

The Senate Insurance and Labor Committee offered the following substitute to HB 1441:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to change certain provisions regarding assignment of corporate income tax
3 credits; to provide for state insurance premium tax credits with respect to certified capital
4 companies; to provide for definitions; to provide for procedures, conditions, and limitations;
5 to provide for powers, duties, and authority of the Office of Treasury and Fiscal Services; to
6 provide for related matters; to provide effective dates; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended by striking Code Section 48-7-42, relating to assignment of corporate income tax
12 credits, and inserting in its place a new Code Section 48-7-42 to read as follows:

13 "48-7-42.

14 (a) As used in this Code section, the term 'affiliated entity' means:

15 (1) A corporation that is a member of the taxpayer's 'affiliated group' within the meaning
16 of Section 1504(a) of the Internal Revenue Code; or

17 (2) An entity affiliated with a corporation, business, partnership, or limited liability
18 company taxpayer, which entity:

19 (A) Owns or leases the land on which a project is constructed;

20 (B) Provides capital for construction of the project; and

21 (C) Is the grantor or owner under a management agreement with a managing company
22 of the project.

23 (b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is
24 eligible for the taxable year (such eligibility being determined for this purpose without
25 regard to any limitation imposed by reason of the taxpayer's precredit income tax liability),
26 the taxpayer may elect to assign such credit in its entirety to another affiliated entity whole

1 or in part to one or more affiliated entities for such taxable year by attaching a statement
 2 to the taxpayer's return for the taxable year; provided, however, that no carryover
 3 attributable to the unused portion of any previously claimed or assigned credit may be
 4 assigned or reassigned, except as provided in subsection (d) of this Code section. In the
 5 case of any credit that must be claimed in installments in more than one taxable year, the
 6 election under this subsection may be made on an annual basis with respect to each such
 7 installment, provided that the taxpayer shall notify the commissioner with respect to the
 8 assignment of each such installment by filing a separate copy of the election statement for
 9 such installment no later than the time of filing of the taxpayer's state income tax return for
 10 such taxable year. Once made, an election under this subsection shall be irrevocable.

11 (c) The recipient of a tax credit assigned under subsection (b) of this Code section shall
 12 attach a statement to its return identifying the assignor of the tax credit, in addition to
 13 providing any other information required to be provided by a claimant of the assigned tax
 14 credit.

15 (d) If the assignor and the recipient of a tax credit assigned under subsection (b) of this
 16 Code section cease to be affiliated entities, any carryover attributable to the unused portion
 17 of such credit shall be transferred back to the assignor of the credit. Such assignor shall be
 18 permitted to use any such carryover itself, and also shall be permitted to assign such
 19 carryover to ~~another affiliated entity~~ one or more affiliated entities, as if such carryover
 20 were an income tax credit for which the assignor became eligible in the taxable year in
 21 which the carryover was transferred back to the assignor.

22 (e) The assignor and recipient of a tax credit assigned under subsection (b) of this Code
 23 section shall be jointly and severally liable for any tax (plus interest and penalties, if any)
 24 attributable to the disallowance or recapture of the assigned credit."

25 SECTION 2.

26 Said title is further amended by adding a new chapter at the end thereof, to be designated
 27 Chapter 18, to read as follows:

28 "CHAPTER 18

29 48-18-1.

30 As used in this chapter, the term:

31 (1) 'Affiliate' of a certified capital company or insurance company means:

32 (A) Any person, directly or indirectly, who is beneficially owning, whether through
 33 rights, options, convertible interests, or otherwise, controlling, or holding power to vote

1 15 percent or more of the outstanding voting securities or other voting ownership
2 interests of the certified capital company or insurance company, as applicable;

3 (B) Any person 15 percent or more of whose outstanding voting securities or other
4 voting ownership interests are, directly or indirectly, beneficially owned, whether
5 through rights, options, convertible interests, or otherwise, controlled, or held with
6 power to vote by the certified capital company or insurance company, as applicable;

7 (C) Any person, directly or indirectly, controlling, controlled by, or under common
8 control with the certified capital company or insurance company, as applicable;

9 (D) A partnership or limited liability company in which the certified capital company
10 or insurance company, as applicable, is a general partner, manager, or managing
11 member, as the case may be; or

12 (E) Any person who is an officer, director, employee, or agent of the certified capital
13 company or insurance company, as applicable, or an immediate family member of such
14 officer, director, employee, or agent.

15 (2) 'Allocation date' means the date on which the certified investors of a certified capital
16 company are allocated certified capital by the department pursuant to Code
17 Section 48-18-4.

18 (3) 'Certified capital' means an investment of cash by a certified investor in a certified
19 capital company which fully funds the purchase price of an equity interest in the certified
20 capital company or a qualified debt instrument issued by the certified capital company.

21 (4) 'Certified capital company' means a partnership, corporation, trust, or limited liability
22 company, whether organized on a profit or not for profit basis, that has as its primary
23 business activity the investment of cash in qualified businesses and that is certified by the
24 department as meeting the criteria of this law.

25 (5) 'Certified investor' means any insurance company that contributes certified capital
26 pursuant to an allocation of tax credits under Code Section 48-18-4.

27 (6) 'Department' means the Office of Treasury and Fiscal Services.

28 (7) 'Person' means any natural person or entity, including a corporation, general or
29 limited partnership, trust, or limited liability company.

30 (8) 'Qualified business' means a business that meets all of the following conditions as of
31 the time of a certified capital company's first investment in the business:

32 (A) Is headquartered and has its principal business operations located in this state;

33 (B) Is a small business concern as defined in Section 121.301(c) of the small business
34 size regulations of the U.S. Small Business Administration, 13 CFR 121.301(c);

35 (C) Has fewer than 200 employees and at least 75 percent of the employees are
36 employed in the state; and

1 (D) Is not predominantly engaged in professional services provided by accountants,
2 lawyers, or predominantly engaged in retail sales or the selling of real estate.

3 (9) 'Qualified debt instrument' means a debt instrument issued to a certified investor by
4 a certified capital company, at par value or a premium, with an original maturity date of
5 at least five years from date of issuance and a repayment schedule that is no faster than
6 a level principal amortization over five years and that contains no interest, distribution,
7 or payment features that are related to the profitability of the certified capital company
8 or the performance of the certified capital company's investment portfolio until such time
9 as the certified capital company is permitted to make distributions other than qualified
10 distributions under Code Section 48-18-6.

11 (10) 'Qualified distribution' means any distribution or payment by a certified capital
12 company in connection with any of the following:

13 (A) Reasonable costs and expenses of forming, syndicating, and organizing the
14 certified capital company, including reasonable and necessary fees paid for professional
15 services, including, but not limited to, legal and accounting services, related to the
16 formation of the certified capital company, and the cost of financing and insuring the
17 obligations of the certified capital company;

18 (B) Reasonable costs and expenses of managing and operating the certified capital
19 company, including an annual management fee in an amount that does not exceed 2 1/2
20 percent of certified capital; except that no such cost or expense shall be paid to a
21 certified investor or affiliate of a certified investor and that such costs and expenses in
22 the aggregate shall not exceed 5 percent of certified capital in any one year;

23 (C) Reasonable and necessary fees in accordance with industry custom for professional
24 services, including, but not limited to, legal and accounting services, related to the
25 operation of the certified capital company; and

26 (D) Any projected increase in federal or state taxes of the equity owners of a certified
27 capital company resulting from the earnings or other tax liability of the certified capital
28 company to the extent that the increase is related to the ownership, management or
29 operation of a certified capital company or issuance, repayment, or redemption of
30 qualified debt instruments of the certified capital company.

31 (11) 'Qualified investment' means the investment of cash by a certified capital company
32 in a qualified business for the purchase of any debt, debt participation, equity, or hybrid
33 security, of any nature and description whatsoever, including a debt instrument or
34 security which has the characteristics of debt but which provides for conversion into
35 equity or equity participation instruments such as options or warrants.

36 (12) 'Qualified technology business' means a qualified business:

1 (A) That is either less than two years old at the time of the initial investment in such
 2 business by a certified capital company, or that had, together with its affiliates, less than
 3 \$3 million in annual revenue for the fiscal year immediately preceding the fiscal year
 4 of such investment on a consolidated basis in conformance with generally accepted
 5 accounting principles; and

6 (B) That is engaged on the date of such investment in development or offering of
 7 products or services involving:

8 (i) Biotechnology;

9 (ii) The industrial use of microorganisms or biological techniques;

10 (iii) Biomedical engineering and the use of engineering technology, instrumentation,
 11 and methods to solve medical problems;

12 (iv) Pharmacology;

13 (v) The uses and manufacture of drugs;

14 (vi) Pharmaceutical research, development, and testing; or

15 (vii) Bioagriculture.

16 (13) 'State premium tax liability' means any state insurance premium tax liability
 17 incurred by an insurance company under the provisions of Code Sections 33-8-4 and
 18 33-8-5.

19 (14) 'Tax credit' means the credit against state premium tax liability which is earned by
 20 a certified investor in connection with an investment of certified capital in a certified
 21 capital company pursuant to this chapter.

22 (15) 'Tax credit allocation claim' means a claim for allocation of tax credits prepared and
 23 executed by an insurance company on a form provided by the department and filed by a
 24 certified capital company with the department. The form shall include an affidavit of the
 25 insurance company pursuant to which such insurance company shall become legally
 26 bound and irrevocably committed to make an investment of certified capital in a certified
 27 capital company in the amount allocated (even if such amount is less than the amount of
 28 the claim), subject only to the receipt of an allocation pursuant to Code Section 48-18-4.

29 48-18-2.

30 (a) The director of the department shall establish by rule or regulation the procedures for
 31 making an application to become a certified capital company. The applicant shall pay a
 32 nonrefundable application fee of \$7,500.00 at the time of filing the application with the
 33 department.

34 (b) A certified capital company's equity capitalization from the time of seeking
 35 certification through the date of receipt of an allocation of certified capital must be

1 \$500,000.00 or more and must be in the form of unencumbered cash, marketable securities,
2 or other liquid assets.

3 (c) The department shall review the organizational documents of each applicant for
4 certification and the business history of the applicant and shall determine that the
5 applicant's cash, marketable securities, and other liquid assets are at least \$500,000.00. As
6 part of its application, each applicant shall submit to the department its balance sheet,
7 audited with an unqualified opinion of a firm of independent certified public accountants,
8 of a date no more than 35 days prior to the date of the application.

9 (d) The department shall verify that at least two principals of the certified capital company
10 or at least two persons employed or engaged to manage the funds of the certified capital
11 company have not less than two years of experience in the venture capital industry.

12 (e) The certified capital company shall certify that within 60 days of the investment of
13 certified capital in the certified capital company, at least one of such principals or managers
14 of the certified capital company shall be primarily located in an office of the certified
15 capital company which is based in this state.

16 (f) Any offering material involving the sale of securities of the certified capital company
17 shall include the following statement:

18 'By authorizing the formation of a certified capital company, the state does not
19 necessarily endorse the quality of management or the potential for earnings of such
20 company and is not liable for damages or losses to a certified investor in the company.
21 Use of the word "certified" in an offering does not constitute a recommendation or
22 endorsement of the investment by the Office of Treasury and Fiscal Services. In the
23 event applicable provisions of this law are violated, the state may require forfeiture of
24 unused tax credits and repayment of used tax credits.'

25 (g) Within 60 days of application, the department shall issue the certification or shall
26 refuse the certification and communicate in detail to the applicant the grounds for the
27 refusal, including suggestions for the removal of those grounds. If an applicant submits an
28 amended application within 30 days of receipt of refusal by the department, the department
29 shall have 30 days from the receipt of such amended application by which to communicate
30 its approval or refusal of such amended application to the applicant. The department shall
31 review and approve or reject applications in the order submitted, and in the event more than
32 one application is received by the department on any date, all such applications shall be
33 reviewed and approved simultaneously, except in the case of incomplete applications or
34 applications for which additional information is requested by the department and is not
35 supplied by the applicant within the allowable time limits established by the department.

1 (h) No insurance company or any affiliate of an insurance company shall, directly or
2 indirectly, own whether through rights, options, convertible interests, or otherwise 15
3 percent or more of the voting equity interests of or manage a certified capital company or
4 control the direction of investments for a certified capital company. This provision shall
5 not preclude a certified investor, insurance company, or any other person from:

6 (1) Exercising its legal rights and remedies which may include interim management of
7 a certified capital company in the event that a certified capital company is in default of
8 its statutory obligations or its contractual obligations to a certified investor, insurance
9 company, or other person; or

10 (2) Establishing controls to ensure that the certified capital company satisfies the
11 requirements of subsections (a) and (f) of Code Section 48-18-5.

12 (i) A certified capital company may obtain a guaranty, indemnity, bond, insurance policy,
13 or other payment undertaking for the benefit of its certified investors from any entity;
14 provided that, in no case shall more than one certified investor of such certified capital
15 company or affiliates of such certified investor be entitled to provide such guaranty,
16 indemnity, bond, insurance policy, or other payment undertaking in favor of the certified
17 investors of the certified capital company and its affiliates in this state.

18 48-18-3.

19 (a) Any certified investor who makes an investment of certified capital pursuant to an
20 allocation of tax credits under Code Section 48-18-4 shall, in the year of investment, earn
21 a vested credit against state premium tax liability equal to 100 percent of the certified
22 investor's investment of certified capital. After July 1, 2005, a certified investor shall be
23 entitled to take up to 10 percent of such vested tax credits in any taxable year to reduce the
24 certified investor's state premium tax liability for such taxable year of the certified
25 investor, plus up to 10 percent of the original amount of any tax credits some or all of
26 which was carried forward unused pursuant to subsection (b) of this Code section;
27 provided, however, that in the event that a certified investor is unable under the provisions
28 of this Code section to utilize the full 10 percent allowable under the provisions of this
29 subsection for a taxable year, the remainder of such 10 percent may be taken in a future tax
30 year without regard to the annual limitations of this subsection.

31 (b) The tax credit that may be applied against state premium tax liability in any one year
32 may not exceed the state premium tax liability of the certified investor for such taxable
33 year. All unused tax credits against state premium tax liability may be carried forward
34 indefinitely and used in any subsequent year until the tax credits are utilized in full.

1 (c) A certified investor shall not be required to reduce the amount of tax liability included
2 with respect to its state premium tax liability in connection with ratemaking for any
3 insurance contract written in this state because of a reduction in the certified investor's
4 actual state premium tax liability as a result of tax credits allowed under this chapter.

5 (d) If the taxes paid by a certified investor with respect to its state premium tax liability
6 constitute a credit against any other tax which is imposed by this state, the certified
7 investor's credit against such other tax shall not be reduced by virtue of the reduction in the
8 certified investor's state premium tax liability as a result of tax credits allowed under this
9 chapter.

10 (e) A certified investor shall not be subject to additional or retaliatory tax as a result of
11 claiming tax credits allowed under this chapter.

12 48-18-4.

13 (a) The aggregate amount of certified capital for which tax credits shall be allowed for all
14 certified investors under this act shall not exceed the amount which would entitle all
15 certified investors in certified capital companies to take aggregate tax credits of \$7.5
16 million per year for ten years. No certified capital company, on an aggregate basis with its
17 affiliates, may file tax credit allocation claims in excess of the maximum amount of
18 certified capital for which tax credits may be allowed as provided in this subsection.

19 (b) Certified capital for which tax credits are allowed will be allocated to certified
20 investors in certified capital companies in the order that tax credit allocation claims are
21 received by the department from such certified capital companies on behalf of their
22 certified investors. All filings made on the same day shall be treated as having been made
23 contemporaneously.

24 (c) In the event that two or more certified capital companies file tax credit allocation
25 claims with the department on behalf of their respective certified investors on the same day,
26 and the amount of such tax credit allocation claims exceeds in the aggregate the limit of
27 available tax credits under the provisions of subsection (a) of this Code section, capital for
28 which tax credits are allowed shall be allocated among the certified investors who filed on
29 that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation
30 for any one certified investor shall be the product of a fraction, the numerator of which is
31 the amount of the tax credit allocation claim filed on behalf of such certified investor and
32 the denominator of which is the total of all tax credit allocation claims filed on behalf of
33 all certified investors on such day, multiplied by the aggregate limitation as provided in
34 subsection (a) of this Code section or such lesser amount of tax credits that remains
35 unallocated on such day.

1 (d) Within 30 business days after the department receives a tax credit allocation claim filed
2 by a certified capital company on behalf of one or more of its certified investors, the
3 department shall notify the certified capital company of the amount of tax credits allocated
4 to each of the certified investors in such certified capital company.

5 (e) In the event a certified capital company does not receive an investment of certified
6 capital equaling the amount of premium tax credits allocated to a certified investor for
7 which it filed a tax credit allocation claim from such certified investor or affiliate of such
8 certified investor within ten business days of its receipt of notice of allocation, that portion
9 of the tax credits allocated to such certified investor in the certified capital company shall
10 be forfeited, and the department shall reallocate that certified capital among the other
11 certified investors in all certified capital companies on a pro rata basis with respect to the
12 tax credit allocation claims filed on behalf of such certified investors by all certified capital
13 companies. The department is authorized to levy a fine of not more than \$50,000.00 on
14 any certified investor that does not invest, or have an affiliate invest, the full amount of
15 certified capital allocated by the department to such certified investor in accordance with
16 the tax credit allocation claim filed on its behalf.

17 (f) The maximum amount of tax credit allocation claims that may be filed on behalf of any
18 one certified investor, on an aggregate basis with its affiliates, in one or more certified
19 capital companies, shall not exceed the greater of \$10 million or 15 percent of the
20 aggregate limitation as provided in subsection (a) of this Code section.

21 48-18-5.

22 (a) To continue to be certified, a certified capital company must make qualified
23 investments according to the following schedule:

24 (1) Within the period ending three years after its allocation date, a certified capital
25 company must have made qualified investments cumulatively equal to 30 percent of its
26 certified capital;

27 (2) Within the period ending five years after its allocation date, a certified capital
28 company must have made qualified investments cumulatively equal to 50 percent of its
29 certified capital; and

30 (3) For purposes of this subsection, each \$1.00 of qualified investment made in a
31 qualified business having its headquarters or principal place of business in a county
32 designated tier 1 or tier 2 pursuant to Code Section 48-7-40, as amended, shall be treated
33 as respectively, \$2.00 and \$1.50.

34 (b) The aggregate cumulative amount of all qualified investments made by the certified
35 capital company from its allocation date shall be considered in the calculation of the

1 percentage requirements under this chapter. Any funds received from a qualified
2 investment may be invested in another qualified investment and shall count toward any
3 requirement in this chapter with respect to investments of certified capital.

4 (c) Any business which is classified as a qualified business at the time of the first
5 investment in said business by a certified capital company shall remain classified as a
6 qualified business and may receive follow-on investments from any certified capital
7 company, and such follow-on investments shall be qualified investments even though such
8 business may not meet the definition of a qualified business at the time of such follow-on
9 investments.

10 (d) No qualified investment may be made if the aggregate investment by the certified
11 capital company in the qualified business following such investment would exceed 15
12 percent of the total certified capital of the certified capital company at the time of
13 investment.

14 (e) At its option, a certified capital company, prior to making a proposed investment in a
15 specific business, may request from the department a written opinion that the investment
16 which it proposes to make should be considered a qualified investment. Upon receiving
17 such a request, the department shall have 30 business days to determine whether or not the
18 proposed investment meets the definition of a qualified investment and notify the certified
19 capital company of its determination and an explanation thereof. If the department fails
20 to notify the certified capital company with respect to the proposed investment within the
21 ten day period, the proposed investment shall be deemed to be a qualified investment. If
22 the department determines that the proposed investment does not meet all applicable
23 criteria, the department may nevertheless consider the business a qualified investment and
24 approve the investment if the department determines that the proposed investment will
25 further state economic development.

26 (f) All certified capital not currently invested in qualified investments by the certified
27 capital company must be invested in one or more of the following:

- 28 (1) Cash deposited with a federally insured financial institution;
- 29 (2) Certificates of deposit in a federally insured financial institution;
- 30 (3) Investment securities that are obligations of the United States, its agencies or
31 instrumentalities, or obligations that are guaranteed fully as to principal and interest by
32 the United States;
- 33 (4) Debt instruments rated at least 'AA' or its equivalent by a nationally recognized rating
34 organization, or issued by, or guaranteed with respect to payment by, an entity whose
35 unsecured indebtedness is rated at least 'AA' or its equivalent by a nationally recognized

1 credit rating organization, and which is not subordinated to other unsecured indebtedness
2 of the issuer or the guarantor, as the case may be;

3 (5) Obligations of this state, or any municipality in this state, or any political subdivision
4 thereof;

5 (6) Commercial paper rated at least A1 or P1 by Standard and Poor's Ratings Services
6 or Moody's Investor Service, Inc., with a maturity of no more than 270 days; or

7 (7) Any other investments approved in advance and in writing by the department.

8 (g) Each certified capital company shall report the following to the department:

9 (1) As soon as practicable after the receipt of certified capital, each certified capital
10 company shall report the following to the department:

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

13 (B) The amount of each certified investor's investment of certified capital and tax
14 credits; and

15 (C) The date on which the certified capital was received;

16 (2) On an annual basis, on or before January 31:

17 (A) The amount of the certified capital company's certified capital at the end of the
18 immediately preceding year;

19 (B) Whether or not the certified capital company has invested more than 15 percent of
20 its total certified capital in any one qualified business;

21 (C) A description of all qualified investments that the certified capital company made
22 during the previous calendar year; and

23 (D) For informational purposes only, the total number of permanent, full-time jobs
24 either created or retained by the qualified business during the calendar year, the average
25 wage of the jobs created or retained, the industry sectors in which the qualified
26 businesses operate, and any additional capital invested in qualified businesses from
27 sources other than certified capital companies;

28 (3) Each certified capital company shall provide to the department annual audited
29 financial statements, which shall include the opinion of an independent certified public
30 accountant regarding the financial statements, within 90 days of the close of the fiscal
31 year. The audit or such other review performed by the independent certified public
32 accountant shall address the methods of operation and conduct of the business of the
33 certified capital company to determine if the certified capital company is complying with
34 the statutes and program rules and that the funds received by the certified capital
35 company have been invested as required within the time limits provided by subsection (a)
36 of this Code section; and

1 (4) On or before January 31 of each year, each certified capital company shall pay an
2 annual, nonrefundable certification fee of \$5,000.00 to the department.

3 48-18-6.

4 A certified capital company may make qualified distributions at any time. In order to make
5 a distribution from certified capital, other than a qualified distribution, a certified capital
6 company must have made qualified investments in qualified technology businesses in an
7 amount cumulatively equal to at least 40 percent of its certified capital, and aggregate
8 qualified investments, including such qualified technology business investments, in an
9 amount cumulatively equal to at least 100 percent of its certified capital. A certified capital
10 company may, however, make payments of principal and interest on its indebtedness
11 without any restriction whatsoever, including payments of indebtedness of the certified
12 capital company on which certified investors earned tax credits. For purposes of
13 calculating whether a certified capital company has satisfied the requirements of this Code
14 section, certified capital shall mean the total amount of certified capital originally allocated
15 to the certified capital company, irrespective of any distributions, payments, qualified
16 distributions, or payments of indebtedness by such company, less any certified capital
17 forfeited pursuant to subsection (e) of Code Section 48-18-4.

18 48-18-7.

19 (a) The department shall conduct an annual review of each certified capital company to
20 determine if the certified capital company is abiding by the requirements of certification,
21 to advise the certified capital company as to the eligibility status of its qualified
22 investments, and to ensure that no investment has been made in violation of this chapter.
23 The cost of the annual review shall be paid by each certified capital company according to
24 a reasonable fee schedule adopted by the department.

25 (b) A certified capital company at any time may certify to the department its good faith
26 belief that it has complied with the provisions of paragraphs (1) or (2) of subsection (a) of
27 Code Section 48-18-5 or subsection (f) of Code section 48-18-7. Within 120 days of
28 receipt of such certification by the department, the department shall conduct a review of
29 the qualified investments of the certified capital company and shall certify in writing to the
30 certified capital company whether or not the certified capital company has so complied.
31 The certified capital company shall pay the costs of such a review according to a
32 reasonable fee schedule adopted by the department.

33 (c) Any material violation of Code Section 48-18-5 shall be grounds for decertification of
34 the certified capital company. If the department determines that a certified capital

1 company is not in compliance with the requirements of Code section 48-18-5, it shall, by
2 written notice, inform the officers of the certified capital company that the certified capital
3 company may be subject to decertification in 120 days from the date of mailing of the
4 notice, unless the deficiencies are corrected and the certified capital company is again in
5 compliance with all requirements for certification.

6 (d) At the end of the such grace period, if the certified capital company is still not in
7 compliance with Code Section 48-18-5, the department may send a notice of decertification
8 to the certified capital company and to all other appropriate state agencies.

9 (e) Decertification of a certified capital company may cause the recapture of tax credits
10 previously claimed and the forfeiture of future tax credits to be claimed by certified
11 investors with respect to such certified capital company, as follows:

12 (1) Decertification of a certified capital company within three years of its allocation date
13 shall cause the recapture of all tax credits previously claimed and the forfeiture of all
14 future tax credits to be claimed by certified investors with respect to such certified capital
15 company, except as set forth in paragraph (4) of this subsection;

16 (2) When a certified capital company meets all requirements for continued certification
17 under paragraph (1) of subsection (a) of Code Section 48-18-5 and subsequently fails to
18 meet the requirements for continued certification under the provisions of paragraph (2)
19 of subsection (a) of Code Section 48-18-5, those tax credits which are eligible to be taken
20 by certified investors within the first three years in which such tax credits may be taken
21 will not be subject to recapture or forfeiture; however, all tax credits that are eligible to
22 be taken by certified investors after the third year in which tax credits may be taken shall
23 be subject to recapture or forfeiture;

24 (3) Once a certified capital company has met all requirements for continued certification
25 under paragraphs (1) and (2) of subsection (a) of Code Section 48-18-5, and is
26 subsequently decertified, those tax credits which are eligible to be taken by certified
27 investors within the first five years in which such tax credits may be taken will not be
28 subject to recapture or forfeiture. Those tax credits that are eligible to be taken only after
29 the fifth year in which such tax credits may be taken shall be subject to forfeiture only if
30 the certified capital company is decertified within five years from the applicable
31 allocation date, except as set forth in paragraph (4) of this subsection;

32 (4) Once a certified capital company has invested an amount cumulatively equal to 100
33 percent of its certified capital in qualified investments, all tax credits claimed or to be
34 claimed by its certified investors shall no longer be subject to recapture or forfeiture; and

35 (5) If at the time of any such distribution made by the certified capital company, such
36 distribution taken together with all other such distributions made by the certified capital

1 company, other than qualified distributions, exceeds in the aggregate the sum of the
2 certified capital company's original certified capital and any additional capital
3 contributions to the certified capital company, as determined by the audit, the certified
4 capital company shall pay to the department 10 percent of the portion of such distribution
5 in excess of such amount. Payments to the department by a certified capital company
6 pursuant to this paragraph shall not exceed the aggregate amount of tax credits used by
7 all certified investors in such certified capital company.

8 (f) Once a certified capital company has invested an amount cumulatively equal to 100
9 percent of its certified capital in qualified investments, the certified capital company shall
10 no longer be subject to regulation by the department.

11 (g) The department shall send written notice to the address of each certified investor whose
12 tax credit has been subject to recapture or forfeiture, using the address last shown on the
13 last premium tax filing.

14 48-18-8.

15 The tax credit established pursuant to this chapter may be transferred or sold to any other
16 person with state premium tax liability. The department shall promulgate regulations to
17 facilitate the transfer or sale of the tax credits. Any such transfer or sale shall not affect the
18 time schedule for taking the tax credit as provided in this chapter. Any tax credits
19 recaptured pursuant to Code Section 48-18-7 shall be the liability of the taxpayer which
20 actually claimed the tax credits."

21 SECTION 3.

22 Section 1, this section, and Section 4 of this Act shall become effective upon the approval
23 of the Governor or upon its becoming law without such approval. The remainder of this Act
24 shall become effective on March 1, 2003.

25 SECTION 4.

26 All laws and parts of laws in conflict with this Act are repealed.