

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.

