

Amendment No. _____

Charles S. Dwyer
Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 3049

House Bill No. 2927*

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 4-28-102(4), is amended by inserting the following language at the end of the subdivision:

provided, however, that a contract for payment of cash or cash equivalents over a specified period of time shall also be sufficient;

SECTION 2. Tennessee Code Annotated, Section 4-28-102(10)(A)(iv), is amended by inserting the following language at the end of the subdivision:

provided, however, that if the TNInvestco continues to fulfill its fiduciary duty to the program established by this chapter, then the business can be one in which the TNInvestco, its affiliates, or a separate fund managed by the managers of the TNInvestco was invested prior to the allocation of investment tax credits to the TNInvestco; and provided, further, that if the TNInvestco continues to fulfill its fiduciary duty to the program established by this chapter, then the business can be one in which a separate fund managed by the managers of the TNInvestco makes an investment after the investment by the TNInvestco;

SECTION 3. Tennessee Code Annotated, Section 4-28-102(10), is amended by redesignating current subdivision (B) as subdivision (C) and by inserting the following language as a new subdivision (B):

(B)

(i) The requirements of subdivision (10)(A)(i) may, in the alternative, be met if the qualified TNInvestco represents in its application for funding approval that the business will, in the definitive purchase agreements to be executed upon



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closing, agree to:

(a) Commence locating its headquarters, its principal business operations, and at least sixty percent (60%) of its employees in Tennessee, and

(b) Complete all of the required elements of subdivision (10)(A)(i) within twelve (12) months after closing.

(ii) If the business fails to fulfill the commitments specified in subdivision (10)(B)(i), then the commissioner of economic and community development, in the commissioner's sole discretion, may impose on the TNInvestco a penalty in an amount equal to the TNInvestco's investment in the business, and such penalty shall not be paid out of monies generated by the sale of investment tax credits under this chapter or any gain thereon.

SECTION 4. Tennessee Code Annotated, Section 4-28-102(11), is amended by deleting the language prior to subdivision (A) in its entirety and by substituting instead the following:

(11) "Qualified distribution" means any distribution or payment by a qualified TNInvestco in connection with the following:

SECTION 5. Tennessee Code Annotated, Section 4-28-102(12), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(12) "Qualified investment" means the investment of cash by a qualified TNInvestco in a qualified business for the purchase of equity, equity options, warrants, or debt convertible to equity at the option of the investee. An investment by a qualified TNInvestco with the characteristics of a debt instrument, such as fixed or determinable interest or principal repayment terms, personal guarantees required by the owners or managers of an investee, or assets identified as collateral, shall not be deemed as a qualified investment. Qualified investments determined to be seed or early stage investments shall be increased by three hundred percent (300%) for purposes of determining if a qualified TNInvestco meets the investment thresholds in § 4-28-106;

SECTION 6. Tennessee Code Annotated, Section 4-28-103(b), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(b) No participating investor's investment tax credit for any taxable year shall exceed the participating investor's state premium tax liability for such year. If the amount of the investment tax credit determined under this section for any taxable year exceeds the state premium tax liability, then the excess shall be an investment tax credit carryover to future taxable years until tax year 2035. Investment tax credits may be used in connection with both final payments and prepayments of a participating investor's state premium tax liability. Investment tax credits may be sold or otherwise transferred by a participating investor to another entity, which can likewise resell or transfer the tax credits, provided that the department of revenue receives written notification within thirty (30) days of any sale or transfer.

SECTION 7. Tennessee Code Annotated, Section 4-28-104, is amended by adding the following language as a new subsection (f):

(f) Proprietary information provided by an applicant to the department of economic and community development or the department of revenue pursuant to this section shall be considered "tax information" as defined in § 67-1-1701 and shall be subject to the provisions of title 67, chapter 1, part 17.

SECTION 8. Tennessee Code Annotated, Section 4-28-105(d), is amended by deleting the last sentence of the subsection in its entirety.

SECTION 9. Tennessee Code Annotated, Section 4-28-105, is amended by adding the following language as new subsections (f) and (g):

(f) Notwithstanding subsection (d) of this section, the commissioner of revenue and the commissioner of economic and community development are authorized to allocate additional investment tax credits in the total amount of forty million dollars (\$40,000,000) such that the aggregate amount of investment tax credits to be allocated under this chapter shall not exceed one hundred sixty million dollars (\$160,000,000). Such additional investment tax credits shall consist of two (2) twenty million dollar

(\$20,000,000) allocations, which shall be awarded, respectively, to the two (2) alternate TNInvestcos chosen by the commissioner of revenue and the commissioner of economic and community development during the selection process set out in subsections (a) through (e) of this section. Final allocation of such tax credits to such alternate TNInvestcos shall occur after the TNInvestcos have obtained irrevocable investment commitments from participating investors and TNInvestco owners in an aggregate amount equal to at least the base investment amount.

(g) Proprietary information provided by an applicant to the department of economic and community development or the department of revenue pursuant to this section shall be considered "tax information" as defined in § 67-1-1701 and shall be subject to the provisions of title 67, chapter 1, part 17.

SECTION 10. Tennessee Code Annotated, Section 4-28-106(a)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(1)

(A) To maintain its certification, a qualified TNInvestco shall make qualified investments as follows:

(i) Within two (2) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least fifty percent (50%) of its base investment amount in qualified investment;

(ii) Within three (3) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least seventy percent (70%) of its base investment amount in qualified investment;

(iii) Within four (4) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least eighty percent (80%) of its base investment amount in qualified investment; and

(iv) Within six (6) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least ninety percent (90%) of its base investment amount in qualified investment.

(B) Not more than twenty five percent (25%) of the investment amounts required by subdivisions (a)(1)(A)(i) through (iv) of this section shall be attributable to the three hundred percent (300%) seed or early stage multiplier.

SECTION 11. Tennessee Code Annotated, Section 4-28-106(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) All designated capital not invested in qualified investments by a qualified TNInvestco shall be held in an escrow account maintained by the state and administered through the department of economic and community development.

SECTION 12. Tennessee Code Annotated, Section 4-28-106, is amended by adding the following language as new subsections (e) and (f):

(e) Any amounts that have not been invested by the TNInvestco at the end of the investment period shall be forfeited and paid to the state to support the Tennessee rural opportunity fund.

(f) No qualified TNInvestco shall sell any interest in a qualified business to an affiliate unless the TNInvestco has first obtained written authorization for the sale from the department of economic and community development.

SECTION 13. Tennessee Code Annotated, Section 4-28-110, is amended by adding the following language as a new subsection (d):

(d)

(1) For the purposes of this subsection, "key person" means:

(A) The TNInvestco investment managers listed in part II, item 6, of such TNInvestco's application under § 4-28-105; or

(B) A list of investment managers as has been previously approved by the department of economic and community development under subdivision (2) of this subsection or otherwise.

(2) A TNInvestco's success shall be deemed to depend, in particular, on the TNInvestco's key person or persons. On or before July 1, 2010, each qualified TNInvestco shall provide to the department of economic and community

development a description of the TNInvestco's procedure for choosing a successor should any key person die, become legally incapacitated, or cease to be involved in the management of the TNInvestco for more than ninety (90) consecutive days. In the event that a majority of key persons do die, become legally incapacitated, or cease to be involved in the management of the TNInvestco for more than ninety (90) consecutive days for any reason, the commissioner of economic and community development, in consultation with the commissioner of revenue, the Tennessee Technology Development Corporation, or any other appropriate professional advisors, shall determine whether a new individual or individuals will be able to assume the role of key person so that the TNInvestco's performance will remain unimpaired. If the commissioner of economic and community development determines, in the commissioner's sole discretion, that the key person cannot be adequately replaced and the TNInvestco's performance therefore will be impaired, then any funds not already invested by the TNInvestco shall be deposited into the general fund unless the department of finance and administration has certified, pursuant to § 4-28-109, that the total amount of payments deposited in the general fund under this chapter equals or exceeds the total amount of revenue forgone pursuant to the credits used as provided in § 4-28-103. If the department of finance and administration has made such a determination, then any funds not already invested by the TNInvestco shall be deposited into the Tennessee rural opportunity fund to further support the state's economic development efforts.

SECTION 14. Tennessee Code Annotated, Title 4, Chapter 28, is amended by adding the following language as a new section:

§ 4-28-113.

(a) The commissioner of economic and community development, in consultation with the commissioner of revenue, the Tennessee Technology Development Corporation, or any other appropriate professional advisors, shall conduct an annual

review of each qualified TNInvestco, at the conclusion of each fiscal year, to determine whether the investment strategy used by the TNInvestco is in substantial compliance with the TNInvestco's proposed investment strategy described in its application for investment tax credits pursuant to § 4-28-105(c)(1)(A)(iii) as it relates to investments involving seed or early stage investments, which strategy may, in the sole discretion of the commissioner of economic and community development, be modified from time to time upon written request of the TNInvestco to the commissioner of economic and community development.

(b)

(1) If the commissioner of economic and community development, in the commissioner's sole discretion, determines that the investment strategy actually used by the TNInvestco is not in substantial compliance with the strategy last approved by the state, then the commissioner of economic and community development shall provide the qualified TNInvestco a summary of findings including the areas of noncompliance. Within sixty (60) days of receiving the commissioner's findings, the TNInvestco shall provide to the commissioner of economic and community development a written statement that shall describe in detail the TNInvestco's plan for curing all areas of noncompliance before the next annual review.

(2) If the commissioner of economic and community development determines, at the next annual review conducted pursuant to this section, that the TNInvestco has failed to cure such areas of noncompliance, a penalty in the amount of two-hundred fifty thousand dollars (\$250,000) shall be imposed, and an additional penalty of two-hundred fifty thousand dollars (\$250,000) shall be imposed for each year in which such noncompliance remains uncured.

(3) The proceeds from any penalty imposed pursuant to subdivision (2) of this subsection shall be deposited into the Tennessee Rural Opportunity Fund to further the state's economic development efforts. Such penalty shall not be

paid out of monies generated by the sale of investment tax credits under this chapter or any gain thereon.

SECTION 15. Tennessee Code Annotated, Title 4, Chapter 28, is amended by adding the following language as a new section:

§ 4-28-114.

Notwithstanding any provision of § 8-6-106 or other law to the contrary, the commissioner of economic and community development may employ or contract for the services of legal counsel to advise the commissioner and to perform other duties as required to enable the commissioner of economic and community development to fulfill the commissioner's duties under this chapter; provided, however, that the attorney general and reporter shall remain the state's sole representative in federal and state court proceedings. Such counsel shall be paid such compensation for services rendered as the commissioner of finance and administration may approve and such compensation shall be paid out of any money in the state treasury not otherwise appropriated.

SECTION 16. This act shall take effect upon becoming a law and shall apply to all transactions occurring on or after July 9, 2009, as well as all documentation provided to or prepared by the department of revenue or the department of economic and community development on or after July 9, 2009, the public welfare requiring it.

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 2927 - SB 3049

February 29, 2010

SUMMARY OF BILL: Increases the maximum voting interest an insurance company may have in a TNInvestco from 15 percent to 25 percent.

ESTIMATED FISCAL IMPACT:

MINIMAL

Assumption:

- Increasing the voting interest of insurance companies will not affect capital contributions required or affect the state's financial risk.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "James W. White".

James W. White, Executive Director

/agl

HB 2927 - SB 3049