
SENATE BILL 5621

State of Washington 60th Legislature 2007 Regular Session

By Senators Kastama, Rasmussen, Clements, Hatfield and Shin

Read first time 01/25/2007. Referred to Committee on Economic Development, Trade & Management.

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; adding a new section to chapter 48.14
4 RCW; adding a new chapter to Title 43 RCW; creating a new section; and
5 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" means:

14 (a) Any person who, directly or indirectly, beneficially owns,
15 controls, or holds power to vote fifteen percent or more of the
16 outstanding voting securities or other voting ownership interests of
17 the certified capital company or insurance company;

18 (b) Any person, fifteen percent or more of whose outstanding voting
19 securities or other voting ownership interests are directly or
20 indirectly beneficially owned, controlled, or held with power to vote
21 by the certified capital company or insurance company;

22 (c) Any person who, directly or indirectly, controls, is controlled
23 by, or is under common control with the certified capital company or
24 insurance company;

25 (d) A partnership or limited liability company in which the
26 certified capital company or insurance company is a general partner,
27 manager, or managing member; or

28 (e) Any person who is an officer, director, employee, or agent of
29 the certified capital company or insurance company, or an immediate
30 family member of such officer, director, employee, or agent.

31 (2) "Allocation date" means the date on which the certified capital
32 is allocated by the department to the investors of a certified capital
33 company under section 5 of this act.

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

35 (a) Is invested by a certified investor in a certified capital
36 company; and

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

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

10 (5) "Certified investor" means any insurer as defined in RCW
11 48.01.050 that invests certified capital pursuant to an allocation by
12 the department under section 5 of this act.

13 (6) "Department" means the department of community, trade, and
14 economic development.

15 (7) "Director" means the director of community, trade, and economic
16 development.

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

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

23 (i) It is headquartered in Washington, its principal business
24 operations are located in Washington, and at least fifty percent of its
25 employees are in Washington;

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

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

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

37 (v) Is not a franchise of and has not been organized by a certified
38 capital company or an affiliate of a certified capital company; and has

1 no financial relationship with the certified capital company or any
2 affiliate of the certified capital company prior to the certified
3 capital company's first qualified investment in the business and will
4 not have any such relationship after the initial qualified investment
5 other than as created by that investment and any subsequent investments
6 in the business made by the certified capital company or its
7 affiliates;

8 (vi) Any business that is classified as a qualified business at the
9 time of the first qualified investment in the business shall remain
10 classified as a qualified business, may receive continuing qualified
11 investments from any certified capital company, and such continuing
12 investments shall be qualified investments even though the business may
13 not meet the definition of a qualified business at the time of such
14 continuing investments; except the business shall not be eligible to
15 receive further qualified investments if:

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

18 (B) Less than seventy-five percent of the funds expended from its
19 prior qualified investments have been used to establish and support its
20 Washington operations, except for advertising, promotions, and sales
21 purposes, which may be conducted outside of Washington.

22 (b) A qualified business shall also include a qualified
23 microenterprise development organization that also meets the
24 requirements of (a)(v) of this subsection.

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

30 (10) "Qualified debt instrument" means a debt instrument issued by
31 a certified capital company, at par value or a premium, with an
32 original maturity date of at least five years from the date of
33 issuance, a repayment schedule which is not faster than a level
34 principal amortization over five years, and interest, distribution, or
35 payment features which are not related to the profitability of the
36 certified capital company or the performance of the certified capital
37 company's investment portfolio. In addition, the qualified debt
38 instrument shall not allow for the cash prepayment of interest on the

1 debt instrument unless the qualified debt instrument or the issuer
2 thereof is in default with respect to the terms of the investment and
3 must be rated within the top two rating categories of a rating agency
4 that has been designated as a nationally recognized statistical rating
5 agency by the United States securities and exchange commission.

6 (11) "Qualified distribution" means any distribution or payment by
7 a certified capital company in connection with the following, provided
8 that no distribution or payment permitted by (a) or (b) of this
9 subsection be made to a certified investor or an affiliate of a
10 certified investor:

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

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

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

28 (13) "Qualified microenterprise development organization" means a
29 community development corporation or a nonprofit development
30 organization that has filed a certification with the department that:

- 31 (a) The organization is headquartered in Washington;
32 (b) The organization or its principals have a minimum of two years'
33 experience in providing access to capital and business education
34 services to entrepreneurs who are low income at point of intake; and
35 (c) Capital investments from the certified capital company will
36 only be used to provide for the capital needs of businesses licensed in
37 Washington.

1 (14) "State premium tax liability" means any liability incurred by
2 an insurance company under the provisions of RCW 48.14.020 or in the
3 case of a repeal or a reduction by the state of the liability imposed
4 by RCW 48.14.020, any other tax liability imposed upon an insurance
5 company by the state.

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

8 PREMIUM TAX CREDIT. (1) Any certified investor who invests
9 certified capital pursuant to an allocation of tax credits under
10 section 5 of this act shall, at the time of investment, earn a vested
11 tax credit against the certified investor's state premium tax liability
12 due under RCW 48.14.020, equal to seventy-five percent of the certified
13 investor's investment of certified capital. A certified investor shall
14 be entitled to take the vested tax credit according to the following
15 schedule:

16 (a) Year 2008 - Twenty percent of the certified investor's
17 investment of certified capital.

18 (b) Year 2009 - Twenty percent of the certified investor's
19 investment of certified capital.

20 (c) Year 2010 - Twenty percent of the certified investor's
21 investment of certified capital.

22 (d) Year 2011 - Five percent of the certified investor's investment
23 of certified capital.

24 (e) Year 2012 - Five percent of the certified investor's investment
25 of certified capital.

26 (f) Year 2013 - Five percent of the certified investor's investment
27 of certified capital.

28 In any tax year, a certified investor shall also be entitled to
29 take any amount of unused tax credits carried forward pursuant to this
30 section. Credits may be used in connection with both final payments
31 and prepayments of a certified investor's state premium tax liability
32 but may not be used in connection with prepayments until the first
33 prepayment of its 2009 state premium tax liability due on June 15,
34 2009.

35 (2) A certified investor taking the credit under this section is
36 subject to all the requirements of chapter 82.32 RCW. The tax credit
37 that may be applied against state premium tax liability in any one tax

1 year may not exceed the state premium tax liability of the certified
2 investor for such tax year. All unused tax credits against state
3 premium tax liability may be carried forward indefinitely and used in
4 any subsequent year until the tax credits are utilized in full.

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

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

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

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

26 (a) Decertification of a certified capital company within two years
27 of its allocation date and prior to meeting the requirements of section
28 6(1)(a) of this act shall cause the disallowance of one hundred percent
29 of the credit allowed under subsection (1) of this section and the tax
30 for which the credit was used shall be immediately due.

31 (b) Decertification of a certified capital company that has met all
32 the requirements of section 6(1)(a) of this act but that subsequently
33 fails to meet the requirements of section 6(1)(b) of this act shall
34 cause the disallowance of seventy percent of the credit allowed under
35 subsection (1) of this section and any portion of such credit in excess
36 of thirty percent that was previously taken shall be immediately due.

37 (c) Decertification of a certified capital company which, having
38 met all the requirements of section 6(1) of this act, shall not cause

1 the disallowance of any credits allowed under subsection (1) of this
2 section nor the recapture of any portion of such credits that was
3 previously taken.

4 (d) If, after twelve years after its allocation date, a certified
5 capital company has failed to invest at least one hundred percent, on
6 a cumulative basis, of its certified capital in qualified investments,
7 the percentage of distributions that the certified capital company
8 shall be required to pay to the department under section 8(3) of this
9 act shall increase prospectively to fifty percent.

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

17 (8) A certified investor, or subsequent transferee, may only
18 transfer credits earned under this act to an affiliate unless the state
19 premium tax liability of the certified investor in the year immediately
20 preceding the proposed transfer is less than seventy-five percent of
21 the certified investor's state premium tax liability for the tax year
22 in which it earned the vested premium tax credit. Any transfer or sale
23 shall not affect the time schedule for claiming the premium tax
24 credits. Any tax credits recaptured under this section shall be the
25 liability of the certified investor that actually claimed the premium
26 tax credits.

27 NEW SECTION. **Sec. 4.** CERTIFICATION. (1) The department shall
28 establish by rule the procedures for making an application to become a
29 certified capital company.

- 30 (2) An applicant is required to:
- 31 (a) File an application with the department;
 - 32 (b) Pay a nonrefundable application fee in the amount of twenty
33 thousand dollars as described in section 13 of this act at the time of
34 filing the application, which the department shall deposit in the
35 certified capital company revolving fund;
 - 36 (c) Have an equity capitalization at the time of seeking
37 certification of five hundred thousand dollars or more in the form of

1 unencumbered cash, marketable securities, or other liquid assets. The
2 applicant shall submit as part of its application an audited balance
3 sheet that contains an unqualified opinion of an independent certified
4 public accountant issued not more than thirty-five days before the
5 application date that states whether the applicant satisfies this
6 equity capitalization requirement; and

7 (d) Have at least two principals or at least two persons employed
8 to manage the funds who have at least two years of money management
9 experience in the venture capital industry.

10 (3) The department may certify partnerships, corporations, trusts,
11 or limited liability companies, organized on a for-profit basis, which
12 submit an application to be designated as a certified capital company
13 if such applicant is located, headquartered, and licensed or registered
14 to conduct business in Washington, has as its primary business activity
15 the investment of cash in qualified businesses and qualified
16 microenterprise development organizations, and meets the other criteria
17 set forth in this act.

18 (4) The department shall review the organizational documents of
19 each applicant for certification and the business history of each
20 applicant, determine that the applicant has satisfied the requirements
21 of this section, and determine that the officers and the board of
22 directors, general partners, managers, or members are thoroughly
23 acquainted with the requirements of this section, and have not been
24 convicted of, or entered a plea of guilty or nolo contendere to, a
25 crime against the laws of Washington or any other state or of the
26 United States or any other country or government, involving a
27 fraudulent act in connection with the operation of a certified capital
28 company, or in connection with the performance of fiduciary duties in
29 another capacity.

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

32 "By authorizing the formation of a certified capital company, the
33 state does not necessarily endorse the quality of management or the
34 potential for earnings of such company and is not liable for damages or
35 losses to a certified investor in the company. Use of the word
36 "certified" in an offering does not constitute a recommendation or
37 endorsement of the investment by the director of the department of
38 community, trade, and economic development. If any applicable

1 provisions of the "certified capital company act" are violated, the
2 state may require forfeiture of unused premium tax credits and
3 repayment of used premium tax credits."

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

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

12 (i) Beneficially own, whether through rights, options, convertible
13 interests, or otherwise, fifteen percent or more of the voting
14 securities or other voting ownership interest of a certified capital
15 company;

16 (ii) Manage a certified capital company; or

17 (iii) Control the direction of investments for a certified capital
18 company.

19 (b) A certified capital company may obtain one or more guaranties,
20 indemnities, bonds, insurance policies, or other payment undertakings
21 for the benefit of its certified investors from any entity; except that
22 in no case shall more than one certified investor of such certified
23 capital company on an aggregate basis with all affiliates of such
24 certified investor be entitled to provide such guaranties, indemnities,
25 bonds, insurance policies, or other payment undertakings in favor of
26 the certified investors of the certified capital company and its
27 affiliates in Washington.

28 (c) This subsection shall not preclude a certified investor,
29 insurance company, or other party from exercising its legal rights and
30 remedies, including, without limitation, interim management of a
31 certified capital company, in the event that a certified capital
32 company is in default of its statutory obligations or its contractual
33 obligations to such certified investor, insurance company, or other
34 party, or from monitoring the certified capital company to ensure its
35 compliance with section 6 of this act or disallowing any investments
36 that have not been approved by the department under section 6(2) of
37 this act.

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

4 NEW SECTION. **Sec. 5.** AGGREGATE LIMITATIONS ON TAX CREDITS--
5 ALLOCATION. (1) The aggregate amount of certified capital for which
6 tax credits will be allocated to all certified investors under this act
7 shall not exceed the amount that would entitle all certified investors
8 of certified capital companies to take aggregate tax credits of one
9 hundred million dollars. No certified capital company, on an aggregate
10 basis with its affiliates, may file tax credit allocation claims that
11 exceed the maximum amount of certified capital for which tax credits
12 will be allocated as provided in this subsection (1).

13 (2) Tax credits shall be allocated to certified investors in the
14 order that the tax credit allocation claims are filed with the
15 department. All tax credit allocation claims filed with the department
16 on the same day shall be treated as having been filed
17 contemporaneously. Any tax credit allocation claims filed with the
18 department prior to the tax credit allocation claim filing date will be
19 deemed to have been filed on the tax credit allocation claim filing
20 date. The department will set the initial tax credit allocation claim
21 filing date to be ninety days after the department begins to accept
22 applications under section 4 of this act.

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

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

6 (5) In the event a certified capital company does not receive
7 aggregate investments of certified capital equaling the amount of tax
8 credits allocated to its certified investors within ten business days
9 of the certified capital company's receipt of notice of allocation,
10 then it shall so notify the department on or before the next business
11 day and that portion of the tax credits allocated to the certified
12 investors of such certified capital company in excess of the amount of
13 certified capital invested in such certified capital company by such
14 date will be forfeited. The department shall then reallocate those
15 forfeited tax credits among the certified investors of the other
16 certified capital companies on a pro rata basis with respect to the tax
17 credit allocation claims filed on behalf of such certified investors.
18 The department is authorized to levy a fine of not more than fifty
19 thousand dollars, to be placed in the certified capital company
20 revolving fund, on any certified investor that does not invest the full
21 amount of certified capital allocated by the department to such
22 investor in accordance with the premium tax credit allocation claim
23 filed on its behalf.

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

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

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

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

4 (2) Prior to making a proposed qualified investment in a specific
5 business, a certified capital company shall request from the department
6 a written opinion that the proposed investment will qualify as a
7 qualified investment in a qualified business. The department shall
8 have fifteen business days from the receipt of such a request to
9 determine whether the proposed investment qualifies as a qualified
10 investment in a qualified business and to notify the certified capital
11 company of its determination and an explanation thereof. If the
12 department fails to notify the certified capital company of its
13 determination within the fifteen business day period, the proposed
14 investment shall be deemed to be a qualified investment in a qualified
15 business. If the department determines that the proposed investment
16 does not meet the definition of a qualified investment or qualified
17 business or both, the department may nevertheless consider the proposed
18 investment a qualified investment, and if necessary the business a
19 qualified business, if the department determines that the proposed
20 investment will further state economic development.

21 (3) All certified capital not placed in qualified investments by
22 the certified capital company may be held or invested in such manner as
23 the certified capital company, in its discretion, deems appropriate.
24 The proceeds of all certified capital returned to a certified capital
25 company after being originally placed in qualified investments may be
26 placed again in qualified investments and shall count toward any
27 requirement of this section with respect to placing certified capital
28 in qualified investments.

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

34 (5) No certified capital company shall make a qualified investment
35 without the specific approval of the department if after the certified
36 capital company's qualified investment, on an aggregate basis with its
37 affiliates, would own more than forty-nine percent of the common equity
38 or voting interests of the qualified business; except that nothing in

1 this subsection (5) shall preclude a certified capital company from
2 exercising (a) any right or remedy upon a default by the qualified
3 business pursuant to an investment contract or (b) any antidilution or
4 preemptive rights it may have been granted in connection with an
5 initial qualified investment that can be exercised upon an investment
6 in the business by a party other than the certified capital company or
7 an affiliate of the certified capital company.

8 (6) No qualified investment may be made by a certified capital
9 company to the extent such investment would cause the company's total
10 qualified investment outstanding with respect to the qualified business
11 receiving such investment to exceed fifteen percent of the total
12 certified capital of the certified capital company at the time of such
13 investment.

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

19 (8) The cumulative amount of all qualified investments made by a
20 certified capital company will be considered in the calculation of the
21 percentage requirements under this section, provided that any amounts
22 received by a certified capital company from a qualified business as
23 (a) commitment fees, closing fees, or other similar fees, excluding
24 reimbursement of out-of-pocket expenses, such as legal fees and
25 accounting fees in excess of one percent of the certified capital
26 company's investment in the qualified business or (b) license fees,
27 royalties, or similar charges shall not be considered in any percentage
28 calculations under this section.

29 NEW SECTION. **Sec. 7.** CERTIFIED CAPITAL COMPANY REPORTING
30 REQUIREMENTS. Each certified capital company shall report the
31 following to the department:

32 (1) As soon as practicable after the receipt of certified capital:

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

36 (b) The amount of each certified investor's investment of certified
37 capital; and

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

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

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

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

8 (c) All qualified investments that the certified capital company
9 has made in the previous taxable year, including the number of
10 employees of each qualified business in which it has made investments
11 at the time of such investment and as of December 1st of the preceding
12 taxable year. For any qualified business where the certified capital
13 company no longer has an investment, the certified capital company
14 shall provide employment figures for such company as of the last day
15 before the investment was terminated; and

16 (d) Other information that the department may reasonably request
17 that will help the department ascertain the impact of the certified
18 capital companies both directly and indirectly on the economy of the
19 state of Washington including but not limited to the number of jobs
20 retained and created by qualified businesses that have received
21 qualified investments.

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

23 (a) Annual audited financial statements, which shall include the
24 opinion of an independent certified public accountant, within ninety
25 days of the close of its fiscal year; and (b) an "agreed upon
26 procedures report" or equivalent regarding the operations of the
27 certified capital company regarding section 6 of this act. Upon
28 receiving notification and documentation by a certified capital company
29 that it has satisfied the requirements of section 6 of this act that it
30 has invested fifty percent of its certified capital, the department
31 shall have sixty days to notify such certified capital company that it
32 has or has not met such requirement. If the department does not
33 provide such notification within sixty days, the certified capital
34 company shall then be deemed to have met such a requirement.

35 NEW SECTION. **Sec. 8.** DISTRIBUTIONS. (1)(a) A certified capital
36 company may make qualified distributions at any time. In order for a

1 certified capital company to make a distribution other than a qualified
2 distribution to its equity holders, the certified capital company must
3 demonstrate the following:

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

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

13 (iii) An amount equal to or exceeding five percent of its certified
14 capital that has been invested in qualified microenterprise development
15 organizations inclusive of investments that also meet the requirements
16 of (a)(ii) of this subsection.

17 (b) In addition, certified capital companies are encouraged to make
18 qualified investments in businesses that are certified by the office of
19 minority and women's business enterprises.

20 (2) In the event that a business in which a qualified investment is
21 made relocates its principal business operations to another state
22 either during such investment, or upon the earlier of: (a) The end of
23 the investment holding period with respect to such investment by the
24 certified capital company or (b) when the certified capital company
25 reaches one hundred percent investment, the cumulative amount of
26 qualified investments made by a certified capital company shall be
27 reduced by the amount of such qualified investment for the purposes of
28 satisfying the requirements of (b)(i) of this subsection only unless:
29 (i) The certified capital company invests an amount at least equal to
30 the investment of certified capital in the relocated business in a
31 qualified business located in Washington within six months of the
32 relocation or (ii) the business demonstrates that it has returned its
33 principal business operations to Washington within three months of such
34 relocation. A business shall be deemed to have relocated its principal
35 business operations outside Washington, unless it maintains its
36 headquarters or the primary workplace of more than fifty percent of the
37 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. 9.** 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 6 or 7 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 7 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. 10.** 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 6 of this act.

17 NEW SECTION. **Sec. 11.** 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. 12.** 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. 13.** 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 9(3) of this act.

22 (3) Once a certified capital company has met the conditions of
23 section 9(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. 14.** RULES. The department shall develop rules
27 as deemed necessary to implement the provisions of this act.

28 NEW SECTION. **Sec. 15.** CAPTIONS. Captions used in this act are
29 not any part of the law.

30 NEW SECTION. **Sec. 16.** Sections 1, 2, and 4 through 14 of this act
31 constitute a new chapter in Title 43 RCW.

32 NEW SECTION. **Sec. 17.** 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. 18.** 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.

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