

BEN FRANKLIN TECHNOLOGY DEVELOPMENT AUTHORITY

Board Meeting Minutes For the Meeting of April 4, 2013

A meeting of the Ben Franklin Technology Development Authority Board (BFTDA) was held at 10:00 a.m. on April 4, 2013, via conference call.

Board members and designees in attendance:

- DCED Deputy Secretary Carolyn Boser Newhouse
- Tom Balderston
- Honorable Bryan Barbin
- Frederick J. Beste, III
- Austin J. Burke
- Sheri Collins, Executive Director of BFTDA
- Kenneth E. Davis
- Martin Indars for Honorable Andrew E. Dinniman
- Dr. S. Thomas Emerson
- Honorable Garth D. Everett
- Dr. Henry C. Foley
- President John A. Fry
- Phil Dunn for Honorable John R. Gordner
- Honorable Doyle Heffley
- Brian Kennedy
- Ellen Kight
- Dr. Robert Kumpf
- John Clark for Secretary Kelly P. Logan
- Charles Peters
- Robert J. Schena
- Robert McGrath for Secretary Ronald Tomalis
- Peter Tonia
- Naomi Wyatt

DCED staff and guests in attendance:

- R. Michael Cortez, DCED Senior Advisor to Secretary C. Alan Walker
- Ryan Glenn, TIO
- Jennifer Leinbach, TIO
- Carolyn Lengel, TIO
- Cathy Lowe, TIO
- John Sider, BFTP-Managing Director for Statewide Initiatives
- Christopher Houston, DCED Office of Chief Counsel

I. Welcome and Opening Remarks

Executive Director Sheri Collins called the meeting to order at 10:05 a.m. and conducted a roll call of Board members participating on the conference call. After welcoming the Board

members and thanking them for their participation, Deputy Secretary Newhouse introduced new Board member, Representative Bryan Barbin.

Additionally, Deputy Secretary Newhouse thanked the Ben Franklin Northeast Partners for the role they played two weeks ago in making DCED's "On the Road" a success. One of the most successful events included the venture capital presentation at Misericordia University, organized by Ken Okrepkie with about 45 in attendance. DCED also appreciated that Representative Heffley and Austin Burke participated in "DCED on the Road." The next destination for "DCED on the Road" is the North Central region scheduled for August or September.

Deputy Secretary Newhouse gave an update on the status of "Innovate in PA." Senate Bill 456 has been referred to the Finance Committee on April 1; sponsored by Senator John Blake as well as Senators Gordner, Costa, Hughes, Teplitz, etc. It's inclusive of many of the partners including the BFTDA, the Ben Franklin Technology Partners, DCED's PREP partners, DCED, and the venture capital community. Representative Kampf has introduced a similar version of "Innovate PA." There are some (significant) differences relative to the participation. This is House Bill 898. A hearing is scheduled for April 23rd at which time several of our partners will be participating. Staff will be happy to provide any additional information.

II. Approval of Minutes

Deputy Secretary Newhouse requested a motion to approve the minutes of the January 31, 2013 Board meeting. A motion to approve the minutes was made and approved by a unanimous vote of the Board.

III. BFTDA Program Updates

Sheri Collins, Executive Director, extended congratulations to Board member Senator Dinniman for being chosen as "State Public Official of the Year" on March 13 by PA BIO, the leading trade association of PA's Life science industry sector.

Ms. Collins recounted that at the January Board meeting, presentations were made of successful projects funded by the Board. These presentations may have been too many and too lengthy. She asked Board members for patience as we continue to strive for the right balance. Additionally, she asked Board members to reach out to her with feedback in how she can do things better, to maintain the quality of the Authority.

Ms. Collins announced that Governor Corbett, Secretary Walker, Deputy Secretary Newhouse, the Office of International Business, and members of our team are heading to Chile and Brazil on April 6, returning April 17 on the Governor's Trade Mission. When Deputy Secretary Newhouse returns, we will be heading to Chicago for the Bio International Event as part of Pennsylvania Pavilion. We are excited to have many of our university partners and our companies in attendance at that meeting with us, as well as Governor Corbett.

June 3rd marks a very special day for our Ben Franklin Technology Partners who, through the end of the year, are celebrating their thirtieth anniversary. On June 3rd in Harrisburg, the four Ben Franklin Technology Partners will put on an event that will feature Governor Corbett and will include a panel that is very similar in structure to one that took place in 2010 at the SSTI Conference in Pittsburgh. Former Governor Ridge, former Governor Thornburgh, and Senator Gordner are confirmed to participate in this event. We will make sure that an invitation goes out to the Board members.

IV. Old Business

At the end of the January Board meeting, there was great discussion by Board members whether directors and officers insurance is necessary or required, if there is a *carry forward*, and whether or not an audit is required. Unfortunately, Chief Counsel Chris Houston had to depart the meeting prior to that discussion. Chris is here this morning to provide an overview of this information.

Chris Houston addressed the issues from the last Board meeting, beginning with the issue of an audit. He stated that there is clear direction in the BFTDA Act that the Authority is required to conduct an audit yearly of its financial statements. Additionally, the Auditor General has the right of first refusal to conduct such an audit. If the Authority wishes to have a private firm do the audit, then it must first reach out to the Auditor General and ask for a waiver for their right to have the audit conducted. Chris asked if there were questions from the Board members.

President Fry asked what has been our procedure in getting audits. Chris deferred to Sheri regarding this as he is new to the Authority. Sheri stated that she will have to do some due diligence as she does not recall, nor did other members of the Board, the office of the Auditor General requesting an audit.

Chris Houston stated that he believes that staff should be directed to seek proposals from firms for the purposes of conducting an independent audit. President Fry stated that he agreed with that and wanted to make clear that he has no concern other than that he wants to follow accepted practice which is that organizations should have an annual audit. Sheri agreed and stated that they will begin working with Chief Counsel and others to begin that process by communicating with the Auditor General.

Chris confirmed that there is currently no directors and officers insurance coverage for the Board and talked of the protections and assurances that are in place. First, the Sovereign Immunity Statute bars claims against the Authority and its Members except those that fall under specific enumerated exceptions, none of which apply to the activities that the Authority conducts. In addition, the Authority's Bylaws specifically provide that Members of the Board shall not be personally liable for monetary damages as result of any action taken in good faith and in a manner that he or she reasonably believes to be in the best interest of the Board. There is also a clause that provides for indemnification to members of the Board. The protections in place do not preclude the Board from seeking directors and officer's liability insurance.

Ellen Kight stated that most Boards do have indemnification in place; however, most Boards also secure D & O insurance. She asked Chris to explain the Sovereign Immunity Statute more. Chris explained that the Sovereign Immunity bars any claims by a third party against the Authority and its members if an action is brought, unless it falls into one of the enumerated exceptions: vehicle liability, medical professional liability, care, custody or control of personal property, other exceptions, liquor store sales, etc. that don't apply to what the Authority does. This does not preclude the Board from securing D & O Insurance but that it would come as a cost to the Board and the cost depends upon the amount of coverage you would wish to seek.

The question was asked if any other state Board has secured D & O Insurance. Chris replied that he believes the Commonwealth Financing Authority does; however, that is not the same animal as this organization. Chuck Peters stated that he is on two county authorities who, for the relatively small cost of officers' coverage, like that extra layer of protection. He suggested that the Board consider this and direct the staff to seek pricing. Deputy Secretary Newhouse stated

that we will obtain that information and send it to the Board ahead of the next Board meeting so that we can discuss it at that time.

Representative Bryan Barbin suggested that the Board also be provided the exceptions to Sovereign Immunity at the same time. What we are really weighing is "What is the likelihood of someone being able to get around the Sovereign Immunity Statute and create a possible liability?"

The next issue is the item of carrying forward funds of the Authority. The statute provides that monies appropriated by the General Assembly for the Ben Franklin Technology Development Authority program along with Federal funds and other monies received for the program, must be deposited into the Ben Franklin Technology Development Fund. The General Assembly must annually appropriate those collected monies from the fund for program purposes. The General Appropriations Act states that any monies appropriated must have been spent or encumbered for expenses incurred by June 30, of that fiscal year. Any funds which have not been spent or encumbered by that date must lapse as of that date. Which means that the Authority is required to expend the part of the appropriation which remains unused or unencumbered as of that date expires. DCED cannot expend that unused part of the appropriation. In brief, monies for the Technology Development Program are appropriated annually from the Fund and any monies from the appropriation that remain unencumbered or unspent as of June 30 must lapse. An unused part cannot be spent or carried forward into the next fiscal year. By the term *lapse*, they do not go back to the General Fund; they lapse back to the BFTDA Fund.

Sheri stated that Statements of Financial Interest are due May 1 to the Ethics Commission. Members receive notification from DCED's HR Department, Donna Keister. Sheri has a list of members who have already submitted the statement and thanked them for doing so. She will reach out to Board Members who left the Board over the last year to make sure that they file and any new members who have joined the Board in 2013 will be required to file as well by May 1. Rather than have that discussion now, Sheri will send a separate email to follow up with individual Board members. Chris Houston confirmed that the period for the statement covers activities in calendar year 2012.

V. **New Business**

Deputy Secretary Newhouse announced that she has appointed Ryan Glenn, who is serving as DCED's Venture Capital Advisor, and also is the assistant treasurer for this Board, to serve as the Ben Franklin Coordinator. He will be working very closely with our Ben Franklin Tech Partners.

With no further discussion items or questions, a motion was made to adjourn, duly seconded, and approved. Meeting adjourned at 11:05 a.m.

Respectfully submitted,



Jennifer Leinbach, Assistant Secretary

Ben Franklin Technology Development Authority