
SUBSTITUTE HOUSE BILL 1721

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Community & Economic Development & Trade
(originally sponsored by Representatives P. Sullivan, Pettigrew,
Kristiansen, Orcutt, Chase, Skinner, Haler, Roach, Morrell, Linville,
Eickmeyer, Kessler, Walsh, Dunn, Kenney, VanDeWege and Simpson)

READ FIRST TIME 2/28/07.

1 AN ACT Relating to the creation of certified capital companies to
2 promote economic development through investment in start-up and
3 emerging Washington businesses; amending RCW 48.13.240; adding a new
4 section to chapter 48.14 RCW; adding a new chapter to Title 43 RCW;
5 creating a new section; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) Washington has many world class
8 companies within its borders producing family wage jobs and benefits.
9 Growing and retaining small businesses that are currently located
10 within the state are the most expedient forms of economic development.
11 Small businesses employ over fifty percent of nonfarm private sector
12 employees in the state, and are an important source of new job
13 creation. Washington continues to be home to entrepreneurs and
14 innovative technologies. However, according to the United States small
15 business administration, only two-thirds of small businesses are still
16 operating after three years. The future success and development of
17 many of the state's emerging businesses depends on access to capital.

18 (2) The legislature finds that new sources of prudently targeted
19 private equity investments would promote economic development by

1 strengthening the local venture capital infrastructure, increasing
2 access to capital for local companies, supporting emerging businesses,
3 and creating jobs for Washington citizens. Targeted venture capital
4 has the potential to hasten the transformation of research and
5 development concepts into commercially viable products and services,
6 expedite the expansion of small Washington firms, enlarge the state's
7 tax base, and develop these businesses into significant contributors to
8 the Washington economy. This act is intended to assist small start-up
9 enterprises to succeed in their business and to contribute to the
10 future of Washington.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The following definitions
12 apply to this chapter and section 3 of this act:

13 (1) "Affiliate" shall have the meaning set forth in RCW 48.31B.005
14 and 48.31C.010.

15 (2) "Allocation date" means the date on which the certified capital
16 is allocated by the department to the investors of a certified capital
17 company under section 6 of this act.

18 (3) "Certified capital" means an amount of cash that:

19 (a) Is invested by a certified investor in a certified capital
20 company; and

21 (b) Fully funds the purchase price of a qualified debt instrument
22 issued by the certified capital company.

23 (4) "Certified capital company" means a partnership, corporation,
24 trust, or limited liability company, organized on a for-profit basis,
25 that: (a) Has its principal office located or is headquartered in
26 Washington; (b) has as its primary business activity the investment of
27 cash in qualified businesses; and (c) is certified by the department as
28 meeting the provisions of this act.

29 (5) "Certified investor" means any insurer as defined in RCW
30 48.01.050 that invests certified capital pursuant to an allocation by
31 the department under section 6 of this act.

32 (6) "Department" means the department of financial institutions.

33 (7) "Director" means the director of the department of financial
34 institutions.

35 (8) "Person" means any natural person or entity, including but not
36 limited to a corporation, general or limited partnership, trust, or
37 limited liability company.

1 (9)(a) "Qualified business" means a business that is independently
2 owned and operated and meets the requirements of (a)(i) through (vi) of
3 this subsection:

4 (i) It is headquartered in Washington, its principal business
5 operations are located in Washington, and at least fifty percent of its
6 employees are in Washington;

7 (ii) That has no more than one hundred employees;

8 (iii) It is unable to obtain conventional financing, which means
9 that the business has failed in an attempt to obtain funding for a loan
10 from a bank or other commercial lender, or that the business cannot
11 reasonably be expected to qualify for such financing under the
12 standards of commercial lending;

13 (iv) Is not predominantly engaged in: (A) Professional services
14 provided by accountants, doctors, or lawyers; (B) banking or lending;
15 (C) real estate development; (D) insurance; (E) oil and gas
16 exploration; (F) direct gambling activities; (G) making loans to or
17 investments in a certified capital company or an affiliate;

18 (v) Is not a franchise of and has not been organized by a certified
19 capital company or an affiliate of a certified capital company; and has
20 no financial relationship with the certified capital company or any
21 affiliate of the certified capital company prior to the certified
22 capital company's first qualified investment in the business and will
23 not have any such relationship after the initial qualified investment
24 other than as created by that investment and any subsequent investments
25 in the business made by the certified capital company or its
26 affiliates;

27 (vi) Any business that is classified as a qualified business at the
28 time of the first qualified investment in the business shall remain
29 classified as a qualified business, may receive continuing qualified
30 investments from any certified capital company, and such continuing
31 investments shall be qualified investments even though the business may
32 not meet the definition of a qualified business at the time of such
33 continuing investments; except the business shall not be eligible to
34 receive further qualified investments if:

35 (A) It has relocated its headquarters or principal business
36 operations outside of Washington; or

37 (B) Less than seventy-five percent of the funds expended from its

1 prior qualified investments have been used to establish and support its
2 Washington operations, except for advertising, promotions, and sales
3 purposes, which may be conducted outside of Washington.

4 (b) A qualified business shall also include a qualified
5 microenterprise development organization that also meets the
6 requirements of (a)(v) of this subsection.

7 (c) An entity shall be considered "independently owned and
8 operated" unless more than fifty percent of the entity's equity
9 interests are owned directly or indirectly by another business entity
10 except if such other business entity itself meets the requirements of
11 being a qualified business.

12 (10) "Qualified debt instrument" means a debt instrument issued by
13 a certified capital company, at par value or a premium, with an
14 original maturity date of at least five years from the date of
15 issuance, a repayment schedule which is not faster than a level
16 principal amortization over five years, and interest, distribution, or
17 payment features which are not related to the profitability of the
18 certified capital company or the performance of the certified capital
19 company's investment portfolio. In addition, the qualified debt
20 instrument shall not allow for the cash prepayment of interest on the
21 debt instrument unless the qualified debt instrument or the issuer
22 thereof is in default with respect to the terms of the investment and
23 must be rated within the highest rating category of the securities
24 valuation office of the national association of insurance
25 commissioners.

26 (11) "Qualified distribution" means any distribution or payment by
27 a certified capital company in connection with the following, provided
28 that no distribution or payment permitted by (a) or (b) of this
29 subsection be made to a certified investor or an affiliate of a
30 certified investor:

31 (a) Reasonable costs and expenses of forming, syndicating, and
32 organizing the certified capital company, including reasonable and
33 necessary fees paid for professional services, including, but not
34 limited to, legal and accounting services, related to the formation of
35 the certified capital company, and the costs of financing and insuring
36 the obligations of the certified capital company so long as, at the
37 time the certified capital company initially receives its investment of
38 certified capital from its certified investors, the certified capital

1 company has cash equal to at least fifty percent of the amount of
2 certified capital such certified capital company initially received as
3 investment from its certified investors;

4 (b) Reasonable costs and expenses of managing and operating the
5 certified capital company, including any management fee, which in the
6 aggregate must not exceed two percent of certified capital.

7 (c) Reasonable and necessary fees in accordance with industry
8 custom for professional services, including but not limited to legal
9 and accounting services, related to the operation of the certified
10 capital company; except that such professional services shall not be
11 construed to include lobbying or governmental relations;

12 (d) Any increase or projected increase in federal or state taxes,
13 including penalties and related interest, of the equity owners of a
14 certified capital company resulting from the earnings or other tax
15 liability of the certified capital company to the extent that the
16 increase is related to the ownership, management, or operation of a
17 certified capital company;

18 (e) Payments to debt holders of a certified capital company may be
19 made without restriction with respect to repayments of principal and
20 interest on indebtedness owed to them by a certified capital company,
21 including indebtedness of the certified capital company on which
22 certified investors earned tax credits: PROVIDED, That no more than
23 fifty percent of a certified capital company's certified capital may be
24 used to purchase United States treasury securities, other investment
25 grade securities, a guaranty, indemnity, bond, insurance policy or
26 other payment undertaking, or combination thereof: PROVIDED FURTHER,
27 That nothing in this subsection shall be construed to limit a certified
28 capital company or its affiliates from expending noncertified capital
29 for such instruments or in satisfaction of indebtedness to its
30 certified investors. A debt holder that is also a certified investor
31 or equity holder of a certified capital company may receive payments
32 with respect to such debt without any restriction whatsoever.

33 (12) "Qualified investment" means the investment of cash by a
34 certified capital company in a qualified business or a qualified
35 microenterprise development organization for the purchase of any debt,
36 debt participation, equity, or hybrid security, of any nature and
37 description whatsoever, including a debt instrument or security which
38 has the characteristics of debt but which provides for conversion into

1 equity or equity participation instruments such as options or warrants.
2 Any qualified investment in the form of a debt instrument, including
3 those owned through debt participations, must have a final stated
4 maturity of at least two years from the date of issuance and a
5 repayment schedule that is no faster than level principal amortization
6 over two years, however, this does not prohibit (a) the qualified
7 business from voluntarily prepaying a qualified investment at any time;
8 or (b) the certified capital company from exercising any of its rights
9 as a creditor, including the acceleration of the debt owed upon a
10 default by the qualified business under the terms of the debt
11 instrument or upon the acquisition, merger, or the sale of all or
12 substantially all of the assets of the qualified business. With
13 respect to an investment in a qualified microenterprise development
14 organization, a certified capital company may only make such investment
15 after the structure, terms, conditions and use of proceeds of such
16 investment has been approved by the department.

17 (13) "Qualified microenterprise development organization" means a
18 community development corporation or a nonprofit development
19 organization that has filed a certification with the department that:

20 (a) The organization is headquartered in Washington;

21 (b) The organization or its principals have a minimum of two years'
22 experience in providing access to capital and business education
23 services to entrepreneurs who are economically disadvantaged; and

24 (c) Capital investments from the certified capital company will
25 only be used to provide for the capital needs of businesses licensed in
26 Washington.

27 (14) "State premium tax liability" means any liability incurred by
28 an insurance company under the provisions of RCW 48.14.020 or in the
29 case of a repeal or a reduction by the state of the liability imposed
30 by RCW 48.14.020, any other tax liability imposed upon an insurance
31 company by the state.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.14 RCW
33 to read as follows:

34 **PREMIUM TAX CREDIT.** (1) Any certified investor who invests
35 certified capital pursuant to an allocation of tax credits under
36 section 6 of this act shall, at the time of investment, earn a vested
37 tax credit against the certified investor's state premium tax liability

1 due under RCW 48.14.020, equal to eighty percent of the certified
2 investor's investment of certified capital. A certified investor shall
3 be entitled to take the vested tax credit according to the following
4 schedule:

5 (a) Year 2010 - Ten percent of the certified investor's investment
6 of certified capital.

7 (b) Year 2011 - Ten percent of the certified investor's investment
8 of certified capital.

9 (c) Year 2012 - Ten percent of the certified investor's investment
10 of certified capital.

11 (d) Year 2013 - Ten percent of the certified investor's investment
12 of certified capital.

13 (e) Year 2014 - Ten percent of the certified investor's investment
14 of certified capital.

15 (f) Year 2016 - Ten percent of the certified investor's investment
16 of certified capital.

17 (g) Year 2017 - Ten percent of the certified investor's investment
18 of certified capital.

19 (h) Year 2018 - Ten percent of the certified investor's investment
20 of certified capital.

21 In any tax year, a certified investor shall also be entitled to
22 take any amount of unused tax credits carried forward pursuant to this
23 section. Credits may be used in connection with both final payments
24 and prepayments of a certified investor's state premium tax liability
25 but may not be used in connection with prepayments until the first
26 prepayment of its 2010 state premium tax liability due on June 15,
27 2010.

28 (2) A certified investor taking the credit under this section is
29 subject to all the requirements of chapter 82.32 RCW. The tax credit
30 that may be applied against state premium tax liability in any one tax
31 year may not exceed the state premium tax liability of the certified
32 investor for such tax year. All unused tax credits against state
33 premium tax liability may be carried forward indefinitely and used in
34 any subsequent year until the tax credits are utilized in full. The
35 investment made by a certified investor under this section shall
36 constitute an investment authorized by chapter 48.13 RCW and shall be
37 subject to RCW 48.13.240.

1 (3) A certified investor claiming a tax credit against state
2 premium tax liability earned through an investment in a certified
3 capital company shall not be required to pay any additional retaliatory
4 tax levied pursuant to RCW 48.14.040 as a result of claiming that tax
5 credit.

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

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

18 (6) Decertification of a certified capital company shall cause the
19 disallowance and the recapture of the credit allowed under subsection
20 (1) of this section. The amount to be disallowed and recaptured shall
21 be assessed as follows:

22 (a) Decertification of a certified capital company within two years
23 of its allocation date and prior to meeting the requirements of section
24 7(1)(a) of this act shall cause the disallowance of one hundred percent
25 of the credit allowed under subsection (1) of this section and the tax
26 for which the credit was used shall be immediately due.

27 (b) Decertification of a certified capital company that has met all
28 the requirements of section 7(1)(a) of this act but that subsequently
29 fails to meet the requirements of section 7(1)(b) of this act shall
30 cause the disallowance of seventy percent of the credit allowed under
31 subsection (1) of this section and any portion of such credit in excess
32 of thirty percent that was previously taken shall be immediately due.

33 (c) Decertification of a certified capital company which, having
34 met all the requirements of section 7(1) of this act, shall not cause
35 the disallowance of any credits allowed under subsection (1) of this
36 section nor the recapture of any portion of such credits that was
37 previously taken.

1 (d) If, after twelve years after its allocation date, a certified
2 capital company has failed to invest at least one hundred percent, on
3 a cumulative basis, of its certified capital in qualified investments,
4 the percentage of distributions that the certified capital company
5 shall be required to pay to the department under section 9(3) of this
6 act shall increase prospectively to fifty percent.

7 (7) Revocation of certification from a certified capital company,
8 before the later of (a) the third anniversary of the allocation date of
9 the certified capital company or (b) the date on which the certified
10 capital company satisfies the requirements of section 7(1)(b) of this
11 act, shall cause the disallowance of one hundred percent of the credits
12 allowed under subsection (1) of this section and the tax for which the
13 credit was given is immediately due.

14 (8) A certified investor, or subsequent transferee, may only
15 transfer credits earned under this act to an affiliate unless the state
16 premium tax liability of the certified investor in the year immediately
17 preceding the proposed transfer is less than seventy-five percent of
18 the certified investor's state premium tax liability for the tax year
19 in which it earned the vested premium tax credit. No certified
20 investor may make more than one transfer in any calendar year. Any
21 transfer or sale shall not affect the time schedule for claiming the
22 premium tax credits. Any tax credits recaptured under this section
23 shall be the liability of the certified investor that actually claimed
24 the premium tax credits. Each certified capital company shall track
25 and report all transfers of tax credits using a form approved by the
26 insurance commissioner that ensures the proper collection of premium
27 taxes.

28 **Sec. 4.** RCW 48.13.240 and 2004 c 88 s 1 are each amended to read
29 as follows:

30 (1) An insurer may loan or invest its funds in an aggregate amount
31 not exceeding the lesser of the following sums: Ten percent of its
32 assets, or fifty percent of its surplus over its capital and other
33 liabilities, or if a mutual or reciprocal insurer fifty percent of its
34 surplus over minimum required surplus, in loans or investments not
35 otherwise eligible for investment, including qualified debt instruments
36 as defined in section 2 of this act, and not specifically prohibited by
37 RCW 48.13.270.

1 (2) No such loan or investment shall be any item described in RCW
2 48.12.020.

3 (3) No such investment in or loan upon the security of any one
4 person or entity shall exceed the amount specified in subsection (1) of
5 this section or one percent of the insurer's assets, whichever is the
6 lesser, except that an investment in a limited liability company formed
7 under chapter 25.15 RCW to develop real property owned by the insurer
8 as permitted by RCW 48.13.160 shall not exceed the lesser of the amount
9 specified in subsection (1) of this section or four percent of the
10 insurer's assets. This subsection (3) shall not apply to an investment
11 in the stock of a subsidiary company.

12 (4) The insurer shall keep a separate record of all investments
13 acquired under this section.

14 NEW SECTION. **Sec. 5. CERTIFICATION.** (1) The department shall
15 establish by rule the procedures for making an application to become a
16 certified capital company.

17 (2) An applicant is required to:

18 (a) File an application with the department;

19 (b) Pay a nonrefundable application fee in the amount of twenty
20 thousand dollars as described in section 14 of this act at the time of
21 filing the application, which the department shall deposit in the
22 certified capital company revolving fund;

23 (c) Have an equity capitalization at the time of seeking
24 certification of five hundred thousand dollars or more in the form of
25 unencumbered cash, marketable securities, or other liquid assets. The
26 applicant shall submit as part of its application an audited balance
27 sheet that contains an unqualified opinion of an independent certified
28 public accountant issued not more than thirty-five days before the
29 application date that states whether the applicant satisfies this
30 equity capitalization requirement; and

31 (d) Have at least two principals or at least two persons employed
32 to manage the funds who have at least two years of money management
33 experience in the venture capital industry or two years of experience
34 in private equity fund management.

35 (3) The department may certify partnerships, corporations, trusts,
36 or limited liability companies, organized on a for-profit basis, which
37 submit an application to be designated as a certified capital company

1 if such applicant is located, headquartered, and licensed or registered
2 to conduct business in Washington, has as its primary business activity
3 the investment of cash in qualified businesses and qualified
4 microenterprise development organizations, and meets the other criteria
5 set forth in this act.

6 (4) The department shall review the organizational documents of
7 each applicant for certification and the business history of each
8 applicant, determine that the applicant has satisfied the requirements
9 of this section, and determine that the officers and the board of
10 directors, general partners, managers, or members are thoroughly
11 acquainted with the requirements of this section, and have not been
12 convicted of, or entered a plea of guilty or nolo contendere to, a
13 crime against the laws of Washington or any other state or of the
14 United States or any other country or government, involving a
15 fraudulent act in connection with the operation of a certified capital
16 company, or in connection with the performance of fiduciary duties in
17 another capacity.

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

20 "By authorizing the formation of a certified capital company, the
21 state does not necessarily endorse the quality of management or the
22 potential for earnings of such company and is not liable for damages or
23 losses to a certified investor in the company. Use of the word
24 "certified" in an offering does not constitute a recommendation or
25 endorsement of the investment by the director of the department of
26 community, trade, and economic development. If any applicable
27 provisions of the "certified capital company act" are violated, the
28 state may require forfeiture of unused premium tax credits and
29 repayment of used premium tax credits."

30 (6) Within sixty days after the receipt of an application, the
31 department shall issue the certification or refuse the certification
32 and communicate in detail to the applicant the grounds for refusal,
33 including suggestions for the removal of such grounds. The department
34 shall begin accepting applications to become a certified capital
35 company in the certified capital company program on January 30, 2008.

36 (7)(a) No insurance company or affiliate of an insurance company
37 shall, directly or indirectly:

1 (i) Beneficially own, whether through rights, options, convertible
2 interests, or otherwise, fifteen percent or more of the voting
3 securities or other voting ownership interest of a certified capital
4 company;

5 (ii) Manage a certified capital company; or

6 (iii) Control the direction of investments for a certified capital
7 company.

8 (b) A certified capital company may obtain one or more guaranties,
9 indemnities, bonds, insurance policies, or other payment undertakings
10 for the benefit of its certified investors from any entity; except that
11 in no case shall more than one certified investor of such certified
12 capital company on an aggregate basis with all affiliates of such
13 certified investor be entitled to provide such guaranties, indemnities,
14 bonds, insurance policies, or other payment undertakings in favor of
15 the certified investors of the certified capital company and its
16 affiliates in Washington.

17 (c) This subsection shall not preclude a certified investor,
18 insurance company, or other party from exercising its legal rights and
19 remedies, including, without limitation, interim management of a
20 certified capital company, in the event that a certified capital
21 company is in default of its statutory obligations or its contractual
22 obligations to such certified investor, insurance company, or other
23 party, or from monitoring the certified capital company to ensure its
24 compliance with section 7 of this act or disallowing any investments
25 that have not been approved by the department under section 7(2) of
26 this act.

27 (8) The department may contract with an independent third party to
28 review, investigate, and certify that the applications comply with the
29 provisions of this section.

30 NEW SECTION. **Sec. 6.** AGGREGATE LIMITATIONS ON TAX CREDITS--
31 ALLOCATION. (1) The aggregate amount of certified capital for which
32 tax credits will be allocated to all certified investors under this act
33 shall not exceed the amount that would entitle all certified investors
34 of certified capital companies to take aggregate tax credits of one
35 hundred million dollars. No certified capital company, on an aggregate
36 basis with its affiliates, may file tax credit allocation claims that

1 exceed the maximum amount of certified capital for which tax credits
2 will be allocated as provided in this subsection (1).

3 (2) Tax credits shall be allocated to certified investors in the
4 order that the tax credit allocation claims are filed with the
5 department. All tax credit allocation claims filed with the department
6 on the same day shall be treated as having been filed
7 contemporaneously. Any tax credit allocation claims filed with the
8 department prior to the tax credit allocation claim filing date will be
9 deemed to have been filed on the tax credit allocation claim filing
10 date. The department will set the initial tax credit allocation claim
11 filing date to be ninety days after the department begins to accept
12 applications under section 5 of this act.

13 (3) In the event that two or more certified capital companies file
14 tax credit allocation claims with the department on behalf of their
15 respective certified investors on the same day, and the aggregate
16 amount of such tax credit allocation claims exceeds the aggregate limit
17 of tax credits under this section or such lesser amount of tax credits
18 that remain unallocated on such day, then the tax credits shall be
19 allocated among the certified investors who filed on that day on a pro
20 rata basis with respect to the amounts claimed. The pro rata
21 allocation for any one certified investor shall be the product obtained
22 by multiplying a fraction, the numerator of which is the amount of the
23 tax credit allocation claim filed on behalf of such certified investor
24 and the denominator of which is the total of all tax credit allocation
25 claims filed on behalf of all certified investors on such day, by the
26 aggregate limit of tax credits under this section or such lesser amount
27 of tax credits that remain unallocated on such day.

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

33 (5) In the event a certified capital company does not receive
34 aggregate investments of certified capital equaling the amount of tax
35 credits allocated to its certified investors within ten business days
36 of the certified capital company's receipt of notice of allocation,
37 then it shall so notify the department on or before the next business
38 day and that portion of the tax credits allocated to the certified

1 investors of such certified capital company in excess of the amount of
2 certified capital invested in such certified capital company by such
3 date will be forfeited. The department shall then reallocate those
4 forfeited tax credits among the certified investors of the other
5 certified capital companies on a pro rata basis with respect to the tax
6 credit allocation claims filed on behalf of such certified investors.
7 The department is authorized to levy a fine of not more than fifty
8 thousand dollars, to be placed in the certified capital company
9 revolving fund, on any certified investor that does not invest the full
10 amount of certified capital allocated by the department to such
11 investor in accordance with the premium tax credit allocation claim
12 filed on its behalf.

13 (6) The maximum amount of tax credit allocation claims that may be
14 filed on behalf of any one certified investor, on an aggregate basis
15 with its affiliates, in one or more certified capital companies, shall
16 not exceed the greater of ten million dollars of certified capital or
17 fifteen percent of the aggregate limitation on certified capital
18 allocations as provided in this section.

19 NEW SECTION. **Sec. 7.** REQUIREMENTS FOR CONTINUANCE OF
20 CERTIFICATION. (1) To continue to be eligible for certification, a
21 certified capital company shall make qualified investments according to
22 the following schedule:

23 (a) Within two years after the allocation date, an amount equal to
24 at least twenty-five percent of the certified capital allocable to such
25 certified capital company must be placed in qualified investments.

26 (b) Within five years after the allocation date, an amount equal to
27 at least fifty percent of the certified capital allocable to such
28 certified capital company must be placed in qualified investments.

29 (2) Prior to making a proposed qualified investment in a specific
30 business, a certified capital company shall request from the department
31 a written opinion that the proposed investment will qualify as a
32 qualified investment in a qualified business. The department shall
33 have fifteen business days from the receipt of such a request to
34 determine whether the proposed investment qualifies as a qualified
35 investment in a qualified business and to notify the certified capital
36 company of its determination and an explanation thereof. If the
37 department fails to notify the certified capital company of its

1 determination within the fifteen business day period, the proposed
2 investment shall be deemed to be a qualified investment in a qualified
3 business. If the department determines that the proposed investment
4 does not meet the definition of a qualified investment or qualified
5 business or both, the department may nevertheless consider the proposed
6 investment a qualified investment, and if necessary the business a
7 qualified business, if the department determines that the proposed
8 investment will further state economic development.

9 (3) All certified capital not placed in qualified investments by
10 the certified capital company may be held or invested in such manner as
11 the certified capital company, in its discretion, deems appropriate.
12 The proceeds of all certified capital returned to a certified capital
13 company after being originally placed in qualified investments may be
14 placed again in qualified investments and shall count toward any
15 requirement of this section with respect to placing certified capital
16 in qualified investments.

17 (4) If, within ten years after its allocation date, a certified
18 capital company has not placed at least one hundred percent of the
19 certified capital allocable to it in qualified investments, the
20 certified capital company shall no longer be permitted to distribute
21 management fees.

22 (5) No certified capital company shall make a qualified investment
23 without the specific approval of the department if after the certified
24 capital company's qualified investment, on an aggregate basis with its
25 affiliates, would own more than forty-nine percent of the common equity
26 or voting interests of the qualified business; except that nothing in
27 this subsection (5) shall preclude a certified capital company from
28 exercising (a) any right or remedy upon a default by the qualified
29 business pursuant to an investment contract or (b) any antidilution or
30 preemptive rights it may have been granted in connection with an
31 initial qualified investment that can be exercised upon an investment
32 in the business by a party other than the certified capital company or
33 an affiliate of the certified capital company.

34 (6) No qualified investment may be made by a certified capital
35 company to the extent such investment would cause the company's total
36 qualified investment outstanding with respect to the qualified business
37 receiving such investment to exceed fifteen percent of the total

1 certified capital of the certified capital company at the time of such
2 investment.

3 (7) Documents and other materials submitted by certified capital
4 companies or by businesses for the purpose of the continuance of
5 certification shall not be public records if such records are
6 determined by the department to be trade or business secrets and shall
7 be maintained in a confidential manner by the department.

8 (8) The cumulative amount of all qualified investments made by a
9 certified capital company will be considered in the calculation of the
10 percentage requirements under this section, provided that any amounts
11 received by a certified capital company from a qualified business as
12 (a) commitment fees, closing fees, or other similar fees, excluding
13 reimbursement of out-of-pocket expenses, such as legal fees and
14 accounting fees in excess of one percent of the certified capital
15 company's investment in the qualified business or (b) license fees,
16 royalties, or similar charges shall not be considered in any percentage
17 calculations under this section.

18 NEW SECTION. **Sec. 8.** CERTIFIED CAPITAL COMPANY REPORTING
19 REQUIREMENTS. Each certified capital company shall report the
20 following to the department:

21 (1) On an annual basis, on or before January 31st of each year, (a)
22 any matter in which the certified capital company has failed to comply
23 with this section, or the rules adopted by the department, (b) such
24 other information that the department may reasonably request that will
25 help the department ascertain the impact of the certified capital
26 companies both directly and indirectly on the economy of the state of
27 Washington including but not limited to the number of jobs retained and
28 created by qualified businesses that have received qualified
29 investments.

30 (2) If in its annual report, a certified capital company provides
31 notification and documentation, including agreed upon procedures, that
32 it has satisfied the requirements of section 7 of this act that it has
33 invested fifty percent of its certified capital, the department shall
34 have sixty days to notify such certified capital company that it has or
35 has not met such requirement. If the department does not provide such
36 notification within sixty days, the certified capital company shall
37 then be deemed to have met such a requirement.

1 NEW SECTION. **Sec. 9.** DISTRIBUTIONS. (1)(a) A certified capital
2 company may make qualified distributions at any time. In order for a
3 certified capital company to make a distribution other than a qualified
4 distribution to its equity holders, the certified capital company must
5 demonstrate the following:

6 (i) The cumulative amount of all qualified investments of the
7 certified capital company must equal or exceed an amount equal to one
8 hundred percent of its certified capital;

9 (ii) An amount equal to or exceeding twenty-five percent of its
10 certified capital that has been invested in qualified businesses or
11 qualified microenterprise development organizations which are either
12 located in rural counties as defined in RCW 82.14.370, or for any other
13 counties, in cities with a population of no greater than thirty
14 thousand.

15 (b) In addition, certified capital companies are encouraged to set
16 a target goal for investments in businesses that would otherwise be
17 eligible for certification by the office of minority and women's
18 business enterprises or investment through qualified microenterprise
19 development organizations and shall report to the department on an
20 annual basis their progress against this voluntary goal.

21 (2) In the event that a business in which a qualified investment is
22 made relocates its principal business operations to another state
23 either during such investment, or upon the earlier of: (a) The end of
24 the investment holding period with respect to such investment by the
25 certified capital company or (b) when the certified capital company
26 reaches one hundred percent investment, the cumulative amount of
27 qualified investments made by a certified capital company shall be
28 reduced by the amount of such qualified investment for the purposes of
29 satisfying the requirements of (b)(i) of this subsection only unless:

30 (i) The certified capital company invests an amount at least equal to
31 the investment of certified capital in the relocated business in a
32 qualified business located in Washington within six months of the
33 relocation or (ii) the business demonstrates that it has returned its
34 principal business operations to Washington within three months of such
35 relocation. A business shall be deemed to have relocated its principal
36 business operations outside Washington, unless it maintains its
37 headquarters or the primary workplace of more than fifty percent of the
38 employees within the state.

1 (3) A certified capital company shall pay to the department for
2 deposit in the general fund an amount equal to five percent of all
3 distributions to the equity holders of the certified capital company
4 other than qualified distributions and distributions of all equity
5 contributed to the certified capital company by such equity holders.
6 Revenues collected under this subsection shall be distributed to and
7 supplement state-funded programs which assist businesses with start-up,
8 to commercialize research, business education, modernization services,
9 and technical services including but not limited to Washington
10 manufacturing services under chapter 24.50 RCW, Washington technology
11 center under RCW 28B.20.285, Spokane intercollegiate research and
12 technology institute under RCW 28B.38.010, and the microenterprise
13 development program. A certified capital company shall make all
14 payments required under this subsection concurrently with distributions
15 to its equity owners; however, nothing contained in this subsection
16 shall be construed to affect qualified distributions.

17 NEW SECTION. **Sec. 10.** DECERTIFICATION. (1) The department shall
18 conduct an annual review of each certified capital company to determine
19 if the certified capital company is abiding by the requirements of
20 certification, to advise the certified capital company as to the
21 eligibility status of its qualified investments, and to ensure that no
22 investment has been made in violation of this section.

23 (2) Any material violation of section 7 or 8 of this act shall be
24 grounds for decertification of the certified capital company and the
25 disallowance of credits as set forth in section 3 of this act.
26 Additionally, the department may decertify a certified capital company
27 if any material representation to the department in connection with the
28 application process proves to have been falsely made, or if the
29 application materially violates any requirements established by the
30 department pursuant to this act.

31 (3) Once a certified capital company has invested an amount
32 cumulatively equal to one hundred percent of its certified capital in
33 qualified investments and has met all other requirements under this
34 act, the certified capital company shall no longer be subject to
35 regulation by the department and shall no longer be subject to section
36 8 of this act. Upon receiving documented certification by a certified
37 capital company that it has invested an amount equal to one hundred

1 percent of its certified capital, the department shall have sixty days
2 to notify such certified capital company that it has or has not met the
3 requirements with a reason for such determination if it has not, in the
4 judgment of the director or the director's designee, met such
5 requirement. If the department does not provide such notification
6 within sixty days, the certified capital company shall be deemed to
7 have met such requirements.

8 (4) The department shall send written notice of such
9 decertification to the commissioner and to the address of each
10 certified investor whose tax credit has been subject to recapture or
11 forfeiture, using the address shown on the last filing submitted to the
12 department.

13 NEW SECTION. **Sec. 11.** REGISTRATION REQUIREMENTS. All investments
14 for which tax credits are allowable under section 3 of this act shall
15 satisfy the conditions of being registered or specifically exempt from
16 registration under section 7 of this act.

17 NEW SECTION. **Sec. 12.** REPORTS TO THE GOVERNOR AND LEGISLATURE.
18 Upon notification of a review of this act under the provisions of
19 chapter 43.136 RCW, by the joint legislative audit and review
20 committee, the department shall report to the governor:

21 (1) The number of certified capital companies holding certified
22 capital;

23 (2) The amount of certified capital invested in each certified
24 capital company;

25 (3) The cumulative amount that each certified capital company has
26 invested as of September 30, 2012, and the cumulative total each year
27 thereafter;

28 (4) The cumulative amount that the investments of each certified
29 capital company have leveraged in terms of capital invested by other
30 sources of capital in qualified businesses at the same time or
31 subsequent to investments made by a certified capital company in such
32 businesses;

33 (5) The total amount of tax credits granted under this act for each
34 year the credits have been awarded;

35 (6) The performance of each certified capital company with regard
36 to the requirements for continued certification;

1 (7) The classification of the companies in which each certified
2 capital company has invested according to industrial sector and size of
3 company;

4 (8) The total gross number of jobs created by investments made by
5 each certified capital company using certified capital and the number
6 of jobs retained;

7 (9) The location of the companies in which each certified capital
8 company has invested;

9 (10) The total amount invested in qualified microenterprise
10 development organizations, the number of small businesses that received
11 financial assistance from these organizations and the number of jobs
12 created and retained by such businesses;

13 (11) The total amount invested in businesses that are certified
14 minority and women-owned and controlled businesses;

15 (12) Those certified capital companies that have been decertified,
16 or have had their certification revoked, including the reasons for
17 decertification or revocation; and

18 (13) Other information as requested by the joint legislative audit
19 and review committee.

20 NEW SECTION. **Sec. 13.** CERTIFIED CAPITAL COMPANY REVOLVING FUND.

21 There is created in the state treasury a certified capital company
22 revolving fund. Regulatory fees payable by all certified capital
23 companies shall be deposited to the credit of the certified capital
24 company revolving fund. All expenses of operation of the certified
25 capital company program by the department of community, trade, and
26 economic development shall be payable out of the certified capital
27 company revolving fund.

28 NEW SECTION. **Sec. 14.** COMPANIES TO PAY FEES TO COVER APPROXIMATE
29 REASONABLE COST OF REGULATION. It is the intent and purpose of the
30 legislature that the certified capital companies shall each contribute
31 sufficient fees to the department to pay the reasonable cost of
32 regulating the several companies respectively.

33 (1) Every capital company making application for certification as
34 a certified capital company shall pay to the department an application
35 fee in an amount of twenty thousand dollars to be deposited in the
36 certified capital company revolving fund.

1 (2) For ongoing expenses, the department shall annually estimate
2 the cost of administering the program established in this act,
3 including the expenses associated with the employment of one full-time
4 equivalent to carry out the department's administration. The
5 department shall annually assess a fee upon every certified capital
6 company to recoup such expenses which shall be deposited in the
7 certified capital company revolving fund. Fees shall be assessed among
8 certified capital companies in accordance with the amount of certified
9 capital raised by each certified capital company. In estimating the
10 administration costs for each next fiscal year, the department shall
11 consider all moneys then in the certified capital company revolving
12 fund and adjust its assessment so that the nondedicated balance in the
13 certified capital company revolving fund shall at no time exceed one-
14 half of the estimated administration cost for the coming fiscal year.
15 The department shall keep accurate records of the costs incurred in
16 regulating and supervising the several companies subject to regulation
17 or supervision, and such records shall be open record subject to
18 inspection by all interested parties. No fee shall be assessed on a
19 certified capital company that has been decertified or that has
20 received or been deemed to have received notification under section
21 10(3) of this act.

22 (3) Once a certified capital company has met the conditions of
23 section 10(3) of this act and is no longer subject to regulation by the
24 department, the certified capital company will no longer be required to
25 pay regulatory fees under this section.

26 NEW SECTION. **Sec. 15.** RULES. The department shall develop rules
27 as deemed necessary to implement the provisions of this act.

28 NEW SECTION. **Sec. 16.** CAPTIONS. Captions used in this act are
29 not any part of the law.

30 NEW SECTION. **Sec. 17.** Sections 1, 2, and 5 through 14 of this act
31 constitute a new chapter in Title 43 RCW.

32 NEW SECTION. **Sec. 18.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

--- END ---