiliates, own 10% or more of the equity securities in, be a general partner or manager of, or otherwise control the investments of, the certified capital company. However, a certified investor is not precluded from exercising its legal rights and remedies, including contractual interim management of a certified capital company, if that company defaults on its statutory or contractual obligations to the certified investor.

Certified Capital Companies. Persons must apply to Commerce in order to be certified as a capital company. The Department determines if the applicant meets the required conditions and approves or denies the application within 30 days of the date of the application. In order to be certified, a person is required to meet the following conditions:

a. The person is a partnership, corporation, trust, or limited liability company (LLC), organized either for profit or not for profit, that has as its primary business activity the investment of cash in qualified businesses.

b. The person has a net worth, at the time of application for certification, of at least $500,000, and has at least $500,000 in cash, cash equivalents, and marketable securities.

c. The directors, officers, general partners, trustees, managers, or members, or persons having a similar function, are familiar with statutory requirements related to certified capital companies.

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

e. The person includes, in any offering material involving the sale of securities, certain required statements.

f. The person agrees to maintain an office and staff actively engaged in making investments in Wisconsin.

g. The person pays a nonrefundable application fee of $7,500.

If the Department denies certification, it must include with the denial a detailed description of the grounds for refusal, along with suggestions for removing the grounds for denial. A certified capital company cannot be managed or controlled by, or have a general partner that is, an insurance company or an affiliate of an insurance company.

Operation of Certified Capital Companies. A certified capital company must make qualified investments from an investment pool following a specified investment schedule. A qualified investment is an investment of cash in a qualified business for the purchase of any of the following: (a) an equity security of the qualified business; or (b) a debt security of the qualified business if the debt has a maturity of at least five years and if one of the following conditions is met: (1) the debt is unsecured; or (2) the debt is convertible into equity securities or equity participation instruments such as options or warrants.

In addition, as a condition of the investment, and as long as the certified capital company holds the investment, the qualified business must:

a. Not use the proceeds from the investment for the purpose of relocating its operations.

b. Not relocate its headquarters out of Wisconsin.

c. Maintain at least 75% of its employees in Wisconsin.

d. Maintain at least 75% of its employees at worksites that were maintained by the qualified business at the time the investment was made, unless the qualified business obtained an exemption from Commerce. Commerce cannot grant an exemption if it determines that the qualified business is locating the employees at new sites to take advantage of lower wages.

A business is a qualified business if all of the following requirements are met at the time that a certified capital company or affiliate makes its first investment in the business:

a. The business is headquartered in Wisconsin and its principal business operations are located in the state.

b. The business is in need of venture capital and is unable to obtain conventional financing. "In need of venture capital" means that the qualified business requires debt or equity funds, or both, for working capital, expansion, research and development, sales growth, or modernization of current operations. "Unable to obtain conventional financing" means the business has failed in an attempt to obtain funding from financial institutions or that the business cannot reasonably be expected to qualify for such financing under the standards of commercial lending.

c. The business has no more than 100 employees, at least 75% of whom are employed in Wisconsin.

d. During its two most recent fiscal years, the business had, together with all of its consolidated affiliates, an average annual net income of not more than $2 million, after federal income taxes, excluding any carryover losses, and determined in accordance with generally accepted accounting principles.

e. The business has, together with its consolidated affiliates, a net worth that is not in excess of $5 million.

f. The business is not predominantly engaged in professional services provided by accountants, lawyers, or physicians.

g. The business is not engaged in the development of real estate for resale.

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

Prior to making an investment in a specific business, a certified capital company may request a written opinion from Commerce that the business in which it proposes to invest is a qualified business. If Commerce determines that the business meets the necessary requirements, the Department is required to issue a written opinion that the business is a qualified business.

Each investment pool of a certified capital company must make qualified investments according to the following schedule: (a) at least 30% of the investment pool must be placed in qualified investments within three years after the investment date for that investment pool; and (b) at least 50% of the investment pool must be placed in qualified investments within five years after the investment date of the investment pool.

The proceeds of all capital of a qualified investment returned to a certified capital company may be reinvested and count against the qualified investment percentage requirements, and for eligibility for distributions and voluntary decertifications. Reinvestments of proceeds are counted toward the investment pool qualified investment, distribution, and volunteer decertification requirements as follows:

a. 100% of the portion of proceeds of capital from a qualified investment returned to a certified capital company by a qualified business that are placed in new qualified investments count toward the percentage investment requirements, and eligibility for distributions and voluntary decertification;

b. 100% of the proceeds received from the sale of a qualified investment returned to a certified capital company that are placed in a new qualified investment in another qualified business count toward the percentage investment requirements, and eligibility for distributions and voluntary decertifications except: (1) 50% of the proceeds, up to a maximum of the investment cost, received from the sale of a qualified investment returned to a certified capital company within one year of the initial investment date, other than those sold as part of a public offering, that are placed in a new qualified investment count toward the percentage requirements; (2) proceeds from the sale of a qualified investment that are reinvested in that qualified business or affiliate of that business do not count towards the percentage investment requirements, if the reinvestment is made within one year of the original investment's return to the certified capital company; and (3) proceeds received from the sale of qualified investments that are returned to a certified capital company are presumed to be placed in subsequent qualified investments in the order received and before funds that have never been placed in qualified businesses. For the purpose of meeting the percentage investment, and distribution and voluntary decertification requirements, the cumulative amount of qualified investments made by the certified capital company are considered.

A certified capital company may not make a qualified investment in a business if, at the time of the investment, more than 15% of the total certified capital of the certified capital company would be invested in that business or affiliates of that business.

All certified 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. However, a certified capital company may not make certified capital investments in an insurance company or its affiliate.

Distributions. A certified capital company is authorized to make distributions to its equity holders from its certified capital investment pool for a number of purposes. A certified capital company can make a distribution if it meets the requirements of a qualified distribution. A qualified distribution is a distribution or payment from its certified capital investment pool to its equity holders for any of the following:

a. The costs of forming, syndicating, managing, or operating a certified capital company.

b. An annual management fee that does not exceed 2.5% of the certified capital company's total certified capital.

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

d. A projected increase in federal or state taxes, including 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.

A certified capital company may also make a distribution if one of the following conditions is met:

a. The Department of Commerce makes a written determination that the distribution may be made without adversely affecting the ability of the certified capital company to place, in qualified investments, an amount equal to 100% of the certified capital in the investment pool from which the distribution is to be made.

b. The certified capital company has placed an amount equal to 100% of the certified capital investment in an investment pool in qualified investments.

c. The distribution is payment of principal or interest owed to a debt holder of a certified capital company, even if the debt holder is also a holder of equity in the certified capital company and the indebtedness is a certified capital investment.

Reporting Requirements. As soon as practicable after receiving a certified capital investment, a certified capital company is required to report the following to Commerce: (a) the name and tax identification number of the certified investor from which the certified capital was received; (b) the amount of the certified capital investment; (c) the date on which the certified capital investment was received by the certified capital company; and (d) the investment date for the investment pool of the certified capital.

Certified capital companies are required to submit information to Commerce indicating the amount of certified capital placed in qualified investments and the amount of total certified capital provided by investors as of the scheduled dates by which the minimum percentage of the investment pool is required to be placed in qualified investments (30% within three years; 50% within five years). This information must be submitted to the Department within 30 days of the minimum investment dates.

Also, a certified capital company must notify Commerce of a violation of qualified investment requirements by a qualified business and of the facts that contributed to the violation as soon as practicable after receiving news of the violation.

Certified capital companies are required to pay an application fee of $7,500 and an annual nonrefundable certification fee of $5,000 to Commerce. Fees are placed in a program revenue appropriation for administrative expenses. An annual report must be filed with Commerce by each January 31 which includes: (a) the amount of the certified capital company's certified capital at the end of the preceding year; (b) whether the certified capital company has invested more than 15% of its total certified capital in any one person; and (c) all qualified investments that the certified capital company has made during the previous calendar year and the investment pool from which each qualified investment was made.

Certified capital companies must provide Commerce with copies of annual audited financial statements, including opinions of independent certified public accountants, within 90 days after the end of each fiscal year. The audits must address the methods of operation and conduct of the business to determine if the company is complying with statutory provisions and administrative rules, including determining compliance with investment requirements. The financial statements are required to be segregated by investment pool and audited on that basis.

Any document submitted to Commerce under these provisions that contains trade secrets or business secrets, as determined by the Department, are not subject to the right of inspection and copying under the state open records law.

Records Requirements. Each certified capital company is required to prepare and maintain, on a current basis, and make available to the Department of Commerce the following records:

a. A complete executed copy of the application to become a certified capital company and any amendments and attached schedules.

b. Files for each director and principal of the certified capital company containing evidence that at least two of the principals meet the requirements regarding two years experience in the venture capital industry.

c. Records of all the securities issued by the certified capital company including information relating to the investor, type of security, amount of investment, and prospectus or offering material.

d. Records relating to each certified investor of the certified capital company that include each investor's state and federal tax identification numbers and premium tax identification number.

e. Records of each qualified business invested in by the certified capital company including certain information relating to the business, such as its location and principal business operations, evidence that it meets the definition of qualified business, the amount and type of investment in the business, a copy of any contractual agreement, copies of any prospectus or offering material used in connection with the sale of securities by the business, and the number of jobs created by the qualified business.

f. Organizational documents of the certified capital company and amendments based on the type of organization structure including, if applicable, articles of incorporation, articles of organization, certificate of limited partnership, partnership agreement, operating agreement, bylaws, and evidence of registration with the Department of Financial Institutions.

g. Records relating to the certified capital of the certified capital company that is not invested in qualified businesses.

h. Records relating to all distributions by the certified capital company including the dates, amounts, recipients, purposes, and reference to authority for such distributions.

i. Financial records, prepared in accordance with generally accepted accounting principles, that include: a journal or journals (including cash receipts and disbursements records) or other records of original entry forming the basis of entries in any ledger; general and auxiliary or other comparable records reflecting asset, liability, reserve, capital, and income and expense accounts; and all bills or statements or copies, paid and unpaid, relating to the business of the certified capital company.

These records must be retained by the certified capital company at a state office for at least 10 years while the certified capital company is certified and at least five years after decertification.

Compliance Reviews, Decertification, and Disqualification. The Department of Commerce is required to conduct an annual compliance review of each certified capital company to determine if the company is complying with the statutory requirements, to advise the company regarding the status of its investment as a qualified investment, and to ensure that no investment was made in violation of the statutory provisions. The Department may charge certified capital companies a reasonable fee to cover the costs of compliance reviews.

If Commerce determines that a certified capital company is not complying with the statutory schedule for qualified investments for an investment pool, it is authorized to disqualify that investment pool. The Department is required to send written notice to the certified capital company and OCI indicating that the investment pool has been disqualified.

Commerce is authorized to decertify a certified capital company for noncompliance with statutory investment, reporting, and fee requirements. A certified capital company can also be decertified if the company: violates material administrative rules provisions; misrepresents, conceals, or provides false facts or statements in required applications, reports, or information; is convicted or pleads guilty or nolo contendere to a crime under state, federal, or international laws involving a fraudulent act related to operation of a certified capital company or in performance of fiduciary duties in another capacity; has been adjudicated liable in a civil action on grounds of fraud, breach of fiduciary trust, embezzlement, misrepresentation, or deceit; or fails to maintain requirements for certification as a certified capital company. If Commerce determines that a certified capital company is not in compliance with the statutory provisions or has violated administrative provisions, the Department sends written notice to the company that it may be subject to decertification within 120 days from the date on which the notice was mailed, unless the company brings itself into compliance. If, at the end of the 120-day period, the certified capital company is not in compliance with the statutory provisions, Commerce must send a notice of decertification to the certified capital company and OCI.

If a certified capital company is decertified or an investment pool disqualified before the first stage of scheduled required qualified investments are made (30% in three years), any insurer that receives a credit based on its investment in that decertified capital company or disqualified investment pool is required to repay the credit and cannot claim future credits based on that particular investment. If a certified capital company complies with the first stage of scheduled qualified investment requirements for an investment pool, but is decertified or an investment pool is disqualified before the second stage of scheduled qualified investments are made (50% in five years), any insurer that received a credit based on its investment in the decertified capital company or disqualified investment pool is required to repay all credits claimed for the third tax year following the investment date of that investment and cannot claim credits for the following years based on the investment. Commerce is required to notify a certified investor when these recapture provisions no longer apply to a certified investment.

Voluntary Decertification. A certified capital company may voluntarily decertify itself if either of the following conditions are met:

a. It has been at least ten years since the last certified capital investment was made in the certified capital company; or

b. The certified capital company has placed an amount equal to 100% of the certified capital investment in qualified investments.

A certified capital company that voluntarily decertifies itself is required to send notice to Commerce that it was eligible for such action. The decertification is effective on the date the notice was received by Commerce.

Department of Commerce Evaluation. Beginning on March 31, 2000, and on March 31 of each even-numbered year thereafter, Commerce must submit a report to the chief clerk of each house of the Legislature that includes:

a. The total amount of certified capital investments made under the program and the amount made during the previous two calendar years.

b. Statistical information on the qualified investments made by certified capital companies during the previous two years; and

c. The Department's assessment of the number of jobs created in Wisconsin during the previous two years as a result of the certified capital company program.

Program Activity. In October, 1999, Commerce certified $50 million of certified capital investments in three venture capital firms. The three certified firms and their allocations are as follows: (a) Advantage Capital Wisconsin Partners I, Limited Partnership, Madison, $16.6 million; (b) Banc One Stonehenge Capital Fund Wisconsin, LLC, Milwaukee, $16.6 million; and (c) Wilshire Investors, LLC, Mequon, $16.6 million.

As of December, 2002, the three certified capital companies had made total qualified investments as follows: (a) Advantage Capital Wisconsin Partners I, Limited Partnership -- $7.6 million in six investments; (b) Banc One Stonehenge Capital Fund Wisconsin, LLC -- $5.1 million in six investments; and (c) Wilshire Investors, LLC -- $5.2 million in four investments. The sixteen qualified investments were made in 14 qualified businesses. Two businesses received investments from two certified capital companies.

A total of thirty-three insurance companies made certified capital investments of $50 million in the three certified capital companies. The total amount of insurance premium tax credits claimed by these companies are: (a) 1999 -- $4.8 million by 30 companies; (b) 2000 -- $4.8 million by 33 companies; (c) 2001 -- $4.8 million by 31 companies; and (d) 2002 -- $4.8 million by 32 companies.

SUMMARY OF SUBSTITUTE AMENDMENTS

Senate Substitute Amendment LRB 0263/2 to Senate Bill 249 and Assembly Substitute Amendment LRB 0231/5 to Assembly Bill 531 would authorize an additional amount of certified capital investments, create a certified capital company income and franchise tax credit, and modify certified capital companies program provisions related to certification and operation of certified capital companies, distributions, reporting requirements, voluntary decertification, and other administrative provisions.

Insurance Premiums Tax Credit. The substitute amendments would provide an insurance premiums tax credit against premium tax liabilities equal to the lesser of a certain percentage of a certified capital investment or the amount by which the sum of the claimant's certified capital investments and qualified investments exceeded the claimant's qualified investments in the tax year in which the credit was first claimed. The tax credit could be claimed over 10 years beginning with the year of investment. In each of the first two tax years, the tax credit would equal 7.5% of the claimant's certified capital investment. In each of the following eight tax years, the tax credit would equal 10.625% of the claimant's certified capital investment. As a result, tax credits equal to 100% of the claimant's certified capital investments could be claimed over 10 years. The credit would first apply to taxable years beginning on July 1, 2005.

Franchise Tax Credit. The substitute amendments would create a certified capital investment tax credit, under the state individual and corporate income and franchise taxes, for insurers, financial institutions, and certain utilities. The income and franchise tax credit could be claimed by light, heat, and power companies; transmission companies; wholesale electric companies; electric cooperative associations, air carriers, railroads, sleeping car companies, and car line companies; pipeline companies; conservation and regulation companies; telephone companies; insurance companies; credit unions; savings banks; banks; and savings and loan associations.

Similar to the insurance premiums tax credit provided under the substitute amendments, the tax credit would equal the lesser of a specified percentage of the claimant's certified capital investment or the amount by which the sum of the claimant's certified capital investments and qualified investments exceeded the claimant's qualified investments in the tax year in which the credit was first claimed. In order to claim the income and franchise tax credit, the claimant would have to make a certified capital investment of at least $1.0 million. The credit could be claimed for 10 years, beginning with the year of investment. For each of the first two tax years for which the credit was claimed, the tax credit would equal 7.5% of the claimant's certified capital investment. For each of the following eight tax years for which the credit was claimed, the tax credit would equal 10.625% of the claimant's certified capital investment. As a result, tax credits equal to 100% of the claimant's certified capital investment could be claimed over 10 years.

Unused credit amounts could be carried forward up to 15 years to offset future tax liabilities. The Department of Revenue would administer the franchise tax credit, and current law provisions related to change of business or ownership and timely claims under the research credit would apply to the certified capital company credit. An insurer could sell credits to another insurer if the seller notifies OCI and DOR of the sale and provides a copy of the transfer papers with the notification.

Partnerships, limited liability companies, and tax-option corporations (S corporations) could not claim the tax credit, but eligibility for, and the amount of, the credit would be based on the entities' certified capital investments. Partnerships, LLCs, and tax-option corporations would be required to compute the amount of credit that each of their partners, members, or shareholders could claim and provide that information to them. Partnerships, members of LLCs, and shareholders of tax-option corporations would claim the tax credit in proportion to their ownership interest.

If a certified capital company was decertified or an investment pool disqualified before the first stage of the qualified investment schedule was met (30% of investment pool in three years), any claimant that received a credit based on its investment in that decertified capital company or disqualified investment pool would be required to repay the credit and could not claim future credits based on that particular investment. If a certified capital company complied with the first stage of the qualified investment schedule, but was decertified or an investment pool was disqualified before the company complied with the second stage of the qualified investment schedule (50% of investment pool in five years), any claimant that received a credit based on its investment in the decertified capital company or disqualified investment pool would be required to repay all credits claimed for the third tax year following the investment date of that investment and could not claim credits for the following years based on the investment. Commerce would be required to notify a certified investor when these recapture provisions no longer applied to a certified investment.

These provisions would also first apply to taxable years beginning on July 1, 2005.

Certified Capital Investments. The substitute amendments would authorize Commerce to certify an additional $75 million in certified capital investments. The Department could certify a capital investment for a single investor, along with all of its affiliates, up to the greater of $10 million or 15% of the total amount of additional certified capital investments authorized ($75 million).

The substitute amendments require that if, as a result of the total statewide ($75 million) or individual investor ($10 million/15%) limits on new certified capital investments, Commerce could not certify the full amount of requested certified capital investments, Commerce would prorate the available investment amounts based on the relative amount each investor had committed to invest in a certified capital company. However, if the available amounts of certified capital investments were such that after they were prorated and allocated to eligible certified capital companies, the total amount of certified capital that a certified capital company would be allocated would be less than $10 million, no allocation could be made to that certified capital company. If, after the available amounts of certified capital investments were allocated to eligible certified capital companies, no certified capital company would have $10 million or more in certified capital, Commerce would be authorized to promulgate administrative rules providing for an alternative method of allocating the certified capital investments. Commerce could promulgate the rule as an emergency rule without providing evidence that promulgating the rule is necessary for public peace, safety, or welfare.

Under current law, a certified capital investment in a certified capital company is an investment that fully funds either the investor's equity interest in the company, a qualified debt instrument issued by the certified capital company, or both. The substitute amendments would modify the definition of "qualified debt instrument" to require that the instrument's repayment schedule be no faster than a level principal amortization over five years and that the debt instrument does not permit the certified investor to receive prepayment of interest.

Provisions that apply to the investment ownership management and control limits on certified investors regarding certified capital companies would be modified. The current law provision that prohibits a certified investor in a certified capital company from being a general partner or manager of the certified capital company would be expanded to preclude a certified investor from being an affiliate of a certified capital company. The substitute amendments provide that any person, rather than a certified investor as under current law, would not be precluded from exercising its legal rights and remedies, including interim management of a certified capital company, if the company defaults on its statutory or contractual obligations. The substitute amendments further specify that a person is not precluded from establishing controls to ensure that a certified capital company meets the schedule for required investment pool qualified investments. This provision would be effective retroactively to May 13, 1998.

Certified Capital Companies. The current law provision that requires Commerce to certify a person as a certified capital company if certain conditions are met, would be changed to authorize, but not require, the Department to certify the capital company if those conditions are met. In addition, the current law conditions that a capital company must meet to be certified would be modified and expanded as follows:

a. The current law provision that, to be certified, a person must have a net worth of $500,000 and at least $500,000 in cash, cash equivalents, and marketable securities on the application date would be modified to require the person to meet those requirements on the certification date as well.

b. The person would be statutorily required to maintain an investment office and staff actively engaged in making investments in Wisconsin until all investment pools have been decertified.

c. The person would be required to provide Commerce with a list of all persons that have an ownership interest in the capital company. The list would have to include the percentage ownership of each person and whether the interest was voting or non-voting. If a person was an entity registered with the Securities and Exchange Commission under federal law, the listing would have to include only those persons having beneficial ownership of equity securities of 5% or more.

If the listing included a business entity, the listing would also have to include all persons with an ownership interest in the entity, both voting and nonvoting.

d. The person would be required to submit to Commerce: (1) its business plan covering at least the five-year period following the application date; (2) an organizational chart; and (3) its investment strategy including a description of its investment criteria. "Investment criteria" would be a certified capital company's investment criteria submitted to the Department of Commerce as part of the certification process or any subsequent investment criteria that are approved by Commerce as provided under administrative rule.

Commerce would be required to promulgate rules for certifying capital companies as eligible for receiving the capital investment authorized under the bill. As under current law, the Department would have to approve or deny the application within 30 days of the date of application. If an application for certification was denied by Commerce, a capital company would have the right to file an amended application for certification within 15 days of the denial. Commerce would be required to grant or deny the amended application for certification within 15 days of the date of the amended application. If Commerce denied the amended application, it would have to include with the denial a detailed description of the grounds for the refusal. The capital company could, within 10 days after the Department's decision, request a contested case hearing from Commerce. If the final administrative or judicial proceeding determined that the application was denied in error, Commerce would be required to revise its determination to reflect the results of the proceeding.

The substitute amendments would preclude utilities, financial institutions, and insurance companies that are eligible for certified capital company income and franchise tax credits from managing or controlling or being an affiliate of a certified capital company, if a company was a certified investor in that certified capital company.

Operation of Certified Capital Companies. The substitute amendments would modify the requirements for a qualified investment. A cash investment in the qualified business for the purchase of an equity security in the business could specifically include options, warrants, and other entity participation instruments but, after the investment and assuming full conversion and exercise of any equity participation instrument, could not result in the certified capital company owning more than 50% of the voting equity of the qualified business. Commerce would be authorized to grant an exception to this limit. The conditions for a qualified investment in a debt security would be modified to require that: (a) the debt is not secured by a first priority lien on any of the assets of the qualified business at the time of the certified capital company's qualified investment in the business; or (b) the debt is convertible into equity securities or options, warrants, or other equity participation instruments or has attached equity participation rights, unless full conversion and exercise of the debt and equity participation instruments results in the certified capital company owning more than 50% of the voting equity of the qualified business. However, Commerce would have authority to approve such investments.

Under the substitute amendments, current provisions that require the qualified business to agree to certain conditions for investment would be modified. The qualified business would have to maintain at least 75% of its employees in Wisconsin or pay at least 75% of its total payroll to employees in Wisconsin. The requirement that the business maintain at least 75% of its employees at work sites of the qualified business at the time of investment would be modified to, alternatively, require 75% of the employees to be at work sites that are within 25 miles of the location of the headquarters or principal business operations of the qualified business at the time of the investment. The qualified business could not use the proceeds from the investment for the purpose of relocating its operations, unless it relocated to Wisconsin. Finally, the investment in the business would have to be consistent with the certified capital company's investment criteria. Commerce would be permitted to grant exemption from the specific qualified investment requirements if it determined the qualified business was in substantial compliance with the requirements.

The substitute amendments would expand the definition of qualified business as follows:

a. The current law provision that requires a qualified business have no more than 100 employees and at least 75% of its employees employed in the state would be modified to alternatively include a business that paid at least 75% of its total payroll to employees employed in the state.

b. The current law provision which requires the business to be headquartered in Wisconsin and have its principal business operations in the state would be modified to alternatively include a business that commits to relocate its headquarters and its principal business operations to Wisconsin within 90 days after the date on which the certified capital company makes its first investment in the business.

c. The business could not be predominantly engaged in professional services provided by business consultants.

d. The business could not be engaged in lobbying or political consulting.

e. The business could not be predominately engaged in retail sales, unless the business was approved by Commerce.

f. The business could not be a business that was organized by a certified capital company or an affiliate of a certified capital company. However, a certified capital company would be permitted to provide financial, technical, or other similar advice to a business prior to making an investment in the business.

g. The business would have to be predominantly engaged in: (1) manufacturing, processing, or assembling products; (2) providing services, unless the services were of a nature disapproved of by Commerce; (3) conducting research and development; or (4) any other business not expressly excluded by the law and that is approved by Commerce.

h. The business could not have a financial relationship with a certified capital company or any affiliate before the date on which the certified capital company made its first investment in the business, unless approved by Commerce. A certified capital company would not be prohibited from providing financial advice to the business prior to investing in it.

Prior to making an investment in a specific business the certified capital company would be required to provide Commerce with a description of the proposed investment in a format prescribed by the Department. Within 15 business days from receiving this information, Commerce would be required to: (a) determine if the business in which the certified capital company proposed to invest was a qualified business; (b) determine whether the proposed investment was consistent with the certified capital company's investment criteria; and (c) if the business was not qualified or the investment inconsistent with the criteria, notify the certified capital company in writing and provide an explanation of its determination and reasons for it. If Commerce failed to notify the certified capital company of its determination within 15 business days, the business would be deemed to be qualified and the investment would be deemed to be consistent with the certified capital company's investment criteria.

In cases where Commerce determined that a proposed investment was not consistent with a certified capital company's investment criteria, the certified capital company could, within 10 days after the Department's determination, request a contested case hearing. If the final administrative or judicial proceedings resulted in a determination that the investment was consistent with criteria, the Department would be required to issue a redetermination reflecting those results.

As part of the 15-day approval process, Commerce would be authorized to make a determination that a business that would not otherwise meet the requirements of qualified business was a qualified business, if the certified capital company's proposed investment in the business would further the goals of the certified capital company law.

The required schedule for qualifying investments by an investment pool would be modified. Under current law, at least 50% of the investment pool must be placed in qualified investments within five years after the investment date. The substitute amendments would require that 50% of these investments be placed in qualified investments in early stage businesses. An early stage business would be defined as a qualified business that meets one of the following criteria: (a) is involved in activities related to prototype development, establishment of initial production or service processes, or other development of initial product or service offerings at the time of a certified capital company's initial investment in the business; (b) had gross revenues of less than $2.0 million, on a consolidated basis, as determined in accordance with generally accepted accounting principles, during the fiscal year immediately preceding the year of the certified capital company's investment in the business; or (c) is otherwise approved by Commerce as an early stage business as part of the procedure for approving qualified businesses as established under the substitute amendments.

The substitute amendments would authorize a certified capital company to expend moneys in an investment pool to purchase guarantees, indemnities, bonds, insurance policies, U.S. Treasury securities, other investment-grade securities, or other payment undertakings for the benefit of its certified investors. However, a certified capital company could not spend more than 25% of an investment pool for the purpose of obtaining guarantees, indemnities, bonds, insurance policies, U.S. Treasury securities, or other payments. In addition, only one certified investor or one of its affiliates would be permitted to provide the guaranty, indemnity, bond, insurance policy, or payment undertaking to benefit the investors of a certified capital company and its Wisconsin affiliates. The provisions specifying the use of investment pool funds would be effective retroactively to May 13, 1998. The percentage limit on use of investment pool funds would not be retroactive.

During the time a certified capital company held an investment in a qualified business, if that qualified business violated an agreement to meet the requirements that make an investment in the business a qualified investment, the violation would not affect the certified capital company in meeting the required schedule for percentage of qualified investments for investment pools (30% in three years/ 50% in five years). In these cases, 100% of the amount of the qualified investment in the business would be counted toward satisfaction of the investment requirements. However, for purposes of determining eligibility for making distributions and for voluntary decertification, only a specified portion of such investments would be counted in determining if 100% of the certified capital investments in an investment pool had been placed in qualified investments. The portion of the investment that would be recognized would depend upon the time after the qualified investment was made in which the business violated an agreement and is shown in the table below.

Year in Which Agreement is Violated	Amount of Investment Counted
Within first year	0%
Between 1 and 3 years	25%
Between 3 and 5 years	50%
More than 5 years	90%

Commerce would be authorized to grant an exception and not reduce the amount of qualified investment that would be counted towards the percentage requirements for eligibility to make distributions or to voluntarily decertify, unless the Department determined that the qualified business was locating employees at a new site to take advantage of lower wage rates in areas where those sites are located.

The current law provision regarding nonqualified investments would be changed to require that all certified capital investments in a certified capital company that were not invested in qualified investments could be held or invested only in any of the following:

a. Deposits with a federally insured financial institution, as defined under state law. (Any organization authorized to do business under state or federal laws relating to financial institutions, including, but not limited to, banks and trust companies, savings banks, building and loan associations, saving and loan associations, and credit unions.)

b. Certificates of deposit in a federally insured financial institution, as defined under state law.

c. Investment securities that are obligations of the United States or its agencies or instrumentalities, or that are obligations with principal and interest fully guaranteed by the U.S.

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 for which payment is guaranteed 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.

g. Swaps 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, if the portfolios are limited to cash and other nonqualified investments that would be permissible under the bill.

j. A small business investment company approved by Commerce.

k. Any other investments approved in advance in writing by Commerce.

Distributions. Under the substitute amendments, a qualified distribution would be a distribution or payment by a certified capital company for specified purposes. Reference to the company's equity holders would be deleted. Current eligible uses for qualified distributions would be modified as follows:

a. Costs related generally to managing or operating the certified capital company would be deleted. The costs of forming and syndicating the certified capital company would continue to be eligible for distributions. However, distributions for such purposes would be limited to a maximum of $750,000.

b. The substitute amendment would specify that the annual management fee could not exceed 2.5% of the certified capital company's total certified capital or the costs of managing and operating the company, whichever is less.

c. Penalties and interest on federal and state taxes would be eliminated (taxes would remain an eligible cost).

d. Reasonable costs associated with applying to qualified federal funding programs, as determined by Commerce, would be an eligible use for a qualified distribution.

e. The provision allowing a qualified distribution for reasonable and necessary fees paid for professional services related to the operation of the company would be repealed.

The substitute amendments provide that if a certified capital company violated the percentage limit on certain types of expenditures that could be made from an investment pool (25% of moneys for U.S. treasury securities, guarantees, indemnities, bonds, insurance policies, payment undertakings) or failed to make scheduled qualified investments (30% in three years/50% in five years), Commerce could order the certified capital company to reduce its annual management fee to either a percentage of the certified capital company's certified capital or a total dollar amount specified by Commerce. Within 10 days of receiving the order, the certified capital company could request a contested case hearing from the Department. If the final administrative or judicial proceedings resulted in a determination that the order was issued in error or was unreasonable, Commerce would be required to revise or rescind the order to reflect the determination.

Authority to make distributions after the certified capital company has placed 100% of the certified capital investments in the investment pool in qualified investments would be modified. Specifically, the substitute amendments would require that at least 60% of those qualified investments would have to be purchases of: (a) equity securities: (b) options, warrants, or other equity participation instruments; or (c) debt that is convertible into equity securities or options, warrants, or other equity participation instruments

State Participation in Investment Returns. The substitute amendments would require that the state receive a distribution equal to 30% of the cumulative net profits and gains, including capital gains, interest, dividends, and royalties, realized by a certified capital company on its qualified investments. Distributions of profits and gains to the state would have to be made at the same time as such distributions were made to the equity holders of the certified capital company. The amount distributed to the state could be reduced to 20%, if the certified capital company, either at the time certified capital investments are made in the company or after, raises an additional pool of non-certified venture capital funds that are in an amount and for an investment purpose approved by Commerce. Distributions received by the state would be placed in the general fund.

Reporting Requirements. Additional reporting requirements for certified capital companies would be established. Certified capital companies would be required, within three business days after making a qualified investment, to report all of the following to Commerce: (a) the name of the qualified business in which the qualified investment was made; (b) the amount of the qualified investment; and (c) the type of investment.

Thirty days after the scheduled dates for percentage of qualified investments for investment pools (30% in three years/ 50% in five years), a certified capital company would be required to report to Commerce, in the format and substance prescribed by the Department, information Commerce required for determining whether the certified capital company has complied with the percentage of qualified investment schedule for an investment pool. (This provision mirrors current administrative rules.)

The current requirement that certified capital companies file an annual report would be changed to require a semiannual report for the preceding six-month period ending on December 31, to be filed on or before January 31, and a report for the preceding six-month period ending on June 30, to be filed on or before July 31. As a result, the report would be required to include the amount of certified capital and all qualified investments from each investment pool for the preceding six-month period. In addition, the report would have to include: (a) all amounts expended to purchase U.S. treasury securities, guarantees, indemnities, bonds, insurance policies, or other payment undertakings for the certified investors; (b) the investment pool from which each expenditure was made; and (c) the percentage of the total amount of each investment pool that each expenditure represented. The current provision that requires information on whether the certified capital company has invested more than 15% of its total certified capital in any one person would be retained.

The substitute amendments would modify the provisions governing submission of audited financial statements to also require a copy of a report on agreed-upon procedures prepared by an independent certified public accountant. The report would have to identify the procedures performed by the certified capital company, as prescribed by Commerce, that relate to methods of operation and conduct of business to enable the Department to determine if the certified capital company was conforming with statutory provisions and administrative rules. The financial statements and agreed-upon procedures report would have to be segregated by investment pool to allow the Department to determine if the certified capital company was in compliance with statutory provisions and administrative rules. A statutory provision requiring investment pools to be separately audited would be deleted.

Voluntary Decertification. The substitute amendments would eliminate the current law provision that authorizes certified capital companies to voluntarily decertify if it has been ten years since the last certified capital investment was made in the certified capital company. As a result, a certified capital company could voluntarily decertify itself only if the certified capital company placed an amount equal to 100% of the certified capital investment in it in qualified investments.

Performance Evaluation Audit. The substitute amendments include a provision that requests the Joint Legislative Audit Committee to direct the Legislative Audit Bureau to conduct a performance audit of the certified capital companies program, that would include an evaluation of the overall effectiveness of the program. The Audit Bureau would be required to submit the report by January 1, 2005, to the Governor, Chief Clerks of the Senate and Assembly, Department of Administration, Legislative Reference Bureau, Joint Committee on Finance, Legislative Fiscal Bureau, and Department of Commerce.

Program Name Change. The substitute amendments would change the name of the certified capital companies program to the Wisconsin capital companies program.

Technical Modifications. Certain current law provisions that refer to certified capital corporations would be changed to certified capital companies to reflect the current law definition that permits certified capital companies to be entities other than corporations.

Applicability of Law Changes. The substitute amendments provide that, if a certified capital company is party to a contract that is in effect on the effective date of the substitute amendments and that contains provisions that are inconsistent with the changes to the certified capital company law made by the substitute amendments, but that are not inconsistent with any applicable law in effect immediately before the effective date of the substitute amendments, the parties to the contract may perform their obligations and exercise their rights under those provisions of the contract until it expires or is extended, modified, or renewed.

Effective and Applicability Dates. In general, the expansion and modifications to the certified capital companies program included in the substitute amendments would first apply to certified capital companies for which investments are first certified and to certified capital investments that are first certified on or after the day after publication. However, as noted, the insurance premiums tax credit and the corporate franchise tax credits created under the substitute amendments could only be claimed by eligible companies for tax years beginning on or after July 1, 2005.

FISCAL EFFECT

Insurance Premiums and Income and Franchise Tax Credits. The substitute amendments would authorize an additional $75 million in certified capital investments. In addition, the substitute amendments would create a certified capital company tax credit for certain utility companies, certain financial institutions, and insurance companies under the individual and corporate income and franchise taxes. The tax credits could be claimed over 10 years. Both the insurance premiums tax credit and the individual and corporate income and franchise tax credits would equal 7.5% of the claimant's certified capital investments for each of the first two tax years and 10.625% for each of the following eight tax years. Carryforwards would be limited to 15 years under the individual and corporate income and franchise taxes. In addition, the premiums and franchise tax credits could be sold to other insurance companies and used to offset the purchaser's tax liability.

The maximum additional amount of certified capital investments that could be made would be $75 million and tax credits could be claimed for 100% of those investments over 10 years. The maximum amount of additional insurance premiums and individual and corporate income and franchise tax credits that could be claimed for each of the first two tax years would be $5,625,000, and the maximum amount of tax credits that could be claimed for each of the following eight tax years would be $7,968,750.

Based on information from the current certified capital companies program, and the experiences of other states with similar programs, it is estimated that the substitute amendments would reduce state insurance premiums and individual and corporate income and franchise tax revenues by $5,625,000 during each of the first two tax years after implementation and by $7,968,750 during each of the following eight years. Under the effective date provisions of the substitute amendments, insurance premiums and income and franchise tax credits could first be claimed for tax years beginning on or after July 1, 2005. Depending on the type of businesses that made certified capital investments, annual insurance premiums, and individual and corporate income and franchise tax revenues would be reduced by $5,625,000 for fiscal years 2005-06 and 2006-07. Insurance premiums and income and franchise tax revenues would be reduced by $7,968,750 from fiscal years 2007-08 through 2014-15.

Department of Commerce Administration. The Department of Commerce would be responsible for administering the expanded certified capital companies program. In its fiscal note to Senate Bill 249, the Department indicates that the following would result in an increased workload: (a) in order to allocate additional tax credits to investors, an application cycle would have to be conducted to certify venture capital firms as certified capital companies and to certify investments in those firms; (b) the Department would be required to issue determinations as to whether or not a business was a qualified business eligible for certified capital company investments; and (c) Commerce could designate a business as a qualified business if certain general conditions were met, even if that business would not otherwise qualify under statutory provisions. Other current administrative activities that would increase to meet the expanded program include: (a) receiving and reviewing annual reports; (b) making written determinations regarding distributions from certified capital companies; (c) determining and providing written notice of disqualification of an investment; (d) conducting compliance reviews of certified capital companies; (e) ensuring that investment schedules have been met; and (f) responding to inquiries. In its fiscal note, Commerce indicates that it would require $69,800 and 1.0 grants specialist advanced position annually to administer the expanded program.

The substitute amendments would not provide Commerce with additional expenditure or position authority to administer the expanded certified capital companies program. However, certified capital companies must pay an application fee of $7,500, and an annual certification fee of $5,000 to the Department. Fees are placed in a continuing, program revenue appropriation for administrative expenses. Since the appropriation is a continuing appropriation, the Department can expend monies in the appropriation without specific expenditure authority. However, under a provision included in 2003 Wisconsin Act 33 (the 2003-05 biennial budget), the year-end unencumbered balance in the appropriation is lapsed to the general fund. The total annual certification fee from the three existing certified capital companies generates annual revenue of $15,000. The expanded program would result in additional application and annual certification fees. The annual revenue for the appropriation would depend upon the number of new venture capital firms that are certified.

Performance Audit. The substitute amendments would request the Joint Legislative Audit Committee to direct the Legislative Audit Bureau to conduct a performance audit of the effectiveness of the certified capital companies program and to submit a report by January 1, 2005. In its fiscal note to SB 249, the Audit Bureau indicates that it could absorb the costs of the audit within existing resources, although the ability to perform other evaluations could be affected.

State Participation. The substitute amendments require that the state receive a certain percentage of certain certified capital company distributions. Data is not currently available to estimate the timing and amount of such payments.

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