

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 326**

**Senator Coley**

—

**A B I L L**

To amend sections 5725.18 and 5729.03 and to enact 1  
sections 126.51 and 126.52 of the Revised Code to 2  
authorize the Director of Budget and Management to 3  
arrange for the sale of prepaid insurance premium 4  
tax certificates to insurers in exchange for 5  
offsets against future tax payments and use 6  
revenue so generated on projects to increase 7  
efficiency or reduce costs of state or local 8  
government. 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 5725.18 and 5729.03 be amended and 10  
sections 126.51 and 126.52 of the Revised Code be enacted to read 11  
as follows: 12

**Sec. 126.51.** (A) As used in this section and section 126.52 13  
of the Revised Code: 14

(1) A person is an "affiliate" of another person if: 15

(a) The person, directly or indirectly, beneficially owns ten 16  
per cent or more of the outstanding voting securities or other 17  
ownership interests of the other person, whether through rights, 18  
options, or convertible interests or directly or indirectly 19  
controls or is empowered to vote ten per cent or more of the 20

outstanding voting securities or other ownership interests of the 21  
other person. 22

(b) The person is a partner in a partnership in which the 23  
other person is a general partner. 24

(c) The person is an officer, employee, or agent of the other 25  
person, or an immediate family member of the officer, employee, or 26  
agent. 27

(2) "Insurance premium tax" means the tax levied pursuant to 28  
section 5725.18 or Chapter 5729. of the Revised Code. 29

(3) "Manager" means a person, including its principals, 30  
partners, subsidiaries, affiliates, or subcontractors designated 31  
by the director of budget and management pursuant to division (D) 32  
of this section. 33

(4) "Purchaser" means any insurer authorized to conduct 34  
business in this state and subject to the insurance premium tax 35  
that prepays its insurance premium tax pursuant to this section. 36

(5) "Fund allocation date" means the date on which the 37  
manager receives the tax prepayments from purchasers and sells tax 38  
prepayment certificates. 39

(6) "Tax prepayment certificate" means an instrument 40  
authorized by the director of budget and management and issued by 41  
the manager in exchange for the purchaser's prepayment of 42  
insurance premium tax that has a final maturity date of ten years 43  
from the date on which the instrument is first used by the 44  
purchaser and is amortized at ten per cent of the amount of the 45  
certificate. 46

(7) "Person" means any natural person, corporation, limited 47  
liability company, partnership, joint venture, trust, incorporated 48  
or unincorporated association, joint stock company, the state or 49  
any of its agencies or instrumentalities, or a political 50

<u>subdivision.</u>	51
<u>(8) "Principal" means any of the following:</u>	52
<u>(a) An officer or director of a corporation;</u>	53
<u>(b) An individual manager of a limited liability company or a principal of any entity that serves as a manager;</u>	54 55
<u>(c) An individual general partner of a partnership or limited partnership or a principal of any entity that serves as a general partner;</u>	56 57 58
<u>(d) An individual in a position of similar authority involved in any entity.</u>	59 60
<u>(9) "Manager costs" means a fee of one hundred fifty basis points of the face amount of tax prepayment certificates sold by the manager as compensation for the manager configuring and selling the tax prepayment certificates, which includes all costs related to configuring and selling the certificates.</u>	61 62 63 64 65
<u>(10) "Offset" means an offset or credit against a purchaser's insurance premium tax liability arising from the purchaser's prepayment of the tax.</u>	66 67 68
<u>(B) The director of budget and management, in consultation with the treasurer of state, may authorize up to one billion two hundred fifty million dollars in tax prepayment certificates to purchasers that prepay, in cash, the purchasers' insurance premium tax. A certificate holder is eligible to offset an amount of the purchaser's future insurance premium tax in accordance with the procedures and requirements of this section. A tax prepayment certificate shall not grant offsets in excess of ten years, beginning with the first year the purchaser is able to claim an offset.</u>	69 70 71 72 73 74 75 76 77 78
<u>The director may solicit proposals and contract for the services necessary for the configuration, marketing, and sale of</u>	79 80

such certificates, including designating a manager in accordance 81  
with division (D) of this section. 82

Revenue received from the sale of tax prepayment 83  
certificates, less any manager costs, shall be deposited in the 84  
efficiency and cost reduction fund created under section 126.52 of 85  
the Revised Code. 86

(C)(1) Each purchaser that prepays the purchaser's insurance 87  
premium tax shall earn vested offsets against future insurance 88  
premium taxes equal to the face amount of the tax prepayment 89  
certificate purchased by the purchaser and evidencing its 90  
prepayment of insurance premium taxes. Tax offsets shall vest on 91  
the fund allocation date and shall be available to the purchaser 92  
annually. 93

(2) Each purchaser holding a tax prepayment certificate may 94  
apply the offset provided in the certificate against the insurance 95  
premium tax each year in accordance with the terms of the 96  
certificate, beginning with the third annual return filed 97  
following the purchase date of the certificate and continuing for 98  
the following nine consecutive years. 99

(3) Any offset against a purchaser's insurance premium tax 100  
applied in any year shall not exceed the full tax liability of the 101  
purchaser for that year. 102

(4) Any offsets against the insurance premium tax that a 103  
purchaser is permitted to apply under division (C)(2) of this 104  
section, but is unable to apply because of division (C)(3) of this 105  
section, may be carried forward up to ten years following the 106  
issuance of a tax prepayment certificate. Unused offsets may be 107  
used to offset the purchaser's liability in any year, within such 108  
limit, in which the purchaser has sufficient tax liability, 109  
including in a year in which the purchaser also applies tax 110  
offsets that are allocable to that year pursuant to division 111

<u>(C)(2) of this section.</u>	112
<u>(5) A purchaser holding a tax prepayment certificate is not</u>	113
<u>required to reduce the amount of insurance premium tax liability</u>	114
<u>included by the purchaser in connection with the ratemaking for</u>	115
<u>any insurance contract written because of a reduction in the</u>	116
<u>purchaser's assessment derived from offsets granted in tax</u>	117
<u>prepayment certificates.</u>	118
<u>(6) If the insurance premium tax that a purchaser offsets in</u>	119
<u>any year under this section would constitute a credit against</u>	120
<u>another tax or assessment if the full amount of insurance premium</u>	121
<u>tax was paid for that year, the purchaser shall nevertheless earn</u>	122
<u>the credit as though the purchaser had paid the offset insurance</u>	123
<u>premium tax in cash.</u>	124
<u>(7) A purchaser may transfer any amount remaining on a tax</u>	125
<u>prepayment certificate to another purchaser or purchasers provided</u>	126
<u>that the transferor delivers to the director of budget and</u>	127
<u>management, within thirty days after the transfer, a written</u>	128
<u>notice indicating the name of the transferee, the amount being</u>	129
<u>transferred, and the year or years to which any remaining offsets</u>	130
<u>are allowed as provided under this section.</u>	131
<u>(8) A purchaser redeeming an offset granted by a tax</u>	132
<u>prepayment certificate shall not be required to pay any additional</u>	133
<u>insurance premium tax as a result of claiming the offset.</u>	134
<u>(9) For the purposes of this section, a purchaser may treat</u>	135
<u>tax prepayment certificates as an admitted asset, pursuant to the</u>	136
<u>national association of insurance commissioners accounting</u>	137
<u>practices and procedures manual and statement of statutory</u>	138
<u>accounting principle number ninety-four.</u>	139
<u>(10) If the insurance premium tax is repealed or reduced, a</u>	140
<u>tax prepayment certificate may be used to offset any substitute</u>	141
<u>tax liability imposed on a purchaser or other person that had</u>	142

<u>premium tax liability on the date of repeal or reduction.</u>	143
<u>(D)(1) The director of budget and management, in consultation</u>	144
<u>with the treasurer of state, may issue a request for proposals to</u>	145
<u>select a manager to be the exclusive manager for all purposes</u>	146
<u>under this section. The director may include in the director's</u>	147
<u>request for proposals all of the following:</u>	148
<u>(a) A statement of the services sought;</u>	149
<u>(b) The time and date for the deadline for the receipt of</u>	150
<u>proposals and the time and date that proposals may begin to be</u>	151
<u>accepted;</u>	152
<u>(c) The terms and conditions applicable to the designation of</u>	153
<u>the manager, including the criteria in division (D)(2) of this</u>	154
<u>section;</u>	155
<u>(d) Any other information or specifications that the director</u>	156
<u>deems necessary.</u>	157
<u>(2) The director may evaluate manager applications and</u>	158
<u>designate a manager. The director may consider whether a</u>	159
<u>prospective manager has the following, in addition to any other</u>	160
<u>factor or quality:</u>	161
<u>(a) Experience structuring, marketing, and preselling</u>	162
<u>insurance premium tax credit obligations and has previously</u>	163
<u>marketed and secured purchase commitment agreements;</u>	164
<u>(b) Experience underwriting and marketing state and local</u>	165
<u>securities;</u>	166
<u>(c) A minimum amount of equity capital, to be determined by</u>	167
<u>the director;</u>	168
<u>(d) Experience managing financing transactions nationwide.</u>	169
<u>(3) Any manager designated under this division shall receive</u>	170
<u>manager costs in exchange for the manager's services.</u>	171

(E) If the director of budget and management designates a manager, then, not later than thirty days after a purchaser's fund allocation date, the manager shall report to the director the following information: 172  
173  
174  
175

(1) The name of each purchaser from whom prepayment of insurance premium tax was received, including the purchaser's identification number; 176  
177  
178

(2) The amount of each purchaser's prepayment; 179

(3) The date on which the prepayment was received. 180

**Sec. 126.52. (A) As used in this section:** 181

(1) "Compensation" has the same meaning as in section 5747.01 of the Revised Code. 182  
183

(2) "Eligible project" means a project certified by the auditor of state in accordance with division (C) of this section. 184  
185

(3) "Political subdivision" has the same meaning as in section 9.23 of the Revised Code. 186  
187

(4) "Project" means an expense or series of expenses proposed to be made by a state agency or political subdivision. 188  
189

(B) There is hereby created in the state treasury the efficiency and cost reduction fund. Money collected from the sale of tax prepayment certificates under section 126.51 of the Revised Code shall be credited to the fund. Subject to the approval of the controlling board, the director of budget and management shall use money in the fund to provide funding to state agencies and political subdivisions for eligible projects. 190  
191  
192  
193  
194  
195  
196

(C) The auditor of state shall certify a project as an eligible project upon a finding that the project would yield increased efficiency or reduce future costs such that the funding awarded under this section would yield an overall positive 197  
198  
199  
200

monetary return on investment to the state. Projects that the 201  
auditor of state may certify include, but are not limited to, 202  
purchases of tangible personal property, facilities, 203  
infrastructure, or systems, refinancing or repayment of debt, or 204  
payment of interest or penalties. The auditor of state shall not 205  
certify projects to fund, in whole or in part, compensation, 206  
employee benefits, and other personnel costs. 207

(D) The director of budget and management and the auditor of 208  
state may adopt rules under Chapter 119. of the Revised Code to 209  
administer this section. 210

**Sec. 5725.18.** (A) An annual franchise tax on the privilege of 211  
being an insurance company is hereby levied on each domestic 212  
insurance company. In the month of May, annually, the treasurer of 213  
state shall charge for collection from each domestic insurance 214  
company a franchise tax in the amount computed in accordance with 215  
the following, as applicable: 216

(1) With respect to a domestic insurance company that is a 217  
health insuring corporation, one per cent of all premium rate 218  
payments received, exclusive of payments received under the 219  
medicare program established under Title XVIII of the "Social 220  
Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, 221  
and exclusive of payments received pursuant to the medical 222  
assistance program established under Chapter 5111. of the Revised 223  
Code for the period ending September 30, 2009, as reflected in its 224  
annual report for the preceding calendar year; 225

(2) With respect to a domestic insurance company that is not 226  
a health insuring corporation, one and four-tenths per cent of the 227  
gross amount of premiums received from policies covering risks 228  
within this state, exclusive of premiums received under the 229  
medicare program established under Title XVIII of the "Social 230



Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, 231  
and exclusive of payments received pursuant to the medical 232  
assistance program established under Chapter 5111. of the Revised 233  
Code for the period ending September 30, 2009, as reflected in its 234  
annual statement for the preceding calendar year, and, if the 235  
company operates a health insuring corporation as a line of 236  
business, one per cent of all premium rate payments received from 237  
that line of business, exclusive of payments received under the 238  
medicare program established under Title XVIII of the "Social 239  
Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, 240  
and exclusive of payments received pursuant to the medical 241  
assistance program established under Chapter 5111. of the Revised 242  
Code for the period ending September 30, 2009, as reflected in its 243  
annual statement for the preceding calendar year. 244

Any tax computed under this section for a domestic insurance 245  
company that holds a certificate issued under section 126.51 of 246  
the Revised Code shall be reduced by the amount of any offset 247  
claimed according to the terms of the certificate, except the 248  
offset for any year shall not exceed the amount of the tax due for 249  
that year. 250

Domestic insurance companies, including health insuring 251  
corporations, receiving payments pursuant to the medical 252  
assistance program established under Chapter 5111. of the Revised 253  
Code during the period beginning October 1, 2009, and ending 254  
December 31, 2009, shall file with the 2009 annual statement to 255  
the superintendent a schedule that reflects those payments 256  
received pursuant to the medical assistance program for that 257  
period. The payments reflected in the schedule, plus all other 258  
taxable premiums, are subject to the annual franchise tax due to 259  
be paid in 2010. 260

(B) The gross amount of premium rate payments or premiums 261

used to compute the applicable tax in accordance with division (A) 262  
of this section is subject to the deductions prescribed by section 263  
5729.03 of the Revised Code for foreign insurance companies. The 264  
objects of such tax are those declared in section 5725.24 of the 265  
Revised Code, to which only such tax shall be applied. 266

(C) In no case shall such tax be less than two hundred fifty 267  
dollars. 268

**Sec. 5729.03.** (A) If the superintendent of insurance finds 269  
the annual statement required by section 5729.02 of the Revised 270  
Code to be correct, the superintendent shall compute the following 271  
amount, as applicable, of the balance of such gross amount, after 272  
deducting such return premiums and considerations received for 273  
reinsurance, and charge such amount to such company as a tax upon 274  
the business done by it in this state for the period covered by 275  
such annual statement: 276

(1) If the company is a health insuring corporation, one per 277  
cent of the balance of premium rate payments received, exclusive 278  
of payments received under the medicare program established under 279  
Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 280  
U.S.C.A. 301, as amended, and exclusive of payments received 281  
pursuant to the medical assistance program established under 282  
Chapter 5111. of the Revised Code for the period ending September 283  
30, 2009, as reflected in its annual report; 284

(2) If the company is not a health insuring corporation, one 285  
and four-tenths per cent of the balance of premiums received, 286  
exclusive of premiums received under the medicare program 287  
established under Title XVIII of the "Social Security Act," 49 288  
Stat. 620 (1935), 42 U.S.C.A. 301, as amended, and exclusive of 289  
payments received pursuant to the medical assistance program 290  
established under Chapter 5111. of the Revised Code for the period 291

ending September 30, 2009, as reflected in its annual statement, 292  
and, if the company operates a health insuring corporation as a 293  
line of business, one per cent of the balance of premium rate 294  
payments received from that line of business, exclusive of 295  
payments received under the medicare program established under 296  
Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 297  
U.S.C.A. 301, as amended, and exclusive of payments received 298  
pursuant to the medical assistance program established under 299  
Chapter 5111. of the Revised Code for the period ending September 300  
30, 2009, as reflected in its annual statement. 301

Any tax computed under this section for a foreign insurance 302  
company that holds a certificate issued under section 126.51 of 303  
the Revised Code shall be reduced by the amount of any offset 304  
claimed according to the terms of the certificate, except the 305  
offset for any year shall not exceed the amount of the tax due for 306  
that year. 307

Each foreign insurance company, including health insuring 308  
corporations, receiving payments pursuant to the medical 309  
assistance program established under Chapter 5111. of the Revised 310  
Code during the period beginning October 1, 2009, and ending 311  
December 31, 2009, shall file with the 2009 annual statement to 312  
the superintendent a schedule that reflects those payments 313  
received pursuant to the medical assistance program for that 314  
period. The payments reflected in the schedule, plus all other 315  
taxable premiums, are subject to the annual franchise tax due to 316  
be paid in 2010. 317

(B) Any insurance policies that were not issued in violation 318  
of Title XXXIX of the Revised Code and that were issued prior to 319  
April 15, 1967, by a life insurance company organized and operated 320  
without profit to any private shareholder or individual, 321  
exclusively for the purpose of aiding educational or scientific 322  
institutions organized and operated without profit to any private 323

shareholder or individual, are not subject to the tax imposed by 324  
this section. All taxes collected pursuant to this section shall 325  
be credited to the general revenue fund. 326

(C) In no case shall the tax imposed under this section be 327  
less than two hundred fifty dollars. 328

**Section 2.** That existing sections 5725.18 and 5729.03 of the 329  
Revised Code are hereby repealed. 330