S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. ESPAILLAT, TOWNS, SCHROEDER -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, SWEENEY -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the creation of a local seed capital fund investment credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as "NYSEEDS".

S 2. Legislative findings and intent. The legislature finds and declares that most funding for technology development in the phase between invention and commercialization comes from corporations, the federal government, and especially from individual, private equity, "angel" investors, and not from traditional venture capitalists. In general, funding for early-stage technology development is lagging, and in New York state, this lag has been particularly large. Markets for allocating risk capital to early stage technology ventures are notoriously inefficient; information on investment opportunities for entrepreneurs and investors is difficult to find; the ability for investors in early-stage technology ventures to fully achieve appropriate returns from their investments is limited; and many other uncertainties limit investment potential. When these uncertainties are primarily technical and technological, individual investors have additional difficulties in evaluating potential deals. Recently, the problem of finding early-stage financing has been exacerbated by the economic downturn and contraction of all venture capital markets.

Increasing the amount and availability of seed capital funding in New York state will stimulate new growth and economic recovery. To accomplish this task, the state needs to assist New York entrepreneurs and business angels by providing assistance to bring inventions to the market. The "NYSEEDS" tax credit is designed to encourage the investment

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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of New York venture funds in start-up New York companies by bringing together entrepreneurs and local business angels to grow more jobs in New York state. It will help angel investors maximize their investments, increase early stage capital and investments in new start-ups in the state, and stimulate the formation of desperately needed seed capital at the crucial early phase of business development. It is essential that New York state act to provide all necessary support to growing businesses in the "new economy".

S 3. The tax law is amended by adding a new section 11-a to read as follows:

S 11-A. CERTIFIED SEED CAPITAL FUND. (A) DEFINITIONS. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL MEAN:

(1) "INVESTOR" - AN INDIVIDUAL WHO CONTRIBUTES TO A CERTIFIED SEED CAPITAL FUND AND IS ELIGIBLE FOR A TAX CREDIT UNDER SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER. "INVESTOR" DOES NOT INCLUDE A PERSON WHO IS A CURRENT OR PREVIOUS OWNER, MEMBER, OR SHAREHOLDER IN A QUALIFIED BUSINESS.

(2) "CERTIFIED SEED CAPITAL" - AN INVESTMENT OF CASH BY AN INVESTOR IN A CERTIFIED SEED CAPITAL FUND WHICH FULLY FUNDS THE PURCHASE PRICE OF EITHER OR BOTH ITS EQUITY INTEREST IN THE CERTIFIED SEED CAPITAL FUND OR A QUALIFIED DEBT INSTRUMENT ISSUED BY THE CERTIFIED SEED CAPITAL FUND.

(3) "CERTIFIED SEED CAPITAL FUND" - A PARTNERSHIP, CORPORATION, TRUST OR LIMITED LIABILITY COMPANY, ORGANIZED ON A FOR-PROFIT BASIS THAT IS LOCATED, HEADQUARTERED AND LICENSED OR REGISTERED TO CONDUCT BUSINESS IN NEW YORK STATE, THAT HAS AS ITS PRIMARY BUSINESS ACTIVITY THE INVESTMENT OF CASH IN QUALIFIED BUSINESSES AND THAT IS CERTIFIED BY THE COMPTROLLER AS MEETING THE CRITERIA SET FORTH IN SUBDIVISION (B) OF THIS SECTION.

(4) "QUALIFIED BUSINESS" - AN INDEPENDENTLY OWNED AND OPERATED BUSINESS THAT MEETS ALL OF THE FOLLOWING CONDITIONS AS OF THE TIME OF THE FIRST INVESTMENT IN THE BUSINESS:

(A) IT IS HEADQUARTERED IN NEW YORK STATE, AND ITS PRINCIPAL BUSINESS OPERATIONS ARE LOCATED IN NEW YORK STATE, AND THE QUALIFIED INVESTMENT IT RECEIVES IS USED SOLELY TO SUPPORT ITS BUSINESS OPERATIONS IN THE STATE, EXCEPT FOR ADVERTISING, PROMOTIONS AND SALES PURPOSES. IN CASES WHERE THE QUALIFIED INVESTMENT IS MADE IN A START-UP COMPANY SUCH CAPITAL MUST BE USED SOLELY TO ESTABLISH AND SUPPORT ITS BUSINESS OPERATIONS IN NEW YORK STATE, EXCEPT FOR ADVERTISING, PROMOTIONS AND SALES PURPOSES.

(B) IT HAS EITHER (I) NO MORE THAN TWENTY EMPLOYEES, AT LEAST EIGHTY PERCENT OF WHOM ARE EMPLOYED IN NEW YORK STATE, OR (II) DURING THE FISCAL YEAR IMMEDIATELY PRECEDING THE QUALIFIED INVESTMENT TOGETHER WITH ITS AFFILIATES, GROSS REVENUES OF NO MORE THAN TWO MILLION DOLLARS, ON A CONSOLIDATED BASIS AS DETERMINED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(C) IT IS INVOLVED IN COMMERCE FOR THE PURPOSE OF DEVELOPING AND MANUFACTURING PRODUCTS AND SYSTEMS, INCLUDING BUT NOT LIMITED TO HIGH TECHNOLOGY PRODUCTS AND SYSTEMS SUCH AS COMPUTERS, COMPUTER SOFTWARE, MEDICAL EQUIPMENT, BIOTECHNOLOGY, TELECOMMUNICATIONS EQUIPMENT AND PRODUCTS, PROCESSING OR ASSEMBLING ALL TYPES OF PRODUCTS, CONDUCTING RESEARCH AND DEVELOPMENT ON ALL TYPES OF PRODUCTS OR PROVIDING SERVICES, BUT EXCLUDING REAL ESTATE, REAL ESTATE DEVELOPMENT, INSURANCE AND BUSINESSES PREDOMINANTLY ENGAGED IN PROFESSIONAL SERVICES PROVIDED BY ACCOUNTANTS, LAWYERS OR PHYSICIANS.

(D) FOR PURPOSES OF THIS PARAGRAPH, THE TERM "INDEPENDENTLY OWNED AND OPERATED BUSINESS" MEANS (I) IN THE CASE OF A CORPORATION, A CORPORATION WHERE NO MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF THE CORPORATION

IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION, A SINGLE PARTNERSHIP OR A SINGLE LIMITED LIABILITY COMPANY, AND (II) IN THE CASE OF A PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY, WHERE NO MORE THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR OTHER BENEFICIAL INTEREST IN SUCH PARTNERSHIP, ASSOCIATION OR OTHER ENTITY IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION, A SINGLE PARTNERSHIP OR A SINGLE LIMITED LIABILITY COMPANY.

(5) "QUALIFIED INVESTMENT" - THE INVESTMENT OF CASH BY A CERTIFIED SEED CAPITAL FUND IN A QUALIFIED BUSINESS FOR THE PURCHASE OF ANY DEBT, EQUITY OR HYBRID SECURITY, OF ANY NATURE AND DESCRIPTION WHATEVER, INCLUDING A DEBT INSTRUMENT OR SECURITY WHICH HAS THE CHARACTERISTICS OF DEBT BUT WHICH PROVIDES FOR CONVERSION INTO EQUITY OR EQUITY PARTICIPATION INSTRUMENTS SUCH AS OPTIONS OR WARRANTS.

(6) "COMPTROLLER" - THE COMPTROLLER OF THE STATE OF NEW YORK.

(B) CERTIFICATION OF A SEED CAPITAL FUND. (1) THE COMPTROLLER SHALL DESIGNATE AND CERTIFY THROUGH A REQUEST FOR PROPOSALS UP TO TEN QUALIFYING SEED CAPITAL FUNDS AND TO THE EXTENT POSSIBLE CERTIFY QUALIFYING FUNDS TO REPRESENT THE DIFFERENT REGIONS OF THE STATE. THE COMPTROLLER SHALL AT HIS OR HER DISCRETION SELECT AN APPLICANT BASED ON PAST PERFORMANCES OF THE APPLICANT AS A VENTURE CAPITALIST.

(2) THE COMPTROLLER SHALL ESTABLISH BY RULE OR REGULATION THE PROCEDURES FOR MAKING AN APPLICATION TO BECOME A CERTIFIED SEED CAPITAL FUND. SUCH APPLICATION SHALL INCLUDE A STATEMENT OF THE ANNUAL MANAGEMENT FEE THAT THE APPLICANT INTENDS TO CHARGE, SUCH FEE IN AN AMOUNT NOT TO EXCEED TWO AND A HALF PERCENT OF THE CERTIFIED SEED CAPITAL OF THE CERTIFIED SEED CAPITAL FUND.

(3) THE COMPTROLLER MAY CERTIFY PARTNERSHIPS, CORPORATIONS, TRUSTS OR LIMITED LIABILITY COMPANIES, ORGANIZED ON A FOR-PROFIT BASIS, WHICH SUBMIT AN APPLICATION TO BE DESIGNATED AS A CERTIFIED SEED CAPITAL FUND IF SUCH APPLICANT IS LOCATED, HEADQUARTERED AND LICENSED OR REGISTERED TO CONDUCT BUSINESS IN NEW YORK STATE, HAS AS ITS PRIMARY BUSINESS ACTIVITY THE INVESTMENT OF CASH IN QUALIFIED BUSINESSES AND MEETS THE OTHER CRITERIA SET FORTH IN THIS SECTION.

(4) A CERTIFIED SEED CAPITAL FUND INITIAL CAPITALIZATION, AT THE TIME OF SEEKING CERTIFICATION, MUST BE FIVE HUNDRED THOUSAND DOLLARS OR MORE.

(5) IN ORDER TO RECEIVE CERTIFICATION AND TO BEGIN OPERATION AS A CERTIFIED SEED CAPITAL FUND, EACH FUND MUST PROVIDE TO THE COMPTROLLER CAPITAL COMMITMENTS FROM INVESTORS TOTALING AT LEAST TWO MILLION DOLLARS.

(6) A CERTIFIED SEED CAPITAL FUND SHALL HAVE NO FEWER THAN TEN INDIVIDUAL INVESTORS WHO ARE NOT AFFILIATES, WITH NO SINGLE INVESTOR AND AFFILIATES OF THAT INVESTOR TOGETHER OWNING A TOTAL OF MORE THAN TWENTY-FIVE PERCENT OF THE OWNERSHIP INTERESTS OUTSTANDING IN THE FUND.

(7) THE COMPTROLLER SHALL REVIEW THE ORGANIZATIONAL DOCUMENTS OF EACH APPLICANT FOR CERTIFICATION AND THE BUSINESS HISTORY OF THE APPLICANT, DETERMINE THAT THE APPLICANT'S CASH, MARKETABLE SECURITIES AND OTHER LIQUID ASSETS ARE AT LEAST FIVE HUNDRED THOUSAND DOLLARS, AND DETERMINE THAT THE OFFICERS AND THE BOARD OF DIRECTORS, GENERAL PARTNERS, TRUSTEES, MANAGERS, OR MEMBERS ARE TRUSTWORTHY AND ARE THOROUGHLY ACQUAINTED WITH THE REQUIREMENTS OF THIS SUBDIVISION.

(8) THE COMPTROLLER SHALL VERIFY THAT AT LEAST TWO PRINCIPALS OF THE CERTIFIED SEED CAPITAL COMPANY OR ANY MANAGER OF THE CERTIFIED SEED FUND EACH HAVE NO LESS THAN FIVE YEARS OF EXPERIENCE IN THE VENTURE CAPITAL OR A VENTURE CAPITAL-RELATED INDUSTRY.

(9) ANY OFFERING MATERIAL INVOLVING THE SALE OF SECURITIES OF THE CERTIFIED SEED CAPITAL FUND SHALL INCLUDE THE FOLLOWING STATEMENT:

"AUTHORIZING THE FORMATION OF A CERTIFIED SEED FUND DOES NOT CONSTITUTE THE ENDORSEMENT OF THE STATE OF NEW YORK AS TO EITHER THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF SUCH COMPANY AND THE STATE OF NEW YORK IS NOT LIABLE FOR DAMAGES OR LOSSES TO A CERTIFIED INVESTOR IN THE COMPANY. USE OF THE WORD 'CERTIFIED' IN AN OFFERING DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE STATE OF NEW YORK. INVESTMENTS IN A PROSPECTIVE CERTIFIED SEED FUND PRIOR TO THE TIME SUCH COMPANY IS CERTIFIED WITH RESPECT TO A CERTIFIED SEED CAPITAL COMPANY PROGRAM ARE NOT ELIGIBLE FOR TAX CREDITS. IN THE EVENT CERTAIN STATUTORY PROVISIONS (AS SPECIFIED IN SECTION 11-A OF THE TAX LAW) ARE VIOLATED, THE STATE OF NEW YORK MAY REQUIRE FORFEITURE OF UNUSED TAX CREDITS AND REPAYMENT OF USED TAX CREDITS."

(10) WITHIN SIXTY DAYS OF APPLICATION, THE COMPTROLLER SHALL ISSUE THE CERTIFICATION OR SHALL REFUSE THE CERTIFICATION AND COMMUNICATE IN DETAIL TO THE APPLICANT THE GROUNDS FOR THE REFUSAL, INCLUDING SUGGESTIONS FOR THE REMOVAL OF THOSE GROUNDS.

(C) REQUIREMENTS FOR CONTINUANCE OF CERTIFICATION. (1) TO CONTINUE TO BE CERTIFIED, A CERTIFIED SEED CAPITAL FUND MUST PROVIDE TO THE COMPTROLLER ANNUAL AUDITED FINANCIAL STATEMENTS, WHICH SHALL INCLUDE THE OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN NINETY DAYS OF THE CLOSE OF ITS FISCAL YEAR.

(2) A CERTIFIED SEED CAPITAL FUND, AT LEAST FIFTEEN WORKING DAYS PRIOR TO MAKING A PROPOSED INVESTMENT IN A SPECIFIC BUSINESS, SHALL CERTIFY IN WRITING TO THE COMPTROLLER THAT THE BUSINESS IN WHICH IT PROPOSES TO INVEST MEETS THE DEFINITION OF A QUALIFIED BUSINESS AS SET FORTH IN PARAGRAPH FOUR OF SUBDIVISION (A) OF THIS SECTION OR, IN THE CASE OF A FOLLOW-ON INVESTMENT, THAT SUCH BUSINESS CONTINUES TO MEET THE REQUIREMENTS SET FORTH IN PARAGRAPH THREE OF THIS SUBDIVISION, AND IN EITHER CASE, AN EXPLANATION OF ITS DETERMINATION THAT THE BUSINESS MEETS SUCH REQUIREMENTS. THE CERTIFICATION TO THE COMPTROLLER SHALL INCLUDE A SWORN STATEMENT FROM THE BUSINESS IN WHICH THE CERTIFIED SEED CAPITAL FUND PROPOSES TO INVEST, WHICH STATEMENT SHALL EVIDENCE THE INTENTION OF THE BUSINESS TO MAINTAIN ITS HEADQUARTERS IN NEW YORK AND CONDUCT ITS PRIMARY BUSINESS OPERATIONS IN THE STATE OF NEW YORK AFTER THE RECEIPT OF THE INVESTMENT BY THE CERTIFIED SEED CAPITAL FUND. IF THE COMPTROLLER DETERMINES THAT THE BUSINESS DOES NOT MEET THE DEFINITION OF A QUALIFIED BUSINESS, OR IN THE CASE OF A FOLLOW-ON INVESTMENT, THAT SUCH BUSINESS DOES NOT MEET THE REQUIREMENTS SET FORTH IN PARAGRAPH THREE OF THIS SUBDIVISION, THEN THE COMPTROLLER SHALL, WITHIN THE FIFTEEN WORKING DAYS PERIOD PRIOR TO THE MAKING OF THE PROPOSED INVESTMENT, NOTIFY THE CERTIFIED SEED CAPITAL FUND OF ITS DETERMINATION AND PROVIDE AN EXPLANATION THEREOF.

(3) ANY BUSINESS WHICH IS CLASSIFIED AS A QUALIFIED BUSINESS AT THE TIME OF THE FIRST INVESTMENT IN SUCH BUSINESS BY A CERTIFIED SEED CAPITAL FUND SHALL REMAIN CLASSIFIED AS A QUALIFIED BUSINESS AND MAY RECEIVE FOLLOW-ON INVESTMENTS FROM ANY CERTIFIED SEED CAPITAL FUND, AND SUCH FOLLOW-ON INVESTMENTS SHALL BE QUALIFIED INVESTMENTS EVEN THOUGH SUCH BUSINESS MAY NOT MEET THE DEFINITION OF A QUALIFIED BUSINESS AT THE TIME OF SUCH FOLLOW-ON INVESTMENTS, PROVIDED, HOWEVER, THAT SUCH BUSINESS CONTINUES TO MEET THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (A) OR (C) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF THIS SECTION, AND SUCH BUSINESS REAFFIRMS ITS INTENTION TO MAINTAIN ITS HEADQUARTERS IN NEW YORK STATE AND CONDUCT ITS PRIMARY BUSINESS OPERATIONS IN THE STATE OF NEW YORK.

(4) DOCUMENTS AND OTHER MATERIALS SUBMITTED BY CERTIFIED SEED CAPITAL FUND OR BY BUSINESSES FOR PURPOSES OF THE CONTINUANCE OF CERTIFICATION SHALL NOT BE PUBLIC RECORDS IF SUCH RECORDS ARE DETERMINED BY THE COMP-

TROLLER TO BE TRADE OR BUSINESS SECRETS AND SHALL BE MAINTAINED IN A CONFIDENTIAL MANNER BY THE COMPTROLLER.

(5) EACH CERTIFIED SEED CAPITAL FUND SHALL REPORT THE FOLLOWING TO THE COMPTROLLER:

(A) AS SOON AS PRACTICABLE AFTER THE RECEIPT OF CERTIFIED SEED CAPITAL OR AN IRREVOCABLE FUNDING COMMITMENT SUBJECT ONLY TO THE RECEIPT OF AN ALLOCATION PURSUANT TO SUBDIVISION (G) OF THIS SECTION, (I) THE NAME OF EACH CERTIFIED INVESTOR FROM WHICH THE CERTIFIED CAPITAL WAS RECEIVED, INCLUDING SUCH CERTIFIED INVESTOR'S TAX IDENTIFICATION NUMBER; (II) THE AMOUNT OF EACH CERTIFIED INVESTOR'S INVESTMENT OF CERTIFIED SEED CAPITAL; AND (III) THE DATE ON WHICH THE CERTIFIED SEED CAPITAL WAS RECEIVED.

(B) ON AN ANNUAL BASIS, ON OR BEFORE JANUARY THIRTY-FIRST OF EACH YEAR, (I) THE AMOUNT OF THE CERTIFIED SEED CAPITAL FUND'S CERTIFIED SEED CAPITAL AT THE END OF THE IMMEDIATELY PRECEDING YEAR; AND (II) ALL QUALIFIED INVESTMENTS THAT THE CERTIFIED CAPITAL COMPANY MADE DURING THE PREVIOUS CALENDAR YEAR, INCLUDING THE NUMBER OF EMPLOYEES OF EACH QUALIFIED BUSINESS IN WHICH IT HAS MADE INVESTMENTS AT THE TIME OF SUCH INVESTMENT AND AS OF DECEMBER FIRST OF THE PRECEDING CALENDAR YEAR.

(C) EACH CERTIFIED SEED CAPITAL FUND SHALL PROVIDE TO THE COMPTROLLER ANNUAL AUDITED FINANCIAL STATEMENTS, WHICH SHALL INCLUDE THE OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN NINETY DAYS OF THE CLOSE OF ITS FISCAL YEAR.

(D) ON OR BEFORE APRIL FIRST OF EACH YEAR, EACH CERTIFIED SEED CAPITAL FUND SHALL PAY AN ANNUAL, NON-REFUNDABLE CERTIFICATION FEE OF ONE HUNDRED DOLLARS TO THE COMPTROLLER; PROVIDED THAT NO SUCH FEE SHALL BE REQUIRED WITHIN SIX MONTHS OF THE INITIAL CERTIFICATION DATE OF A CERTIFIED SEED CAPITAL FUND.

(6) THE COMPTROLLER SHALL ANNUALLY, BY MARCH FIRST, PREPARE AND SUBMIT TO THE COMMISSIONER A LIST OF PERSONS WHO MAY CLAIM THE TAX CREDIT FOR THE PREVIOUS TAXABLE YEAR AND ANY OTHER INFORMATION NECESSARY FOR THE DEPARTMENT TO DETERMINE ELIGIBILITY FOR SUCH TAX CREDIT.

(D) RELOCATION. IN THE EVENT THAT A BUSINESS IN WHICH A QUALIFIED INVESTMENT IS MADE RELOCATES ITS PRINCIPAL BUSINESS OPERATIONS TO ANOTHER STATE DURING SUCH INVESTMENT, OR WITHIN THREE MONTHS AFTER THE TERMINATION OF SUCH INVESTMENT, THE CUMULATIVE AMOUNT OF QUALIFIED INVESTMENT SHALL BE REDUCED BY THE AMOUNT OF SUCH QUALIFIED INVESTMENT, FOR THE PURPOSES OF THIS SUBDIVISION ONLY, UNLESS (A) THE CERTIFIED SEED CAPITAL FUND INVESTS AN AMOUNT AT LEAST EQUAL TO THE INVESTMENT OF CERTIFIED SEED CAPITAL IN THE RELOCATED BUSINESS IN A QUALIFIED BUSINESS LOCATED IN NEW YORK STATE WITHIN SIX MONTHS OF THE RELOCATION OR (B) UNLESS THE BUSINESS DEMONSTRATES THAT IT HAS RETURNED ITS PRINCIPAL BUSINESS OPERATIONS TO NEW YORK STATE WITHIN THREE MONTHS OF SUCH RELOCATION. A BUSINESS SHALL BE DEEMED TO HAVE RELOCATED ITS PRINCIPAL BUSINESS OPERATIONS OUTSIDE NEW YORK STATE IF THE PRIMARY WORKPLACE OF MORE THAN FIFTY PERCENT OF THE EMPLOYEES OF SUCH BUSINESS WITHIN THE STATE IS RELOCATED TO ANOTHER STATE.

(E) DECERTIFICATION. (1) THE COMPTROLLER SHALL CONDUCT AN ANNUAL REVIEW OF EACH CERTIFIED SEED CAPITAL FUND TO DETERMINE IF THE CERTIFIED SEED CAPITAL FUND IS ABIDING BY THE REQUIREMENTS OF CERTIFICATION, TO ADVISE THE CERTIFIED SEED CAPITAL FUND AS TO THE ELIGIBILITY STATUS OF ITS QUALIFIED INVESTMENTS, AND TO ENSURE THAT NO INVESTMENT HAS BEEN MADE IN VIOLATION OF THIS SUBDIVISION. THE COST OF THE ANNUAL REVIEW SHALL BE PAID BY EACH CERTIFIED SEED CAPITAL FUND ACCORDING TO A REASONABLE FEE SCHEDULE ADOPTED BY THE COMPTROLLER.

(2) ANY MATERIAL VIOLATION OF SUBDIVISION (C) OF THIS SECTION WITH RESPECT TO A PARTICULAR CERTIFIED SEED CAPITAL FUND SHALL BE GROUNDS FOR DECERTIFICATION OF THE CERTIFIED SEED CAPITAL FUND WITH RESPECT TO SUCH PROGRAM. IF THE COMPTROLLER DETERMINES THAT A CERTIFIED SEED CAPITAL FUND IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF SUBDIVISION (C) OF THIS SECTION WITH RESPECT TO A PARTICULAR CERTIFIED SEED CAPITAL FUND PROGRAM, IT SHALL, BY WRITTEN NOTICE, INFORM THE OFFICERS OF THE CERTIFIED SEED CAPITAL FUND THAT THE CERTIFIED SEED CAPITAL FUND WILL BE SUBJECT TO DECERTIFICATION WITH RESPECT TO SUCH PROGRAM IN ONE HUNDRED TWENTY DAYS FROM THE DATE OF MAILING OF THE NOTICE, UNLESS THE DEFICIENCIES ARE CORRECTED AND THE CERTIFIED SEED CAPITAL FUND IS AGAIN IN COMPLIANCE WITH ALL REQUIREMENTS FOR CERTIFICATION, AND SHALL SEND A COPY OF SUCH NOTICE TO THE COMMISSIONER.

(3) AT THE END OF THE ONE HUNDRED TWENTY DAY GRACE PERIOD, IF THE CERTIFIED SEED CAPITAL FUND IS STILL NOT IN COMPLIANCE WITH SUBDIVISION (C) OF THIS SECTION WITH RESPECT TO THE CERTIFIED SEED CAPITAL FUND PROGRAM, THE COMPTROLLER SHALL SEND A NOTICE OF DECERTIFICATION TO THE CERTIFIED SEED CAPITAL FUND WITH RESPECT TO SUCH PROGRAM AND TO ALL OTHER APPROPRIATE STATE AGENCIES.

(4) ONCE A CERTIFIED SEED CAPITAL FUND HAS INVESTED AN AMOUNT CUMULATIVELY EQUAL TO ONE HUNDRED PERCENT OF ITS CERTIFIED SEED CAPITAL WITH RESPECT TO THE CERTIFIED SEED CAPITAL FUND PROGRAM IN QUALIFIED INVESTMENTS AND HAS MET ALL OTHER REQUIREMENTS UNDER THIS SUBDIVISION, THE CERTIFIED SEED CAPITAL FUND SHALL NO LONGER BE SUBJECT TO REGULATION BY THE COMPTROLLER AND SHALL NO LONGER BE SUBJECT TO THE REQUIREMENTS OF SUBDIVISION (C) OF THIS SECTION WITH RESPECT TO SUCH PROGRAM.

(5) THE COMPTROLLER SHALL SEND WRITTEN NOTICE OF SUCH DECERTIFICATION TO THE ADDRESS OF EACH CERTIFIED INVESTOR WHOSE TAX CREDIT HAS BEEN SUBJECT TO RECAPTURE OR FORFEITURE, USING THE ADDRESS SHOWN ON THE LAST FILING SUBMITTED TO THE COMPTROLLER AND SHALL FORWARD A COPY OF SUCH NOTICE TO THE COMMISSIONER.

(F) REVOCATION OF CERTIFICATION. THE COMPTROLLER MAY REVOKE THE CERTIFICATION OF A CERTIFIED SEED CAPITAL FUND IF ANY MATERIAL REPRESENTATION TO THE COMPTROLLER IN CONNECTION WITH THE APPLICATION PROCESS PROVES TO HAVE BEEN FALSELY MADE OR IF THE APPLICATION MATERIALLY VIOLATES ANY REQUIREMENT ESTABLISHED BY THE COMPTROLLER PURSUANT TO THIS SUBDIVISION.

(G) MAXIMUM PERMITTED INVESTMENTS AND CREDITS. THE AGGREGATE AMOUNT OF TAX CREDIT WHICH TAXPAYERS MAY BE ALLOCATED FOR THEIR INVESTMENT OF CERTIFIED SEED CAPITAL PURSUANT TO THIS SUBDIVISION AND SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER MAY NOT EXCEED TWENTY-FIVE MILLION DOLLARS. EACH CERTIFIED SEED CAPITAL FUND SHALL BE INITIALLY AUTHORIZED TO RECEIVE UP TO TEN MILLION DOLLARS IN CERTIFIED SEED CAPITAL TO WHICH SUCH TAX CREDITS SHALL APPLY, AND SHALL REPORT TO THE COMPTROLLER, PURSUANT TO SUBPARAGRAPH (A) OF PARAGRAPH FIVE OF SUBDIVISION (C) OF THIS SECTION, AN AMOUNT NO GREATER THAN TEN MILLION DOLLARS FOR THE PURPOSE OF DETERMINING SUCH TAX CREDITS FOR INVESTORS IN A CERTIFIED SEED CAPITAL FUND. THE TOTAL AMOUNT OF INVESTMENTS BY ANY ONE INDIVIDUAL INVESTOR IN A CERTIFIED SEED CAPITAL FUND THAT IS ELIGIBLE TO RECEIVE SUCH TAX CREDIT SHALL NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS PER INVESTOR.

(H) IF FEWER THAN TEN CERTIFIED SEED CAPITAL FUNDS ARE CERTIFIED BY THE COMPTROLLER BY JANUARY FIRST, TWO THOUSAND TEN THE COMPTROLLER MAY, AT HIS DISCRETION, ALLOCATE ANY REMAINING TAX CREDITS AUTHORIZED UNDER THIS SUBDIVISION TO EXISTING CERTIFIED SEED CAPITAL FUNDS BASED ON A

DEMONSTRATED NEED FOR VENTURE CAPITAL IN THE REGIONS SERVED BY A SEED CAPITAL FUND REQUESTING SUCH ADDITIONAL ALLOCATION.

(I) REPORTS. THE COMPTROLLER SHALL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE COMMISSIONER, OR BEFORE JUNE FIRST OF EACH YEAR BEGINNING IN THE YEAR TWO THOUSAND SEVEN, THE NUMBER OF CERTIFIED SEED CAPITAL FUNDS HOLDING CERTIFIED SEED CAPITAL; THE AMOUNT OF CERTIFIED SEED CAPITAL INVESTED IN EACH CERTIFIED SEED CAPITAL FUND; THE CUMULATIVE AMOUNT THAT EACH CERTIFIED SEED CAPITAL FUND HAS INVESTED AS OF JANUARY FIRST OF THE YEAR TWO THOUSAND ELEVEN, AND THE CUMULATIVE TOTAL EACH YEAR THEREAFTER; THE TOTAL AMOUNT OF TAX CREDITS GRANTED UNDER THIS SECTION EACH YEAR THAT CREDITS HAVE BEEN AWARDED UNDER THIS SECTION AND SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER; THE PERFORMANCE OF EACH CERTIFIED CAPITAL FUND WITH REGARD TO THE REQUIREMENTS FOR RECERTIFICATION SET FORTH IN SUBDIVISION (C) OF THIS SECTION; THE CLASSIFICATION OF COMPANIES IN WHICH EACH CERTIFIED SEED CAPITAL FUND HAS INVESTED ACCORDING TO INDUSTRIAL SECTOR AND SIZE OF COMPANY; AND THE TOTAL NUMBER OF JOBS CREATED BY INVESTMENTS MADE BY EACH CERTIFIED SEED CAPITAL FUND USING CERTIFIED SEED CAPITAL.

(J) RULES AND REGULATIONS. THE COMPTROLLER IN CONSULTATION WITH THE COMMISSIONER SHALL PRESCRIBE SUCH RULES AND REGULATIONS AS HE OR SHE SHALL DEEM NECESSARY IN ORDER TO IMPLEMENT THE PROVISIONS OF THIS SECTION WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION.

S 4. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) CREDIT FOR CERTAIN INVESTMENTS IN A CERTIFIED SEED CAPITAL FUND. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO TWENTY-FIVE PERCENT OF AN INVESTMENT OF CERTIFIED SEED CAPITAL IN A CERTIFIED SEED CAPITAL FUND PROGRAM MADE BY THE TAXPAYER PURSUANT TO SECTION ELEVEN-A OF THIS CHAPTER.

(2) TWENTY PERCENT OF SUCH CREDIT SHALL BE ALLOWED IN THE TAXABLE YEAR TO WHICH SUCH INVESTMENT IS ALLOCATED PURSUANT TO SUBDIVISION (G) OF SECTION ELEVEN-A OF THIS CHAPTER AND IN EACH OF THE FOUR FOLLOWING TAXABLE YEARS, ALTHOUGH SUCH CREDITS SHALL NOT BE FIRST ALLOWED OR INCURRED FOR STATE TAX PURPOSES, UNTIL, AT THE EARLIEST, THE TAX YEAR BEGINNING IN TWO THOUSAND NINE. IN ADDITION, IN ANY TAXABLE YEAR SUBSEQUENT TO THE TAXABLE YEAR FOR WHICH SUCH INVESTMENT IS SO ALLOCATED, ANY AMOUNT CARRIED FORWARD UNDER PARAGRAPH THREE OF THIS SUBSECTION MAY BE CARRIED FORWARD INDEFINITELY UNTIL SUCH CREDITS ARE UTILIZED.

(3) IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXPAYER SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

(4) DECERTIFICATION OF A CERTIFIED SEED CAPITAL FUND FROM A CERTIFIED SEED CAPITAL FUND PROGRAM SHALL CAUSE THE DISALLOWANCE AND THE RECAPTURE OF THE CREDIT ALLOWED UNDER PARAGRAPH ONE OF THIS SUBSECTION.

(5) NO CREDIT SHALL BE ALLOWED IN ANY TAX YEAR IN WHICH THE TAXPAYER SHALL, INDIVIDUALLY OR WITH OR THROUGH ONE OR MORE AFFILIATES, BE A MANAGING GENERAL PARTNER OF OR UNDERWRITE OR CONTROL THE DIRECTION OF INVESTMENTS OF A CERTIFIED SEED CAPITAL FUND FOR WHICH THE CREDIT WAS ALLOWED UNDER PARAGRAPH ONE OF THIS SUBSECTION. THIS PROVISION SHALL NOT PRECLUDE A CERTIFIED INVESTOR FROM EXERCISING HIS OR HER LEGAL RIGHTS AND REMEDIES (WHICH MAY INCLUDE INTERIM MANAGEMENT OF A CERTIFIED SEED CAPITAL FUND) IN THE EVENT THAT A CERTIFIED SEED CAPITAL FUND IS IN

DEFAULT OF ITS STATUTORY OBLIGATIONS OR ITS CONTRACTUAL OBLIGATIONS TO SUCH CERTIFIED INVESTOR. FOR PURPOSES OF THIS PARAGRAPH, AFFILIATE SHALL MEAN A BUSINESS ENTITY IN WHICH THE TAXPAYER HOLDS AT LEAST A TEN PERCENT BENEFICIAL INTEREST.

S 5. This act shall take effect immediately.