
HOUSE BILL 1923

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By Representatives P. Sullivan, Haler, Pettigrew, Walsh, Morrell, Strow, Kilmer, Kessler and Simpson

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1 AN ACT Relating to the creation of certified capital companies to
2 promote investment in start-up and emerging Washington businesses;
3 adding a new section to chapter 48.14 RCW; adding a new chapter to
4 Title 48 RCW; providing an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** DEFINITIONS. The following definitions
7 apply to this chapter:

8 (1)(a) "Affiliate" means:

9 (i) Any person who, directly or indirectly, beneficially owns,
10 controls, or holds power to vote fifteen percent or more of the
11 outstanding voting securities or other voting ownership interests of
12 the certified capital company or insurance company;

13 (ii) Any person, fifteen percent or more of whose outstanding
14 voting securities or other voting ownership interests are directly or
15 indirectly beneficially owned, controlled, or held with power to vote
16 by the certified capital company or insurance company;

17 (iii) Any person who, directly or indirectly, controls, is
18 controlled by, or is under common control with the certified capital
19 company or insurance company;

1 (iv) A partnership in which the certified capital company or
2 insurance company is a general partner; or

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

6 (b) Notwithstanding (a) of this subsection, an investment by a
7 certified investor in a certified capital company pursuant to an
8 allocation of premium tax credits in section 4 of this act shall not
9 cause such certified capital company to become an affiliate of such
10 certified investor.

11 (2) "Certification date" means the date on which the certified
12 capital company is so designated by the office for the certified
13 capital company program.

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

15 (a) Is invested by a certified investor in a certified capital
16 company; and

17 (b) Fully funds the purchase price of either or both certified
18 investor's equity interest in the certified capital company or a
19 qualified debt instrument issued by the certified capital company.

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

26 (5) "Certified investor" means any insurer as defined in RCW
27 48.01.050 that contributes certified capital.

28 (6) "Commissioner" means the state insurance commissioner.

29 (7) "Net profits on certified investments" means the amount of
30 money returned to the certified capital company in repayment of or in
31 exchange for the certified capital company's qualified investment or
32 investments in the qualified business in excess of the amount of such
33 qualified investment or investments. Such number shall aggregate all
34 of the certified capital company's qualified investments where gains on
35 qualified investments are netted against losses on qualified
36 investments.

37 (8) "Person" means any natural person or entity, including but not

1 limited to a corporation, general or limited partnership, trust, or
2 limited liability company.

3 (9) "Qualified business" means a business that is independently
4 owned and operated and meets all of the following requirements:

5 (a) It is headquartered in this state, its principal business
6 operations are located in this state, at least fifty percent of its
7 employees are in Washington, and the certified capital company has a
8 reasonable expectation, based on an affidavit of one of the principal
9 officers of the business or other comparable evidence, that the
10 business intends to preserve its headquarters and principal place of
11 business in Washington for at least three years after the qualified
12 investment and that it will expend substantially all of the qualified
13 investment within Washington pursuant to the criteria adopted by the
14 commissioner by rule;

15 (b) That is a small business as defined in RCW 19.85.020;

16 (c) Is not predominantly engaged in: (i) Professional services,
17 including but not limited to accountants, doctors, or lawyers; (ii)
18 banking or lending; (iii) real estate development; (iv) insurance; (v)
19 oil and gas exploration; (vi) direct gambling activities; (vii) making
20 loans to or investments in a certified capital company or an affiliate;

21 (d) Any business that is classified as a qualified business at the
22 time of the first qualified investment in the business shall remain
23 classified as a qualified business, may receive continuing qualified
24 investments, and such continuing investments shall be qualified
25 investments even though the business may not meet the definition of a
26 qualified business at the time of such continuing investments; except
27 the business shall not be eligible to receive further qualified
28 investments if:

29 (i) It has relocated its headquarters or principal business
30 operations outside of this state; or

31 (ii) It has not expended substantially all of its prior qualified
32 investments within Washington as required by the program. For the
33 purposes of this chapter and section 2 of this act, the purchase of
34 services and goods from outside Washington is not precluded, if the
35 services are performed or the goods are used in Washington.

36 (10) "Qualified debt instrument" means a debt instrument issued by
37 a certified capital company, at par value or a premium, with an
38 original maturity date of at least five years from the date of

1 issuance, a repayment schedule which is not faster than a level
2 principal amortization, and interest, distribution, or payment features
3 which are not related to the profitability of the certified capital
4 company or the performance of the certified capital company's
5 investment portfolio.

6 (11) "Qualified distribution" means any distribution or payment to
7 a certified capital company in connection with the following:

8 (a) Reasonable costs and expenses of forming, syndicating, and
9 organizing the certified capital company, including reasonable and
10 necessary fees paid for professional services, including, but not
11 limited to, legal and accounting services, related to the formation of
12 the certified capital company, and the cost of financing and insuring
13 the obligations of the certified capital company;

14 (b) Reasonable costs and expenses of managing and operating the
15 certified capital company, including an annual management fee in an
16 amount that does not exceed two and one-half percent of certified
17 capital, except: (i) No such cost or expense shall be paid to a
18 certified investor or affiliate of a certified investor; (ii) no such
19 cost or expense shall be paid for federal or state taxes, including
20 penalties and interest related to state and federal taxes, of equity
21 owners of a certified capital company resulting from a tax liability of
22 the certified capital company; and (iii) such costs and expenses in the
23 aggregate shall not exceed five percent of certified capital in any one
24 year;

25 (c) Reasonable and necessary fees in accordance with industry
26 custom for professional services, including but not limited to legal
27 and accounting services, related to the operation of the certified
28 capital company; except that such professional services shall not be
29 construed to include litigation challenging the validity or effect of
30 this act, lobbying or governmental relations;

31 (d) Any increase or projected increase in federal or state taxes,
32 including penalties and related interest, of the equity owners of a
33 certified capital company resulting from the earnings or other tax
34 liability of the certified capital company to the extent that the
35 increase is related to the ownership, management, or operation of a
36 certified capital company.

37 (12) "Qualified investment" means the investment of cash by a
38 certified capital company in a qualified business or qualified rural

1 business for the purchase of any debt, debt participation, equity, or
2 hybrid security, including a debt instrument or security that has the
3 characteristic of debt but provides for conversion into equity or
4 equity participation instruments, including, but not limited to,
5 options or warrants; except that pursuant to an allocation of premium
6 tax credits pursuant to section 4 of this act, the investment shall be
7 made in a qualified rural business.

8 (13) "Seed or early stage," in reference to a qualified business,
9 means that the qualified business, at the time of the initial qualified
10 investment:

11 (a) Had less than five hundred thousand dollars in total revenues
12 for the fiscal year immediately preceding the initial qualified
13 investment;

14 (b) Has received no more than one investment from a professional
15 venture capital firm with funds raised from institutional investors; or

16 (c) Does not have positive operational cash flow for the fiscal
17 year immediately preceding the initial qualified investment.

18 (14) "State premium tax liability" means any liability incurred by
19 an insurance company under the provisions of RCW 48.14.020 or in the
20 case of a repeal or a reduction by the state of the liability imposed
21 by RCW 48.14.020, any other tax liability imposed upon an insurance
22 company by the state.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.14 RCW
24 to read as follows:

25 PREMIUM TAX CREDIT. (1) Subject to the limits of this section, an
26 eligible person is allowed a credit against the tax due under RCW
27 48.14.020. The amount of the credit shall be equal to one hundred
28 percent of an investment of certified capital in a certified capital
29 company made by the eligible person pursuant to this act. The amount
30 of total credit taken statewide each year shall not exceed ten million
31 dollars, however, credits shall not be allowed or incurred for state
32 tax purposes, until 2008 for the first fifty million dollars of credit
33 and until 2009 for the next fifty million dollars of credits.

34 (2) Ten percent of the credit shall be allowed in the taxable year
35 to which such investment is allocated and in each of the nine following
36 taxable years.

1 (3) A person taking the credit under this section is subject to all
2 the requirements of chapter 82.32 RCW. A credit earned during one
3 calendar year may be carried over to be credited against taxes incurred
4 in the subsequent calendar year. Credits carried over must be applied
5 to tax liability before new credits. No refunds may be granted for
6 credits under this section.

7 (4) Decertification of a certified company shall cause the
8 disallowance and the recapture of the credit allowed under subsection
9 (1) of this section. The commissioner shall assess interest, but not
10 penalties, on the credit for which the person is not eligible. The
11 interest shall be assessed at the rate provided for delinquent excise
12 taxes under chapter 82.32 RCW, shall be assessed retroactively to the
13 date the tax credit was taken, and shall accrue until the taxes for
14 which the credit has been used are repaid. The amount to be disallowed
15 and recaptured shall be assessed as follows:

16 (a) Decertification of a certified capital company within two years
17 of its starting date prior to meeting the requirements of section
18 6(1)(a) of this act shall cause the disallowance of one hundred percent
19 of the credit allowed under subsection (1) of this section and the tax
20 for which the credit shall be immediately due.

21 (b) Decertification of a certified capital company which, having
22 met all the requirements of section 6(1)(a) of this act, subsequently
23 fails to meet the requirements of section 6(1)(b) of this act, shall
24 cause the disallowance of seventy percent of the credit allowed under
25 subsection (1) of this section and any portion of such credit in excess
26 of thirty percent that was previously taken shall be immediately due.

27 (c) Decertification of a certified capital company which, having
28 met all the requirements of section 6(1) of this act, subsequently
29 fails to meet the requirements of section 9(2) of this act, other than
30 on the grounds of the failure of such certified capital company to meet
31 the requirements of section 6(1) of this act, shall not cause the
32 disallowance of any credits allowed under subsection (1) of this
33 section nor the recapture of any portion of such credits that was
34 previously taken.

35 (d) If, after twelve years after a certified capital company
36 receives an investment of certified capital, such certified capital
37 company has failed to invest one hundred percent of its certified
38 capital allocable in qualified investment, such certified capital

1 company shall be required to pay to the commissioner, for deposit in
2 the general fund, an amount equal to two times the amount of net
3 profits on qualified investments as required by section 8(4) of this
4 act at such subsequent time when it was fully invested one hundred
5 percent and has begun to make a distribution of net profits. The
6 requirement shall not apply to a certified capital company in which at
7 least fifty percent of voting stock, capital, membership interests, or
8 other beneficial ownership interest, as the case may be, are owned by
9 an entity that is managed, directly or indirectly, by a nonprofit
10 corporation. This amount of payment to the commissioner shall not be
11 reduced by the amount set forth in section 8(4) of this act.

12 (5) Revocation of certification from a certified capital company
13 pursuant to section 10 of this act, before the later of (a) the third
14 anniversary of the certification date of the certified company or (b)
15 the date on which the certified capital company satisfies the
16 requirements of section 6(1)(b) of this act, shall cause the
17 disallowance of one hundred percent of the credits allowed under
18 subsection (1) of this section and the tax for which the credit was
19 given is immediately due.

20 (6) No credit shall be allowed in any tax year in which the
21 eligible person, individually or with or through one or more
22 affiliates, be a managing partner of or underwrite or control the
23 direction of a certified capital company for which the credit is
24 allowed under this section. This provision shall not preclude a
25 certified investor, insurance company, or any other party from
26 exercising its legal rights and remedies in the event that a certified
27 capital company is in default of its statutory obligations or its
28 contractual obligations to such certified investor, insurance company,
29 or other party or from monitoring the certified capital company to
30 ensure its compliance with section 3 of this act or disallowing any
31 investments that have not been approved by the commissioner pursuant to
32 section 6(3) of this act.

33 (7) A certified investor allowed a credit against its state tax
34 liability earned through an investment in a certified capital company
35 shall not be required to pay any additional retaliatory tax levied
36 pursuant to RCW 48.14.040 as a result of claiming such credit.

1 NEW SECTION. **Sec. 3.** CERTIFICATION. (1) The commissioner shall
2 establish by rule the procedures for making an application to become a
3 certified capital company.

4 (2) An applicant is required to:

5 (a) File an application with the commissioner;

6 (b) Pay a nonrefundable application fee of seven thousand five
7 hundred dollars at the time of filing the application;

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

16 (d) Have at least two principals or at least two persons employed
17 to manage the funds who have at least two years of money management
18 experience in the venture capital industry; except that an applicant
19 that seeks to be certified with respect to premium tax credits
20 allocated pursuant to section 4 of this act need only to have at least
21 two years of experience in either venture capital or investment banking
22 industry.

23 (3) The commissioner may certify partnerships, corporations,
24 trusts, or limited liability companies, organized on a for-profit
25 basis, which submit an application to be designated as a certified
26 capital company if such applicant is located, headquartered, and
27 licensed or registered to conduct business in Washington, has as its
28 primary business activity the investment of cash in qualified
29 businesses and meets the other criteria set forth in this act.

30 (4) The commissioner shall review the organizational documents of
31 each applicant for certification and the business history of each
32 applicant, determine that the applicant's cash, marketable securities,
33 and other liquid assets are at least five hundred thousand dollars, and
34 determine that the officers and the board of directors, general
35 partners, trustees, managers, or members are trustworthy and are
36 thoroughly acquainted with the requirements of this section.

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

1 "By authorizing the formation of a certified capital company, the
2 state does not necessarily endorse the quality of management or the
3 potential for earnings of such company and is not liable for damages or
4 losses to a certified investor in the company. Use of the word
5 "certified" in an offering does not constitute a recommendation or
6 endorsement of the investment by the Washington state insurance
7 commissioner. If any applicable provisions of the "certified capital
8 company act" are violated, the state may require forfeiture of unused
9 premium tax credits and repayment of used premium tax credits."

10 (6) Within sixty days after the receipt of an application, the
11 commissioner shall issue the certification or refuse the certification
12 and communicate in detail to the applicant the grounds for refusal,
13 including suggestions for the removal of such grounds. The
14 commissioner shall begin accepting applications to become a certified
15 capital company in the certified capital company program on January 1,
16 2006.

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

19 (i) Beneficially own, whether through rights, options, convertible
20 interests, or otherwise, fifteen percent or more of the voting
21 securities or other voting ownership interest of a certified capital
22 company;

23 (ii) Manage a certified capital company; or

24 (iii) Control the direction of investments for a certified capital
25 company.

26 (b) A certified capital company may obtain a guaranty, indemnity,
27 bond, insurance policy, or other payment undertaking for the benefit of
28 its certified investors from any entity; except that in no case shall
29 more than one certified investor of such certified capital company or
30 affiliate of such certified investor be entitled to provide such
31 guaranty, indemnity, bond, insurance policy, or other payment
32 undertaking in favor of the certified investors of the certified
33 capital company and its affiliates in this state.

34 (c) This subsection shall not preclude a certified investor,
35 insurance company, or other party from exercising its legal rights and
36 remedies, including, without limitation, interim management of a
37 certified capital company, in the event that a certified capital

1 company is in default of its statutory obligations or its contractual
2 obligations to such certified investor, insurance company, or other
3 party.

4 NEW SECTION. **Sec. 4.** THE MAXIMUM AGGREGATE AMOUNT OF CERTIFIED
5 CAPITAL. (1) The aggregate amount of certified capital for which
6 taxpayers may be allocated and allowed tax credits pursuant to section
7 2 of this act may not exceed fifty million dollars beginning January 1,
8 2008, for which certified capital may be invested in certified capital
9 companies beginning in calendar year 2006. Therefore, the total amount
10 of certified capital for which tax credits may be allowed pursuant to
11 this act shall be one hundred million dollars.

12 (2) During any taxable year in which the limitation described in
13 subsection (1) of this section will limit the amount of certified
14 capital, certified capital will be allocated in order of priority based
15 upon the date of filing for certification pursuant to section 3 of this
16 act. Certified capital limited in any taxable year by the application
17 of the provisions of this subsection shall be allowed and allocated in
18 the immediately succeeding taxable year by the application of priority
19 set forth in this section. The commissioner shall advise any certified
20 capital company in writing within fifteen days after receiving such
21 filing, whether the limitations of this section will be applicable with
22 respect to the investments and credits described in such filing with
23 the commissioner.

24 (3) Certified capital may be raised by each certified capital
25 company at any time subsequent to its certification date, and credits
26 shall be allocated to and vested in certified investors at the time of
27 each such investment, although such credits shall not be allowed or
28 incurred for state tax purposes, until 2008 for the first fifty million
29 dollars of credit and until 2009 for the next fifty million dollars of
30 credits.

31 NEW SECTION. **Sec. 5.** MAXIMUM CERTIFIED CAPITAL. The maximum
32 amount of certified capital invested in one or more certified capital
33 companies allowed in any one year to any one certified investor shall
34 not exceed ten million dollars. However, if the aggregate amount of
35 certified capital for such year as set forth in section 4 of this act
36 has not been reached sixty days prior to the end of the year to which

1 such aggregate amount applies, the provisions of this section shall
2 cease to apply for the remainder of such year. In addition, the
3 aggregate amount of tax credits allowed in any taxable year to any
4 affiliated group of taxpayers in relation to certified capital may not
5 exceed ten million dollars.

6 NEW SECTION. **Sec. 6.** REQUIREMENTS FOR CONTINUANCE OF
7 CERTIFICATION. (1) To continue to be eligible for certification, a
8 certified capital company shall make qualified investments according to
9 the following schedule:

10 (a) Within two years after the allocation date, at least twenty-
11 five percent of the certified capital allocable to such certified
12 capital company must be placed in qualified investments.

13 (b) Within five years after the allocation date, at least fifty
14 percent of the certified capital allocable to such certified capital
15 company must be placed in qualified investments.

16 (2) The aggregate cumulative amount of all qualified investments
17 made by the certified capital company from an allocation date shall be
18 considered in the calculation of the percentage requirements under this
19 act.

20 (3) A certified capital company, at least twenty working days prior
21 to making a proposed investment in a specific business, shall certify
22 in writing to the commissioner that the business in which it proposes
23 to invest meets the definition of a qualified business, an explanation
24 of its determination that the business meets such requirements. The
25 certification shall include a sworn statement from the business in
26 which the certified capital company proposes to invest evidencing the
27 intent of the business to maintain its headquarters in Washington and
28 conduct its primary business operations in Washington after its receipt
29 of the investment by the certified capital company. If the
30 commissioner determines that the business does not meet the definition
31 of a qualified business, within fifteen working days prior to making
32 the proposed investment, notify the certified capital company of its
33 determination and provide an explanation thereof; however, an exemption
34 may be granted, at the discretion of the commissioner, from the
35 percentage limits in subsection (1) of this section.

36 (4) All certified capital not placed in qualified investments by
37 the certified capital company may be held or invested in such manner as

1 the certified capital company, in its discretion, deems appropriate.
2 The proceeds of all certified capital returned to a certified capital
3 company after being originally placed in qualified investments may be
4 placed again in qualified investments and shall count toward any
5 requirement of this section with respect to placing certified capital
6 in qualified investments.

7 (5) If within ten years after the starting date of the certified
8 capital company program, one hundred percent of the certified capital
9 allocable to a certified capital company participating in such program
10 has not been placed in qualified investments, the specific certified
11 capital company shall no longer be permitted to receive management
12 fees.

13 (6) Any business which is classified as a qualified business at the
14 time of the first investment in said business by a certified capital
15 company shall remain classified as a qualified business and may receive
16 follow-on investments from any certified capital company, and such
17 follow-on investments shall be qualified investments even though such
18 business may not meet the definition of a qualified business at the
19 time of the follow-on investments, provided that the business meets the
20 requirements of this section and section 7 of this act and such
21 business reaffirms its intention to maintain its headquarters in
22 Washington and conduct its primary business operations in Washington.

23 (7) No qualified investment may be made by a certified capital
24 company to the extent such investment would cause the company's total
25 qualified investment outstanding with respect to the qualified business
26 receiving such investment to exceed fifteen percent of the total
27 certified capital of the certified capital company at the time of such
28 investment.

29 (8) Documents and other materials submitted by certified capital
30 companies or by businesses for the purpose of the continuance of
31 certification shall not be public records if such records are
32 determined by the commissioner to be trade or business secrets and
33 shall be maintained in a confidential manner by the commissioner.

34 (9) The aggregate cumulative amount of all qualified investments
35 made by a certified capital company will be considered in the
36 calculation of the percentage requirements under this section, provided
37 that any amounts received by a certified capital company from a
38 qualified business as (a) commitment fees, closing fees, or other

1 similar fees, excluding reimbursement of out-of-pocket expenses,
2 including legal fees and accounting fees in excess of one percent of
3 the certified company's investment in the qualified business or (b)
4 license fees, royalties, or similar charges shall not be considered in
5 any percentage calculations under this section.

6 NEW SECTION. **Sec. 7.** CERTIFIED CAPITAL COMPANY REPORTING
7 REQUIREMENTS. Each certified capital company shall report the
8 following to the commissioner:

9 (1) As soon as practicable after the receipt of certified capital
10 or an irrevocable funding commitment subject only to the receipt of an
11 allocation pursuant to section 2 of this act:

12 (a) The name of each certified investor from which the certified
13 capital was received, including such certified investor's insurance tax
14 identification number;

15 (b) The amount of each certified investor's investment of certified
16 capital; and

17 (c) The date on which the certified capital was received.

18 (2) On an annual basis, on or before January 31st of each year:

19 (a) The amount of the certified capital company's certified capital
20 at the end of the immediately preceding taxable year;

21 (b) Whether or not the certified capital company has invested more
22 than fifteen percent of its total certified capital in any one
23 business;

24 (c) All qualified investments that the certified capital company
25 has made in the previous taxable year, including the number of
26 employees of each qualified business in which it has made investments
27 at the time of such investment and as of December 1st of the preceding
28 taxable year. For any qualified business where the certified capital
29 company no longer has an investment, the certified capital company
30 shall provide employment figures for such company as of the last day
31 before the investment was terminated; and

32 (d) All qualified investments made in distressed rural areas and
33 distressed urban areas.

34 (3) Each certified capital company shall provide to the
35 commissioner annual audited financial statements, which shall include
36 the opinion of an independent certified public accountant, within
37 ninety days of the close of its fiscal year. The audit shall address

1 whether the funds received by the certified capital company have been
2 invested as required by section 6 of this act. Upon receiving
3 notification and documentation by a certified capital company that it
4 has satisfied the requirements of section 6 of this act that it has
5 invested fifty percent of its certified capital, the department shall
6 have sixty days to notify such certified capital company that it has or
7 has not met such requirement. If the department does not provide such
8 notification within sixty days, the certified capital company shall
9 then be deemed to have met such a requirement.

10 (4) On or before April 1st of each year, each certified capital
11 company shall pay an annual, nonrefundable certification fee of five
12 hundred dollars to the commissioner, provided that no such fee shall be
13 required within six months of the initial certification date of a
14 certified capital company.

15 NEW SECTION. **Sec. 8.** DISTRIBUTIONS. (1) A certified capital
16 company may make qualified distributions at any time. In order for a
17 certified capital company to make a distribution other than a qualified
18 distribution to its equity holders, either (a) the aggregate cumulative
19 amount of all qualified investments of the certified capital company
20 must equal or exceed one hundred percent of its certified capital, or
21 (b) it must have received written authorization to make such
22 distribution from the commissioner. In no event shall any such
23 distribution, other than a qualified distribution, be made by a
24 certified capital company unless an amount equal cumulatively to at
25 least ninety percent of its certified capital is invested in companies
26 that conduct their principal business operations in Washington.

27 (2) In the event that a business in which a qualified investment is
28 made relocates its principal business operations to another state
29 during such investment, or within three months after the termination of
30 such investment, the cumulative amount of qualified investment shall be
31 reduced by the amount of such qualified investment for the purposes of
32 this section unless (a) the certified capital company invests an amount
33 at least equal to the investment of certified capital in the relocated
34 business in a qualified business located in Washington within six
35 months of the relocation or (b) the business demonstrates that it has
36 returned its principal business operations to Washington within three
37 months of such relocation. A business shall be deemed to have

1 relocated its principal business operations outside Washington if the
2 primary workplace of more than fifty percent of the employees of such
3 business within the state is relocated to another state.

4 (3) Payments to debt holders of a certified capital company may be
5 made without restriction with respect to repayments of principal and
6 interest on indebtedness owed to them by a certified capital company,
7 including indebtedness of the certified capital company on which
8 certified investors earned tax credits. A debt holder that is also a
9 certified investor or equity holder of a certified capital company may
10 receive payments with respect to such debt without any restriction
11 whatsoever.

12 (4)(a) A certified capital company shall pay to the commissioner
13 for deposit in the general fund an amount equal to thirty percent of
14 the net profits on qualified investments. A certified capital company
15 shall make all payments required under this subsection concurrently
16 with distributions of profits and gains to its equity owners; however,
17 nothing contained in this subsection shall be construed to affect
18 qualified distributions.

19 (b) The amount of any payment to the commissioner shall be reduced
20 by fifteen percent of such net profits and gains on qualified
21 investments if, at the time of such net profits distribution, such
22 certified capital company irrevocably commits to both: (i) Reinvest
23 the remaining fifteen percent of such net profits not being paid to the
24 general fund into qualified businesses, and (ii) invest an additional
25 amount equal to at least fifteen percent of such net profits
26 distribution into qualified business which additional amount shall come
27 from a separate pool of venture capital that is controlled by the
28 certified capital company but that does not contain certified capital.
29 In making investments from funds under this subsection, the certified
30 capital company shall follow the requirements of section 5(3) of this
31 act pertaining to obtaining approval of the investment being in a
32 qualified business. Once qualified investments in qualified businesses
33 have been made pursuant to this subsection equal thirty percent of the
34 net profits on qualified investments, then the requirement under this
35 subsection shall be satisfied and the proceeds from such qualified
36 businesses may be distributed without restriction.

1 NEW SECTION. **Sec. 9.** DECERTIFICATION. (1) The commissioner shall
2 conduct an annual review of each certified capital company to determine
3 if the certified capital company is abiding by the requirements of
4 certification, to advise the certified capital company as to the
5 eligibility status of its qualified investments, and to ensure that no
6 investment has been made in violation of this section. The cost of the
7 annual review shall be paid by each certified capital company according
8 to a reasonable fee schedule adopted by the commissioner.

9 (2) Any material violation of section 5 of this act shall be
10 grounds for decertification of the certified capital company.

11 (3) Once a certified capital company has invested an amount
12 cumulatively equal to one hundred percent of its certified capital in
13 qualified investments and has met all other requirements under this
14 act, the certified capital company shall no longer be subject to
15 regulation by the commissioner and shall no longer be subject to
16 section 5 of this act. Upon receiving documented certification by a
17 certified capital company that it has invested an amount equal to one
18 hundred percent of its certified capital, the department shall have
19 sixty days to notify such certified capital company that it has or has
20 not met the requirements with a reason for such determination if it has
21 not, in the judgment of the commissioner, met such requirement. If the
22 commissioner does not provide such notification within sixty days, the
23 certified capital company shall be deemed to have met such
24 requirements.

25 (4) The commissioner shall send written notice of such
26 decertification to the address of each certified investor whose tax
27 credit has been subject to recapture or forfeiture, using the address
28 shown on the last filing submitted to the commissioner.

29 NEW SECTION. **Sec. 10.** REVOCATION OF CERTIFICATION. The
30 commissioner may revoke the certification of a certified capital
31 company if any material representation to the commissioner in
32 connection with the application process proves to have been falsely
33 made or if the application materially violates any requirements
34 established by the commissioner pursuant to this act.

35 NEW SECTION. **Sec. 11.** REGISTRATION REQUIREMENTS. All investments

1 for which tax credits are allowable under section 2 of this act shall
2 satisfy the conditions of being registered or specifically exempt from
3 registration under section 6 of this act.

4 NEW SECTION. **Sec. 12.** REPORTS TO THE GOVERNOR AND LEGISLATURE.

5 The commissioner shall report to the governor and the appropriate
6 committees of the legislature on or before June 1st of each year
7 beginning in 2007:

8 (1) The number of certified capital companies holding certified
9 capital;

10 (2) The amount of certified capital invested in each certified
11 capital company;

12 (3) The cumulative amount that each certified capital company has
13 invested as of January 1, 2007, and the cumulative total each year
14 thereafter;

15 (4) The cumulative amount that the investments of each certified
16 capital company have leveraged in terms of capital invested by other
17 sources of capital in qualified businesses at the same time or
18 subsequent to investments made by a certified capital company in such
19 businesses;

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

22 (6) The performance of each certified capital company with regard
23 to the requirements for recertification;

24 (7) The classification of the companies in which each certified
25 capital company has invested according to industrial sector and size of
26 company;

27 (8) The total gross number of jobs created by investments made by
28 each certified capital company using certified capital and the number
29 of jobs retained;

30 (9) The location of the companies in which each certified capital
31 company has invested; and

32 (10) Those certified capital companies that have been decertified,
33 or have had their certification revoked, including the reasons for
34 decertification or revocation.

35 NEW SECTION. **Sec. 13.** RULES. The commissioner shall adopt such

1 rules as he or she deems necessary in order to implement the provisions
2 of this act.

3 NEW SECTION. **Sec. 14.** CAPTIONS. Captions used in this act are
4 not any part of the law.

5 NEW SECTION. **Sec. 15.** Sections 1 and 3 through 13 of this act
6 constitute a new chapter in Title 48 RCW.

7 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2005.

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