

1 (A) the poverty rate is not less than 20%;

2 (B) in the case of a census tract or division
3 located within a metropolitan area, the median
4 family income for the tract or division does not
5 exceed the greater of 80% of the statewide median
6 family income or 80% of the metropolitan area median
7 family income; or

8 (C) in the case of a census tract or division
9 not located within a metropolitan area, the median
10 family income for the tract or division does not
11 exceed 80% of the statewide median family income; or

12 (2) any area located within:

13 (A) a historically underutilized business zone
14 (HUBZone), as defined in Section 3(p) of the Small
15 Business Act (15 U.S.C. 632(p));

16 (B) an urban empowerment zone or an urban
17 enterprise community, as designated by the Secretary
18 of the federal Department of Housing and Urban
19 Development; or

20 (C) a rural empowerment zone or a rural
21 enterprise community, as designated by the Secretary
22 of the federal Department of Agriculture.

23 "New markets venture capital company" means a company
24 that:

25 (1) has been granted final approval by the
26 Department under subsection (e) of Section 20; and

27 (2) has entered into a participation agreement with
28 the Department.

29 "Operational assistance" means management, marketing, and
30 other technical assistance that assists a small business
31 concern with business development.

32 "Participation agreement" means an agreement between the
33 Department and a company granted final approval under
34 subsection (e) of Section 20 that:

1 (1) details the company's operating plan and
2 investment criteria; and

3 (2) requires the company to make investments in
4 smaller enterprises at least 80% of which are located in
5 low-income or moderate-income geographic areas.

6 "Specialized small business investment company" means any
7 small business investment company that (i) invests solely in
8 small business concerns that contribute to a well-balanced
9 State economy by facilitating ownership in those concerns by
10 persons whose participation in the free enterprise system is
11 hampered because of social or economic disadvantages; (ii) is
12 organized or chartered under State business or nonprofit
13 corporations statutes, or formed as a limited partnership;
14 and (iii) was licensed under Section 301(d) of the federal
15 Small Business Investment Act (15 U.S.C. 681(d)), as it was
16 in effect before September 30, 1996.

17 Section 10. Purposes. The purposes of the New Markets
18 Venture Capital Program established under this Act are to:

19 (1) promote economic development and the creation of
20 wealth and job opportunities in low-income or
21 moderate-income geographic areas and among individuals
22 living in those areas by encouraging developmental
23 venture capital investments in smaller enterprises
24 primarily located in those areas; and

25 (2) establish a developmental venture capital
26 program, with the mission of addressing the unmet equity
27 investment needs of small enterprises located in
28 low-income and moderate-income geographic areas, to be
29 administered by the Department to:

30 (A) enter into participation agreements with
31 new markets venture capital companies;

32 (B) guarantee debentures of new markets
33 venture capital companies to enable each company to

1 make developmental venture capital investments in
2 smaller enterprises in low-income or moderate-income
3 geographic areas; and

4 (C) make grants to new markets venture capital
5 companies, and to other entities, for the purpose of
6 providing operational assistance to smaller
7 enterprises financed, or expected to be financed, by
8 the companies.

9 Section 15. Creation of program. The Department must
10 establish a new markets venture capital program under which
11 the Department may:

12 (1) enter into participation agreements with
13 companies granted final approval under subsection (e) of
14 Section 20 for the purposes set forth in Section 10;

15 (2) guarantee the debentures issued by new markets
16 venture capital companies as provided in Section 25; and

17 (3) make grants to new markets venture capital
18 companies, and to other entities, under Section 40.

19 Section 20. Selection of new markets venture capital
20 companies.

21 (a) A company is eligible to apply to participate, as a
22 new markets venture capital company, in the program
23 established under this Act if:

24 (1) the company is a newly formed for-profit entity
25 or a newly formed for-profit subsidiary of an existing
26 entity;

27 (2) the company has a management team with
28 experience in community development financing or relevant
29 venture capital financing; and

30 (3) the company has a primary objective of economic
31 development of low-income or moderate-income geographic
32 areas.

1 (b) To participate as a new markets venture capital
2 company in the program established under this Act, a company
3 meeting the eligibility requirements of subsection (a) must
4 submit an application to the Department that includes:

5 (1) a business plan describing how the company
6 intends to make successful developmental venture capital
7 investments in identified low-income or moderate-income
8 geographic areas;

9 (2) information regarding the community development
10 finance or relevant venture capital qualifications and
11 general reputation of the company's management;

12 (3) a description of how the company intends to work
13 with community organizations and to seek to address the
14 unmet capital needs of the communities served;

15 (4) a proposal describing how the company will use
16 the grant funds provided under this Act to provide
17 operational assistance to smaller enterprises financed by
18 the company, including information regarding whether the
19 company will use licensed professionals, where
20 applicable, on the company's staff or from an outside
21 entity;

22 (5) with respect to binding commitments to be made
23 to the company under this Act, an estimate of the ratio
24 of cash to in-kind contributions;

25 (6) a description of the criteria to be used to
26 evaluate whether and to what extent the company meets the
27 objectives of the program established under this Act;

28 (7) information regarding the management and
29 financial strength of any parent firm, affiliated firm,
30 or any other firm essential to the success of the
31 company's business plan; and

32 (8) any other information that the Department may
33 require.

34 (c) From among companies submitting applications under

1 subsection (b), the Department must, in accordance with this
2 subsection, conditionally approve companies to participate in
3 the New Markets Venture Capital Program.

4 In selecting companies, the Department must consider the
5 following:

6 (1) The likelihood that the company will meet the
7 goals of its business plan.

8 (2) The experience and background of the company's
9 management team.

10 (3) The need for developmental venture capital
11 investments in the geographic areas in which the company
12 intends to invest.

13 (4) The extent to which the company will concentrate
14 its activities on serving the geographic areas in which
15 it intends to invest.

16 (5) The likelihood that the company will be able to
17 satisfy the conditions of subsection (d).

18 (6) The extent to which the activities proposed by
19 the company will expand economic opportunities in the
20 geographic areas in which the company intends to invest.

21 (7) The strength of the company's proposal to
22 provide operational assistance under this Act as the
23 proposal relates to the ability of the applicant to meet
24 applicable cash requirements and properly use in-kind
25 contributions, including the use of resources for the
26 services of licensed professionals whether provided by
27 persons on the company's staff or by persons outside of
28 the company.

29 (8) Any other factors deemed appropriate by the
30 Department.

31 The Department must select companies in such a way that
32 promotes investment statewide.

33 (d) The Department must grant each conditionally approved
34 company a period of time, not to exceed 2 years, to satisfy

1 the following requirements:

2 (1) Each conditionally approved company must raise
3 not less than \$5,000,000 of private capital or binding
4 capital commitments from one or more investors (other
5 than agencies or departments of the State) who meet
6 criteria established by the Department.

7 (2) In order to provide operational assistance to
8 smaller enterprises expected to be financed by the
9 company, each conditionally approved company:

10 (A) must have binding commitments (for
11 contribution in cash or in-kind) (i) from any
12 sources other than the Department that meet criteria
13 established by the Department; (ii) payable or
14 available over a multiyear period acceptable to the
15 Department (not to exceed 10 years); and (iii) in an
16 amount not less than 30% of the total amount of
17 capital and commitments raised under paragraph (1)
18 of this subsection;

19 (B) must have purchased an annuity (i) from an
20 insurance company acceptable to the Department; (ii)
21 using funds (other than the funds raised under
22 paragraph (1) of this subsection) from any source
23 other than the Department; and (iii) that yields
24 cash payments over a multiyear period acceptable to
25 the Department (not to exceed 10 years) in an amount
26 not less than 30% of the total amount of capital and
27 commitments raised under paragraph (1) of this
28 subsection; or

29 (C) must have binding commitments (for
30 contributions in cash or in-kind) of the type
31 described in subparagraph (A) and must have
32 purchased an annuity of the type described in
33 subparagraph (B) that in the aggregate make
34 available, over a multiyear period acceptable to the

1 Department (not to exceed 10 years), an amount not
2 less than 30% of the total amount of capital and
3 commitments raised under paragraph (1) of this
4 subsection.

5 (e) The Department must grant to a company conditionally
6 approved under subsection (c) final approval to participate
7 in the program established under this Act after the company
8 has met the requirements set forth in subsection (d).

9 Section 25. Debentures.

10 (a) The Department may guarantee the timely payment of
11 the principal and interest, as scheduled, on debentures
12 issued by any new markets venture capital company.

13 (b) The Department may make guarantees under this Section
14 on any terms and conditions that it deems appropriate, except
15 that the term of any debenture guaranteed under this Section
16 may not exceed 15 years.

17 (c) The full faith and credit of the State is pledged to
18 pay all amounts that may be required to be paid under any
19 guarantee under this Act.

20 (d) Under this Section, the Department may guarantee the
21 debentures issued by a new markets venture capital company
22 only to the extent that the total face amount of outstanding
23 guaranteed debentures of the company does not exceed 150% of
24 the private capital of the company, as determined by the
25 Department. "Private capital" includes capital that is
26 considered to be State funds if the capital is contributed by
27 an investor other than an agency or department of the State
28 government.

29 Section 30. Issuance and guarantee of trust certificates.

30 (a) The Department may issue trust certificates
31 representing ownership of all or a fractional part of
32 debentures issued by a new markets venture capital company

1 and guaranteed by the Department under this Act if the
2 certificates are based on and backed by a trust or pool
3 approved by the Department and composed solely of guaranteed
4 debentures.

5 (b) The Department may, under any terms and conditions
6 that it deems appropriate, guarantee the timely payment of
7 the principal of and interest on trust certificates issued by
8 the Department or its agents for purposes of this Section.

9 Each guarantee under this subsection is limited to the
10 extent of the principal and interest on the guaranteed
11 debentures that compose the trust or pool.

12 In the event that a debenture in a trust or pool is
13 prepaid, or in the event of default of a debenture, the
14 guarantee of timely payment of principal and interest on the
15 trust certificates shall be reduced in proportion to the
16 amount of principal and interest that prepaid debenture
17 represents in the trust or pool. Interest on prepaid or
18 defaulted debentures shall accrue and be guaranteed by the
19 Department only through the date of payment of the guarantee.
20 At any time during its term, a trust certificate may be
21 called for redemption due to prepayment or default of all
22 debentures.

23 (c) The full faith and credit of the State is pledged to
24 pay all amounts that may be required to be paid under any
25 guarantee of a trust certificate issued by the Department or
26 its agents under this Section.

27 (d) The Department may not collect a fee for any
28 guarantee of a trust certificate under this Section, but any
29 agent of the Department may collect a fee approved by the
30 Department for the functions described in subsection (f).

31 (e) In the event the Department pays a claim on a
32 guarantee issued under this Section, it shall be subrogated
33 fully to the rights satisfied by the payment.

34 No federal, State, or local law precludes or limits the

1 exercise by the Department of its ownership rights in the
2 debentures residing in a trust or pool against which trust
3 certificates are issued under this Section.

4 (f) (1) The Department may provide for a central
5 registration of all trust certificates issued under this
6 Section. Nothing in this subsection shall prohibit the
7 use of a book entry or other electronic form of
8 registration for trust certificates.

9 (2) The Department may contract with an agent or
10 agents to carry out on behalf of the Department the
11 pooling and the central registration functions provided
12 for in this Section including, notwithstanding any other
13 provision of law, (i) maintenance, on behalf of and under
14 the direction of the Department, of any commercial bank
15 accounts or investments in obligations of the State that
16 may be necessary to facilitate the creation of trusts or
17 pools backed by debentures guaranteed under this Act and
18 (ii) the issuance of trust certificates to facilitate the
19 creation of the trusts or pools.

20 Any agent performing functions on behalf of the
21 Department under this paragraph must provide a fidelity
22 bond or insurance in any amounts that the Department
23 determines to be necessary in order to fully protect the
24 interests of the State.

25 Section 35. Fees. Except as provided in subsection (d)
26 of Section 30, the Department may charge any fees that it
27 deems appropriate with respect to any guarantee or grant
28 issued under this Act.

29 Section 40. Operational assistance grants.

30 (a) (1) In accordance with this Section, the Department
31 may make grants to new markets venture capital companies
32 and to other entities to provide operational assistance

1 to smaller enterprises financed, or expected to be
2 financed, by those companies or other entities.

3 (2) Grants made under this subsection shall be made
4 over a multiyear period not to exceed 10 years and under
5 any other terms that the Department may require.

6 (3) In accordance with this Section, the Department
7 may make grants to specialized small business investment
8 companies to provide operational assistance to smaller
9 enterprises financed, or expected to be financed, by
10 those companies after the effective date of this Act.

11 The proceeds of a grant made under this subsection
12 may be used by the company receiving the grant only to
13 provide operational assistance in connection with an
14 equity investment (made with capital raised after the
15 effective date of this Act) in a business located in a
16 low-income or moderate-income geographic area.
17 Operational assistance referred to in this paragraph (3)
18 may not be provided in connection with more than one
19 equity investment.

20 A specialized small business investment company is
21 eligible for a grant under this Section only if the company
22 submits to the Director of Commerce and Community Affairs, in
23 any form and manner that the Director may require, a plan for
24 use of the grant.

25 (4) The amount of a grant made under this subsection
26 to a new markets venture capital company shall be equal
27 to the resources (in cash or in-kind) raised by the
28 company under paragraph (2) of subsection (d) of Section
29 20. The amount of a grant made under this subsection to
30 any entity other than a new markets venture capital
31 company shall be equal to the resources (in cash or
32 in-kind) raised by the entity in accordance with the
33 requirements applicable to new markets venture capital
34 companies set forth in paragraph (2) of subsection (d) of

1 Section 20.

2 (5) If the amount made available to carry out this
3 Section is insufficient for the Department to provide
4 grants in the amounts provided for in paragraph (4), the
5 Department must make pro rata reductions in the amounts
6 otherwise payable to each company and entity under that
7 paragraph.

8 (b) (1) The Department may make supplemental grants to
9 new markets venture capital companies and to other
10 entities under any terms that the Department may require
11 to provide additional operational assistance to smaller
12 enterprises financed, or expected to be financed, by the
13 companies.

14 (2) The Department may require, as a condition of
15 any supplemental grant made under this subsection, that
16 the company or entity receiving the grant provide from
17 resources (in cash or in-kind), other than those provided
18 by the Department, a matching contribution equal to the
19 amount of the supplemental grant.

20 (c) None of the assistance made available under this
21 Section may be used for any operating expense of a new
22 markets venture capital company or a specialized small
23 business investment company.

24 Section 45. Bank participation.

25 (a) Except as provided in subsection (b), any national
26 bank, any member bank of the Federal Reserve System, and any
27 insured bank that is not a member of the system may invest in
28 any new markets venture capital company or in any entity
29 established to invest solely in new markets venture capital
30 companies.

31 (b) No bank described in subsection (a) may make
32 investments described in that subsection that are greater
33 than 5% of the capital and surplus of the bank.

1 Section 50. Reporting. Each new markets venture capital
2 company that participates in the program established under
3 this Act must provide to the Department any information that
4 the Department may require, including (i) information related
5 to the measurement criteria that the company proposed in its
6 program application and (ii) in each case in which the
7 company under this Act makes an investment in, or a loan or
8 grant to, a business that is not located in a low-income or
9 moderate-income geographic area, a report on the number and
10 percentage of employees of the business who reside in those
11 areas.

12 Section 55. Examinations.

13 (a) Each new markets venture capital company that
14 participates in the program established under this Act is
15 subject to examinations made at the direction of the
16 Department in accordance with this Section.

17 (b) Examinations under this Section may be conducted with
18 the assistance of a private sector entity that has both the
19 qualifications and the expertise necessary to conduct the
20 examinations.

21 (c) (1) The Department may assess the cost of
22 examinations under this Section, including compensation
23 of the examiners, against the company examined. Any
24 company against which the Department assesses costs under
25 this paragraph must pay the costs.

26 (2) Funds collected under this Section shall be
27 deposited into the General Revenue Fund and used, subject
28 to appropriation, for the salaries and ordinary and
29 contingent expenses of the Department.

30 Section 60. Injunctions and court orders.

31 (a) Whenever, in the judgment of the Department, a new
32 markets venture capital company or any other person has

1 engaged or is about to engage in any acts or practices that
2 constitute or will constitute a violation of any provision of
3 this Act, of any rule adopted under this Act, or of any order
4 issued under this Act, the Department may make application to
5 the proper circuit court for an order enjoining the acts or
6 practices or for an order enforcing compliance with the
7 provision, rule, order. The court has jurisdiction over
8 those actions and, upon a showing by the Department that the
9 new markets venture capital company or other person has
10 engaged or is about to engage in any such acts or practices,
11 a permanent or temporary injunction, restraining order, or
12 other order shall be granted without bond.

13 (b) In any proceeding under subsection (a), the circuit
14 court may, to any extent the court deems necessary, take
15 exclusive jurisdiction of the new markets venture capital
16 company and the assets of that company and may appoint a
17 trustee or receiver to hold or administer, pursuant to the
18 direction of the court, the assets of the new markets venture
19 capital company.

20 (c) The Department may act as trustee or receiver of a
21 new markets venture capital company. Upon request of the
22 Department, the court may appoint the Department to act as a
23 trustee or receiver of a new markets venture capital company
24 unless the court deems the appointment inequitable or
25 otherwise inappropriate by reason of the special
26 circumstances involved.

27 Section 65. Penalties.

28 (a) With respect to any new markets venture capital
29 company that violates or fails to comply with any of the
30 provisions of this Act, of any rule adopted under this Act,
31 or of any participation agreement entered into under this
32 Act, the Department may in accordance with this Section:

33 (1) void the participation agreement between the

1 Department and the company; and

2 (2) cause the company to forfeit all of the rights
3 and privileges derived by the company from this Act.

4 (b) Before the Department may cause a new markets venture
5 capital company to forfeit rights or privileges under
6 subsection (a), the circuit court must find that the company
7 committed a violation, or failed to comply, in a cause of
8 action brought for that purpose in the county in which the
9 principal office of the company is located.

10 Each cause of action brought by the State under this
11 subsection must be brought by the by Department or the
12 Attorney General.

13 Section 70. Unlawful acts and omissions; breach of
14 fiduciary duty.

15 (a) When any new markets venture capital company violates
16 any provision of this Act, a rule adopted under this Act, or
17 a participation agreement entered into under this Act, by
18 reason of its failure to comply with its terms or by reason
19 of its engaging in any act or practice that constitutes or
20 will constitute a violation thereof, the violation must also
21 be deemed to be a violation and an unlawful act committed by
22 any person who, directly or indirectly, authorizes, orders,
23 participates in, causes, brings about, counsels, aids, or
24 abets in the commission of any acts, practices, or
25 transactions that constitute or will constitute, in whole or
26 in part, the violation.

27 (b) It is unlawful for any officer, director, employee,
28 agent, or other participant in the management or conduct of
29 the affairs of a new markets venture capital company to
30 engage in any act or practice, or to omit any act or
31 practice, in breach of the person's fiduciary duty as an
32 officer, director, employee, agent, or participant if, as a
33 result of the act or practice, the company suffers or is in

1 imminent danger of suffering financial loss or other damage.

2 (c) Except with the written consent of the Department, it
3 is unlawful:

4 (1) for any person to be an officer, director, or
5 employee of any new markets venture capital company, or
6 to become an agent or participant in the conduct of the
7 affairs or management of such a company, if the person
8 (i) has been convicted of a felony or any other criminal
9 offense involving dishonesty or breach of trust or (ii)
10 has been found civilly liable in damages, or has been
11 permanently or temporarily enjoined by an order,
12 judgment, or decree of a court of competent jurisdiction,
13 by reason of any act or practice involving fraud, or
14 breach of trust; and

15 (2) for any person continue to serve in any of the
16 capacities described in paragraph (1) if (i) the person
17 is convicted of a felony or any other criminal offense
18 involving dishonesty or breach of trust or (ii) the
19 person is found civilly liable in damages, or is
20 permanently or temporarily enjoined by an order,
21 judgment, or decree of a court of competent jurisdiction,
22 by reason of any act or practice involving fraud or
23 breach of trust.

24 Section 75. Rules. The Department may adopt any rules
25 necessary to carry out the purposes of this Act."