

By: Senator(s) Chaney

To: Finance

SENATE BILL NO. 2981

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; TO PROVIDE THAT ANY TAX
32 CREDIT EARNED UNDER THIS ACT BY AN INSURANCE COMPANY MAY NOT BE
33 TRANSFERRED OR SOLD TO ANY OTHER INSURANCE COMPANY EXCEPT
34 AFFILIATES OF THE INSURANCE COMPANY; AND FOR RELATED PURPOSES.

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

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

38 **SECTION 2.** The state recognizes the importance of domestic
39 small businesses in creating new employment and expanding the
40 economy of the state.

41 In order to promote the foundation and growth of small
42 business within the state, sufficient resources, both in the form



43 of capital and management expertise, must be made available from
44 both within and without the state.

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

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

53 (a) "Affiliate" of a certified capital company or
54 insurance company means:

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

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

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

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

74 (v) Any person who is an officer, director,
75 employee or agent of the certified capital company or insurance



76 company, as applicable, or an immediate family member of such
77 officer, director, employee or agent.

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

81 (c) "Authority" means the Mississippi Development
82 Authority.

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

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

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

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

101 (h) "Permissible investments" mean:

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

104 (ii) Certificates of deposit issued by a financial
105 institution that is a member of the Federal Deposit Insurance
106 Corporation;

107 (iii) Investment securities that are obligations
108 of the United States, its agencies or instrumentalities, or



109 obligations that are guaranteed fully as to principal and interest
110 by the United States;

111 (iv) Commercial paper rated at least A1, P1 or its
112 equivalent by at least one (1) nationally recognized rating
113 organization;

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

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

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

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

130 (ix) Any other investments approved in advance and
131 in writing by the authority.

132 (i) "Person" means any natural person, corporation,
133 general or limited partnership, trust, limited liability company
134 or other entity.

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

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

140 (ii) It is a small business concern that meets the
141 requirements of the U.S. Small Business Administration's



142 qualification size standards for its venture capital program, as
143 defined in Section 13 CFR 121.301(c) of the Small Business
144 Investment Act of 1958, as amended; and

145 (iii) It is not predominantly engaged in
146 professional services provided by accountants, lawyers or
147 physicians.

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

159 (l) "Qualified distribution" means any distribution or
160 payment from certified capital or profits earned thereon in
161 connection with any of the following:

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

171 (ii) Costs and expenses of managing and operating
172 the certified capital company, including, but not limited to,
173 reasonable and necessary fees paid for professional services (such
174 as legal and accounting services) related to the operation of the



175 certified capital company and an annual management fee in an
176 amount that does not exceed two and one-half percent (2-1/2%) of
177 the certified capital of the certified capital company; and

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

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



207 (n) "State premium tax liability" means any liability
208 incurred by an insurance company under the provisions of Sections
209 27-15-103 through 27-15-119 and Sections 27-15-121 through
210 27-15-127, or in the case of a repeal or reduction by the state of
211 the tax imposed by Sections 27-15-103 through 27-15-119 or
212 Sections 27-15-121 through 27-15-127, any other tax imposed upon
213 an insurance company by this state.

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

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

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

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

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



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

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

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

268 (2) Within thirty (30) days of the filing of an application,
269 the authority shall issue the certification or shall refuse the
270 certification and communicate in detail to the applicant the
271 requirements of subsection (1) of this section that the applicant
272 failed to meet. If an applicant submits an amended application



273 within fifteen (15) days of receipt of refusal by the authority,
274 the authority shall have fifteen (15) days from the receipt of
275 such amended application within which to communicate its approval
276 or refusal of such amended application to the applicant. The
277 authority shall review and approve or reject applications in the
278 order submitted, and, in the event more than one (1) application
279 is received by the authority on any date, all such applications
280 shall be reviewed and approved simultaneously, except in the case
281 of incomplete applications.

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

292 (b) Any offering material involving the sale of
293 securities of the certified capital company shall include the
294 following statement:

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



305 (4) (a) No insurance company or any affiliate of an
306 insurance company shall, directly or indirectly, beneficially own,
307 whether through rights, options, convertible interests or
308 otherwise, fifteen percent (15%) or more of the voting equity
309 interests of or manage a certified capital company or control the
310 direction of investments for a certified capital company.

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

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

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

334 **SECTION 5.** (1) Any certified investor who makes an
335 investment of certified capital pursuant to an allocation of tax
336 credits under Section 6 of this act shall, at the time of
337 investment, earn a vested credit against state premium tax



338 liability equal to one hundred percent (100%) of the certified
339 investor's investment of certified capital. A certified investor
340 shall be entitled to take up to ten percent (10%) of the vested
341 tax credit to reduce the certified investor's state premium tax
342 liability for any taxable year of the certified investor
343 commencing with the tax year beginning in 2005, plus any amount of
344 unused tax credits which are carried forward pursuant to
345 subsection (2) of this section.

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

352 (3) A certified investor claiming a tax credit against state
353 premium tax liability earned through an investment in a certified
354 capital company shall not be required to pay any additional
355 retaliatory tax levied pursuant to Sections 27-15-121 through
356 27-15-127 as a result of claiming that tax credit.

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

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

369 **SECTION 6.** (1) The aggregate amount of certified capital
370 for which tax credits shall be allowed for all certified investors



371 under this act shall not exceed the amount that would entitle all
372 certified investors in certified capital companies to take
373 aggregate tax credits of One Hundred Million Dollars
374 (\$100,000,000.00) or Ten Million Dollars (\$10,000,000.00) per year
375 for ten (10) years. No certified capital company, on an aggregate
376 basis with its affiliates, may file tax credit allocation claims
377 in excess of the maximum amount of certified capital for which tax
378 credits may be allowed as provided in this subsection.

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

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

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



404 provided in subsection (1) of this section, or such lesser amount
405 of tax credits that remains unallocated on such day.

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

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

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

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



437 of such other certified investors of each such certified capital
438 company.

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

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

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

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



469 (b) Within the period ending five (5) years after its
470 allocation date, a certified capital company must have made
471 qualified investments cumulatively equal to at least fifty percent
472 (50%) of its certified capital.

473 (c) For purposes of satisfying the percentage
474 requirements set forth in paragraphs (a) and (b) of this
475 subsection, a certified capital company that has received an
476 investment of certified capital pursuant to an allocation of tax
477 credits under this act shall be deemed to have invested One Dollar
478 and Fifty Cents (\$1.50) for every One Dollar (\$1.00) actually
479 invested in (i) a minority owned qualified business, or (ii) a
480 qualified business that has its headquarters located in the Delta
481 Region of the state. The terms "minority owned qualified
482 business" and the "Delta Region of the state" shall be defined
483 pursuant to rules and regulations adopted by the authority.

484 (2) The aggregate cumulative amount of all qualified
485 investments made by the certified capital company from its
486 allocation date will be considered in the calculation of the
487 percentage requirements under this act. Any funds received from a
488 qualified investment may be invested in another qualified
489 investment and shall count toward any requirement in this act with
490 respect to investments of certified capital.

491 (3) Any business which is classified as a qualified business
492 at the time of the first investment in such business by a
493 certified capital company shall remain classified as a qualified
494 business and may receive follow-on investments from any certified
495 capital company, and such follow-on investments shall be qualified
496 investments even though such business may not meet the definition
497 of a qualified business at the time of such follow-on investments.

498 (4) No qualified investment may be made if the aggregate
499 investment by the certified capital company in the qualified
500 business following such investment would exceed fifteen percent



501 (15%) of the total certified capital of the certified capital
502 company at the time of investment.

503 (5) At its option, a certified capital company, prior to
504 making a proposed investment in a specific business, may request
505 from the authority a written opinion as to whether the investment
506 which it proposes to make will be considered a qualified
507 investment. Upon receiving such a request, the authority shall
508 have fifteen (15) business days to determine whether or not the
509 proposed investment meets the definition of a qualified investment
510 and notify the certified capital company of its determination and
511 explain its determination. If the authority fails to notify the
512 certified capital company with respect to the proposed investment
513 within the fifteen (15) business-day period, the proposed
514 investment shall be deemed to be a qualified investment. If the
515 authority determines that the proposed investment does not meet
516 all of the criteria set forth in the definition of qualified
517 investment, the authority may nevertheless consider the proposed
518 investment a qualified investment and approve the investment if
519 the authority determines that the proposed investment will further
520 economic development of the state.

521 (6) All certified capital held by the certified capital
522 company and not currently invested in qualified investments by the
523 certified capital company must be invested in permissible
524 investments. This subsection shall not apply to securities
525 received by a certified capital company in exchange for a
526 qualified investment prior to the conversion of such securities
527 into cash or cash equivalents.

528 (7) Each certified capital company shall report the
529 following to the authority:

530 (a) Within thirty (30) days after the receipt of
531 certified capital, (i) the name of each certified investor from
532 which the certified capital was received, including such certified
533 investor's insurance premium tax identification number, (ii) the



534 amount of each certified investor's investment of certified
535 capital and tax credits, and (iii) the date on which the certified
536 capital was received.

537 (b) On an annual basis, on or before January 31, (i)
538 the amount of the certified capital company's certified capital at
539 the end of the immediately preceding year, (ii) whether or not the
540 certified capital company has invested more than fifteen percent
541 (15%) of its total certified capital in any one (1) qualified
542 business, and (iii) a description of all qualified investments
543 that the certified capital company made during the previous
544 calendar year.

545 (c) Within ninety (90) days of the close of such
546 certified capital company's fiscal year, annual audited financial
547 statements, which shall include the opinion of an independent
548 certified public accountant regarding the financial statements.

549 (8) Each certified capital company shall pay an annual,
550 nonrefundable certification fee of Five Thousand Dollars
551 (\$5,000.00) on or before January 31 of each year, or Ten Thousand
552 Dollars (\$10,000.00) if paid later, to the authority; however, the
553 fee shall not be required within six (6) months of the initial
554 certification date of a certified capital company.

555 **SECTION 8.** (1) A certified capital company may make
556 qualified distributions at any time. In order to make a
557 distribution from certified capital other than a qualified
558 distribution, a certified capital company must have made qualified
559 investments in an amount cumulatively equal to at least one
560 hundred percent (100%) of its certified capital. A certified
561 capital company may, however, make payments of principal and
562 interest on its indebtedness without any restriction whatsoever,
563 including payments of indebtedness of the certified capital
564 company on which certified investors earned tax credits.

565 (2) Any proposed distribution from a certified capital
566 company out of certified capital or profits earned thereon to its



567 certified investors or equity holders, other than a qualified
568 distribution, that will result in cumulative distributions,
569 excluding qualified distributions, being in excess of the
570 certified capital company's original certified capital, plus any
571 additional capital contributions to the certified capital company,
572 may be audited by a nationally recognized certified public
573 accounting firm acceptable to the authority, at the expense of the
574 certified capital company, if the authority directs such audit be
575 conducted. The audit shall determine whether aggregate cumulative
576 distributions, including the proposed distribution, from the
577 certified capital company to all certified investors and equity
578 holders, including payments with respect to qualified debt
579 instruments, but excluding qualified distributions, when combined
580 with the economic benefit realized over time of the tax credits
581 earned by the certified capital company's certified investors,
582 have resulted in an annual internal rate of return exceeding
583 fifteen percent (15%) on the sum of the certified capital
584 company's original certified capital, plus any additional capital
585 contributions to the certified capital company. If a proposed
586 distribution results in such annual internal rate of return
587 exceeding fifteen percent (15%), then the certified capital
588 company shall pay to the State General Fund ten percent (10%) of
589 such excess at the time such certified capital company makes the
590 proposed distribution.

591 **SECTION 9.** (1) The authority shall conduct an annual review
592 of each certified capital company to determine if the certified
593 capital company is abiding by the requirements for continued
594 certification. The cost of the annual review shall be paid by
595 each certified capital company according to a reasonable fee
596 schedule adopted by the authority.

597 (2) If a certified capital company certifies to the
598 authority its good faith belief that it has complied with the
599 provisions of Section 7(1)(b) of this act or subsection (7) of



600 this section, the authority shall, within sixty (60) days of
601 receipt of such certification, conduct a review of the qualified
602 investments of the certified capital company and shall certify in
603 writing to the certified capital company whether the certified
604 capital company has complied with the provisions of Section
605 7(1)(b) of this act or subsection (7) of this section, as the case
606 may be. The certified capital company shall pay the costs of the
607 review according to a reasonable fee schedule adopted by the
608 authority.

609 (3) Any intentional misstatement of material fact in a
610 certified capital company's application for certification or any
611 material violation of Section 7 of this act shall be grounds for
612 decertification of the certified capital company subject to the
613 notice and grace period provided for in this section. If the
614 authority determines that a certified capital company
615 intentionally misstated a material fact in its application for
616 certification or materially violated the requirements of Section 7
617 of this act, it shall, by written notice, inform the officers of
618 the certified capital company that the certified capital company
619 may be subject to decertification in one hundred twenty (120) days
620 from the date of mailing of the notice, unless the deficiencies
621 are corrected and the certified capital company is again in
622 compliance with all requirements for certification.

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

628 (5) Decertification of a certified capital company may cause
629 the recapture of tax credits previously claimed and the forfeiture
630 of future tax credits to be claimed by certified investors with
631 respect to such certified capital company, as follows:



632 (a) Decertification of a certified capital company
633 within three (3) years of its allocation date and prior to its
634 satisfaction of Section 7(1)(a) of this act shall cause the
635 recapture of all tax credits previously claimed and the forfeiture
636 of all future tax credits to be claimed by certified investors
637 with respect to such certified capital company.

638 (b) When a certified capital company meets all
639 requirements for continued certification under Section 7(1)(a) of
640 this act, and subsequently fails to meet the requirements for
641 continued certification under the provisions of Section 7(1)(b) of
642 this act, the first three (3) annual tax credits which have been
643 or will be taken by its certified investors shall not be subject
644 to recapture or forfeiture; however, all other tax credits that
645 have been or will be taken by its certified investors shall be
646 subject to recapture or forfeiture.

647 (c) Once a certified capital company has met all
648 requirements for continued certification under Section 7(1)(a) and
649 (b) of this act, and is subsequently decertified, the first five
650 (5) annual tax credits which have been or will be taken by
651 certified investors shall not be subject to recapture or
652 forfeiture. Subsequent tax credits shall be subject to forfeiture
653 only if the certified capital company is decertified within five
654 (5) years after its allocation date.

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

661 (7) Once a certified capital company has invested an amount
662 cumulatively equal to one hundred percent (100%) of its certified
663 capital in qualified investments, the certified capital company



664 shall no longer be subject to regulation by the authority with the
665 exception of the requirements of Section 8(2) of this act.

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

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

674 **SECTION 10.** (1) Any tax credit earned under this act by an
675 insurance company shall not be transferred or sold to any other
676 insurance company except to an affiliate of the insurance company.

677 (2) An insurance company may only transfer or sell tax
678 credits once during a calendar year, although on such date, the
679 insurance company may make several transfers to different
680 affiliates and each entity that purchases the tax credits may not
681 transfer the tax credits obtained during the year of purchase. In
682 any subsequent calendar year, the purchaser of the tax credits may
683 make one (1) election per year, if needed.

684 (3) An insurance company that transfers or sells tax credits
685 shall submit to the State Tax Commission, in writing, a
686 notification of such transfer or sale of tax credits within thirty
687 (30) days of the transfer or sale of such tax credits. The
688 notification shall include the insurance company's tax credit
689 balance prior to the transfer, the remaining balance after the
690 transfer, all tax identification numbers for both the transferor
691 and purchaser, the date of transfer and the amount transferred.

692 (4) The transfer or sale of tax credits shall not affect the
693 time schedule for taking such tax credits. Any tax credits
694 transferred or sold which are subject to recapture pursuant to
695 Section 9 of this act shall be the liability of the taxpayer that
696 actually claimed the tax credit.



697 **SECTION 11.** This act shall take effect and be in force from
698 and after July 1, 2003.

