

By: Representatives Guice, Morris

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1562

1 AN ACT TO CREATE THE CERTIFIED CAPITAL COMPANY ACT; TO
 2 PROVIDE THAT A CERTIFIED INVESTOR WHO MAKES AN INVESTMENT OF
 3 CERTIFIED CAPITAL PURSUANT TO AN ALLOCATION UNDER THIS ACT SHALL
 4 EARN A VESTED CREDIT AGAINST THE CERTIFIED INVESTOR'S INSURANCE
 5 PREMIUM TAX LIABILITY EQUAL TO 100% OF THE CERTIFIED INVESTOR'S
 6 INVESTMENT OF CERTIFIED CAPITAL; TO PROVIDE THAT A CERTIFIED
 7 INVESTOR IS ENTITLED TO TAKE A MAXIMUM OF 10% OF THE VESTED TAX
 8 CREDIT IN ANY TAX YEAR BEGINNING WITH THE 2005 TAX YEAR; TO
 9 PROVIDE THAT THE CREDIT CLAIMED IN ANY ONE TAX YEAR SHALL NOT
 10 EXCEED THE TAX LIABILITY OF THE INVESTOR FOR THE YEAR CLAIMED; TO
 11 PROVIDE THAT ALL UNUSED CREDIT MAY BE CARRIED FORWARD UNTIL THE
 12 CREDIT IS USED UP; TO PROVIDE THAT THE TOTAL AMOUNT OF CREDIT
 13 ALLOWED UNDER THIS ACT FOR ALL TAXPAYERS SHALL NOT EXCEED
 14 \$100,000,000.00 OR \$10,000,000.00 PER YEAR FOR 10 YEARS; TO
 15 PROVIDE FOR THE ALLOCATION OF SUCH CREDITS BY THE MISSISSIPPI
 16 DEVELOPMENT AUTHORITY; TO LIMIT THE AMOUNT OF THE TAX CREDIT
 17 ALLOCATION FOR EACH CERTIFIED INVESTOR; TO PROVIDE THAT
 18 APPLICATION MUST BE MADE TO THE MISSISSIPPI DEVELOPMENT AUTHORITY
 19 FOR CERTIFICATION AS A CERTIFIED CAPITAL COMPANY; TO PROVIDE FOR A
 20 FEE FOR SUCH CERTIFICATION; TO PROVIDE FOR REVIEW OF THE
 21 APPLICATIONS BY THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO REQUIRE
 22 CERTIFIED CAPITAL COMPANIES TO REPORT CERTAIN INFORMATION TO THE
 23 MISSISSIPPI DEVELOPMENT AUTHORITY; TO AUTHORIZE THE MISSISSIPPI
 24 DEVELOPMENT AUTHORITY TO ISSUE OPINIONS AS TO WHETHER AN
 25 INVESTMENT A CERTIFIED CAPITAL COMPANY PROPOSES TO MAKE IS A
 26 QUALIFIED INVESTMENT; TO REQUIRE THE MISSISSIPPI DEVELOPMENT
 27 AUTHORITY TO CONDUCT ANNUAL REVIEWS OF CERTIFIED CAPITAL COMPANIES
 28 TO DETERMINE IF THE CERTIFIED CAPITAL COMPANY IS ABIDING BY THE
 29 REQUIREMENTS OF CERTIFICATION; TO PROVIDE FOR A FEE FOR SUCH
 30 REVIEW; TO PROVIDE PENALTIES FOR DECERTIFICATION IN THE FORM OF
 31 RECAPTURE OR FORFEITURE OF TAX CREDITS; AND FOR RELATED PURPOSES.

32 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

33 **SECTION 1.** This act shall be known and may be cited as the
 34 Certified Capital Company Act.

35 **SECTION 2.** The state recognizes the importance of domestic
 36 small businesses in creating new employment and expanding the
 37 economy of the state.

38 In order to promote the foundation and growth of small
 39 business within the state, sufficient resources, both in the form
 40 of capital and management expertise, must be made available from
 41 both within and without the state.



42 The state hereby enacts this Certified Capital Company Act to
43 provide financial and management assistance to the formation of
44 new businesses and the expansion of existing small businesses
45 within the state by providing premium tax credits to insurance
46 companies to encourage the insurance companies to invest in
47 certified capital companies.

48 **SECTION 3.** For the purpose of this act, the following terms
49 shall have the following meanings:

50 (a) "Affiliate" of a certified capital company or
51 insurance company means:

52 (i) Any person, directly or indirectly
53 beneficially owning (whether through rights, options, convertible
54 interests or otherwise), controlling or holding power to vote
55 fifteen percent (15%) or more of the outstanding voting securities
56 or other voting ownership interests of the certified capital
57 company or insurance company, as applicable;

58 (ii) Any person, fifteen percent (15%) or more of
59 whose outstanding voting securities or other voting ownership
60 interests are directly or indirectly beneficially owned (whether
61 through rights, options, convertible interests or otherwise),
62 controlled or held with power to vote by the certified capital
63 company or insurance company, as applicable;

64 (iii) Any person directly or indirectly
65 controlling, controlled by, or under common control with the
66 certified capital company or insurance company, as applicable;

67 (iv) A partnership or limited liability company in
68 which the certified capital company or insurance company, as
69 applicable, is a general partner, manager or managing member, as
70 the case may be; or

71 (v) Any person who is an officer, director,
72 employee or agent of the certified capital company or insurance
73 company, as applicable, or an immediate family member of such
74 officer, director, employee or agent.



75 (b) "Allocation date" means the date on which the
76 certified investors of a certified capital company are allocated
77 tax credits by the authority pursuant to Section 6 of this act.

78 (c) "Authority" means the Mississippi Development
79 Authority.

80 (d) "Certified capital" means an investment of cash by
81 a certified investor in a certified capital company which fully
82 funds the purchase price of an equity interest in the certified
83 capital company or a qualified debt instrument issued by the
84 certified capital company.

85 (e) "Certified capital company" means a partnership,
86 corporation, trust or limited liability company, whether organized
87 on a for profit or not-for-profit basis, that has as its primary
88 business activity the investment of cash in qualified businesses
89 and that is certified as a certified capital company by the
90 authority by meeting the requirements of Section 4(1) of this act.

91 (f) "Certified investor" means any insurance company
92 that invests certified capital pursuant to an allocation of tax
93 credits under Section 6 of this act.

94 (g) "Experienced individuals" mean individuals who have
95 not less than four (4) years of experience making venture capital
96 investments, which may include investments made in connection with
97 a state or federally sponsored venture capital program.

98 (h) "Permissible investments" mean:

99 (i) Deposits with a financial institution that is
100 a member of the Federal Deposit Insurance Corporation;

101 (ii) Certificates of deposit issued by a financial
102 institution that is a member of the Federal Deposit Insurance
103 Corporation;

104 (iii) Investment securities that are obligations
105 of the United States, its agencies or instrumentalities, or
106 obligations that are guaranteed fully as to principal and interest
107 by the United States;



108 (iv) Commercial paper rated at least A1, P1 or its
109 equivalent by at least one (1) nationally recognized rating
110 organization;

111 (v) Debt instruments rated at least "AA" or its
112 equivalent by a nationally recognized rating organization, or
113 issued by, or guaranteed with respect to payment by, an entity
114 whose unsecured indebtedness is rated at least "AA" or its
115 equivalent by a nationally recognized credit rating organization,
116 and which is not subordinated to other unsecured indebtedness of
117 the issuer or the guarantor, as the case may be;

118 (vi) Obligations of this state, or any
119 municipality in this state, or any political subdivision thereof;

120 (vii) Interests in money market funds or other
121 mutual funds, the portfolios of which are limited to cash and
122 permissible investments;

123 (viii) Swaps or other hedging transactions with a
124 counterparty rated at least "A" or its equivalent by a nationally
125 recognized rating agency designed to realize and/or protect the
126 value of a qualified investment; or

127 (ix) Any other investments approved in advance and
128 in writing by the authority.

129 (i) "Person" means any natural person, corporation,
130 general or limited partnership, trust, limited liability company
131 or other entity.

132 (j) "Qualified business" means a business that meets
133 all of the following conditions as of the time of a certified
134 capital company's first investment in such business:

135 (i) It is headquartered and has its principal
136 business operations located in this state;

137 (ii) It is a small business concern that meets the
138 requirements of the U.S. Small Business Administration's
139 qualification size standards for its venture capital program, as



140 defined in Section 13 CFR 121.301(c) of the Small Business
141 Investment Act of 1958, as amended; and

142 (iii) It is not predominantly engaged in
143 professional services provided by accountants, lawyers or
144 physicians.

145 (k) "Qualified debt instrument" means a debt instrument
146 issued to a certified investor by a certified capital company, at
147 par value or a premium, with an original maturity date of at least
148 five (5) years from date of issuance and a repayment schedule that
149 is no faster than a level principal amortization over five (5)
150 years and that contains no interest, distribution or payment
151 features that are related to the profitability of the certified
152 capital company or the performance of the certified capital
153 company's investment portfolio until such time as the certified
154 capital company is permitted to make distributions other than
155 qualified distributions under Section 8 of this act.

156 (l) "Qualified distribution" means any distribution or
157 payment from certified capital or profits earned thereon in
158 connection with any of the following:

159 (i) Costs and expenses of forming, organizing and
160 syndicating the certified capital company, including the costs of
161 financing and insuring the obligations of the certified capital
162 company so long as, at the time the certified capital company
163 initially receives its investment of certified capital from its
164 certified investors, the certified capital company has cash or
165 permissible investments equal to at least fifty percent (50%) of
166 the amount of certified capital such certified capital company
167 initially received as investment from its certified investors;

168 (ii) Costs and expenses of managing and operating
169 the certified capital company, including, but not limited to,
170 reasonable and necessary fees paid for professional services (such
171 as legal and accounting services) related to the operation of the
172 certified capital company and an annual management fee in an



173 amount that does not exceed two and one-half percent (2-1/2%) of
174 the certified capital of the certified capital company; and

175 (iii) Any projected increase in federal or state
176 taxes, including penalties and interest related to state and
177 federal income taxes, of the equity owners of a certified capital
178 company resulting from the earnings or other tax liability of the
179 certified capital company without regard to any revenues or
180 expenses from other operations of affiliates of the certified
181 capital company, to the extent that the increase is related to the
182 ownership, management or operation of a certified capital company
183 or issuance, repayment or redemption of the qualified debt
184 instruments of the certified capital company.

185 (m) "Qualified investment" means the investment of cash
186 by a certified capital company in a qualified business for the
187 purchase of any debt, debt participation, equity or hybrid
188 security, of any nature and description whatsoever, including a
189 debt instrument or security which has the characteristics of debt
190 but which provides for conversion into equity or equity
191 participation instruments such as options or warrants. Any
192 qualified investment in the form of a debt instrument, including
193 those owned through debt participations, must have a final stated
194 maturity of at least one (1) year from the date of issuance and a
195 repayment schedule that is no faster than level principal
196 amortization over one (1) year. The preceding sentence shall not
197 prohibit (i) the qualified business from voluntarily prepaying the
198 qualified investments received at anytime, or (ii) the certified
199 capital company from exercising any of its rights as a creditor,
200 including the acceleration of the debt owed upon a default by the
201 qualified business under the terms of the debt instrument or the
202 acquisition, merger or the sale of all or substantially all of the
203 assets of the qualified business.

204 (n) "State premium tax liability" means any liability
205 incurred by an insurance company under the provisions of Sections



206 27-15-103 through 27-15-119 and Sections 27-15-121 through
207 27-15-127, or in the case of a repeal or reduction by the state of
208 the tax imposed by Sections 27-15-103 through 27-15-119 or
209 Sections 27-15-121 through 27-15-127, any other tax imposed upon
210 an insurance company by this state.

211 (o) "Tax credit" means the vested credit against state
212 premium tax liability that is earned at the time of investment by
213 a certified investor in connection with an investment of certified
214 capital in a certified capital company pursuant to this act.

215 (p) "Tax credit allocation claim" means a claim for
216 allocation of tax credits prepared and executed by an insurance
217 company on a form provided by the authority and filed by a
218 certified capital company with the authority. The form shall
219 include two (2) affidavits of the insurance company. Pursuant to
220 the first affidavit, such insurance company shall attest that it
221 is legally bound and irrevocably committed to make an investment
222 of certified capital in a certified capital company in the amount
223 of allocated tax credits (even if such amount is less than the
224 amount of the claim), subject only to the receipt of an allocation
225 pursuant to Section 6 of this act, and pursuant to the second
226 affidavit, the insurance company shall attest that it complies
227 with the requirements of Sections 4(4) and 6(6) of this act.

228 (q) "Tax credit allocation claim filing date" means the
229 date on which the authority will first accept tax credit
230 allocation claims on behalf of certified investors.

231 **SECTION 4.** (1) The authority shall certify an applicant
232 that meets the following requirements as a certified capital
233 company:

234 (a) The applicant has paid a nonrefundable application
235 fee of Fifteen Thousand Dollars (\$15,000.00) at or before the time
236 of filing its application with the authority.

237 (b) The applicant's equity capitalization at the time
238 of seeking certification shall be at least Five Hundred Thousand



239 Dollars (\$500,000.00) and shall be in the form of unencumbered
240 cash or cash equivalents. As part of its application, each
241 applicant shall submit to the authority its balance sheet, audited
242 with an unqualified opinion of a firm of independent certified
243 public accountants, of a date no more than thirty-five (35) days
244 prior to the date of the application. In addition, the applicant
245 shall submit an affidavit stating that, if certified, it will
246 maintain the equity capitalization, except for reductions due to
247 qualified distributions, until the allocation date.

248 (c) That at least two (2) principals of the applicant
249 or at least two (2) persons employed or engaged to manage the
250 funds of the applicant are experienced individuals. As part of
251 its application, each applicant will provide to the authority
252 affidavits, with detailed resumes or equivalent biographic
253 materials appended, from the experienced individuals stating that
254 their experience meets the requirement of this act. In addition,
255 the experienced individuals shall provide to the authority
256 affidavits stating that they have not violated federal or state
257 securities or banking laws or been convicted of any crime
258 involving fraud.

259 (d) The applicant shall provide an affidavit stating
260 that within sixty (60) days of the investment of certified capital
261 in the certified capital company, at least one (1) investment
262 professional of the certified capital company shall be primarily
263 located in an office of the certified capital company based in
264 this state.

265 (2) Within thirty (30) days of the filing of an application,
266 the authority shall issue the certification or shall refuse the
267 certification and communicate in detail to the applicant the
268 requirements of subsection (1) of this section that the applicant
269 failed to meet. If an applicant submits an amended application
270 within fifteen (15) days of receipt of refusal by the authority,
271 the authority shall have fifteen (15) days from the receipt of



272 such amended application within which to communicate its approval
273 or refusal of such amended application to the applicant. The
274 authority shall review and approve or reject applications in the
275 order submitted, and, in the event more than one (1) application
276 is received by the authority on any date, all such applications
277 shall be reviewed and approved simultaneously, except in the case
278 of incomplete applications.

279 (3) (a) As part of the application, an applicant shall
280 provide the authority with copies of either (i) its offering
281 materials, which may be in draft or preliminary form, or (ii)
282 other information that describes in reasonable detail the
283 structure of its qualified debt instruments and any other
284 securities to be issued to its certified investors so that the
285 authority may verify the certified capital company's compliance
286 with the requirements of this act and, if applicable, the
287 inclusion of the statement described in paragraph (b) of this
288 subsection.

289 (b) Any offering material involving the sale of
290 securities of the certified capital company shall include the
291 following statement:

292 "By authorizing the formation of a certified capital company,
293 the State of Mississippi does not necessarily endorse the quality
294 of management or the potential for earnings of such company and is
295 not liable for damages or losses to a certified investor in the
296 company. Use of the word 'certified' in an offering does not
297 constitute a recommendation or endorsement of the investment by
298 the Mississippi Development Authority. In the event applicable
299 provisions of the Certified Capital Company Act are violated, the
300 state may require forfeiture of unused tax credits and repayment
301 of used tax credits."

302 (4) (a) No insurance company or any affiliate of an
303 insurance company shall, directly or indirectly, beneficially own,
304 whether through rights, options, convertible interests or



305 otherwise, fifteen percent (15%) or more of the voting equity
306 interests of or manage a certified capital company or control the
307 direction of investments for a certified capital company.

308 (b) Paragraph (a) of this subsection shall not preclude
309 a certified investor, insurance company or any other party from
310 (i) exercising its legal rights and remedies, which may include
311 interim management of a certified capital company or ownership of
312 equity interests in excess of the limits contained herein, in the
313 event that a certified capital company is in default of its
314 statutory obligations or its contractual obligations to a
315 certified investor, insurance company or other person, or (ii)
316 establishing controls to insure that the certified capital company
317 satisfies the requirements of Section 7(1) of this act.

318 (c) Nothing in this subsection (4) shall limit an
319 insurance company's ownership of nonvoting equity securities or
320 other nonvoting ownership interests of a certified capital
321 company.

322 (5) A certified capital company may obtain a guaranty,
323 indemnity, bond, insurance policy and/or other payment undertaking
324 for the benefit of its certified investors from any entity;
325 however, in no case shall more than one (1) certified investor of
326 such certified capital company or affiliates of such certified
327 investor be entitled to provide such guaranty, indemnity, bond,
328 insurance policy and/or other payment undertaking in favor of the
329 certified investors of the certified capital company and its
330 affiliates in this state.

331 **SECTION 5.** (1) Any certified investor who makes an
332 investment of certified capital pursuant to an allocation of tax
333 credits under Section 6 of this act shall, at the time of
334 investment, earn a vested credit against state premium tax
335 liability equal to one hundred percent (100%) of the certified
336 investor's investment of certified capital. A certified investor
337 shall be entitled to take up to ten percent (10%) of the vested



338 tax credit to reduce the certified investor's state premium tax
339 liability for any taxable year of the certified investor
340 commencing with the tax year beginning in 2005, plus any amount of
341 unused tax credits which are carried forward pursuant to
342 subsection (2) of this section.

343 (2) The tax credit that may be applied against state premium
344 tax liability in any one (1) year may not exceed the state premium
345 tax liability of the certified investor for such taxable year.
346 All unused tax credits against state premium tax liability may be
347 carried forward indefinitely and used in any subsequent year until
348 the tax credits are utilized in full.

349 (3) A certified investor claiming a tax credit against state
350 premium tax liability earned through an investment in a certified
351 capital company shall not be required to pay any additional
352 retaliatory tax levied pursuant to Sections 27-15-121 through
353 27-15-127 as a result of claiming that tax credit.

354 (4) A certified investor is not required to reduce the
355 amount of tax pursuant to the state premium tax liability included
356 by the certified investor in connection with ratemaking for any
357 insurance contract written in this state because of a reduction in
358 the certified investor's tax liability based on the tax credit
359 allowed under this act.

360 (5) If the taxes paid by a certified investor with respect
361 to its state premium tax liability constitute a credit against any
362 other tax which is imposed by this state, the certified investor's
363 credit against such other tax shall not be reduced by virtue of
364 the reduction in the certified investor's tax liability based on
365 the tax credit allowed under this act.

366 **SECTION 6.** (1) The aggregate amount of certified capital
367 for which tax credits shall be allowed for all certified investors
368 under this act shall not exceed the amount that would entitle all
369 certified investors in certified capital companies to take
370 aggregate tax credits of One Hundred Million Dollars



371 (\$100,000,000.00) or Ten Million Dollars (\$10,000,000.00) per year
372 for ten (10) years. No certified capital company, on an aggregate
373 basis with its affiliates, may file tax credit allocation claims
374 in excess of the maximum amount of certified capital for which tax
375 credits may be allowed as provided in this subsection.

376 (2) Tax credits will be allocated to certified investors in
377 certified capital companies in the order that tax credit
378 allocation claims are received by the authority by such certified
379 capital companies on behalf of their certified investors. All
380 filings made on the same day shall be treated as having been made
381 contemporaneously. Filings made before the tax credit allocation
382 claim filing date will be considered to have been received by the
383 authority on the tax credit allocation claim filing date.

384 (3) (a) In the event that two (2) or more certified capital
385 companies file tax credit allocation claims with the authority on
386 behalf of their respective certified investors on the same day,
387 and the amount of such tax credit allocation claims exceeds in the
388 aggregate the limit of available tax credits under the provisions
389 of subsection (1) of this section, capital for which tax credits
390 are allowed shall be allocated among the certified investors who
391 filed on that day on a pro rata basis with respect to the amounts
392 claimed.

393 (b) Except as provided in paragraph (c) of this
394 subsection, the pro rata allocation for any one (1) certified
395 capital company shall be the product of a fraction, the numerator
396 of which is the amount of the tax credit allocation claim filed on
397 behalf of the certified investors of such certified capital
398 company and the denominator of which is the total of all tax
399 credit allocation claims filed on behalf of all certified
400 investors on such day, multiplied by the aggregate limitation as
401 provided in subsection (1) of this section, or such lesser amount
402 of tax credits that remains unallocated on such day.



403 (c) No allocation shall be made to any certified
404 capital company if that allocation results in less than five
405 percent (5%) of the maximum amount of certified capital for which
406 tax credits may be allocated under subsection (1) of this section
407 being invested in such certified capital company.

408 (d) If one or more certified capital companies that
409 filed tax credit allocation claims do not receive allocations of
410 certified capital by operation of paragraph (c) of this
411 subsection, the pro rata allocation to be made among the remaining
412 certified capital companies that filed tax credit allocation
413 claims shall be made as if the certified capital companies who do
414 not receive allocations by operation of the paragraph (c) of this
415 subsection had not filed tax credit allocation claims in the first
416 place.

417 (4) Within ten (10) business days after the authority
418 receives a tax credit allocation claim filed by a certified
419 capital company on behalf of one or more of its certified
420 investors, the authority shall notify the certified capital
421 company of the amount of tax credits allocated to each of the
422 certified investors in such certified capital company.

423 (5) (a) In the event a certified capital company does not
424 receive investments of certified capital in the aggregate equaling
425 the amount of tax credits allocated to its certified investors for
426 which it filed tax credit allocation claims within ten (10)
427 business days of its receipt of notice of allocation, that portion
428 of the tax credits allocated to the certified investors in the
429 certified capital company in excess of the amount of certified
430 capital invested in the certified capital company by such date
431 will be forfeited, and the authority will reallocate that amount
432 among the other certified capital companies on a pro rata basis
433 with respect to the tax credit allocation claims filed on behalf
434 of such other certified investors of each such certified capital
435 company.



436 (b) In the event a certified capital company does not
437 receive investments of certified capital in the aggregate equaling
438 or exceeding five percent (5%) of the maximum amount of certified
439 capital for which tax credits may be allocated under subsection
440 (1) of this section within ten (10) business days of its receipt
441 of notice of allocation, then, at the discretion of the authority,
442 all of the tax credits allocated to the certified investors in
443 that certified capital company may be forfeited. If forfeited,
444 the authority shall reallocate that certified capital among the
445 other certified capital companies on a pro rata basis with respect
446 to the tax credit allocation claims filed on behalf of such other
447 certified investors of each such certified capital company.

448 (6) The maximum amount of tax credit allocation claims that
449 may be filed on behalf of any one (1) certified investor, on an
450 aggregate basis with its affiliates, in one or more certified
451 capital companies, shall not exceed the lesser of either (a) the
452 greater of (i) Ten Million Dollars (10,000,000.00), or (ii)
453 fifteen percent (15%) of the aggregate limitation as provided in
454 subsection (1) of this section, or (b) ten (10) times the largest
455 annual state premium tax liability incurred by the certified
456 investor on an aggregate basis with its affiliates during the
457 three (3) tax years preceding the year of the allocation date for
458 which final returns have been filed.

459 **SECTION 7.** (1) To continue to be certified, a certified
460 capital company must make qualified investments according to the
461 following schedule:

462 (a) Within the period ending three (3) years after its
463 allocation date, a certified capital company must have made
464 qualified investments cumulatively equal to at least thirty
465 percent (30%) of its certified capital.

466 (b) Within the period ending five (5) years after its
467 allocation date, a certified capital company must have made



468 qualified investments cumulatively equal to at least fifty percent
469 (50%) of its certified capital.

470 (2) The aggregate cumulative amount of all qualified
471 investments made by the certified capital company from its
472 allocation date will be considered in the calculation of the
473 percentage requirements under this act. Any funds received from a
474 qualified investment may be invested in another qualified
475 investment and shall count toward any requirement in this act with
476 respect to investments of certified capital.

477 (3) Any business which is classified as a qualified business
478 at the time of the first investment in such business by a
479 certified capital company shall remain classified as a qualified
480 business and may receive follow-on investments from any certified
481 capital company, and such follow-on investments shall be qualified
482 investments even though such business may not meet the definition
483 of a qualified business at the time of such follow-on investments.

484 (4) No qualified investment may be made if the aggregate
485 investment by the certified capital company in the qualified
486 business following such investment would exceed fifteen percent
487 (15%) of the total certified capital of the certified capital
488 company at the time of investment.

489 (5) At its option, a certified capital company, prior to
490 making a proposed investment in a specific business, may request
491 from the authority a written opinion as to whether the investment
492 which it proposes to make will be considered a qualified
493 investment. Upon receiving such a request, the authority shall
494 have fifteen (15) business days to determine whether or not the
495 proposed investment meets the definition of a qualified investment
496 and notify the certified capital company of its determination and
497 explain its determination. If the authority fails to notify the
498 certified capital company with respect to the proposed investment
499 within the fifteen (15) business-day period, the proposed
500 investment shall be deemed to be a qualified investment. If the



501 authority determines that the proposed investment does not meet
502 all of the criteria set forth in the definition of qualified
503 investment, the authority may nevertheless consider the proposed
504 investment a qualified investment and approve the investment if
505 the authority determines that the proposed investment will further
506 economic development of the state.

507 (6) All certified capital held by the certified capital
508 company and not currently invested in qualified investments by the
509 certified capital company must be invested in permissible
510 investments. This subsection shall not apply to securities
511 received by a certified capital company in exchange for a
512 qualified investment prior to the conversion of such securities
513 into cash or cash equivalents.

514 (7) Each certified capital company shall report the
515 following to the authority:

516 (a) Within thirty (30) days after the receipt of
517 certified capital, (i) the name of each certified investor from
518 which the certified capital was received, including such certified
519 investor's insurance premium tax identification number, (ii) the
520 amount of each certified investor's investment of certified
521 capital and tax credits, and (iii) the date on which the certified
522 capital was received.

523 (b) On an annual basis, on or before January 31, (i)
524 the amount of the certified capital company's certified capital at
525 the end of the immediately preceding year, (ii) whether or not the
526 certified capital company has invested more than fifteen percent
527 (15%) of its total certified capital in any one (1) qualified
528 business, and (iii) a description of all qualified investments
529 that the certified capital company made during the previous
530 calendar year.

531 (c) Within ninety (90) days of the close of such
532 certified capital company's fiscal year, annual audited financial



533 statements, which shall include the opinion of an independent
534 certified public accountant regarding the financial statements.

535 (8) Each certified capital company shall pay an annual,
536 nonrefundable certification fee of Five Thousand Dollars
537 (\$5,000.00) on or before January 31 of each year, or Ten Thousand
538 Dollars (\$10,000.00) if paid later, to the authority; however, the
539 fee shall not be required within six (6) months of the initial
540 certification date of a certified capital company.

541 **SECTION 8.** (1) A certified capital company may make
542 qualified distributions at any time. In order to make a
543 distribution from certified capital other than a qualified
544 distribution, a certified capital company must have made qualified
545 investments in an amount cumulatively equal to at least one
546 hundred percent (100%) of its certified capital. A certified
547 capital company may, however, make payments of principal and
548 interest on its indebtedness without any restriction whatsoever,
549 including payments of indebtedness of the certified capital
550 company on which certified investors earned tax credits.

551 (2) Any proposed distribution from a certified capital
552 company out of certified capital or profits earned thereon to its
553 certified investors or equity holders, other than a qualified
554 distribution, that will result in cumulative distributions,
555 excluding qualified distributions, being in excess of the
556 certified capital company's original certified capital, plus any
557 additional capital contributions to the certified capital company,
558 may be audited by a nationally recognized certified public
559 accounting firm acceptable to the authority, at the expense of the
560 certified capital company, if the authority directs such audit be
561 conducted. The audit shall determine whether aggregate cumulative
562 distributions, including the proposed distribution, from the
563 certified capital company to all certified investors and equity
564 holders, including payments with respect to qualified debt
565 instruments, but excluding qualified distributions, when combined



566 with the economic benefit realized over time of the tax credits
567 earned by the certified capital company's certified investors,
568 have resulted in an annual internal rate of return exceeding
569 fifteen percent (15%) on the sum of the certified capital
570 company's original certified capital, plus any additional capital
571 contributions to the certified capital company. If a proposed
572 distribution results in such annual internal rate of return
573 exceeding fifteen percent (15%), then the certified capital
574 company shall pay to the State Treasurer for deposit into the
575 State General Fund ten percent (10%) of such excess at the time
576 such certified capital company makes the proposed distribution.

577 **SECTION 9.** (1) The authority shall conduct an annual review
578 of each certified capital company to determine if the certified
579 capital company is abiding by the requirements for continued
580 certification. The cost of the annual review shall be paid by
581 each certified capital company according to a reasonable fee
582 schedule adopted by the authority.

583 (2) If a certified capital company certifies to the
584 authority its good faith belief that it has complied with the
585 provisions of Section 7(1)(b) of this act or subsection (7) of
586 this section, the authority shall, within sixty (60) days of
587 receipt of such certification, conduct a review of the qualified
588 investments of the certified capital company and shall certify in
589 writing to the certified capital company whether the certified
590 capital company has complied with the provisions of Section
591 7(1)(b) of this act or subsection (7) of this section, as the case
592 may be. The certified capital company shall pay the costs of the
593 review according to a reasonable fee schedule adopted by the
594 authority.

595 (3) Any intentional misstatement of material fact in a
596 certified capital company's application for certification or any
597 material violation of Section 7 of this act shall be grounds for
598 decertification of the certified capital company subject to the



599 notice and grace period provided for in this section. If the
600 authority determines that a certified capital company
601 intentionally misstated a material fact in its application for
602 certification or materially violated the requirements of Section 7
603 of this act, it shall, by written notice, inform the officers of
604 the certified capital company that the certified capital company
605 may be subject to decertification in one hundred twenty (120) days
606 from the date of mailing of the notice, unless the deficiencies
607 are corrected and the certified capital company is again in
608 compliance with all requirements for certification.

609 (4) At the end of the one hundred twenty-day grace period,
610 if the certified capital company is still in material
611 noncompliance with Section 7 of this act, the authority may send a
612 notice of decertification to the certified capital company and to
613 all other appropriate state agencies.

614 (5) Decertification of a certified capital company may cause
615 the recapture of tax credits previously claimed and the forfeiture
616 of future tax credits to be claimed by certified investors with
617 respect to such certified capital company, as follows:

618 (a) Decertification of a certified capital company
619 within three (3) years of its allocation date and prior to its
620 satisfaction of Section 7(1)(a) of this act shall cause the
621 recapture of all tax credits previously claimed and the forfeiture
622 of all future tax credits to be claimed by certified investors
623 with respect to such certified capital company.

624 (b) When a certified capital company meets all
625 requirements for continued certification under Section 7(1)(a) of
626 this act, and subsequently fails to meet the requirements for
627 continued certification under the provisions of Section 7(1)(b) of
628 this act, the first three (3) annual tax credits which have been
629 or will be taken by its certified investors shall not be subject
630 to recapture or forfeiture; however, all other tax credits that



631 have been or will be taken by its certified investors shall be
632 subject to recapture or forfeiture.

633 (c) Once a certified capital company has met all
634 requirements for continued certification under Section 7(1)(a) and
635 (b) of this act, and is subsequently decertified, the first five
636 (5) annual tax credits which have been or will be taken by
637 certified investors shall not be subject to recapture or
638 forfeiture. Subsequent tax credits shall be subject to forfeiture
639 only if the certified capital company is decertified within five
640 (5) years after its allocation date.

641 (6) Notwithstanding the provisions of subsection (5) of this
642 section, once a certified capital company has invested an amount
643 cumulatively equal to one hundred percent (100%) of its certified
644 capital in qualified investments, all tax credits claimed or to be
645 claimed by its certified investors shall no longer be subject to
646 recapture or forfeiture.

647 (7) Once a certified capital company has invested an amount
648 cumulatively equal to one hundred percent (100%) of its certified
649 capital in qualified investments, the certified capital company
650 shall no longer be subject to regulation by the authority with the
651 exception of the requirements of Section 8(2) of this act.

652 (8) The authority shall send written notice to the address
653 of each certified investor whose tax credit has been subject to
654 recapture or forfeiture at such certified investor's address shown
655 on such certified investor's last premium tax filing.

656 (9) The authority shall have the authority to waive any
657 recapture or forfeiture of tax credits if, after considering all
658 facts and circumstances, it determines that such waiver will have
659 the effect of furthering the economic development of the state.

660 **SECTION 10.** This act shall take effect and be in force from
661 and after July 1, 2003.

