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

6481

2013-2014 Regular Sessions

I N A S S E M B L Y

April 4, 2013

Introduced by M. of A. SILVER, MORELLE, FARRELL, SCHIMMINGER, LUPARDO, SCARBOROUGH, MAGNARELLI, CASTRO, CAHILL, GUNTHER, GABRYSZAK, MILLER, WEPRIN, SIMOTAS, WEISENBERG, MILLMAN, GALEF, ZEBROWSKI, JAFFEE -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, CAMARA, COLTON, CYMBROWITZ, ENGLEBRIGHT, GIBSON, LAVINE, MAGEE, MARKEY, RIVERA, ROBERTS, SCHIMEL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to program six certified capital companies; and to repeal section 84 of part A of chapter 62 of the laws of 2011 relating to constituting chapter 18-A of the consolidated laws relating to financial services, relating to certain reporting requirements

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

Section 1. The opening paragraph of paragraph 7 of subdivision (a) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

"Qualified business" - A QUALIFIED SEED FUND OR an independently owned and operated business that meets all of the following conditions as of the time of the first investment in the business:

S 2. Paragraph 10 of subdivision (a) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(10) "Qualified investment" - the investment of cash by a certified capital company 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, provided however, in the case of certified capital programs three, four [and], five[,] AND SIX that any such debt instrument have a maturity of at least twenty-

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

LBD09744-01-3

four months from the date such debt is incurred; and further provided that a certified capital company, after the investment and assuming full conversion and exercise of any equity participation instruments, shall not own more than fifty percent of the voting equity of the qualified business, except in the case of a follow-on investment where a specific exemption is granted by the department under subparagraph (D) of paragraph one of subdivision (c) of this section OR AN INVESTMENT IN A QUALIFIED SEED FUND BY A PROGRAM SIX CERTIFIED CAPITAL COMPANY. Furthermore, except in the case of a follow-on investment, if a certified capital company owns more than fifteen percent of the equity in a company or has a seat on the board of directors of such company, then a certified capital company cannot invest in such company unless the following conditions are met: (i) at least one other investor who is not an affiliate of the certified capital company participates in the same round of investment on the same terms and conditions as the certified capital company; and (ii) the certified capital company and its affiliates invest no more than fifty percent of the total investment made in that round of investment.

S 3. Subdivision (a) of section 11 of the tax law is amended by adding two new paragraphs 17 and 18 to read as follows:

17. "QUALIFIED SEED FUND" - IS ANY FUND THAT HAS BEEN CERTIFIED BY THE SUPERINTENDENT AS SUCH BY RULE OR REGULATION. THE SUPERINTENDENT MAY CERTIFY PARTNERSHIPS, CORPORATIONS, TRUSTS, OR LIMITED LIABILITY COMPANIES ORGANIZED ON A FOR-PROFIT BASIS, OR NOT-FOR-PROFIT FUNDS, WHICH SUBMIT AN APPLICATION TO BE DESIGNATED AS A QUALIFIED SEED FUND OPERATOR IF SUCH APPLICANT IS LOCATED, HEADQUARTERED AND LICENSED OR REGISTERED TO CONDUCT BUSINESS IN NEW YORK. QUALIFIED SEED FUNDS SHALL BE UNDER EXPERIENCED PROFESSIONAL MANAGEMENT FAMILIAR WITH SEED CAPITAL INVESTMENT, APPROPRIATE BUSINESS PRACTICES AND TECHNOLOGY-ORIENTED PRODUCTS AND SERVICES, AND FORMED FOR THE PURPOSE OF PROVIDING PRIVATE EQUITY TO TECHNOLOGY-BASED COMPANIES IN THEIR FORMATIVE STAGES AND INVEST IN QUALIFIED ENTERPRISES LOCATED WITHIN NEW YORK STATE. QUALIFIED SEED FUNDS MUST DEMONSTRATE (A) CAPACITY TO PERFORM DUE DILIGENCE IN MAKING INVESTMENT DECISIONS AND TO PROVIDE MANAGEMENT EXPERTISE AND OTHER VALUE-ADDED SERVICES; (B) FINANCIAL RESOURCES FOR IDENTIFYING AND INVESTING SEED-STAGE COMPANIES; AND (C) ABILITY TO EVALUATE EMERGING TECHNOLOGY COMMERCIALIZATION.

18. "MATCH" - A CASH INVESTMENT IN OR LOAN TO A QUALIFIED BUSINESS MADE NO MORE THAN THREE MONTHS BEFORE OR SIX MONTHS AFTER AN INVESTMENT OF CERTIFIED CAPITAL BY A CERTIFIED CAPITAL COMPANY PROGRAM SIX IN SUCH QUALIFIED BUSINESS, OTHER THAN AN INVESTMENT MADE WITH CERTIFIED CAPITAL. THE TERM SHALL ALSO INCLUDE CASH INVESTED IN OR LENT TO A QUALIFIED BUSINESS BY A CERTIFIED CAPITAL COMPANY THAT HAS INVESTED ONE HUNDRED PERCENT OF ITS CERTIFIED CAPITAL IN QUALIFIED BUSINESSES.

S 4. Paragraph 9 of subdivision (b) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(9) The superintendent shall start accepting applications to become a certified capital company in certified capital company program two by November first, nineteen hundred ninety-nine, and shall start accepting applications to become a certified capital company in certified capital company program three by August first, two thousand, and shall begin accepting applications to become a certified capital company in certified capital company program four by the later of August first, two thousand four or not more than sixty days after the effective date of section one of part D of chapter fifty-nine of the laws of two thousand

four and shall begin accepting applications to become a certified capital company in certified capital company program five by the later of July first, two thousand five or not more than sixty days after the effective date of the chapter of the laws of two thousand five which amended this paragraph, AND SHALL BEGIN ACCEPTING APPLICATIONS TO BECOME A CERTIFIED CAPITAL COMPANY IN PROGRAM SIX BY JULY FIRST, TWO THOUSAND THIRTEEN OR NOT MORE THAN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN WHICH AMENDED THIS PARAGRAPH.

S 5. Subparagraph (A) of paragraph 1 of subdivision (c) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(A) Within two years after the starting date of a specific certified capital company program of a certified capital company, at least twenty-five percent of its certified capital allocable to such certified capital company program must be placed in qualified investments AND IN THE CASE OF PROGRAM SIX, AT LEAST TEN PERCENT OF ITS CERTIFIED CAPITAL MUST HAVE BEEN PLACED IN QUALIFIED SEED FUNDS. ALL QUALIFIED INVESTMENTS MADE IN QUALIFIED SEED FUNDS UNDER PROGRAM SIX SHALL COUNT TOWARDS THE TWENTY-FIVE PERCENT INVESTMENT REQUIREMENT OF THIS SUBPARAGRAPH.

S 6. Subparagraph (C) of paragraph 1 of subdivision (c) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(C) Within four years after the starting date of a specific certified capital company program of a certified capital company, at least fifty percent of its certified capital allocable to such certified capital company program must be placed in qualified investments, at least fifty percent of which must have been placed in early stage businesses, except that in the case of program four and any subsequent program, at least twenty-five percent of which must have been placed in early stage businesses and an additional twenty-five percent of which must have been placed in start-up businesses, and except that in the case of qualified investments made in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law under the provisions of certified capital company program three, program four and program five from allocations of certified capital made specifically for such targeted investments in such zones, the requirement for qualified investments in early stage and start-up businesses shall not apply. AN INVESTMENT IN A QUALIFIED SEED FUND SHALL COUNT TOWARDS THE REQUIREMENT UNDER PROGRAM SIX FOR QUALIFIED INVESTMENTS IN EARLY STAGE BUSINESSES.

S 7. Subparagraph (D) of paragraph 1 of subdivision (c) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(D) A certified capital company, at least fifteen working days prior to making a proposed investment in a specific business, shall certify in writing to the superintendent that (i) the business in which it proposes to invest meets the definition of a qualified business as set forth in 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 subparagraphs (A) and (C) of paragraph seven of subdivision (a) of this section and, in either case, an explanation of its determination that the business meets such requirements, [and] (ii) with respect to certified capital company program three, program four and program five, whether or not such business is located in an empire zone established pursuant to article eighteen-B of the general municipal law or in an

underserved area outside an empire zone AND (III) WITH RESPECT TO CERTIFIED CAPITAL COMPANY PROGRAM SIX, WHETHER OR NOT SUCH INVESTMENT IS IN A QUALIFIED SEED FUND. The certification to the superintendent shall include a sworn statement from the business in which the certified capital company 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 its receipt of the investment by the certified capital company. If the superintendent 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 subparagraphs (A) and (C) of paragraph seven of subdivision (a) of this section, then it shall, within the fifteen working day period prior to the making of the proposed investment, notify the certified capital company of its determination and provide an explanation thereof, provided, however, that the department may, upon written request of a certified capital company and at the discretion of the department, grant, in writing, an exemption to the percentage limitations of paragraph ten of subdivision (a) of this section.

S 8. Subparagraph (F) of paragraph 1 of subdivision (c) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(F) If within ten years after the starting date of certified capital company program four [or], program five OR PROGRAM SIX, and within twelve years after the starting date of certified capital company programs one, two, and three, one hundred percent of the certified capital allocable to a certified capital company participating in [such] program ONE, TWO, THREE, FOUR OR FIVE has not been placed in qualified investments AND, WITH RESPECT TO PROGRAM SIX, ONE HUNDRED PERCENT OF THE CERTIFIED CAPITAL HAS NOT BEEN PLACED IN QUALIFIED INVESTMENTS WITH TEN PERCENT OF SUCH AMOUNT BEING PLACED IN QUALIFIED SEED FUNDS, the specific certified capital company shall no longer be permitted to receive management fees; provided that such restriction shall not apply (i) with respect to certified capital company programs one, two, and three, to any certified capital company that has not, prior to October thirty-first, two thousand four, received, as opposed to accrued, any management fees, or (ii) with respect to any certified capital company program, to a certified capital company in which at least fifty percent of the voting stock, capital, membership interests, or other beneficial ownership interests, as the case may be, are owned by an entity that is managed, directly or indirectly, by a non-profit corporation.

S 9. Paragraph 1 of subdivision (c) of section 11 of the tax law is amended by adding a new subparagraph (G) to read as follows:

(G) IF WITHIN ONE YEAR OF THE STARTING DATE OF CERTIFIED CAPITAL COMPANY PROGRAM SIX, THE CERTIFIED CAPITAL COMPANY HAS NOT ACHIEVED A MATCH OF AT LEAST ONE HUNDRED PERCENT OF THE AMOUNT OF QUALIFIED INVESTMENTS MADE BY SUCH CERTIFIED CAPITAL COMPANY WITH PROGRAM SIX CERTIFIED CAPITAL AS OF SUCH DATE, THE SPECIFIC CERTIFIED CAPITAL COMPANY SHALL NOT BE PERMITTED TO RECEIVE MANAGEMENT FEES UNTIL IT HAS ACHIEVED SUCH MATCH. IF WITHIN THREE YEARS OF THE STARTING DATE OF CERTIFIED CAPITAL COMPANY PROGRAM SIX, THE CERTIFIED CAPITAL COMPANY HAS NOT ACHIEVED A MATCH OF AT LEAST ONE HUNDRED PERCENT OF THE AMOUNT OF QUALIFIED INVESTMENTS MADE BY SUCH CERTIFIED CAPITAL COMPANY WITH PROGRAM SIX CERTIFIED CAPITAL COMPANY AS OF SUCH DATE, THE SPECIFIC CERTIFIED CAPITAL COMPANY SHALL NOT BE PERMITTED TO RECEIVE MANAGEMENT FEES UNTIL IT HAS ACHIEVED SUCH MATCH. IF WITHIN FIVE YEARS OF THE STARTING DATE OF CERTIFIED CAPI-

TAL COMPANY PROGRAM SIX, THE CERTIFIED CAPITAL COMPANY HAS NOT ACHIEVED A MATCH OF AT LEAST ONE HUNDRED PERCENT OF THE AMOUNT OF QUALIFIED INVESTMENTS MADE BY SUCH CERTIFIED CAPITAL COMPANY WITH PROGRAM SIX CERTIFIED CAPITAL COMPANY AS OF SUCH DATE, THE SPECIFIC CERTIFIED CAPITAL COMPANY SHALL NOT BE PERMITTED TO RECEIVE MANAGEMENT FEES UNTIL IT HAS ACHIEVED SUCH MATCH.

S 10. Subparagraph (A) of paragraph 6 of subdivision (c) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(A) As soon as practicable after the receipt of certified capital or an irrevocable funding commitment subject only to the receipt of an allocation pursuant to subdivision (h) of this section, (i) the name of each certified investor from which the certified capital was received, including such certified investor's insurance tax identification number; (ii) the amount of each certified investor's investment of certified capital; and (iii) the date on which the certified capital was received. Provided, however, that requests for allocation of tax credits with respect to certified capital company program two by certified capital companies on behalf of their certified investors which are received by the superintendent on or before March first, two thousand shall be treated as having been received on March first, two thousand for tax credits to be utilized in two thousand one, and if satisfactory, shall be given equal priority for allocation, and provided, however, that requests for allocation of tax credits with respect to certified capital company program three by certified capital companies on behalf of their certified investors which are received by the superintendent on or before December first, two thousand shall be treated as having been received on December first, two thousand for tax credits to be utilized in two thousand two, and if satisfactory, shall be given equal priority for allocation, and provided, however, that requests for allocation of tax credits with respect to certified capital company program four by certified capital companies on behalf of their certified investors which are received by the superintendent on or before December first, two thousand four shall be treated as having been received on December first, two thousand four for tax credits to be utilized in two thousand six, and if satisfactory, shall be given equal priority for allocation, and provided, however, that requests for allocation of tax credits with respect to certified capital company program five by certified capital companies on behalf of their certified investors which are received by the superintendent on or before the later of (i) November first, two thousand five and (ii) the one hundred twentieth day after the date on which the superintendent began accepting applications for certification in connection with certified capital company program five pursuant to paragraph nine of subdivision (b) of this section shall be treated as having been received on such later date for tax credits to be utilized in two thousand seven, and if satisfactory, shall be given equal priority for allocation, AND PROVIDED, HOWEVER, THAT REQUESTS FOR ALLOCATION OF TAX CREDITS WITH RESPECT TO CERTIFIED CAPITAL COMPANY PROGRAM SIX BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS WHICH ARE RECEIVED BY THE SUPERINTENDENT ON OR BEFORE THE LATER OF (I) NOVEMBER FIRST, TWO THOUSAND THIRTEEN AND (II) THE ONE HUNDRED TWENTIETH DAY AFTER THE DATE ON WHICH THE SUPERINTENDENT BEGAN ACCEPTING APPLICATIONS FOR CERTIFICATION IN CONNECTION WITH CERTIFIED CAPITAL PROGRAM SIX PURSUANT TO PARAGRAPH NINE OF SUBDIVISION (B) OF THIS SECTION SHALL BE TREATED AS HAVING BEEN RECEIVED ON SUCH LATER DATE FOR TAX CREDITS TO BE

UTILIZED IN TWO THOUSAND SEVENTEEN, AND IF SATISFACTORY, SHALL BE GIVEN EQUAL PRIORITY FOR ALLOCATION.

S 11. Subparagraph (B) of paragraph 6 of subdivision (c) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(B) On an annual basis, on or before January thirty-first of each year, (i) the amount of the certified capital company's certified capital at the end of the immediately preceding year; (ii) whether or not the certified capital company has invested more than fifteen percent of its total certified capital in any one business; (iii) 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. For any qualified business where the certified capital company no longer has an investment, the certified capital company shall provide employment figures for such company as of the last day before the investment was terminated. Such report shall provide a separate accounting by each certified capital company program; [and] (iv) all qualified investments made in empire zones and underserved areas outside such empire zones as required under certified capital company program three, certified capital company program four and certified capital company program five; AND (V) WITH RESPECT TO CERTIFIED CAPITAL COMPANY PROGRAM SIX, ALL QUALIFIED INVESTMENTS MADE IN UNDERSERVED AREAS, ALL QUALIFIED INVESTMENTS MADE IN QUALIFIED SEED FUNDS, INCLUDING THE NUMBER OF EMPLOYEES OF EACH BUSINESS IN WHICH A QUALIFIED SEED FUND HAS MADE INVESTMENTS AT THE TIME OF SUCH INVESTMENT AND AS OF DECEMBER FIRST OF THE PRECEDING CALENDAR YEAR AND THE MATCH ACHIEVED BY THE CERTIFIED CAPITAL COMPANY. FOR ANY BUSINESS WHERE THE QUALIFIED SEED FUND NO LONGER HAS AN INVESTMENT, THE CERTIFIED CAPITAL COMPANY SHALL PROVIDE EMPLOYMENT FIGURES FOR SUCH COMPANY AS OF THE LAST DAY BEFORE THE INVESTMENT WAS TERMINATED.

S 12. Paragraph 1 of subdivision (d) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(1) A certified capital company may make qualified distributions at any time. In order for a certified capital company to make a distribution other than a qualified distribution from a certified capital company program, to its equity holders, either (A) the aggregate cumulative amount of all qualified investments for such program must equal or exceed one hundred percent of its certified capital allocable to such certified capital company program AND WITH RESPECT TO PROGRAM SIX, THE CERTIFIED CAPITAL COMPANY MUST HAVE ACHIEVED A MATCH OF AT LEAST NINETY PERCENT OF THE CERTIFIED CAPITAL ALLOCABLE TO SUCH CERTIFIED CAPITAL COMPANY, or (B) it must have received written authorization to make such distribution from the superintendent. In no event, however, shall any such distribution to its equity holders, other than a qualified distribution, be made by a certified capital company from a certified capital company program unless an amount equal cumulatively to at least ninety percent of its certified capital of such program is invested in companies that conduct their principal business operations in New York state.

S 13. Paragraph 5 of subdivision (e) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(5) Once a certified capital company has invested an amount cumulatively equal to one hundred percent of its certified capital with respect to a particular certified capital company program in qualified

investments and has met all other requirements under this subdivision, INCLUDING THE REQUIREMENT THAT A PROGRAM SIX CERTIFIED CAPITAL COMPANY INVEST TEN PERCENT OF ITS CERTIFIED CAPITAL IN QUALIFIED SEED FUNDS AND ACHIEVE A MATCH OF AT LEAST NINETY PERCENT OF THE CERTIFIED CAPITAL ALLOCABLE TO SUCH CERTIFIED CAPITAL COMPANY, the certified capital company shall no longer be subject to regulation by the superintendent and shall no longer be subject to the requirements of subdivision (c) of this section with respect to such program. Upon receiving documented certification by a certified capital company that it has invested, WITH RESPECT TO PROGRAMS ONE, TWO, THREE, FOUR AND FIVE, an amount equal to one hundred percent of its certified capital AND, WITH RESPECT TO PROGRAM SIX, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF ITS CERTIFIED CAPITAL WITH TEN PERCENT OF SUCH CERTIFIED CAPITAL INVESTED IN QUALIFIED SEED FUNDS AND, WITH RESPECT TO PROGRAM SIX, ACHIEVED A MATCH OF AT LEAST NINETY PERCENT OF THE CERTIFIED CAPITAL ALLOCABLE TO SUCH CERTIFIED CAPITAL COMPANY, the department shall have sixty days to notify such certified capital company that it has or has not met such requirement with a reason for such determination if it has not, in the judgment of the department, met such requirement. If the department does not provide such notification within sixty days, the certified capital company shall then be deemed to have met such requirement.

S 14. Subdivision (h) of section 11 of the tax law is amended by adding a new paragraph 6 to read as follows:

(6) CERTIFIED CAPITAL COMPANY PROGRAM SIX. THE AGGREGATE AMOUNT OF CERTIFIED CAPITAL FOR WHICH TAXPAYERS MAY BE ALLOCATED AND ALLOWED TAX CREDITS PURSUANT TO THIS PARAGRAPH AND SUBDIVISION (K) OF SECTION FIFTEEN HUNDRED ELEVEN OF THIS CHAPTER MAY NOT EXCEED ONE HUNDRED FIFTY MILLION DOLLARS FOR CALENDAR YEAR TWO THOUSAND SEVENTEEN, WHICH CERTIFIED CAPITAL MAY BE INVESTED IN CERTIFIED CAPITAL COMPANIES BEGINNING IN CALENDAR YEAR TWO THOUSAND THIRTEEN.

DURING ANY CALENDAR YEAR IN WHICH THE LIMITATION DESCRIBED IN THIS PARAGRAPH WILL LIMIT THE AMOUNT OF CERTIFIED CAPITAL, CERTIFIED CAPITAL WILL BE ALLOCATED IN ORDER OF PRIORITY BASED UPON THE DATE OF FILING OF INFORMATION DESCRIBED IN SUBPARAGRAPH (A) OF PARAGRAPH SIX OF SUBDIVISION (C) OF THIS SECTION. THE SUPERINTENDENT SHALL ADVISE ANY CERTIFIED CAPITAL COMPANY IN WRITING, WITHIN FIFTEEN DAYS AFTER RECEIVING SUCH FILING, WHETHER THE LIMITATIONS OF THIS PARAGRAPH THEN IN EFFECT WILL BE APPLICABLE WITH RESPECT TO THE INVESTMENTS AND CREDITS DESCRIBED IN SUCH FILING WITH THE SUPERINTENDENT.

CERTIFIED CAPITAL MAY BE RAISED BY EACH CERTIFIED CAPITAL COMPANY WITH RESPECT TO CERTIFIED CAPITAL COMPANY PROGRAM SIX AT ANY TIME SUBSEQUENT TO ITS CERTIFICATION DATE, AND CREDITS SHALL BE ALLOCATED TO AND IRREVOCABLY VESTED BY THE STATE IN CERTIFIED INVESTORS AT THE TIME OF EACH SUCH INVESTMENT AS PROVIDED IN THIS PARAGRAPH, ALTHOUGH SUCH CREDITS SHALL NOT BE FIRST ALLOWED OR INCURRED FOR STATE TAX PURPOSES, UNTIL, AT THE EARLIEST, TAX YEARS BEGINNING IN TWO THOUSAND SEVENTEEN. IN ORDER TO SATISFY THE REQUIREMENTS OF PARAGRAPH FIVE OF SUBDIVISION (E) OF THIS SECTION, A CERTIFIED CAPITAL COMPANY MUST HAVE MADE, ON A CUMULATIVE BASIS, (A) AN AMOUNT OF QUALIFIED INVESTMENTS IN QUALIFIED BUSINESSES LOCATED IN UNDERSERVED AREAS EQUAL TO AT LEAST TWO-THIRDS OF THE CERTIFIED CAPITAL RAISED BY SUCH CERTIFIED CAPITAL COMPANY WITH RESPECT TO CERTIFIED CAPITAL COMPANY PROGRAM SIX, (B) QUALIFIED INVESTMENTS IN QUALIFIED SEED FUNDS IN AN AMOUNT EQUAL TO AT LEAST TEN PERCENT OF THE CERTIFIED CAPITAL RAISED BY SUCH CERTIFIED CAPITAL COMPANY WITH RESPECT TO CERTIFIED CAPITAL COMPANY PROGRAM SIX AND (C) QUALIFIED INVESTMENTS IN QUALIFIED BUSINESSES THAT ARE INVOLVED IN COMMERCE FOR THE PRIMARY

PURPOSE OF DEVELOPING AND MANUFACTURING PRODUCTS AND SYSTEMS COVERED BY THE ACTIVITIES SET FORTH IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW AND HAVE A RATIO OF RESEARCH AND DEVELOPMENT EXPENDITURES TO NET SALES WHICH EQUALS OR EXCEEDS SIX PERCENT DURING THE FISCAL YEAR IMMEDIATELY PRECEDING THE QUALIFIED INVESTMENT IN AN AMOUNT EQUAL TO AT LEAST THIRTY-THREE PERCENT OF THE CERTIFIED CAPITAL RAISED BY SUCH CERTIFIED CAPITAL COMPANY WITH RESPECT TO PROGRAM SIX; PROVIDED, HOWEVER, THAT ALL QUALIFIED INVESTMENTS IN QUALIFIED SEED FUNDS SHALL COUNT TOWARD THE AMOUNT REQUIRED BY SUBPARAGRAPH (C) OF THIS PARAGRAPH.

S 15. Subdivision (i) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(i) Maximum certified capital. The maximum amount of certified capital per certified capital company program invested in one or more certified capital companies allowed in any one year to any one certified investor shall not exceed ten million dollars for certified capital company programs one and three, [and] eight million dollars for certified capital company programs two, four and five, AND FIFTEEN MILLION DOLLARS FROM CERTIFIED CAPITAL COMPANY PROGRAM SIX for such year, provided, however, that if the aggregate amount of certified capital for such year, as set forth in subdivision (h) of this section, has not been reached sixty days prior to the end of the year to which such aggregate amount applies, the provisions of this subdivision shall cease to apply for the remainder of such year. In addition, the aggregate amount of tax credits allowed in any taxable year to any affiliated group of taxpayers in relation to certified capital may not exceed such maximum amount, whether or not such taxpayers file a combined return pursuant to subdivision (f) of section fifteen hundred fifteen of this chapter. For purposes of the preceding sentence, the term "affiliated group" shall have the same meaning as described in section 1504 of the internal revenue code, except that the references to "at least eighty percent" in such section 1504 shall be read as "more than fifty percent".

S 16. Subdivision (j) of section 11 of the tax law, as amended by section 19 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(j) Reports. The superintendent shall report to the governor, the temporary president of the senate, and the speaker of the assembly, on or before June first of each year beginning in the year two thousand, the number of certified capital companies holding certified capital; the amount of certified capital invested in each certified capital company; the cumulative amount that each certified capital company has invested as of January first of the year two thousand and the cumulative total each year thereafter; the cumulative amount that the investments of each certified capital company have leveraged in terms of capital invested by other sources of capital in qualified businesses at the same time or subsequent to investments made by a certified capital company in such businesses; the total amount of tax credits granted under this section each year that credits have been awarded under this section and subdivision (k) of section fifteen hundred eleven of this chapter; the performance of each certified capital company with regard to the requirements for recertification set forth in subdivision (c) of this section; the classification of companies in which each certified capital company has invested according to industrial sector and size of company; the total gross number of jobs created by investments made by each certified capital company using certified capital and the number of jobs retained; the

location of companies in which each certified capital company has invested in a manner to indicate if the requirements for qualified investments in qualified businesses located in empire zones established pursuant to article eighteen-B of the general municipal law set forth for programs three, four and five and in underserved areas outside such empire zones have been met; the total gross number of jobs created in empire zones established pursuant to article eighteen-B of the general municipal law and in underserved areas outside such empire zones made by each certified capital company using certified capital in certified capital company programs three, four and five, reported by geographic location of each empire zone and underserved area and the number of jobs retained; and those certified capital companies that have been decertified, or have had their certifications revoked, including the reasons for decertification or revocation; THE LOCATION OF COMPANIES IN WHICH EACH CERTIFIED CAPITAL COMPANY HAS INVESTED IN A MANNER TO INDICATE IF THE REQUIREMENTS FOR QUALIFIED INVESTMENTS IN QUALIFIED BUSINESSES LOCATED IN UNDERSERVED AREAS AS SET FORTH IN PROGRAM SIX; THE TOTAL GROSS NUMBER OF JOBS CREATED IN UNDERSERVED AREAS USING CERTIFIED CAPITAL IN CERTIFIED CAPITAL COMPANY PROGRAM SIX AND THE NUMBER OF JOBS RETAINED; THE AMOUNT OF QUALIFIED INVESTMENTS MADE INTO QUALIFIED SEED FUNDS FOR PROGRAM SIX CERTIFIED CAPITAL COMPANIES; THE CLASSIFICATION OF COMPANIES IN WHICH EACH QUALIFIED SEED FUND HAS INVESTED ACCORDING TO INDUSTRIAL SECTOR AND SIZE OF COMPANY; THE TOTAL GROSS NUMBER OF JOBS CREATED BY INVESTMENTS MADE BY EACH QUALIFIED SEED FUND USING THE NUMBER OF JOBS RETAINED.

S 17. Paragraph 2 of subdivision (k) of section 1511 of the tax law, as amended by section 2 of part S of chapter 407 of the laws of 1999, is amended to read as follows:

(2) Ten percent of such credit shall be allowed in the taxable year to which such investment is allocated pursuant to PARAGRAPHS ONE THROUGH FIVE OF subdivision (h) of section eleven of this chapter and in each of the nine following taxable years. TWENTY-FIVE PERCENT OF SUCH CREDIT SHALL BE ALLOWED IN THE TAXABLE YEAR TO WHICH SUCH INVESTMENT IS ALLOCATED PURSUANT TO PARAGRAPH SIX OF SUBDIVISION (H) OF SECTION ELEVEN OF THIS CHAPTER AND IN EACH OF THE THREE FOLLOWING TAXABLE YEARS. In addition, in any taxable year subsequent to the taxable year for which [such] ANY investment is so allocated UNDER SUCH SUBDIVISION (H), any amount carried forward under paragraphs three and four of this subdivision may be carried forward indefinitely until such credits are utilized.

S 18. Section 84 of part A of chapter 62 of the laws of 2011 relating to constituting chapter 18-A of the consolidated laws relating to financial services is REPEALED.

S 19. Notwithstanding the provisions of article 5 of the general construction law, the provisions of subdivision (j) of section 11 of the tax law, as repealed by section 84 of part A of chapter 62 of the laws of 2011, are hereby revived and shall continue in full force and effect as such provisions existed on March 30, 2011.

S 20. This act shall take effect immediately.