
HOUSE BILL 3307

State of Washington

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By Representatives P. Sullivan, Pettigrew, Simpson, B. Sullivan, Williams and Strow

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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 43 RCW; creating a new section; 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) "Allocation date" means the date on which the certified capital
12 company is allocated by the department under section 4 of this act.

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

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

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

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

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

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

28 (7) "Department" means the department of community, trade, and
29 economic development.

30 (8) "Director" means the director of the department of community,
31 trade, and economic development.

32 (9) "Person" means any natural person or entity, including but not
33 limited to a corporation, general or limited partnership, trust, or
34 limited liability company.

35 (10) "Qualified business" means a business that is independently
36 owned and operated and meets all of the following requirements:

37 (a) It is headquartered in this state, its principal business

1 operations are located in this state, and at least fifty percent of its
2 employees are in Washington;

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

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

9 (d) Is not a franchise of and has not been organized by a certified
10 capital company or an affiliate of a certified capital company; and has
11 no financial relationship with the certified capital company or any
12 affiliate of the certified capital company prior to the certified
13 capital company's first qualified investment in the business and will
14 not have any such relationship after the initial qualified investment
15 other than as created by that investment and any subsequent investments
16 in the business made by the certified capital company or its
17 affiliates;

18 (e) Any business that is classified as a qualified business at the
19 time of the first qualified investment in the business shall remain
20 classified as a qualified business, may receive continuing qualified
21 investments from any certified capital company, and such continuing
22 investments shall be qualified investments even though the business may
23 not meet the definition of a qualified business at the time of such
24 continuing investments; except the business shall not be eligible to
25 receive further qualified investments if:

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

28 (ii) It has not expended substantially all of its prior qualified
29 investments to establish and support its Washington operations, except
30 for advertising, promotions, and sales purposes, which may be conducted
31 outside of Washington.

32 (11) "Qualified debt instrument" means a debt instrument issued by
33 a certified capital company, at par value or a premium, with an
34 original maturity date of at least five years from the date of
35 issuance, a repayment schedule which is not faster than a level
36 principal amortization over five years, and interest, distribution, or
37 payment features which are not related to the profitability of the
38 certified capital company or the performance of the certified capital

1 company's investment portfolio. In addition, the qualified debt
2 instrument shall not allow for the cash prepayment of interest on the
3 debt instrument unless the qualified debt instrument or the issuer
4 thereof is in default with respect to the terms of the investment.

5 (12) "Qualified distribution" means any distribution or payment by
6 a certified capital company in connection with the following:

7 (a) Reasonable costs and expenses of forming, syndicating, and
8 organizing the certified capital company, including reasonable and
9 necessary fees paid for professional services, including, but not
10 limited to, legal and accounting services, related to the formation of
11 the certified capital company, and the costs of financing and insuring
12 the obligations of the certified capital company so long as, at the
13 time the certified capital company initially receives its investment of
14 certified capital from its certified investors, the certified capital
15 company has cash equal to at least fifty percent of the amount of
16 certified capital such certified capital company initially received as
17 investment from its certified investors;

18 (b) Reasonable costs and expenses of managing and operating the
19 certified capital company, including any management fee, which in the
20 aggregate must not exceed two percent of certified capital. No such
21 cost or expense shall be paid to a certified investor or affiliate of
22 a certified investor. The limitation contained in this subsection
23 (12)(b) shall only apply to distributions described in this subsection
24 (12)(b);

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 lobbying or governmental relations;

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

36 (e) Payments to debt holders of a certified capital company may be
37 made without restriction with respect to repayments of principal and
38 interest on indebtedness owed to them by a certified capital company,

1 including indebtedness of the certified capital company on which
2 certified investors earned tax credits. A debt holder that is also a
3 certified investor or equity holder of a certified capital company may
4 receive payments with respect to such debt without any restriction
5 whatsoever.

6 (13) "Qualified investment" means the investment of cash by a
7 certified capital company in a qualified business for the purchase of
8 any debt, debt participation, equity, or hybrid security, of any nature
9 and description whatsoever, including a debt instrument or security
10 which has the characteristics of debt but which provides for conversion
11 into equity or equity participation instruments such as options or
12 warrants. Any qualified investment in the form of a debt instrument,
13 including those owned through debt participations, must have a final
14 stated maturity of at least two years from the date of issuance and a
15 repayment schedule that is no faster than level principal amortization
16 over two years, however, this does not prohibit (a) the qualified
17 business from voluntarily prepaying a qualified investment at any time;
18 or (b) the certified capital company from exercising any of its rights
19 as a creditor, including the acceleration of the debt owed upon a
20 default by the qualified business under the terms of the debt
21 instrument or upon the acquisition, merger, or the sale of all or
22 substantially all of the assets of the qualified business.

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

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

30 PREMIUM TAX CREDIT. (1) Any certified investor who makes an
31 investment of certified capital pursuant to an allocation of tax
32 credits under section 4 of this act shall, at the time of investment,
33 earn a vested credit against state premium tax liability equal to
34 seventy-five percent of the certified investor's investment of
35 certified capital. A certified investor shall be entitled to take up
36 to twenty percent of the vested tax credit to reduce the certified
37 investor's state premium tax liability due under RCW 48.14.020 for tax

1 years of the certified investor beginning with each of the three tax
2 years commencing on January 1, 2008. For the next three succeeding tax
3 years, a certified investor shall be entitled to take up to five
4 percent of the vested tax credit to reduce the certified investor's
5 state premium tax liability due under RCW 48.14.020. In any tax year,
6 a certified investor shall also be entitled to take any amount of
7 unused tax credits carried forward pursuant to this section. Credits
8 may be used in connection with both final payments and prepayments of
9 a certified investor's state premium tax liability but may not be used
10 in connection with prepayments until the first prepayment of its 2009
11 state premium tax liability due on June 15, 2009.

12 (2) A certified investor taking the credit under this section is
13 subject to all the requirements of chapter 82.32 RCW. The tax credit
14 that may be applied against state premium tax liability in any one tax
15 year may not exceed the state premium tax liability of the certified
16 investor for such tax year. All unused tax credits against state
17 premium tax liability may be carried forward indefinitely and used in
18 any subsequent year until the tax credits are utilized in full.

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

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

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

36 (6) Decertification of a certified company shall cause the
37 disallowance and the recapture of the credit allowed under subsection
38 (1) of this section. The commissioner shall assess interest, but not

1 penalties, on the credit for which the person is not eligible. The
2 interest shall be assessed at the rate provided for delinquent excise
3 taxes under chapter 82.32 RCW, shall be assessed retroactively to the
4 date the tax credit was taken, and shall accrue until the taxes for
5 which the credit has been used are repaid. The amount to be disallowed
6 and recaptured shall be assessed as follows:

7 (a) Decertification of a certified capital company within two years
8 of its allocation date and prior to meeting the requirements of section
9 5(1)(a) of this act shall cause the disallowance of one hundred percent
10 of the credit allowed under subsection (1) of this section and the tax
11 for which the credit shall be immediately due.

12 (b) Decertification of a certified capital company which, having
13 met all the requirements of section 5(1)(a) of this act, subsequently
14 fails to meet the requirements of section 5(1)(b) of this act, shall
15 cause the disallowance of seventy percent of the credit allowed under
16 subsection (1) of this section and any portion of such credit in excess
17 of thirty percent that was previously taken shall be immediately due.

18 (c) Decertification of a certified capital company which, having
19 met all the requirements of section 5(1) of this act, shall not cause
20 the disallowance of any credits allowed under subsection (1) of this
21 section nor the recapture of any portion of such credits that was
22 previously taken.

23 (d) If, after twelve years after its allocation date, a certified
24 capital company has failed to invest at least one hundred percent, on
25 a cumulative basis, of its certified capital in qualified investments,
26 the percentage of distributions that the certified capital company
27 shall be required to pay to the department under section 7(3) of this
28 act shall increase prospectively to fifty percent.

29 (7) Revocation of certification from a certified capital company
30 pursuant to section 9 of this act, before the later of (a) the third
31 anniversary of the allocation date of the certified company or (b) the
32 date on which the certified capital company satisfies the requirements
33 of section 5(1)(b) of this act, shall cause the disallowance of one
34 hundred percent of the credits allowed under subsection (1) of this
35 section and the tax for which the credit was given is immediately due.

36 (8) A certified investor allowed a credit against its state tax
37 liability earned through an investment in a certified capital company

1 shall not be required to pay any additional retaliatory tax levied
2 pursuant to RCW 48.14.040 as a result of claiming such credit.

3 (9) Premium tax credits may be transferred or sold. However, a
4 certified investor, or subsequent transferee, may only transfer credits
5 earned under this act to an affiliate unless the state premium tax
6 liability of the certified investor in the year immediately preceding
7 the proposed transfer is less than seventy-five percent of the
8 certified investor's state premium tax liability for the tax year in
9 which it earned the vested premium tax credit. Any transfer or sale
10 shall not affect the time schedule for claiming the premium tax
11 credits. Any tax credits recaptured under this section shall be the
12 liability of the certified investor that actually claimed the premium
13 tax credits.

14 NEW SECTION. **Sec. 3.** 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 of seven thousand five
20 hundred dollars at the time of filing the application;

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

29 (d) Have at least two principals or at least two persons employed
30 to manage the funds who have at least two years of money management
31 experience in the venture capital industry, at least one of which is
32 primarily located in Washington.

33 (3) The department may certify partnerships, corporations, trusts,
34 or limited liability companies, organized on a for-profit basis, which
35 submit an application to be designated as a certified capital company
36 if such applicant is located, headquartered, and licensed or registered

1 to conduct business in Washington, has as its primary business activity
2 the investment of cash in qualified businesses and meets the other
3 criteria set forth in this act.

4 (4) The department shall review the organizational documents of
5 each applicant for certification and the business history of each
6 applicant, determine that the applicant has satisfied the requirements
7 of this section, and determine that the officers and the board of
8 directors, general partners, trustees, managers, or members are
9 trustworthy and are thoroughly acquainted with the requirements of this
10 section.

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

13 "By authorizing the formation of a certified capital company, the
14 state does not necessarily endorse the quality of management or the
15 potential for earnings of such company and is not liable for damages or
16 losses to a certified investor in the company. Use of the word
17 "certified" in an offering does not constitute a recommendation or
18 endorsement of the investment by the Washington state insurance
19 commissioner. If any applicable provisions of the "certified capital
20 company act" are violated, the state may require forfeiture of unused
21 premium tax credits and repayment of used premium tax credits."

22 (6) Within sixty days after the receipt of an application, the
23 department shall issue the certification or refuse the certification
24 and communicate in detail to the applicant the grounds for refusal,
25 including suggestions for the removal of such grounds. The department
26 shall begin accepting applications to become a certified capital
27 company in the certified capital company program on September 30, 2006.

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

30 (i) Beneficially own, whether through rights, options, convertible
31 interests, or otherwise, fifteen percent or more of the voting
32 securities or other voting ownership interest of a certified capital
33 company;

34 (ii) Manage a certified capital company; or

35 (iii) Control the direction of investments for a certified capital
36 company.

37 (b) A certified capital company may obtain one or more guaranties,
38 indemnities, bonds, insurance policies, or other payment undertakings

1 for the benefit of its certified investors from any entity; except that
2 in no case shall more than one certified investor of such certified
3 capital company on an aggregate basis with all affiliates of such
4 certified investor be entitled to provide such guaranties, indemnities,
5 bonds, insurance policies, or other payment undertakings in favor of
6 the certified investors of the certified capital company and its
7 affiliates in this state.

8 (c) This subsection shall not preclude a certified investor,
9 insurance company, or other party from exercising its legal rights and
10 remedies, including, without limitation, interim management of a
11 certified capital company, in the event that a certified capital
12 company is in default of its statutory obligations or its contractual
13 obligations to such certified investor, insurance company, or other
14 party, or from monitoring the certified capital company to ensure its
15 compliance with section 3 of this act or disallowing any investments
16 that have not been approved by the department under section 5(3) of
17 this act.

18 NEW SECTION. **Sec. 4.** AGGREGATE LIMITATIONS ON TAX CREDITS--
19 ALLOCATION. (1) The aggregate amount of certified capital for which
20 tax credits will be allocated to all certified investors under this act
21 shall not exceed the amount that would entitle all certified investors
22 of certified capital companies to take aggregate tax credits of
23 seventy-five million dollars. No certified capital company, on an
24 aggregate basis with its affiliates, may file tax credit allocation
25 claims that exceed the maximum amount of certified capital for which
26 tax credits will be allocated as provided in this subsection (1).

27 (2) Tax credits shall be allocated to certified investors in the
28 order that the tax credit allocation claims are filed with the
29 department. All tax credit allocation claims filed with the department
30 on the same day shall be treated as having been filed
31 contemporaneously. Any tax credit allocation claims filed with the
32 department prior to the tax credit allocation claim filing date will be
33 deemed to have been filed on the tax credit allocation claim filing
34 date. The department will set the initial tax credit allocation claim
35 filing date to be ninety days after the department begins to accept
36 applications under section 3 of this act.

1 (3) In the event that two or more certified capital companies file
2 tax credit allocation claims with the department on behalf of their
3 respective certified investors on the same day, and the aggregate
4 amount of such tax credit allocation claims exceeds the aggregate limit
5 of tax credits under this section or such lesser amount of tax credits
6 that remain unallocated on such day, then the tax credits shall be
7 allocated among the certified investors who filed on that day on a pro
8 rata basis with respect to the amounts claimed. The pro rata
9 allocation for any one certified investor shall be the product obtained
10 by multiplying a fraction, the numerator of which is the amount of the
11 tax credit allocation claim filed on behalf of such certified investor
12 and the denominator of which is the total of all tax credit allocation
13 claims filed on behalf of all certified investors on such day, by the
14 aggregate limit of tax credits under this section or such lesser amount
15 of tax credits that remain unallocated on such day.

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

21 (5) In the event a certified capital company does not receive
22 aggregate investments of certified capital equaling the amount of tax
23 credits allocated to its certified investors within ten business days
24 of the certified capital company's receipt of notice of allocation,
25 then it shall so notify the department on or before the next business
26 day and that portion of the tax credits allocated to the certified
27 investors of such certified capital company in excess of the amount of
28 certified capital invested in such certified capital company by such
29 date will be forfeited. The department shall then reallocate those
30 forfeited tax credits among the certified investors of the other
31 certified capital companies on a pro rata basis with respect to the tax
32 credit allocation claims filed on behalf of such certified investors.
33 The department is authorized to levy a fine of not more than fifty
34 thousand dollars on any certified investor that does not invest the
35 full amount of certified capital allocated by the department to such
36 investor in accordance with the premium tax credit allocation claim
37 filed on its behalf.

1 (6) The maximum amount of tax credit allocation claims that may be
2 filed on behalf of any one certified investor, on an aggregate basis
3 with its affiliates, in one or more certified capital companies, shall
4 not exceed the lesser of either (a) the greater of ten million dollars
5 or fifteen percent of the aggregate limitation as provided in this
6 section; or (b) ten times the largest annual state premium tax
7 liability incurred by the certified investor on an aggregate basis with
8 its affiliates during the three tax years preceding the year of the
9 allocation date for which final returns have been filed.

10 NEW SECTION. **Sec. 5.** REQUIREMENTS FOR CONTINUANCE OF
11 CERTIFICATION. (1) To continue to be eligible for certification, a
12 certified capital company shall make qualified investments according to
13 the following schedule:

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

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

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

24 (3) Prior to making a proposed investment in a specific business,
25 a certified capital company shall request from the department a written
26 opinion that the proposed investment will qualify as a qualified
27 investment in a qualified business. The department shall have fifteen
28 business days from the receipt of such a request to determine whether
29 the proposed investment qualifies as a qualified investment in a
30 qualified business and to notify the certified capital company of its
31 determination and an explanation thereof. If the department fails to
32 notify the certified capital company of its determination within the
33 fifteen business day period, the proposed investment shall be deemed to
34 be a qualified investment in a qualified business. If the department
35 determines that the proposed investment does not meet the definition of
36 a qualified investment or qualified business or both, the department
37 may nevertheless consider the proposed investment a qualified

1 investment, and if necessary the business a qualified business, if the
2 department determines that the proposed investment will further state
3 economic development.

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

12 (5) If, within ten years after its allocation date, a certified
13 capital company has not placed at least one hundred percent of the
14 certified capital allocable to it in qualified investments, the
15 certified capital company shall no longer be permitted to receive
16 management fees.

17 (6) No certified capital company shall make a qualified investment
18 without the specific approval of the department if after the certified
19 capital company's qualified investment, on an aggregate basis with its
20 affiliates, would own more than forty-nine percent of the common equity
21 or voting interests of the qualified business; except that nothing in
22 this subsection (6) shall preclude a certified capital company from
23 exercising (a) any right or remedy upon a default by the qualified
24 business pursuant to an investment contract or (b) any antidilution or
25 preemptive rights it may have been granted in connection with an
26 initial qualified investment that can be exercised upon an investment
27 in the business by a party other than the certified capital company or
28 an affiliate of the certified capital company.

29 (7) No qualified investment may be made by a certified capital
30 company to the extent such investment would cause the company's total
31 qualified investment outstanding with respect to the qualified business
32 receiving such investment to exceed fifteen percent of the total
33 certified capital of the certified capital company at the time of such
34 investment.

35 (8) Documents and other materials submitted by certified capital
36 companies or by businesses for the purpose of the continuance of
37 certification shall not be public records if such records are

1 determined by the department to be trade or business secrets and shall
2 be maintained in a confidential manner by the department.

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

13 NEW SECTION. **Sec. 6.** CERTIFIED CAPITAL COMPANY REPORTING
14 REQUIREMENTS. Each certified capital company shall report the
15 following to the department:

16 (1) As soon as practicable after the receipt of certified capital
17 or an irrevocable funding commitment subject only to the receipt of an
18 allocation pursuant to section 4 of this act:

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

22 (b) The amount of each certified investor's investment of certified
23 capital; and

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

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

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

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

31 (c) All qualified investments that the certified capital company
32 has made in the previous taxable year, including the number of
33 employees of each qualified business in which it has made investments
34 at the time of such investment and as of December 1st of the preceding
35 taxable year. For any qualified business where the certified capital
36 company no longer has an investment, the certified capital company

1 shall provide employment figures for such company as of the last day
2 before the investment was terminated; and

3 (d) Other information that the department may reasonably request
4 that will help the department ascertain the impact of the certified
5 capital companies both directly and indirectly on the economy of the
6 state of Washington including but not limited to the number of jobs
7 created by qualified businesses that have received qualified
8 investments.

9 (3) Each certified capital company shall provide to the department:

10 (a) Annual audited financial statements, which shall include the
11 opinion of an independent certified public accountant, within ninety
12 days of the close of its fiscal year; and (b) an "agreed upon
13 procedures report" or equivalent regarding the operations of the
14 certified capital company regarding section 5 of this act. Upon
15 receiving notification and documentation by a certified capital company
16 that it has satisfied the requirements of section 5 of this act that it
17 has invested fifty percent of its certified capital, the department
18 shall have sixty days to notify such certified capital company that it
19 has or has not met such requirement. If the department does not
20 provide such notification within sixty days, the certified capital
21 company shall then be deemed to have met such a requirement.

22 (4) Each certified capital company shall pay to the department an
23 annual, nonrefundable certification fee of five thousand dollars on or
24 before April 1st, or ten thousand dollars if later. However, no fee is
25 required within six months of the date a certified capital company is
26 first certified by the department.

27 NEW SECTION. **Sec. 7.** DISTRIBUTIONS. (1) A certified capital
28 company may make qualified distributions at any time. In order for a
29 certified capital company to make a distribution other than a qualified
30 distribution to its equity holders, the aggregate cumulative amount of
31 all qualified investments of the certified capital company must equal
32 or exceed an amount equal to one hundred percent of its certified
33 capital and, of those investments, an amount equal to or exceeding
34 twenty-five percent of its certified capital must have been invested in
35 minority and women-owned businesses as defined by the department and an
36 amount equal to twenty-five percent must have been invested in
37 qualified rural investments as defined by the department.

1 (2) In the event that a business in which a qualified investment is
2 made relocates its principal business operations to another state
3 during such investment, the cumulative amount of qualified investments
4 made by a certified capital company shall be reduced by the amount of
5 such qualified investment for the purposes of satisfying the
6 requirements of (a) of this subsection only unless (a) the certified
7 capital company invests an amount at least equal to the investment of
8 certified capital in the relocated business in a qualified business
9 located in Washington within six months of the relocation or (b) the
10 business demonstrates that it has returned its principal business
11 operations to Washington within three months of such relocation. A
12 business shall be deemed to have relocated its principal business
13 operations outside Washington if the primary workplace of more than
14 fifty percent of the employees of such business within the state is
15 relocated to another state.

16 (3) A certified capital company shall pay to the department for
17 deposit in the general fund an amount equal to ten percent of all
18 distributions to the equity holders of the certified capital company
19 other than qualified distributions and distributions of all equity
20 contributed to the certified capital company by such equity holders.
21 A certified capital company shall make all payments required under this
22 subsection concurrently with distributions to its equity owners;
23 however, nothing contained in this subsection shall be construed to
24 affect qualified distributions.

25 NEW SECTION. **Sec. 8.** DECERTIFICATION. (1) The department shall
26 conduct an annual review of each certified capital company to determine
27 if the certified capital company is abiding by the requirements of
28 certification, to advise the certified capital company as to the
29 eligibility status of its qualified investments, and to ensure that no
30 investment has been made in violation of this section. The cost of the
31 annual review shall be paid by each certified capital company according
32 to a reasonable fee schedule adopted by the department.

33 (2) Any material violation of section 5 or 6 of this act shall be
34 grounds for decertification of the certified capital company and the
35 disallowance of credits as set forth in section 2 of this act.

36 (3) Once a certified capital company has invested an amount
37 cumulatively equal to one hundred percent of its certified capital in

1 qualified investments and has met all other requirements under this
2 act, the certified capital company shall no longer be subject to
3 regulation by the department and shall no longer be subject to section
4 6 of this act. Upon receiving documented certification by a certified
5 capital company that it has invested an amount equal to one hundred
6 percent of its certified capital, the department shall have sixty days
7 to notify such certified capital company that it has or has not met the
8 requirements with a reason for such determination if it has not, in the
9 judgment of the director or the director's designee, met such
10 requirement. If the department does not provide such notification
11 within sixty days, the certified capital company shall be deemed to
12 have met such requirements.

13 (4) The department shall send written notice of such
14 decertification to the commissioner and to the address of each
15 certified investor whose tax credit has been subject to recapture or
16 forfeiture, using the address shown on the last filing submitted to the
17 department.

18 NEW SECTION. **Sec. 9.** REVOCATION OF CERTIFICATION. The department
19 may revoke the certification of a certified capital company if any
20 material representation to the department in connection with the
21 application process proves to have been falsely made or if the
22 application materially violates any requirements established by the
23 department pursuant to this act.

24 NEW SECTION. **Sec. 10.** REGISTRATION REQUIREMENTS. All investments
25 for which tax credits are allowable under section 2 of this act shall
26 satisfy the conditions of being registered or specifically exempt from
27 registration under section 5 of this act.

28 NEW SECTION. **Sec. 11.** REPORTS TO THE GOVERNOR AND LEGISLATURE.
29 The department shall report to the governor and the appropriate
30 committees of the legislature on or before June 1st of each year
31 beginning in 2008:

32 (1) The number of certified capital companies holding certified
33 capital;

34 (2) The amount of certified capital invested in each certified
35 capital company;

1 (3) The cumulative amount that each certified capital company has
2 invested as of January 1, 2008, and the cumulative total each year
3 thereafter;

4 (4) The cumulative amount that the investments of each certified
5 capital company have leveraged in terms of capital invested by other
6 sources of capital in qualified businesses at the same time or
7 subsequent to investments made by a certified capital company in such
8 businesses;

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

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

13 (7) The classification of the companies in which each certified
14 capital company has invested according to industrial sector and size of
15 company;

16 (8) The total gross number of jobs created by investments made by
17 each certified capital company using certified capital and the number
18 of jobs retained;

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

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

24 NEW SECTION. **Sec. 12.** RULES. The department shall develop
25 proposed rules as deemed necessary to implement the provisions of this
26 act and shall report to the legislature on these proposed rules by June
27 30, 2006.

28 NEW SECTION. **Sec. 13.** CAPTIONS. Captions used in this act are
29 not any part of the law.

30 NEW SECTION. **Sec. 14.** Sections 1 and 3 through 12 of this act
31 constitute a new chapter in Title 43 RCW.

32 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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