

By: Representative Reeves

To: Ways and Means

HOUSE BILL NO. 1756

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 2006 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, retaining existing
 37 employment and expanding the 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 which, in turn, will invest in
48 qualified businesses within the state.

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

51 (a) "Affiliate" of a certified capital company,
52 insurance company or qualified business means:

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

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

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

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

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

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

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

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

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

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

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

96 (g) "Early stage business" means a qualified business
97 that (i) at the time of a certified capital company's initial
98 investment in such qualified business, is involved in activities
99 related to the development (including product development,
100 manufacturing, and sales and marketing) of initial product or
101 service offerings or (ii) for the fiscal year immediately
102 preceding the year of a certified capital company's initial
103 investment in such qualified business, had gross revenues of less
104 than Five Hundred Thousand Dollars (\$500,000.00), on a
105 consolidated basis, as determined in accordance with generally
106 accepted accounting principles.

107 (h) "Experienced investor" means any natural person
108 that has not less than four (4) years of experience making venture
109 capital investments, which may include investments made in
110 connection with a state or federally sponsored venture capital
111 program.

112 (i) "Permissible investments" means:

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

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

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

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

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

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

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

137 (viii) Swaps or other hedging transactions with a
138 counterparty rated at least "A" or its equivalent by a nationally

139 recognized rating agency designed to realize and/or protect the
140 value of a qualified investment; or

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

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

146 (k) "Qualified business" means a business that meets
147 all of the following conditions as of the time of a certified
148 capital company's first investment in such business:

149 (i) It is headquartered and has its principal
150 business operations located in this state and intends to maintain
151 its headquarters and principal business operations in this state
152 after receipt of the certified capital company's investment, or
153 has its headquarters and principal business operations located in
154 another state, and commits to relocate its headquarters and
155 principal business operations to this state and does so within
156 ninety (90) days after receipt of the certified capital company's
157 investment;

158 (ii) It is a small business concern that meets the
159 requirements of the United States Small Business Administration's
160 qualification size standards for its venture capital program, as
161 defined in Section 13 CFR 121.301(c) of the Small Business
162 Investment Act of 1958, as amended;

163 (iii) It is not predominantly engaged in any of
164 the following:

165 1. The purchase or development of real estate
166 for resale or solely for investment purposes;

167 2. The business of insurance, banking,
168 lending, lobbying, or political consulting; or

169 3. The provision of professional services
170 provided by accountants, attorneys or physicians;

171 (iv) It is not (a) formed or organized, directly
172 or indirectly, by a certified capital company or an affiliate of
173 the certified capital company, (b) a franchisee of a certified
174 capital company or an affiliate of the certified capital company,
175 or (c) before the date on which a certified capital company makes
176 its first investment in such business, an affiliate of the
177 certified capital company; and

178 (v) It does not have any financial relationship
179 with a certified capital company before the date on which the
180 certified capital company makes its first investment.

181 (1) "Qualified debt instrument" means a debt instrument
182 issued to a certified investor by a certified capital company
183 which has the following characteristics: (i) an original maturity
184 date of at least five (5) years from date of issuance, (ii) an
185 issue price to the certified investor of at least par value, (iii)
186 a repayment schedule that is no faster than a level principal
187 amortization over five (5) years, (iv) does not permit the
188 certified investor to receive prepayment of interest, and (v)
189 contains no interest, distribution or payment features that are
190 related to the profitability of the certified capital company or
191 the performance of the certified capital company's investment
192 portfolio until such time as the certified capital company is
193 permitted to make distributions other than qualified distributions
194 under Section 8 of this act.

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

198 (i) 1. Costs and expenses of forming, organizing
199 and syndicating the certified capital company, 2. the costs of
200 financing (including the cost of purchasing securities for the
201 purpose of defeasing the obligations of the certified capital
202 company under its qualified debt instruments) and insuring the
203 obligations of the certified capital company under its qualified

204 debt instruments, and 3. an amount equal to two and one-half
205 percent (2-1/2%) of the certified capital of the certified capital
206 company, which amount represents the certified capital company's
207 first annual management fee so long as, at the time the certified
208 capital company initially received its investment of certified
209 capital from its certified investors, the certified capital
210 company has cash or permissible investments available for
211 investment in qualified businesses equal to at least fifty percent
212 (50%) of the amount of certified capital such certified capital
213 company initially received as investment from its certified
214 investors; provided, however, nothing in this subparagraph (i)
215 shall absolve the certified capital company from its obligation to
216 make qualified investments of at least one hundred percent (100%)
217 of its certified capital with at least ten percent (10%) of such
218 investments being made in early stage businesses before it is
219 entitled to make distributions other than qualified distributions;

220 (ii) From and after the first anniversary of the
221 allocation date, an annual management fee in an amount that does
222 not exceed two and one-half percent (2-1/2%) of the certified
223 capital of the certified capital company, which amount shall be
224 applied to the costs and expenses of managing and operating the
225 certified capital company; provided that no such cost or expense
226 shall be paid to a certified investor or an affiliate of a
227 certified investor, nor to a lobbyist or political consultant; and
228 provided further that after the seventh anniversary of the
229 allocation date, the annual management fee shall not exceed one
230 and one-half percent (1-1/2%) of the certified capital of the
231 certified capital company and after the tenth anniversary of the
232 allocation date, no annual management fee shall be permitted; and

233 (iii) Any projected increase in federal or state
234 taxes, excluding penalties and interest related to state and
235 federal income taxes, of the equity owners of a certified capital
236 company resulting from the earnings or other tax liability of the

237 certified capital company without regard to any revenues or
238 expenses from other operations of affiliates of the certified
239 capital company, to the extent that the increase is related to the
240 ownership, management or operation of a certified capital company
241 or issuance, repayment or redemption of the qualified debt
242 instruments of the certified capital company.

243 (n) "Qualified investment" means the investment of cash
244 by a certified capital company in a qualified business for the
245 purchase of any debt, debt participation, equity or hybrid
246 security, of any nature and description whatsoever, including a
247 debt instrument or security which has the characteristics of debt
248 but which provides for conversion into equity or equity
249 participation instruments such as options or warrants. Any
250 qualified investment in the form of a debt instrument, including
251 those owned through debt participations, must have a final stated
252 maturity of at least two (2) years from the date of issuance and a
253 repayment schedule that is no faster than level principal
254 amortization over the same time period, and any qualified
255 investment in the form of equity or equity participation
256 instruments may not provide for the mandatory redemption or
257 repurchase of such investment by the qualified business prior to
258 two (2) years after the date of such investment. Nothing in this
259 paragraph (n) shall prohibit (i) the qualified business from
260 voluntarily prepaying, redeeming, or repurchasing qualified
261 investments at anytime, or (ii) the certified capital company from
262 exercising any of its rights and remedies following a default in
263 the obligations of the qualified business, including the
264 acceleration of the debt, redemption, or repurchase obligations
265 owed upon a default by the qualified business under the terms of
266 the qualified investment or upon the acquisition, merger or the
267 sale of all or substantially all of the assets of the qualified
268 business. Notwithstanding the foregoing, a qualified investment
269 shall not include an investment that results, or could result in,

270 a certified capital company owning, after the investment, fifty
271 percent (50%) or more of the voting or nonvoting stock of a
272 qualified business, unless (a) such ownership is the result of the
273 certified capital company's exercise of its rights and remedies
274 following a default in the obligations of the qualified business
275 or (b) such investment is approved by the authority prior its
276 being made.

277 (o) "State premium tax liability" means any liability
278 incurred by an insurance company under the provisions of Sections
279 27-15-103 through 27-15-119 and Sections 27-15-121 through
280 27-15-127, or in the case of a repeal or reduction by the state of
281 the tax imposed by Sections 27-15-103 through 27-15-119 or
282 Sections 27-15-121 through 27-15-127, any other tax imposed upon
283 an insurance company by this state.

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

288 (q) "Tax credit allocation claim" means a claim for
289 allocation of tax credits prepared and executed by an insurance
290 company on a form provided by the authority and filed by a
291 certified capital company with the authority. The form shall
292 include an affidavit of the insurance company pursuant to which
293 such insurance company shall attest that it (i) is legally bound
294 and irrevocably committed to make an investment of certified
295 capital in a certified capital company in the amount of allocated
296 tax credits (even if such amount is less than the amount of the
297 claim), subject only to the receipt of an allocation pursuant to
298 Section 6 of this act and (ii) complies with the requirements of
299 Section 4(4) of this act.

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

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

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

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

320 (c) That at least two (2) principals of the applicant
321 or at least two (2) persons employed or engaged to manage the
322 funds of the applicant qualify as experienced investors. As part
323 of its application, each applicant will provide to the authority
324 affidavits, with detailed resumes or equivalent biographic
325 materials appended, from such experienced investors stating that
326 their experience meets the requirement of this act. In addition,
327 such experienced investors shall provide to the authority
328 affidavits stating that they have not violated federal or state
329 securities or banking laws or been convicted of any crime
330 involving fraud.

331 (d) The applicant shall provide an affidavit stating
332 that within sixty (60) days of the investment of certified capital
333 in the certified capital company, at least one (1) investment
334 professional of the certified capital company shall be primarily

335 located in an office of the certified capital company based in
336 this state.

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

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

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

364 "By authorizing the formation of a certified capital company,
365 the State of Mississippi does not necessarily endorse the quality
366 of management or the potential for earnings of such company and is
367 not liable for damages or losses to a certified investor in the

368 company. Use of the word 'certified' in an offering does not
369 constitute a recommendation or endorsement of the investment by
370 the Mississippi Development Authority. In the event applicable
371 provisions of the Certified Capital Company Act are violated, the
372 state may require forfeiture of unused tax credits and repayment
373 of used tax credits."

374 (4) (a) No insurance company or any affiliate of an
375 insurance company shall, directly or indirectly, beneficially own,
376 whether through rights, options, convertible interests or
377 otherwise, fifteen percent (15%) or more of the voting equity
378 interests of or manage a certified capital company or control the
379 direction of investments for a certified capital company.

380 (b) Paragraph (a) of this subsection (4) shall not
381 preclude a certified investor, insurance company or any other
382 party from (i) exercising its legal rights and remedies, which may
383 include interim management of a certified capital company or
384 ownership of equity interests in excess of the limits contained
385 herein, in the event that a certified capital company is in
386 default of its statutory obligations or its contractual
387 obligations to a certified investor, insurance company or other
388 person, or (ii) establishing controls to insure that the certified
389 capital company satisfies the requirements of Section 7(1) of this
390 act.

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

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

401 insurance policy and/or other payment undertaking in favor of the
402 certified investors of the certified capital company and its
403 affiliates in this state.

404 **SECTION 5.** (1) Any certified investor who makes an
405 investment of certified capital pursuant to an allocation of tax
406 credits under Section 6 of this act shall, at the time of
407 investment, earn a vested credit against state premium tax
408 liability equal to one hundred percent (100%) of the certified
409 investor's investment of certified capital. A certified investor
410 shall be entitled to take up to ten percent (10%) of the vested
411 tax credit to reduce the certified investor's state premium tax
412 liability for any taxable year of the certified investor
413 commencing with the tax year beginning in 2006, plus any amount of
414 unused tax credits which are carried forward pursuant to
415 subsection (2) of this section.

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

422 (3) A certified investor claiming a tax credit against state
423 premium tax liability earned through an investment in a certified
424 capital company shall not be required to pay any additional
425 retaliatory tax levied pursuant to Sections 27-15-121 through
426 27-15-127 as a result of claiming that tax credit.

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

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

439 **SECTION 6.** (1) The maximum aggregate amount of certified
440 capital for which tax credits are allowed for all certified
441 investors under this act is equal to that amount that entitles all
442 certified investors in certified capital companies to take
443 aggregate tax credits of One Hundred Million Dollars
444 (\$100,000,000.00) or Ten Million Dollars (\$10,000,000.00) per year
445 for ten (10) years. No certified capital company, on an aggregate
446 basis with its affiliates, may file tax credit allocation claims
447 in excess of the maximum aggregate amount of certified capital for
448 which tax credits are allowed as provided in this subsection (1).

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

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

466 (b) Except as provided in paragraph (c) of this
467 subsection (3), the pro rata allocation for any one (1) certified
468 investor shall be the product of a fraction, the numerator of
469 which is the amount of the tax credit allocation claim filed on
470 behalf of such certified investor and the denominator of which is
471 the total of all tax credit allocation claims filed on behalf of
472 all certified investors on such day, multiplied by the aggregate
473 limitation as provided in subsection (1) of this section, or such
474 lesser amount of tax credits that remains unallocated on such day.

475 (c) No allocation shall be made to the certified
476 investors of a certified capital company if such allocation
477 results in less than five percent (5%) of the maximum amount of
478 certified capital for which tax credits may be allocated under
479 subsection (1) of this section being allocated to the certified
480 investors of such certified capital company in the aggregate.

481 (d) If none of the certified investors of a certified
482 capital company that filed tax credit allocation claims receive an
483 allocation of tax credits as a result of the operation of
484 paragraph (c) of this subsection (3), the pro rata allocation to
485 be made pursuant to paragraph (a) of this subsection (3) among the
486 certified investors of the other certified capital companies that
487 filed tax credit allocation claims shall be made as if no tax
488 credit allocation claim was ever filed on behalf of the certified
489 investors who did not receive an allocation of tax credits as a
490 result of the operation of paragraph (c) of this subsection (3).

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

497 (5) (a) In the event a certified capital company does not
498 receive investments of certified capital in the aggregate equaling

499 the amount of tax credits allocated to its certified investors for
500 which it filed tax credit allocation claims within ten (10)
501 business days of its receipt of notice of allocation, then that
502 portion of the tax credits allocated to the certified investors in
503 the certified capital company in excess of the amount of certified
504 capital invested in the certified capital company by such date
505 will be forfeited, and the authority will reallocate those tax
506 credits among the certified investors of the other certified
507 capital companies on a pro rata basis with respect to the tax
508 credit allocation claims filed on behalf of such certified
509 investors.

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

522 (6) The maximum amount of tax credit allocation claims that
523 may be filed on behalf of any one (1) certified investor, on an
524 aggregate basis with its affiliates, in one or more certified
525 capital companies, shall not exceed the greater of (a) Ten Million
526 Dollars (\$10,000,000.00), or (b) fifteen percent (15%) of the
527 aggregate limitation as provided in subsection (1) of this
528 section.

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

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

536 (b) Within the period ending five (5) years after its
537 allocation date, a certified capital company must have made
538 qualified investments cumulatively equal to at least fifty percent
539 (50%) of its certified capital.

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

547 (b) Notwithstanding paragraph (a) of this subsection
548 (2), in the event that a certified capital company makes a
549 qualified investment that is guaranteed, in whole or in part, by
550 any federal, state, or other governmental entity, then the
551 guaranteed portion of any such investment shall not be considered
552 in the calculation of any of the percentage requirements under
553 this act.

554 (c) Notwithstanding paragraph (a) of this subsection
555 (2), in the event that a qualified business relocates its
556 headquarters or principal business operations to a state other
557 than this state within six (6) months of the first investment in
558 the business by a certified capital company, then for the purpose
559 of determining whether the certified capital company has met the
560 requirements of Sections 8, 9(6), and 9(7) of this act, the
561 aggregate cumulative amount of all qualified investments made by
562 the certified capital company from its allocation date shall be
563 calculated as if such investment had not been made; provided,
564 however, that this paragraph (c) shall not apply if the relocation

565 was a result of the acquisition (whether by merger, consolidation,
566 or other form of reorganization) of the qualified business or the
567 acquisition or sale of all or substantially all of the assets of
568 the qualified business by a third party that is not an affiliate
569 of either the qualified business or the certified capital company
570 who made the qualified investment; and provided further that this
571 paragraph (c) shall not apply once a certified capital company has
572 made qualified investments of at least one hundred percent (100%)
573 of its certified capital with at least ten percent (10%) of such
574 investments being made in early stage businesses.

575 (d) Notwithstanding paragraph (a) of this subsection
576 (2), any amounts received by a certified capital company from a
577 qualified business as (i) commitment fees, closing fees, or other
578 similar fees in excess of one percent (1%) of the certified
579 capital company's investment in the qualified business or (ii)
580 license fees, royalties, or similar charges, shall not be
581 considered in the calculation of any of the percentage
582 requirements under this act.

583 (3) Any business which is classified as a qualified business
584 or early stage business at the time of the first investment in
585 such business by a certified capital company shall remain
586 classified as a qualified business or early stage business, as
587 applicable, and may receive follow-on investments from any
588 certified capital company, and such follow-on investments shall be
589 qualified investments even though such business may not meet the
590 definition of a qualified business or early stage business, as
591 applicable, at the time of such follow-on investments.

592 (4) No qualified investment may be made if the aggregate
593 investment by the certified capital company in the qualified
594 business following such investment would exceed fifteen percent
595 (15%) of the total certified capital of the certified capital
596 company at the time of investment.

597 (5) A certified capital company, prior to making a proposed
598 investment in a specific business, shall request from the
599 authority a written opinion as to whether the investment which it
600 proposes to make will constitute a qualified investment in a
601 qualified business or early stage business. Upon receiving such a
602 request, the authority shall have fifteen (15) business days to
603 determine whether the proposed investment meets the definition of
604 a qualified investment and whether the business is a qualified
605 business or early stage business. The authority shall notify the
606 certified capital company of its determination and explain its
607 determination. If the authority fails to notify the certified
608 capital company with respect to the proposed investment within the
609 fifteen (15) business-day period, the proposed investment shall be
610 deemed to be a qualified investment in a qualified business or
611 early stage business, as applicable. If the authority determines
612 that the proposed investment does not meet all of the criteria set
613 forth in the definition of qualified investment or if the business
614 does not meet all of the criteria set forth in the definition of
615 qualified business or early stage business, the authority is
616 expressly granted the authority to (i) deem the proposed
617 investment a qualified investment and the business a qualified
618 business or early stage business, as applicable and (ii) approve
619 the investment if the authority determines that the proposed
620 investment would further the intent of this act and the economic
621 development of the state.

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

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

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

638 (b) On an annual basis, on or before January 31, (i)
639 the amount of the certified capital company's certified capital at
640 the end of the immediately preceding year, (ii) whether or not the
641 certified capital company has invested more than fifteen percent
642 (15%) of its total certified capital in any one (1) qualified
643 business, (iii) a description of all qualified investments that
644 the certified capital company made during the previous calendar
645 year, and (iv) a report on the number of persons employed by each
646 qualified business in which the certified capital company
647 maintains a qualified investment.

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

652 (8) Each certified capital company shall pay an annual,
653 nonrefundable certification fee of Five Thousand Dollars
654 (\$5,000.00) on or before January 31 of each year, or Ten Thousand
655 Dollars (\$10,000.00) if paid later, to the authority; however, the
656 fee shall not be required within six (6) months of the initial
657 certification date of a certified capital company.

658 **SECTION 8.** (1) Prior to having made qualified investments
659 in an amount cumulatively equal to at least one hundred percent
660 (100%) of its certified capital, of which at least ten percent
661 (10%) must have been invested in early stage businesses, a

662 certified capital company is prohibited from making any
663 distribution other than (i) qualified distributions and (ii)
664 payments of principal and interest on its indebtedness without any
665 restriction whatsoever, including payments of indebtedness of the
666 certified capital company on which certified investors earned tax
667 credits.

668 (2) Each certified capital company shall pay ten percent
669 (10%) of all distributions, other than (a) qualified
670 distributions, (b) payments of principal and interest on its
671 indebtedness, and (c) a return of any noncertified capital equity
672 capital invested into the certified capital company (which
673 includes a certified capital company's Five Hundred Thousand
674 Dollars (\$500,000.00) equity contribution required by Section
675 4(1)(b) of this act, to the State Treasurer for deposit into the
676 State General Fund; provided, however, that in the event that a
677 certified capital company fails to make qualified investments
678 equal to at least one hundred percent (100%) of its certified
679 capital with at least ten percent (10%) of such investments being
680 made in early stage businesses on or before the tenth anniversary
681 of the allocation date, then the percentage of such distributions
682 that a certified capital company shall be required to pay to the
683 State Treasurer shall be twenty percent (20%).

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

690 (2) If a certified capital company certifies to the
691 authority its good faith belief that it has complied with the
692 provisions of Section 7(1)(b) of this act or subsection (7) of
693 this section, the authority shall, within sixty (60) days of
694 receipt of such certification, conduct a review of the qualified

695 investments of the certified capital company and shall certify in
696 writing to the certified capital company whether the certified
697 capital company has complied with the provisions of Section
698 7(1)(b) of this act or subsection (7) of this section, as the case
699 may be. The certified capital company shall pay the costs of the
700 review according to a reasonable fee schedule adopted by the
701 authority.

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

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

721 (5) Decertification of a certified capital company may cause
722 the recapture of tax credits previously claimed and the forfeiture
723 of future tax credits to be claimed by certified investors with
724 respect to such certified capital company, as follows:

725 (a) Decertification of a certified capital company
726 within three (3) years of its allocation date and prior to its
727 satisfaction of Section 7(1)(a) of this act shall cause the

728 recapture of all tax credits previously claimed and the forfeiture
729 of all future tax credits to be claimed by certified investors
730 with respect to such certified capital company.

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

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

748 (6) Notwithstanding the provisions of subsection (5) of this
749 section, once a certified capital company has invested an amount
750 cumulatively equal to one hundred percent (100%) of its certified
751 capital in qualified investments, with at least ten percent (10%)
752 of such investments in early stage businesses, all tax credits
753 claimed or to be claimed by its certified investors shall no
754 longer be subject to recapture or forfeiture.

755 (7) Once a certified capital company has invested an amount
756 cumulatively equal to one hundred percent (100%) of its certified
757 capital in qualified investments, with at least ten percent (10%)
758 of such investments in early stage businesses, the certified
759 capital company shall no longer be subject to regulation by the

760 authority with the exception of the requirements of Section 8(2)
761 of this act.

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

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

770 **SECTION 10.** After the date that the certified investors are
771 first entitled to apply tax credits against their state premium
772 tax liability, the tax credits earned pursuant to this act may be
773 transferred or sold to any other person with state premium tax
774 liability. Prior to such date, the tax credits may only be
775 transferred or sold to a person who (a) is an affiliate of the
776 certified investor transferring or selling the tax credits or (b)
777 through the voluntary sale, assignment, or other transfer of the
778 business or control of the business of the certified investor
779 (including the sale or other transfer of stock or assets by
780 merger, consolidation, or dissolution) succeeds to all or
781 substantially all of the business or property of the certified
782 investor. Any such transfer or sale shall not affect the time
783 schedule for taking the tax credit as provided in this act. Any
784 tax credits recaptured pursuant to Section 9 of this act shall be
785 the liability of the taxpayer that actually claimed the tax
786 credits.

787 **SECTION 11.** The authority shall administer this act and
788 shall adopt rules and forms as necessary to implement this act.
789 The rules must provide that the authority shall accept (a)
790 applications for certification as a certified capital company not
791 later than the thirtieth day after the date the rules are adopted
792 and (b) premium tax credit allocation claims on behalf of

793 certified investors not later than the one hundred twentieth day
794 after the date the rules are adopted.

795 **SECTION 12.** This act shall take effect and be in force from
796 and after July 1, 2004.