

House Bill 1441 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 175th, Turnquest of the 73rd and Dukes of the 161st

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 provide for tax credits with respect to rehabilitation of historic structures;
3 to provide for conditions and limitations; to provide for powers, duties, and authority of the
4 state revenue commissioner, the Department of Revenue and the Department of Natural
5 Resources; to change certain provisions regarding assignment of corporate income tax
6 credits; to change certain provisions regarding the sales and use tax exemption regarding the
7 sale or lease of certain computer equipment; to provide for additional conditions and
8 limitations; to provide for state insurance premium tax credits with respect to certified capital
9 companies; to provide for definitions; to provide for procedures, conditions, and limitations;
10 to provide for powers, duties, and authority of the Office of Treasury and Fiscal Services; to
11 provide for related matters; to provide effective dates; to provide for applicability; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
16 amended by adding a new Code section immediately following Code Section 48-7-29.7, to
17 be designated Code Section 48-7-29.8, to read as follows:

18 "48-7-29.8.

19 (a) As used in this Code section, the term:

20 (1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are
21 certified by the Department of Natural Resources as meeting the United States Secretary
22 of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation
23 as provided by the Department of Natural Resources.

24 (2) 'Certified structure' means a historic building or structure that is individually listed
25 in the Georgia Register of Historic Places or is certified by the Department of Natural

1 Resources as contributing to the historic significance of a Georgia Register Historic
2 District.

3 (3) 'Historic home' means a certified structure which, or any portion of which is or will,
4 within a reasonable period, be owned and used as the principal residence of the person
5 claiming the tax credit allowed under this Code section. Historic home shall include any
6 structure or group of structures that constitute a multifamily or multipurpose structure,
7 including a cooperative or condominium. If only a portion of a building is used as such
8 person's principal residence, only those qualified rehabilitation expenditures that are
9 properly allocable to such portion shall be deemed to be made to a historic home.

10 (4) 'Qualified rehabilitation expenditure' means any amount properly chargeable to a
11 capital account expended in the substantial rehabilitation of a structure that by the end of
12 the taxable year in which the certified rehabilitation is completed is a certified structure.
13 This term does not include the cost of acquisition of the certified structure, the cost
14 attributable to enlargement or additions to an existing building, site preparation, or
15 personal property.

16 (5) 'Substantial rehabilitation' means rehabilitation of a certified structure for which the
17 qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the
18 exterior during the 24 month period selected by the taxpayer ending with or within the
19 taxable year, exceed:

20 (A) For a historic home, the lesser of \$25,000.00 or 50 percent of the adjusted basis of
21 the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the
22 case of a historic home located in a target area \$5,000.00; or

23 (B) For any other certified structure, the greater of \$5,000.00 or the adjusted basis of
24 the property.

25 (6) 'Target area' means a qualified census tract under Section 42 of the Internal Revenue
26 Code of 1986, found in the United States Department of Housing and Urban
27 Development document number N-94-3821; FR-3796-N-01.

28 (b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter for the
29 taxable year in which the certified rehabilitation is completed:

30 (1) In the case of a historic home, equal to 10 percent of qualified rehabilitation
31 expenditures, except that, in the case of a historic home located within a target area, an
32 additional credit equal to 5 percent of qualified rehabilitation expenditures shall be
33 allowed; and

34 (2) In the case of any other certified structure, equal to 20 percent of qualified
35 rehabilitation expenditures.

36 (c) In no event shall credits for a historic home or certified structure exceed \$5,000.00 in
37 any 120 month period.

1 (d) In order to be eligible to receive the credit authorized under subsection (b) of this Code
2 section, a taxpayer must attach to the taxpayer's state tax return a copy of the certification
3 of the Department of Natural Resources verifying that the improvements to the certified
4 structure are consistent with the Department of Natural Resources Standards for
5 Rehabilitation.

6 (e)(1) If the credit allowed under this Code section in any taxable year exceeds the total
7 tax otherwise payable by the taxpayer for that taxable year, the taxpayer may apply the
8 excess as a credit for succeeding years until the earlier of:

9 (A) The full amount of the excess is used; or

10 (B) The expiration of the tenth taxable year after the taxable year in which the certified
11 rehabilitation has been completed.

12 (2) No such credit shall be allowed the taxpayer against prior years' tax liability.

13 (f) In the case of any rehabilitation which may reasonably be expected to be completed in
14 phases set forth in architectural plans and specifications completed before the rehabilitation
15 begins, a 60 month period may be substituted for the 24 month period provided for in
16 paragraph (5) of subsection (a) of this Code section.

17 (g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event
18 a tax credit under this Code section has been claimed and allowed the taxpayer, upon the
19 sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the
20 remaining unused amount of such credit to the purchaser of such certified structure. If
21 a historic home for which a certified rehabilitation has been completed by a nonprofit
22 corporation is sold or transferred, the full amount of the credit to which the nonprofit
23 corporation would be entitled if taxable shall be transferred to the purchaser or transferee
24 at the time of sale or transfer.

25 (2) Such purchaser shall be subject to the limitations of subsection (e) of this Code
26 section. Such purchaser shall file with such purchaser's tax return a copy of the approval
27 of the rehabilitation by the Department of Natural Resources as provided in
28 subsection (d) and a copy of the form evidencing the transfer of the tax credit.

29 (3) Such purchaser shall be entitled to rely in good faith on the information contained in
30 and used in connection with obtaining the approval of the credit including, without
31 limitation, the amount of qualified rehabilitation expenditures.

32 (h)(1) If an owner other than a nonprofit corporation sells a historic home within three
33 years of receiving the credit, the seller shall recapture the credit to the Department of
34 Revenue as follows:

35 (A) If the property is sold within one year of receiving the credit, the recapture amount
36 will equal the lesser of the credit or the net profit of the sale;

1 (B) If the property is sold within two years of receiving the credit, the recapture
2 amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

3 (C) If the property is sold within three years of receiving the credit, the recapture
4 amount will equal the lesser of one-third of the credit or the net profit of the sale.

5 (2) The recapture provisions of this subsection shall not apply to a sale resulting from the
6 death of the owner.

7 (i) The tax credit allowed under this Code section, and any recaptured tax credit, shall be
8 allocated among some or all of the partners, members, or shareholders of the entity owning
9 the project in any manner agreed to by such persons, whether or not such persons are
10 allocated or allowed any portion of any other tax credit with respect to the project.

11 (j) The Department of Natural Resources and the Department of Revenue shall prescribe
12 such regulations as may be appropriate to carry out the purposes of this Code section.

13 (k) The Department of Natural Resources shall report, on an annual basis, on the overall
14 economic activity, usage, and impact to the state from the rehabilitation of eligible
15 properties for which credits provided by this Code section have been allowed."

16 SECTION 2.

17 Said title is further amended by striking Code Section 48-7-42, relating to assignment of
18 corporate income tax credits, and inserting in its place a new Code Section 48-7-42 to read
19 as follows:

20 "48-7-42.

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

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

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

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

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

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

30 (b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is
31 eligible for the taxable year (such eligibility being determined for this purpose without
32 regard to any limitation imposed by reason of the taxpayer's precredit income tax liability),
33 the taxpayer may elect to assign such credit in ~~its entirety to another affiliated entity~~ whole
34 or in part to one or more affiliated entities for such taxable year by attaching a statement
35 to the taxpayer's return for the taxable year; provided, however, that no carryover
36 attributable to the unused portion of any previously claimed or assigned credit may be

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

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

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

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

22 (f) Notwithstanding the subsequent occurrence of any transaction, corporations that were
 23 treated as affiliated entities on December 31, 2001, shall continue to be so treated with
 24 respect to each other for purposes of this Code section for the taxable year during which
 25 they otherwise would cease to be affiliated entities (but for the modification contained in
 26 this subsection (f)) and for the succeeding ten taxable years, but only if either the assignor
 27 or the recipient of the credit in question is a corporation as described in subparagraph
 28 (d)(2.2)(B) of Code Section 48-7-31 as it existed on December 31, 2001."

29 SECTION 3.

30 Said title is further amended by striking paragraph (68) of Code Section 48-8-3, relating to
 31 exemptions from sales and use tax, and inserting in its place a new paragraph (68) to read as
 32 follows:

33 "(68)(A) The sale or lease of computer equipment to be incorporated into a facility or
 34 facilities in this state to any high-technology company classified under North American
 35 Industrial Classification System code 51121, 51331, 51333, 51334, 51421, 52232,
 36 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511, 541512,

1 541513, or 541519 where such sale of computer equipment for any calendar year
 2 exceeds \$15 million; or, in the event of a lease of such computer equipment, the fair
 3 market value of such leased computer equipment for any calendar year exceeds \$15
 4 million.

5 (B) Any person making a sale or lease of computer equipment to a high-technology
 6 company as specified in subparagraph (A) of this paragraph shall collect the tax
 7 imposed on the sale by this article unless the purchaser furnishes such seller with a
 8 certificate issued by the commissioner certifying that the purchaser is entitled to
 9 purchase the computer equipment without paying the tax. As a condition precedent to
 10 the issuance of the certificate, the commissioner, at such commissioner's discretion,
 11 may require a good and valid bond with a surety company authorized to do business in
 12 this state as surety or may require legal securities, in an amount fixed by the
 13 commissioner, conditioned upon payment by the purchaser of all taxes due under this
 14 article in the event it should be determined that the sale fails to meet the requirements
 15 of this subparagraph.

16 (C)(i) As used in this paragraph, the term 'computer equipment' means any individual
 17 computer terminal or organized assembly of hardware, including, but not limited to,
 18 central processing units and related peripheral equipment such as scanners, printers,
 19 electronic data storage devices, memory chips, data transmission equipment, and
 20 software products, including operating systems and library and maintenance routines
 21 or organized assembly of hardware or software, such as a server farm, mainframe or
 22 midrange computer, mainframe-driven high speed print and mailing devices, and
 23 workstations connected to those devices via high bandwidth connectivity such as a
 24 local area network, wide area network, or any other data transport technology which
 25 performs one of the following functions: storage or management of production data,
 26 hosting of production applications, hosting of application systems development
 27 activities, or hosting of applications systems testing.

28 (ii) The term shall not include:

- 29 (I) Telephone central office equipment or other voice data transport technology; or
- 30 (II) Equipment with imbedded computer hardware or software which is primarily
 31 used for training, product testing, or in a manufacturing process;

32 (D) Any corporation, partnership, limited liability company, or any other similar entity
 33 which qualifies for the exemption and is affiliated in any manner with a nonqualified
 34 corporation, partnership, limited liability company, or any other similar entity must
 35 conduct at least a majority of its business with entities with which it has no affiliation;"

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

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

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

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

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

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

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

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

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

23 (A) Reasonable costs and expenses of forming, syndicating, and organizing the
24 certified capital company, including reasonable and necessary fees paid for professional
25 services, including, but not limited to, legal and accounting services, related to the
26 formation of the certified capital company, and the cost of financing and insuring the
27 obligations of the certified capital company;

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

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

36 (D) Any projected increase in federal or state taxes of the equity owners of a certified
37 capital company resulting from the earnings or other tax liability of the certified capital

1 company to the extent that the increase is related to the ownership, management or
2 operation of a certified capital company or issuance, repayment, or redemption of
3 qualified debt instruments of the certified capital company.

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

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

10 (A) That is either less than two years old at the time of the initial investment in such
11 business by a certified capital company, or that had, together with its affiliates, less than
12 \$3 million in annual revenue for the fiscal year immediately preceding the fiscal year
13 of such investment on a consolidated basis in conformance with generally accepted
14 accounting principles; and

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

17 (i) Biotechnology;

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

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

21 (iv) Pharmacology;

22 (v) The uses and manufacture of drugs;

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

24 (vii) Bioagriculture.

25 (13) 'State premium tax liability' means any state insurance premium tax liability
26 incurred by an insurance company under the provisions of Code Sections 33-8-4 and
27 33-8-5.

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

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

1 48-18-2.

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

6 (b) A certified capital company's equity capitalization from the time of seeking
7 certification through the date of receipt of an allocation of certified capital must be
8 \$500,000.00 or more and must be in the form of unencumbered cash, marketable securities,
9 or other liquid assets.

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

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

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

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

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

32 (g) Within 60 days of application, the department shall issue the certification or shall
33 refuse the certification and communicate in detail to the applicant the grounds for the
34 refusal, including suggestions for the removal of those grounds. If an applicant submits an
35 amended application within 30 days of receipt of refusal by the department, the department
36 shall have 30 days from the receipt of such amended application by which to communicate
37 its approval or refusal of such amended application to the applicant. The department shall

1 review and approve or reject applications in the order submitted, and in the event more than
 2 one application is received by the department on any date, all such applications shall be
 3 reviewed and approved simultaneously, except in the case of incomplete applications or
 4 applications for which additional information is requested by the department and is not
 5 supplied by the applicant within the allowable time limits established by the department.

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

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

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

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

23 48-18-3.

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

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

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

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

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

16 48-18-4.

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

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

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

1 all certified investors on such day, multiplied by the aggregate limitation as provided in
2 subsection (a) of this Code section or such lesser amount of tax credits that remains
3 unallocated on such day.

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

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

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

24 48-18-5.

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

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

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

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

1 (b) The aggregate cumulative amount of all qualified investments made by the certified
2 capital company from its allocation date shall be considered in the calculation of the
3 percentage requirements under this chapter. Any funds received from a qualified
4 investment may be invested in another qualified investment and shall count toward any
5 requirement in this chapter with respect to investments of certified capital.

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

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

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

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

- 30 (1) Cash deposited with a federally insured financial institution;
- 31 (2) Certificates of deposit in a federally insured financial institution;
- 32 (3) Investment securities that are obligations of the United States, its agencies or
33 instrumentalities, or obligations that are guaranteed fully as to principal and interest by
34 the United States;
- 35 (4) Debt instruments rated at least 'AA' or its equivalent by a nationally recognized rating
36 organization, or issued by, or guaranteed with respect to payment by, an entity whose
37 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 35 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
35 company is not in compliance with the requirements of Code section 48-18-5, it shall, by

1 written notice, inform the officers of the certified capital company that the certified capital
2 company may be subject to decertification in 120 days from the date of mailing of the
3 notice, unless the deficiencies are corrected and the certified capital company is again in
4 compliance with all requirements for certification.

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

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

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

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

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

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

34 (5) If at the time of any such distribution made by the certified capital company, such
35 distribution taken together with all other such distributions made by the certified capital
36 company, other than qualified distributions, exceeds in the aggregate the sum of the
37 certified capital company's original certified capital and any additional capital

1 contributions to the certified capital company, as determined by the audit, the certified
2 capital company shall pay to the department 10 percent of the portion of such distribution
3 in excess of such amount. Payments to the department by a certified capital company
4 pursuant to this paragraph shall not exceed the aggregate amount of tax credits used by
5 all certified investors in such certified capital company.

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

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

12 48-18-8.

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

19 **SECTION 5.**

20 (a) Section 2, this section, and Section 6 of this Act shall become effective upon the
21 approval of this Act by the Governor or upon its becoming law without such approval.

22 (b) Section 3 of this Act shall become effective on October 1, 2002.

23 (c) Section 4 of this Act shall become effective on March 1, 2003.

24 (d) Section 1 of this Act shall become effective on January 1, 2004, and shall be applicable
25 to all taxable years beginning on or after that date.

26 **SECTION 6.**

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