COMMONWEALTH OF PENNSYLVANIA
PUBLIC EMPLOYEE RETIREMENT COMMISSION
HARRISBURG
17120

June 20, 2013

The Honorable John P. Blake
Democratic Chairman
Senate Local Government Committee
Room 17 East Wing
Harrisburg, PA 17120

Re: Senate Bill Number 456, Printer's Number 1251

Dear Senator Blake:

I am writing in response to your request concerning an actuarial note for the above referenced bill (copy enclosed). Senate Bill Number 456, Printer's Number 1251, would amend the Tax Reform Code of 1971 to establish the "Innovate in PA" program which would provide for the structured auctioning of insurance premium tax credits. Auction proceeds would then be distributed to a number of economic development programs via the Ben Franklin Technology Development Authority (BFTDA) and the Department of Community and Economic Development (DCED).

Under the Municipal Pension Plan Funding Standard and Recovery Act (Act 205 of 1984), the Commonwealth imposes a tax on the premiums of casualty and fire insurance policies sold in Pennsylvania. Act 205 establishes a General Municipal Pension System State Aid Program financed from the proceeds of a portion of the casualty insurance premium tax and a portion of the fire insurance premium tax assessed against out-of-state ("foreign") insurance companies. As of 2012, the total allocation available through the State aid program was $232.8 million. General Municipal Pension System State Aid is allocated annually to all municipalities (excluding municipal authorities) to defray the costs of providing employee pension benefits.

Section 1805-C (c) of the bill contains a "hold harmless" provision that would require the State Treasurer to transfer from the General Fund into the General Municipal Pension System State Aid revenue account under Section 402(b) of Act 205 an amount equal to the amount of tax credits claimed by insurance companies who pay the Foreign Casualty Insurance Premium Tax and Foreign Fire Insurance Premium Tax.

Under the Public Employee Retirement Commission Act (Act 66 of 1981), the Commission has a mandated responsibility to review any legislative changes that affect public employee retirement systems. At my direction, the Commission staff has reviewed the provisions of Senate Bill Number 456, Printer's Number 1251, and determined the bill will have no actuarial cost impact upon any of the affected municipal pension plans within the Commonwealth.

Based upon the determination that Senate Bill Number 456, Printer's Number 1251, will have no actuarial cost impact, I am informing you, on behalf of the Commission, that the bill will not require an actuarial note prior to further consideration by the General Assembly.

I trust this letter adequately responds to your request. If I may be of any further assistance, please feel free to contact me by telephoning (717) 783-6100.

Sincerely,

Anthony W. Salomone
Chairman

Enclosure

cc: The Honorable Joseph B. Scarnati, III
The Honorable Dominic F. Pileggi
The Honorable Jay Costa, Jr.
The Honorable Patrick M. Browne
The Honorable Anthony H. Williams
The Honorable Michael L. Waugh
The Honorable Richard A. Kasunic
The Honorable Jake Corman
The Honorable Vincent J. Hughes
The Honorable Michael W. Brubaker
The Honorable Daylin B. Leach
The Honorable John H. Eichelberger, Jr.
The Honorable Robert F. Teplitz
Ms. Megan Consedine
Mr. C.J. Hafner
Ms. Stacey Connors
Mr. Gregory K. Jordan

PRIOR PRINTER'S NO. 797 PRINTER'S NO. 1251

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 456 Session of 2013

INTRODUCED BY BLAKE, STACK, GORDNER, YUDICHAK, TARTAGLIONE, KASUNIC, FONTANA, ERICKSON, TEPLITZ, FARNESE, SMITH, BREWSTER, PILEGGI, SOLOBAY, BROWNE, COSTA, WASHINGTON, MENSCH, HUGHES, FERLO, WHITE, BOSCOLA, BRUBAKER, DINNIMAN, WARD AND ARGALL, APRIL 1, 2013

SENATOR BRUBAKER, FINANCE, AS AMENDED, JUNE 19, 2013

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," providing for the Innovate in PA Program.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The heading of Article XVIII-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added July 9, 2008 (P.L.922, No.66), is amended to read:

ARTICLE XVIII-C

[(RESERVED)]

<u>INNOVATE IN PA TAX CREDIT</u>

Section 2. The act is amended by adding sections to read:

<u>Section 1801-C. Scope of article.</u>

This article relates to the Innovate in PA Tax Credit.

Section 1802-C. Legislative intent.

It is the intent of this article to invest in innovation as a catalyst for economic growth. Investment, in the Ben Franklin Technology Development Authority, the Ben Franklin Technology Partners, the Partnerships for Regional Economic Performance, REGIONAL BIOTECHNOLOGY RESEARCH CENTERS, the department and <-- venture capital funds will advance the competitiveness of this Commonwealth's companies in the global economy. It is the goal of this article to maximize the available funding from a minimum amount of ~~$157,500,000~~ $168,750,000 and up to and exceeding <-- $190,000,000.

Section 1803-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Allocation amount." The total amount of tax credits purchased by a qualified taxpayer.

"Authority." The Ben Franklin Technology Development Authority established to manage and fund programs in this Commonwealth that support the development of technology as described in the act of June 22, 2001 (P.L.569, No.38), known as The Ben Franklin Technology Development Authority Act.

"Ben Franklin Technology Partners Program." A program under the Ben Franklin Technology Development Authority that funds four regionally based economic development organizations dedicated to a common mission of technology commercialization.

"Capital." The amount of money that a purchaser invests under the Innovate in PA Program.

"Department." The Department of Community and Economic

Development of the Commonwealth.

"Fund." The Innovate in PA Fund.

"Impact investment." An investment intended to solve social or environmental challenges while generating financial profit. Impact investing recognizes that investments have social and environmental returns in addition to financial returns and attempts to maximize the three returns rather than one at the expense of others.

"Insurance premium tax liability." Any liability incurred by an insurance company under Article IX.

"Program." The Innovate in PA Program.

"Qualified taxpayer." Any of the following that has insurance premium tax liability and contributes capital to purchase premium tax credits under this article:

(1) An insurance company authorized to do business in this Commonwealth.

(2) A holding company that has at least one insurance company subsidiary authorized to do business in this Commonwealth.

"Recipient." An entity that receives a distribution of funds under section 1811-C(c).

"REGIONAL BIOTECHNOLOGY RESEARCH CENTER." A REGIONAL BIOTECHNOLOGY CENTER ESTABLISHED UNDER CHAPTER 17 OF THE ACT OF JUNE 26, 2001 (P.L.755, NO.77), KNOWN AS THE TOBACCO SETTLEMENT ACT. <--

"Tax credit." A credit against insurance premium tax liability offered to or held by a qualified taxpayer under this article.

"Venture Investment Program." A program under the Ben Franklin Technology Development Authority dedicated to increasing the availability of venture capital in this Commonwealth.

Section 1804-C. Tax credit.

A qualified taxpayer may purchase tax credits from the department IN ACCORDANCE WITH THIS ARTICLE and may apply the tax <-- credits against its insurance premium tax liability in accordance with this article.

Section 1805-C. Duties.

(a) Sale of tax credits.--The department, shall have the authority to sell up to $225,000,000 in tax credits to qualified taxpayers. The sale of the tax credits shall be in accordance with section 1808-C.

(b) Time of sale.--The sale authorized under subsection (a) may not occur before October 1, 2013.

(C) TRANSFER OF AMOUNTS.--IN A FISCAL YEAR IN WHICH A TAX <-- CREDIT IS CLAIMED UNDER THIS ARTICLE, THE STATE TREASURER SHALL, PRIOR TO JUNE 30 OF THE FISCAL YEAR, TRANSFER INTO THE REVENUE ACCOUNT ESTABLISHED UNDER SECTION 402(B) OF THE ACT OF DECEMBER 18, 1984 (P.L.1005, NO.205), KNOWN AS THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT, FOR DISTRIBUTION IN ACCORDANCE WITH THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT THE FOLLOWING AMOUNTS:

(1) AN AMOUNT EQUAL TO THE AMOUNT OF TAX CREDITS APPLIED AGAINST THE INSURANCE PREMIUM TAX LIABILITY CLAIMED BY THE QUALIFIED TAXPAYERS UNDER THIS ARTICLE IN THE FISCAL YEAR; AND

(2) AN AMOUNT EQUAL TO THE INCOME LOST BY THE REVENUE ACCOUNT ESTABLISHED UNDER SECTION 402(B) OF THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT BECAUSE OF THE TAX CREDIT CLAIMS GRANTED BY THIS ARTICLE.

Section 1806-C. Use of tax credits by qualified taxpayers.

(a) Use against insurance premium tax liability.--A qualified taxpayer that purchases tax credits under section 1805-C may claim the credits beginning in calendar year 2017 against insurance premium tax liability incurred for a taxable year that begins on or after January 1, 2016.

(b) Application to department.--A qualified taxpayer seeking to use purchased tax credits may submit an application to the department in a manner prescribed by the department.

(c) Construction.--The following shall apply:

(1) A qualified taxpayer may not be required to reduce the amount of insurance premium tax included by the taxpayer in connection with rate-making for any insurance contract written in this Commonwealth because of a reduction of the taxpayer's insurance premium tax liability derived from the tax credit purchased under this article.

(2) If, under the insurance laws of this Commonwealth, the assets of the qualified taxpayer are examined or considered, the taxpayer's balance of tax credits shall be treated as an admitted asset subject to the same financial rating as held by the Commonwealth.

(d) Limitations.--The following shall apply:

(1) The total amount of tax credits applied against insurance premium tax liability by all qualified taxpayers in a fiscal year may not exceed $45,000,000 per year beginning in calendar year 2017.

(2) The credit to be applied in any one year may not exceed the insurance premium tax liability of the qualified taxpayer for that taxable year.

~~(e) Hold harmless provision.--In any year that a tax credit~~ **<--**

~~is claimed under this article, the General Assembly shall do all of the following:~~

~~(1) Transfer an amount equal to the amount of any tax credit claimed by a foreign fire insurance company against taxes that otherwise would be distributed in accordance with Chapter 7 of the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, to the fund as defined in section 702 of the Municipal Pension Plan Funding Standard and Recovery Act.~~

~~(2) Transfer an amount equal to the amount of any tax credit claimed by a foreign casualty insurance company against taxes that otherwise would be distributed and used for police pension, retirement or disability purposes as provided by the act of May 12, 1943 (P.L.259, No.120), referred to as the Foreign Casualty Insurance Premium Tax Allocation Law, for distribution in accordance with the Foreign Casualty Insurance Premium Tax Allocation Law.~~

~~(3) Ensure that the programs under paragraphs (1) and (2) do not experience a negative fiscal impact due to a foreign fire insurance company or a foreign casualty insurance company claiming a tax credit authorized under this article.~~

Section 1807-C. Sale, carryover and carryback.

(a) Carryover.--If the qualified taxpayer cannot use the entire amount of the tax credit for the taxable year in which the taxpayer is eligible for the credit, the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years, provided that the credit may not be carried over to any taxable year that begins after December 31, 2025.

(b) Sale.--No sooner than 30 days after providing the Insurance Department and the department written notice of the intent to transfer tax credits, a qualified taxpayer may transfer tax credits held without restriction to any entity that is a qualified taxpayer in good standing with the Insurance Department and that agrees to assume all of the transferor's obligations with respect to the tax credit.

(c) Carryback.--A qualified taxpayer may not carry back a tax credit.

Section 1808-C. Sale of tax credits to qualified taxpayers.

(a) Conduct of sale.--The sale of tax credits authorized under section 1805-C(a) shall be conducted in accordance with this section.

(b) Process.--The department may sell the tax credits authorized under this article or may contract with an independent third party to conduct a bidding process among qualified taxpayers to purchase the credits. In raising capital for the program, the department shall have the discretion to distribute credits using a market-driven approach or any approach that maximizes the yield to the Commonwealth.

(c) Application.--A qualified taxpayer seeking to purchase tax credits may apply to the department in the manner prescribed by the department.

(d) Bidding process.--Using procedures adopted by the department or, if applicable, by an independent third party, each qualified taxpayer that submits an application shall make a timely and irrevocable offer, subject only to the department's issuance to the taxpayer of tax credit certificates, to make specified contributions of capital to the department on dates specified by the department.

(e) Contents of offer.--The offer under subsection (d) must include all of the following:

(1) The requested amount of tax credits, which may not be less than $500,000.

(2) The qualified taxpayer's capital contribution for each tax credit dollar requested, which may not be less than the greater of either of the following:

(i) ~~Seventy~~ SEVENTY-FIVE percent of the requested dollar amount of tax credits.

(ii) The percentage of the requested dollar amount of tax credits that the department and, if applicable, the independent third party, determines to be consistent with market conditions as of the offer date.

(3) Any other information the department or, if applicable, independent third party requires.

(f) Notice of approval.--Each qualified taxpayer that submits an application under this section shall receive a written notice from the department indicating whether or not it has been approved as a purchaser of tax credits and, if so, the amount of tax credits allocated.

(g) Limitation.--No tax credits may be sold if the bidding process, upon completion, has failed to yield at least $50,000,000 in revenue.

Section 1809-C. Payment for tax credits purchased and certificates.

(a) Payment of capital.--Capital committed by a qualified taxpayer shall be paid to the department for deposit into the fund. Nothing under this section shall prohibit the department from establishing an installment payment schedule for capital payments to be made by the qualified taxpayer.

(b) Issuance of tax credit certificates.--On receipt of payment of capital, the department shall issue to each qualified taxpayer a tax credit certificate representing a fully vested credit against insurance premium tax liability.

(c) Certificate issued in accordance with bidding process.--The department shall issue tax credit certificates to qualified taxpayers in accordance with the bidding process selected by the department or the independent third party.

(d) Contents.--The tax credit certificate shall state all of the following:

(1) The total amount of premium tax credits that the qualified taxpayer may claim.

(2) The amount of capital that the qualified taxpayer has contributed or agreed to contribute in return for the issuance of the tax credit certificate.

(3) The dates on which the tax credits will be available for use by the qualified taxpayer.

(4) Any penalties or other remedies for noncompliance.

(5) The procedures to be used for transferring the tax credits.

(6) Any other requirements the department considers necessary.

Section 1810-C. Failure to make contribution of capital and reallocation.

(a) Prohibition.--A tax credit certificate under section 1809-C may not be issued to any qualified taxpayer that fails to make a contribution of capital within the time the department specifies.

(b) Penalty.--A qualified taxpayer that fails to make a contribution of capital within the time the department specifies shall be subject to a penalty equal to 10% of the amount of capital that remains unpaid. The penalty shall be paid to the department within 30 days after demand.

(c) Reallocation.--The department may offer to reallocate the defaulted capital among other qualified taxpayers, so that the result after reallocation is the same as if the initial allocation had been performed without considering the tax credit allocation to the defaulting qualified taxpayer.

(d) Contribution.--If the reallocation of capital under subsection (c) results in the contribution by another qualified taxpayer of the amount of capital not contributed by the defaulting qualified taxpayer, the department may waive the penalty provided under subsection (b).

(e) Transfer.--A qualified taxpayer that fails to make a contribution of capital within the time specified may avoid the imposition of the penalty by transferring the allocation of tax credits to a new or existing qualified taxpayer within 30 days after the due date of the defaulted installment. Any transferee of an allocation of tax credits of a defaulting qualified taxpayer under this subsection shall agree to make the required contribution of capital within 30 days after the date of the transfer.

Section 1811-C. Innovate in PA Program.

(a) Establishment.--The Innovate in PA Program is established within the authority.

(b) Fund.--The authority shall have the power and duty to establish the Innovate in PA Fund within this authority.

(c) Distribution.--The department shall distribute the net proceeds received by the department as a result of the sale of tax credits under section 1805-C(a) as follows:

(1) ~~Seventy~~ SIXTY-SIX percent of net proceeds received by the department shall be transferred to the authority for deposit into the fund for distribution as follows: <--

(i) Thirty-three and one-half percent shall be distributed to the Ben Franklin Technology Partners Program for use according to program guidelines.

(ii) Five and one-half percent shall be distributed by the authority for technology-based economic development programs designed to support entrepreneurship, including, but not limited to, university-based entrepreneurial programs and new or existing programs designed to support early stage technology companies through seed grants or programming.

(iii) Sixty percent shall be distributed to the Venture Investment Program for use according to program guidelines including traditional venture investments or impact investments. The authority may consider impact investments based on performance. Impact investments may not exceed 15% of the Venture Investment Program distribution under this subparagraph.

(iv) One percent shall be retained by the authority for administrative costs. At the end of the fiscal year, the funds distributed under this subparagraph that are not expended by the authority shall be rededicated to the fund.

(2) ~~Thirty~~ TWENTY-NINE percent of net proceeds shall be retained by the department in a restricted receipts account for distribution as follows: <--

(i) Ninety-five percent shall be distributed to the Partnerships for Regional Economic Performance Program in accordance with guidelines issued by the department.

(ii) Four percent shall be distributed by the department for initiatives related to:

(A) policy-development;

(B) program creation or enhancements; and

(C) strategic planning efforts in the advancement of the life sciences industry in this Commonwealth.

(iii) One percent shall be retained by the department for administrative costs.

(3) FIVE PERCENT TO THE HEALTH ACCOUNT ESTABLISHED UNDER SECTION 303(B) OF THE ACT OF JUNE 26, 2001 (P.L.755, NO.77), KNOWN AS THE TOBACCO SETTLEMENT ACT, FOR DISTRIBUTION IN EQUAL PROPORTIONS TO EACH REGIONAL BIOTECHNOLOGY RESEARCH CENTER. <--

Section 1812-C. Guidelines.

The department, in consultation with the authority AND EACH REGIONAL BIOTECHNOLOGY RESEARCH CENTER, shall promulgate guidelines implementing this article. <--

Section 1813-C. Report.

(a) Duties.--On or before January 1, 2015, and January 1 of each subsequent year, the department, in consultation with the authority AND EACH REGIONAL BIOTECHNOLOGY RESEARCH CENTER, shall do the following: <--

(1) Submit a report on the implementation of the program to all of the following:

(i) The Governor.

(ii) The chairman and minority chairman of the Appropriations Committee of the Senate.

(iii) The chairman and minority chairman of the

Appropriations Committee of the House of Representatives.

(2) Publish the report under paragraph (1) on the department's publicly accessible Internet website.

(b) Contents.--The report under subsection (a) shall include the following:

(1) The name of the purchaser of premium tax credits.

(2) The amount of premium tax credits allocated to the purchaser.

(3) The amount of capital the purchaser contributed for the issuance of the tax credit certificate.

(4) The amount of any tax credits that have been transferred under section 1810-C(e).

(5) The amount of funds received by the recipients during the previous year.

(6) The cumulative amount of capital received by the department in connection with the sale of the tax credits.

(7) The amount of capital remaining uninvested at the end of the preceding calendar year.

(8) The names and locations of businesses receiving capital from the recipients, the reason for the investment and the amount of the investment.

(9) The total number of jobs created in this Commonwealth by the investment and the average wages paid for the jobs.

(10) The total number of jobs retained in this Commonwealth as a result of the investment and the average wages paid for the jobs.

Section 3. This act shall take effect in 60 days.