

# SENATE BILL No. 985

February 29, 2012, Introduced by Senators KOWALL, BIEDA and BRANDENBURG and referred to the Committee on Finance.

A bill to meet deficiencies in state funds by providing for the acceptance of the prepayment of certain future tax liabilities due to this state; to authorize the issuance and sale of certain tax certificates by the department; to provide for the disposition of the proceeds from the sale of the certificates; to provide for the obtaining and transferring of a prepayment tax certificate and to prescribe the contents of that certificate; to prescribe the powers and duties of the department of treasury; to prescribe certain powers and duties of certain state officers and agencies; and to make appropriations.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. (1) This act shall be known and may be cited as the  
2       "Michigan insurance premium tax prepayment act".

3       (2) This act is intended to create a source of funds for

1 appropriation by the legislature.

2 Sec. 3. As used in this act:

3 (a) "Department" means the department of treasury.

4 (b) "Full offset amount" means the aggregate face amount of a  
5 PTP certificate issued by the department to the purchaser  
6 evidencing the prepayment of the purchaser's premium tax liability.

7 (c) "Fund allocation date" means the date on which the  
8 department or the manager receives a prepayment from a purchaser in  
9 return for the issuance of the PTP certificate that entitles the  
10 purchaser to receive an allocation of the full offset amount  
11 authorized by this act.

12 (d) "Insurance company" means an authorized insurer as defined  
13 in section 108 of the insurance code of 1956, 1956 PA 218, MCL  
14 500.108.

15 (e) "Manager" means a person or subcontractor selected by the  
16 department pursuant to this act to arrange for the sale of the PTP  
17 certificates.

18 (f) "Person" means an individual, firm, bank, financial  
19 institution, insurance company, limited partnership, limited  
20 liability partnership, partnership, joint venture, association,  
21 corporation, subchapter S corporation, limited liability company,  
22 receiver, estate, trust, or any other group or combination of  
23 groups acting as a unit.

24 (g) "Premium taxes" means the taxes imposed pursuant to  
25 section 476a of the insurance code of 1956, 1956 PA 218, MCL  
26 500.476a, and part 2 of the income tax act of 1967, 1967 PA 281,  
27 MCL 206.601 to 206.699.

1 (h) "Premium tax return date" means the date or dates in each  
2 calendar year on which an insurance company is required by law to  
3 file an estimated or annual return regarding its premium tax  
4 liability for the premium tax year under the insurance code of  
5 1956, 1956 PA 218, MCL 500.100 to 500.8302, or under part 2 of the  
6 income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.699.

7 (i) "Premium Tax Year" means the 12-month period used in  
8 accordance with the insurance code of 1956, 1956 PA 218, MCL  
9 500.100 to 500.8302, or under part 2 of the income tax act of 1967,  
10 1967 PA 281, MCL 206.601 to 206.699, whichever is applicable, to  
11 measure a purchaser's premium tax liability.

12 (j) "PTP certificate" means an instrument issued by the  
13 department or the manager that is issued in exchange for the  
14 prepayment of premium taxes by the purchaser, which certificate  
15 expires, except as otherwise provided in section 9, 1 business day  
16 after the tenth annual premium tax return date following the fund  
17 allocation date and provides a tax offset equal to 10% per year of  
18 the face amount of the certificate.

19 (k) "Purchaser" means any insurance company subject to a  
20 premium tax that elects to prepay its premium taxes by the purchase  
21 of a PTP certificate.

22 (l) "Tax offsets" means offsets against premium tax liability  
23 under section 476a of the insurance code of 1956, 1956 PA 218, MCL  
24 500.476a, or part 2 of the income tax act of 1967, 1967 PA 281, MCL  
25 206.601 to 206.699, arising from the prepayment of a purchaser's  
26 premium taxes.

27 Sec. 5. The department shall administer the program authorized

1 in this act and shall have the powers and duties necessary or  
2 proper to carry out the provisions of this act, including, but not  
3 limited to, the power and duty to do all of the following:

4 (a) Make and execute contracts and other necessary  
5 instruments.

6 (b) Authorize the issuance of PTP certificates to purchasers  
7 to evidence the right to offset the tax liability under section  
8 476a of the insurance code of 1956, 1956 PA 218, MCL 500.476a, or  
9 part 2 of the income tax act of 1967 PA 281, MCL 206.601 to  
10 206.699.

11 (c) Arrange for the issuance of the PTP certificates and the  
12 tax offsets evidenced thereby in an amount not to exceed 10% of the  
13 amount stated in each PTP certificate per premium tax year for 10  
14 consecutive premium tax years beginning with the premium tax year  
15 associated with the first annual premium tax return date following  
16 the fund allocation date. The funds derived from the sale of the  
17 PTP certificates shall be deposited in the general fund.

18 (d) Solicit proposals and select a manager in accordance with  
19 section 7 and contract for such other services as deemed necessary  
20 or useful by the department for the sale of PTP certificates, and  
21 pay the manager costs incurred from the proceeds of the sale of the  
22 PTP certificates.

23 (e) Review and approve or disapprove the proposals from  
24 prospective purchasers negotiated and presented by the manager,  
25 agree or disagree with the recommendation of the manager to sell  
26 the PTP certificates to the purchasers in a public or private sale,  
27 approve or disapprove the negotiated price to be paid by the

1 purchasers for the PTP certificates, determine the form and  
2 denominations of the PTP certificates, and determine such other  
3 administrative details regarding the PTP certificates as deemed  
4 useful by the department.

5       Sec. 7. Within 30 days after the effective date of this act,  
6 the department shall issue a request for proposals and select a  
7 person to be the manager for all purposes under this act. The  
8 request for proposals shall include a statement of the services  
9 sought, the time and date for the receipt of the proposals and of  
10 the public opening, and all of the terms and conditions applicable  
11 to the designation of the manager, including, without limitation,  
12 the requirement that the manager satisfy all of the following  
13 criteria:

14       (a) The applicant, or a subcontractor of the applicant, shall  
15 have experience in structuring, marketing, and preselling insurance  
16 premium tax credit obligations and shall have previously marketed  
17 and secured purchase commitment agreements in an amount not less  
18 than \$400,000,000.00 of premium tax credit or offset certificates  
19 in at least 5 states. If a subcontractor is used to meet the  
20 requirements of this section, the subcontractor shall have been  
21 authorized to do business in this state on or before January 1,  
2012.

22       (b) The applicant shall have experience during the previous  
23 calendar year with underwriting and marketing state and local  
24 securities.

25       (c) The applicant shall have over \$5,000,000,000.00 in equity

1 capital.

2 (d) The applicant shall have experience during the previous  
3 calendar year in managing a minimum of 50 financing transactions  
4 nationwide each in excess of \$50,000,000.00.

5 Sec. 9. (1) Each purchaser that prepays its premium taxes  
6 pursuant to this act is entitled to tax offsets against future  
7 premium taxes equal to the face amount of the PTP certificates  
8 issued to the purchasers and evidencing their prepayment of premium  
9 taxes as provided under section 476a of the insurance code of 1956,  
10 1956 PA 218, MCL 500.476a, or section 645 of the income tax act of  
11 1967, 1967 PA 281, MCL 206.645. The department or manager shall not  
12 approve more than \$900,000,000.00 in the form of permitted PTP  
13 certificates. Tax offsets shall be vested on the fund allocation  
14 date and shall be available to the purchaser annually as provided  
15 in this act.

16 (2) Each purchaser purchasing a PTP certificate may do 1 or  
17 more of the following:

18 (a) Take in respect of each premium tax year the tax offsets  
19 evidenced by the PTP certificates against premium taxes due for  
20 such premium tax year in accordance with the terms of the PTP  
21 certificates as provided in section 476a of the insurance code act  
22 of 1956, 1956 PA 281, MCL 500.476a, or under section 645 of the  
23 income tax act of 1967, 1967 PA 281, MCL 206.645, whichever is  
24 applicable.

25 (b) Reduce its estimated and annual payments of liability for  
26 premium taxes for each year for which tax offsets are available to  
27 offset liability for premium taxes by the same percentage as the

1 percentage payment due on each estimated payment date.

2 (c) Claim the tax offsets by attaching a copy of the PTP  
3 certificate to the estimated or annual insurance premium tax return  
4 to which the offset is to be applied.

5 (3) The tax offsets against premium taxes that are used by a  
6 purchaser with respect to any year shall not exceed the full  
7 liability of the purchaser for premium taxes for that year.

8 (4) A purchaser that has purchased a PTP certificate is not  
9 required to reduce the amount of tax liability included by the  
10 purchaser in connection with the ratemaking for any insurance  
11 contract written because of a reduction in the purchaser's  
12 assessment derived from the tax offsets granted under this act.

13 (5) If the premium taxes that a purchaser does not pay by  
14 virtue of the tax offsets evidenced by a PTP certificate would  
15 increase any other tax or constitute a credit against any other tax  
16 or assessment if paid, the purchaser shall continue to earn any  
17 such reduction in taxes or credit as though such insurance premium  
18 taxes were paid by cash.

19 (6) A purchaser may assign the PTP certificates and the tax  
20 offsets associated therewith to another insurance company in this  
21 state with a liability for premium taxes provided that the assignor  
22 delivers to the department within 30 days of the assignment a  
23 written notice indicating the name of the assignee, the amount of  
24 tax offsets being assigned, and the year or years to which such  
25 offsets are allocable as provided in subsection (2). The assignee  
26 shall not use the assigned tax offsets until after the written  
27 notice is filed with the department. Thereafter, the assignee is

1 deemed a purchaser under this act.

2 (7) A purchaser claiming a tax offset against premium taxes as  
3 evidenced by a PTP certificate is not required to pay any  
4 additional insurance retaliatory tax levied by the state as a  
5 result of claiming that tax offset.

6 (8) For statutory accounting purposes, a purchaser may treat  
7 the assignable tax offsets or tax credits as an admitted asset in  
8 accordance with the national association of insurance commissioners  
9 accounting practices and procedures manual and pursuant to the  
10 statement of statutory accounting principle no. 94 or any  
11 substitute statement of accounting principle which replaces  
12 accounting principle no. 94.

13 (9) If the premium taxes imposed by this state are eliminated  
14 or reduced, a PTP certificate may be used to offset any other  
15 replacement tax imposed on a purchaser that had premium tax  
16 liability on the date of elimination or reduction.

17 Sec. 11. Within 30 days of the fund allocation date, the  
18 manager shall report to the department the following:

19 (a) The name of each purchaser from whom prepayment of  
20 insurance premium taxes was received, including the purchaser's tax  
21 identification number.

22 (b) The amount of each purchaser's prepayment and the amount  
23 stated in each PTP certificate delivered to that purchaser.

24 (c) The fund allocation date that applies to that prepayment.

25 Sec. 13. The department may promulgate rules to implement this  
26 program.

27 Enacting section 1. This act does not take effect unless all



1 of the following bills of the 96th Legislature are enacted into  
2 law:

3 (a) Senate Bill No.\_986 \_\_\_\_\_ (request no.  
4 04158'11 a).

5 (b) Senate Bill No.\_987 \_\_\_\_\_ (request no.  
6 04158'11 b).