MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) "Permissible investments" mean:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) It is a small business concern that meets the requirements of the U.S. Small Business Administration’s
qualification size standards for its venture capital program, as
defined in Section 13 CFR 121.301(c) of the Small Business
Investment Act of 1958, as amended; and

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

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

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

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

(ii) Costs and expenses of managing and operating
the certified capital company, including, but not limited to,
reasonable and necessary fees paid for professional services (such
as legal and accounting services) related to the operation of the
certified capital company and an annual management fee in an
amount that does not exceed two and one-half percent (2-1/2%) of
the certified capital of the certified capital company; and

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

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

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

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

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

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

(a) The applicant has paid a nonrefundable application fee of Fifteen Thousand Dollars ($15,000.00) at or before the time of filing its application with the authority.
(b) The applicant's equity capitalization at the time of seeking certification shall be at least Five Hundred Thousand Dollars ($500,000.00) and shall be in the form of unencumbered cash or cash equivalents. As part of its application, each applicant shall submit to the authority its balance sheet, audited with an unqualified opinion of a firm of independent certified public accountants, of a date no more than thirty-five (35) days prior to the date of the application. In addition, the applicant shall submit an affidavit stating that, if certified, it will maintain the equity capitalization, except for reductions due to qualified distributions, until the allocation date.

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

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

(2) Within thirty (30) days of the filing of an application, the authority shall issue the certification or shall refuse the certification and communicate in detail to the applicant the requirements of subsection (1) of this section that the applicant failed to meet. If an applicant submits an amended application
within fifteen (15) days of receipt of refusal by the authority, the authority shall have fifteen (15) days from the receipt of such amended application within which to communicate its approval or refusal of such amended application to the applicant. The authority shall review and approve or reject applications in the order submitted, and, in the event more than one (1) application is received by the authority on any date, all such applications shall be reviewed and approved simultaneously, except in the case of incomplete applications.

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

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

"By authorizing the formation of a certified capital company, the State of Mississippi does not necessarily endorse the quality of management or the potential for earnings of such company and is not liable for damages or losses to a certified investor in the company. Use of the word 'certified' in an offering does not constitute a recommendation or endorsement of the investment by the Mississippi Development Authority. In the event applicable provisions of the Certified Capital Company Act are violated, the state may require forfeiture of unused tax credits and repayment of used tax credits."
(4) (a) No insurance company or any affiliate of an insurance company shall, directly or indirectly, beneficially own, whether through rights, options, convertible interests or otherwise, fifteen percent (15%) or more of the voting equity interests of or manage a certified capital company or control the direction of investments for a certified capital company.

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

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

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

SECTION 5. (1) Any certified investor who makes an investment of certified capital pursuant to an allocation of tax credits under Section 6 of this act shall, at the time of investment, earn a vested credit against state premium tax
liability equal to one hundred percent (100%) of the certified investor’s investment of certified capital. A certified investor shall be entitled to take up to ten percent (10%) of the vested tax credit to reduce the certified investor’s state premium tax liability for any taxable year of the certified investor commencing with the tax year beginning in 2005, plus any amount of unused tax credits which are carried forward pursuant to subsection (2) of this section.

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

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

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

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

SECTION 6. (1) The aggregate amount of certified capital for which tax credits shall be allowed for all certified investors
under this act shall not exceed the amount that would entitle all certified investors in certified capital companies to take aggregate tax credits of One Hundred Million Dollars ($100,000,000.00) or Ten Million Dollars ($10,000,000.00) per year for ten (10) years. No certified capital company, on an aggregate basis with its affiliates, may file tax credit allocation claims in excess of the maximum amount of certified capital for which tax credits may be allowed as provided in this subsection.

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

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

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

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

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

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

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

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

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

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

(a) Within the period ending three (3) years after its allocation date, a certified capital company must have made qualified investments cumulatively equal to at least thirty percent (30%) of its certified capital.
(b) Within the period ending five (5) years after its allocation date, a certified capital company must have made qualified investments cumulatively equal to at least fifty percent (50%) of its certified capital.

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

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

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

(4) No qualified investment may be made if the aggregate investment by the certified capital company in the qualified business following such investment would exceed fifteen percent.
(5) At its option, a certified capital company, prior to making a proposed investment in a specific business, may request from the authority a written opinion as to whether the investment which it proposes to make will be considered a qualified investment. Upon receiving such a request, the authority shall have fifteen (15) business days to determine whether or not the proposed investment meets the definition of a qualified investment and notify the certified capital company of its determination and explain its determination. If the authority fails to notify the certified capital company with respect to the proposed investment within the fifteen (15) business-day period, the proposed investment shall be deemed to be a qualified investment. If the authority determines that the proposed investment does not meet all of the criteria set forth in the definition of qualified investment, the authority may nevertheless consider the proposed investment a qualified investment and approve the investment if the authority determines that the proposed investment will further economic development of the state.

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

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

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

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

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

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

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

(2) Any proposed distribution from a certified capital company out of certified capital or profits earned thereon to its certified investors must be approved by the authority on or before the date of the proposed distribution.
certified investors or equity holders, other than a qualified
distribution, that will result in cumulative distributions,
excluding qualified distributions, being in excess of the
certified capital company’s original certified capital, plus any
additional capital contributions to the certified capital company,
may be audited by a nationally recognized certified public
accounting firm acceptable to the authority, at the expense of the
certified capital company, if the authority directs such audit be
conducted. The audit shall determine whether aggregate cumulative
distributions, including the proposed distribution, from the
certified capital company to all certified investors and equity
holders, including payments with respect to qualified debt
instruments, but excluding qualified distributions, when combined
with the economic benefit realized over time of the tax credits
earned by the certified capital company’s certified investors,
have resulted in an annual internal rate of return exceeding
fifteen percent (15%) on the sum of the certified capital
company’s original certified capital, plus any additional capital
contributions to the certified capital company. If a proposed
distribution results in such annual internal rate of return
exceeding fifteen percent (15%), then the certified capital
company shall pay to the State General Fund ten percent (10%) of
such excess at the time such certified capital company makes the
proposed distribution.

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

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

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

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

(5) Decertification of a certified capital company may cause
the recapture of tax credits previously claimed and the forfeiture
of future tax credits to be claimed by certified investors with
respect to such certified capital company, as follows:
(a) Decertification of a certified capital company within three (3) years of its allocation date and prior to its satisfaction of Section 7(1)(a) of this act shall cause the recapture of all tax credits previously claimed and the forfeiture of all future tax credits to be claimed by certified investors with respect to such certified capital company.

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

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

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

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

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

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

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

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

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

(4) The transfer or sale of tax credits shall not affect the time schedule for taking such tax credits. Any tax credits transferred or sold which are subject to recapture pursuant to Section 9 of this act shall be the liability of the taxpayer that actually claimed the tax credit.
SECTION 11. This act shall take effect and be in force from and after July 1, 2003.