

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1142 Session of 2007

INTRODUCED BY WAGNER, M. SMITH, DeWEESE, BELFANTI, BENNINGTON, CREIGHTON, CURRY, DePASQUALE, FABRIZIO, FRANKEL, FREEMAN, GERGELY, GIBBONS, HORNAMAN, KORTZ, KOTIK, KULA, LEACH, MAHONEY, MANN, MARKOSEK, McGEEHAN, McILHATTAN, SANTONI, SOLOBAY, WALKO, J. WHITE, YOUNGBLOOD, YUDICHAK, McILVAINE SMITH, COSTA, PALLONE, EACHUS AND CALTAGIRONE, MAY 18, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 18, 2007

AN ACT

1 Amending the act of June 26, 2001 (P.L.755, No.77), entitled "An
2 act establishing a special fund and account for money
3 received by the Commonwealth from the Master Settlement
4 Agreement with tobacco manufacturers; providing for home and
5 community-based care, for tobacco use prevention and
6 cessation efforts, for Commonwealth universal research
7 enhancement, for hospital uncompensated care, for health
8 investment insurance, for medical assistance for workers with
9 disabilities, for regional biotechnology research centers,
10 for the HealthLink Program, for community-based health care
11 assistance programs, for PACE reinstatement and PACENET
12 expansion, for medical education loan assistance and for
13 percentage allocation and appropriation of moneys," further
14 providing for definitions, for investment of fund and
15 accounts, for use of Tobacco Settlement Fund, for health
16 research program, for department responsibilities, for
17 National Institutes of Health funding formula, FOR
18 ACCOUNTABILITY PROCEDURES and for regional biotechnology
19 research centers; establishing the Jonas Salk Legacy Fund
20 Program, the Jonas Salk Legacy Fund Board and the Jonas Salk
21 Legacy Fund; and providing for the sale or assignment of
22 Commonwealth Universal Research Enhancement Program receipts
23 and for the issuance of Commonwealth Universal Research
24 Enhancement Program bond.

←

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

1 Section 1. Sections 302, 303, 305 and 306 of the act of June
2 26, 2001 (P.L.755, No.77), known as the Tobacco Settlement Act,
3 are amended to read:

4 Section 302. Definitions.

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

8 "Accounts." The Health Endowment Account for Long-Term Hope
9 established in section 303(b) [and], the Health Venture
10 Investment Account established in section 303(c) and the
11 Biotechnology Commercialization Account established in section
12 303(d).

13 "Bioscience product." As defined in section 1702.

14 "Board." The Tobacco Settlement Investment Board established
15 in section 304(a).

16 "Commercialization activity." Any activity that assists a
17 for-profit or not-for-profit bioscience institution or
18 organization in the jurisdiction of a regional biotechnology
19 research center in the testing, production and licensing or sale
20 of a bioscience product or leads to the testing, access or
21 creation of markets for the production, licensing or sale of a
22 bioscience product. The term includes, but is not limited to,
23 legal and business consulting services and expenses, assessing
24 the patentability of bioscience products, obtaining patent
25 protection for such bioscience products in the United States and
26 internationally, testing and marketing activities for bioscience
27 products and negotiating licensing or commercialization
28 agreements with licensees as well as development of new
29 technology transfer programs.

30 "Department." The Department of Community and Economic

1 Development of the Commonwealth.

2 Section 303. Establishment of special fund and [account]
3 accounts.

4 (a) Tobacco Settlement Fund.--There is hereby established a
5 special fund known as the Tobacco Settlement Fund. Except as
6 provided in subsection (b), all payments received by the
7 Commonwealth pursuant to the Master Settlement Agreement shall
8 be deposited by the Treasury Department in the [fund] Tobacco
9 Settlement Fund.

10 (b) Health Account.--There is hereby established within the
11 [fund] Tobacco Settlement Fund the Health Endowment Account for
12 Long-Term Hope. [The] Except as provided in the act of April 9,
13 1929 (P.L.343, No.176), known as The Fiscal Code, the following
14 amounts shall be deposited by the Treasury Department into the
15 account:

16 (1) The jurisdictional payment received by the
17 Commonwealth pursuant to the Master Settlement Agreement.

18 (2) The strategic contribution payments received by the
19 Commonwealth pursuant to the Master Settlement Agreement.

20 (3) Earnings derived from the investment of the money in
21 the [fund] Tobacco Settlement Fund after deduction of
22 investment expenses, including such earnings as may have
23 accrued prior to the effective date of this chapter.

24 (4) Earnings derived from the investment of the money in
25 the Health Account after deduction of investment expenses and
26 the approved expenses of the board.

27 [(5) Money received as a result of investments from the
28 Health Venture Investment Account.]

29 (c) Health Venture Investment Account.--There is hereby
30 established within the [fund] Tobacco Settlement Fund the Health

1 Venture Investment Account. All proceeds received as a result of
2 investments from the Health Venture Investment Account shall be
3 deposited into the Health Venture Investment Account.

4 (d) Biotechnology Commercialization Account.--There is
5 hereby established within the Tobacco Settlement Fund the
6 Biotechnology Commercialization Account. Interest earned on
7 moneys in the Biotechnology Commercialization Account shall be
8 credited to the account. Moneys in the account shall only be
9 used to fund applications submitted and approved under Chapter
10 17.

11 Section 305. Investment of fund and accounts.

12 (a) Control and management.--Notwithstanding any other
13 provision of law, the board shall have exclusive control and
14 authority to manage, invest and reinvest money in the fund and
15 the Health Account in accordance with this section, subject,
16 however, to the exercise of that degree of judgment, skill and
17 care under the circumstances then prevailing that persons of
18 prudence, discretion and intelligence, who are familiar with
19 investment matters, exercise in the management of their own
20 affairs, not in regard to speculation but in regard to permanent
21 disposition of the funds, considering the probable income to be
22 derived from the investments and the probable safety of their
23 capital. The board may hold, purchase, sell, lend, assign,
24 transfer or dispose of any securities and investments, including
25 equity securities, in which money in the fund or the accounts
26 has been invested and of the proceeds of the investments,
27 including any directed commissions that have accrued to the
28 benefit of the fund or the accounts as a consequence of the
29 investments, and of money belonging to the fund or the accounts
30 subject to the standard of prudence in this section.

1 (b) Fiduciary status of board.--The members of the board and
2 their professional personnel shall stand in a fiduciary
3 relationship to the Commonwealth and its citizens regarding the
4 investments of the money of the fund and the accounts and shall
5 not profit, either directly or indirectly, with respect thereto.

6 (c) Custodian.--The State Treasurer shall be the custodian
7 of the fund and the accounts. All investment draws from the fund
8 or the accounts shall be made by the State Treasurer in
9 accordance with requisitions signed by the secretary of the
10 board and ratified by resolution of the board.

11 (d) Authorized investment vehicles for the fund and the
12 Health Account.--The board may invest the money in the fund and
13 the Health Account in investments that meet the standard of
14 prudence set forth in subsection (a) by acquiring any type of
15 interest in a business organization existing under the laws of
16 any jurisdiction. The liability of the fund or the Health
17 Account shall be limited to the amount of their investment under
18 this subsection.

19 (e) Additional authorized investment vehicles for the Health
20 Account.--The board in its prudent discretion may invest the
21 money in the Health Account in venture capital investments,
22 private placement investments or other alternative investments
23 of any kind, structure or manner which meet the standard of
24 prudence set forth in subsection (a). The liability of the
25 Health Account shall be limited to the amount of its investment
26 under this subsection.

27 (f) Authorized investment vehicles for the Health Venture
28 Investment Account.--The board may invest the money in the
29 Health Venture Investment Account in investments which meet the
30 standard of prudence set forth in subsection (a) by becoming a

1 limited partner in partnerships that make venture capital
2 investments by acquiring equity interests or a combination of
3 debt and equity interests in health care, biotechnology or any
4 other health-related businesses that are expected to grow
5 substantially in the future and in which the expected returns on
6 investment are to come predominantly from increases in value of
7 the equity interests and are not interests in or secured by real
8 estate. The board may invest in one or more limited partnerships
9 or comparable investment entities provided that the investment
10 guidelines and strategies of each investment entity require, in
11 the board's prudent discretion, that at least 70% of the
12 investments will be made in companies located primarily in
13 Pennsylvania or in companies willing to relocate significant
14 business operations to Pennsylvania. The liability of the fund
15 or the Health Venture Investment Account shall be limited to the
16 amount of its investment under this section.

17 (g) Requirements for venture capital investments.--The
18 [following are the] board, in its prudent discretion, may
19 establish reasonable requirements to participate in a venture
20 capital investment program undertaken by the board under
21 subsection (e) or (f). These requirements may, in the board's
22 discretion, include the following:

- 23 (1) Each general partner must:
- 24 (i) contribute 2% of the aggregate committee capital
25 as a general partner; and
- 26 (ii) subordinate 5% of the board's contribution in
27 terms of the distribution schedule, putting the general
28 partner in a first loss position with respect to the
29 board.

30 (2) The partnership must provide a preferred return of

1 no less than 5% to all limited partners.

2 (3) The partnership must agree to operate under a
3 prudent expert standard of care. The board shall adopt
4 policies regarding cancellation of a contract with a general
5 partner based on poor performance which may include policies
6 relating to multiple instances of indemnification or
7 substantial changes in principals.

8 (4) The board must be given a seat on any limited
9 partner advisory/valuation committee.

10 (5) The board must be reimbursed for expenses for
11 attending limited partner advisory/valuation committee
12 meetings and partnership annual meetings.

13 (6) The partnership must issue to the board audited
14 financial statements on the basis of Generally Accepted
15 Accounting Principles.

16 (h) Legislative declaration.--The General Assembly finds and
17 declares that authorized investments of the fund or the accounts
18 made by or on behalf of the board under this section whereby the
19 board becomes a joint owner, limited partner or stockholder in a
20 company, corporation, limited partnership, association or other
21 lawful business organization are outside the scope of the
22 original intent of and do not violate the prohibition set forth
23 in section 8 of Article VIII of the Constitution of
24 Pennsylvania.

25 Section 306. Use of Tobacco Settlement Fund.

26 (a) Annual report.--The Governor shall report on the fund in
27 the annual budget which shall include the amounts appropriated
28 to each program.

29 (b) Appropriations.--

30 (1) [The] Except as provided in the act of April 9, 1929

1 (P.L.343, No.176), known as The Fiscal Code, the General
2 Assembly hereby appropriates funds in the fund in accordance
3 with the following percentages based on actual funds received
4 in each year or upon receipt of the final annual payment:

5 (i) Eight percent for deposit into the Health
6 Account pursuant to this chapter, which shall be
7 deposited immediately upon receipt.

8 (ii) Thirteen percent for home and community-based
9 services pursuant to Chapter 5. For fiscal year 2001-
10 2002, up to \$13.5 million may be used for expanded
11 counseling, area agency on aging training and education,
12 assistive technology and for reducing waiting lists for
13 services in the Department of Aging.

14 (iii) Twelve percent for tobacco use prevention and
15 cessation programs pursuant to Chapter 7.

16 (iv) Eighteen percent for health and related
17 research pursuant to section 906 and one percent for
18 health and related research pursuant to section 909.

19 (v) Ten percent for the uncompensated care payment
20 program pursuant to Chapter 11.

21 (vi) Thirty percent for health investment insurance
22 pursuant to Chapter 13 and for the purchase of Medicaid
23 benefits for workers with disabilities pursuant to
24 Chapter 15.

25 (vii) [~~Eight~~] Four percent for the expansion of the
26 PACENET program pursuant to Chapter 23.

27 (viii) Two percent for deposit into the Health
28 Venture Investment Account pursuant to this chapter.

29 (ix) Two percent for deposit into the Biotechnology
30 Commercialization Account pursuant to this chapter for

1 commercialization activities.

2 (2) In addition, any Federal funds received for any of
3 these programs is hereby specifically appropriated to those
4 programs.

5 (c) Lapses.--Lapses shall be deposited in the Health Account
6 except for the following:

7 (1) Lapses from moneys provided for the home and
8 community-based care services shall be reallocated to the
9 home and community-based care program for use in succeeding
10 years.

11 (2) Lapses from moneys provided for the health
12 investment insurance program shall be reallocated to the
13 health investment insurance program for use in succeeding
14 years.

15 (3) Lapses from moneys provided for the health venture
16 investment program shall be reallocated to the Health Venture
17 Investment Account for use in succeeding years.

18 (4) Lapses from moneys provided for commercialization
19 activities shall be reallocated to the Biotechnology
20 Commercialization Account for use in succeeding years.

21 ~~Section 2. Section 902 of the act is amended by adding a~~ <—
22 ~~definition to read:~~

23 SECTION 2. THE DEFINITION OF "APPLICANT" IN SECTION 902 OF <—
24 THE ACT IS AMENDED AND THE SECTION IS AMENDED BY ADDING
25 DEFINITIONS TO READ:

26 Section 902. Definitions.

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

30 * * *

1 "APPLICANT." ANY OF THE FOLLOWING LOCATED IN THIS
2 COMMONWEALTH:

3 (1) A PERSON.

4 (2) AN INSTITUTION.

5 (3) AN ENTITY ESTABLISHED UNDER THE ACT OF AUGUST 24,
6 1951 (P.L.1304, NO.315), KNOWN AS THE LOCAL HEALTH
7 ADMINISTRATION LAW.

8 (4) A SMALL BUSINESS.

9 * * *

10 "Direct research grant." A grant to conduct research that is
11 awarded by the National Institutes of Health, excluding all
12 contracts, cooperative agreements and those grants that are not
13 for investigator-initiated research projects ("R01" grants).

14 * * *

15 "SMALL BUSINESS." ANY FOR-PROFIT BUSINESS LOCATED IN THIS <—
16 COMMONWEALTH EMPLOYING LESS THAN 500 EMPLOYEES.

17 Section 3. Sections ~~903(b)(5), 904(3) and 908~~ 903(B), <—
18 904(3), 908 AND 910 of the act are amended to read:

19 Section 903. Health research program.

20 * * *

21 (b) Advisory committee.--

22 * * * <—

23 (1) THERE IS HEREBY ESTABLISHED IN THE DEPARTMENT THE <—
24 HEALTH RESEARCH ADVISORY COMMITTEE.

25 (2) THE COMMITTEE IS COMPRISED OF THE FOLLOWING:

26 (I) THE SECRETARY OR A DESIGNEE, WHO SHALL SERVE AS
27 CHAIRPERSON.

28 (II) FOUR MEMBERS APPOINTED BY THE GOVERNOR.

29 (III) ONE MEMBER APPOINTED BY THE PRESIDENT PRO
30 TEMPORE OF THE SENATE AND ONE MEMBER APPOINTED BY THE

1 MINORITY LEADER OF THE SENATE.

2 (IV) ONE MEMBER APPOINTED BY THE SPEAKER OF THE
3 HOUSE OF REPRESENTATIVES AND ONE MEMBER APPOINTED BY THE
4 MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

5 (3) [MEMBERS] AT LEAST ONE MEMBER APPOINTED BY THE
6 GOVERNOR MUST BE A SMALL BUSINESS LEADER WITH EXPERIENCE IN
7 COMMERCIALIZING LIFE SCIENCES FOCUSED RESEARCH. REMAINING
8 MEMBERS APPOINTED TO THE COMMITTEE BY THE GOVERNOR MUST
9 POSSESS EXPERTISE IN HEALTH CARE OR RESEARCH, WITH
10 REPRESENTATION BY INSTITUTION-BASED RESEARCH SPECIALISTS,
11 PRACTICING CLINICIANS, CLINICAL INVESTIGATORS AND PUBLIC
12 HEALTH PROFESSIONALS.

13 (4) TERMS ARE AS FOLLOWS:

14 (I) THE SECRETARY SHALL SERVE EX OFFICIO.

15 (II) A MEMBER UNDER PARAGRAPH (2)(II) SHALL SERVE A
16 TERM OF SIX YEARS.

17 (III) A MEMBER UNDER PARAGRAPH (2)(III) SHALL SERVE
18 A TERM OF FOUR YEARS BUT MAY BE REMOVED AT THE PLEASURE
19 OF THE APPOINTING AUTHORITY.

20 (IV) A MEMBER UNDER PARAGRAPH (2)(IV) SHALL SERVE A
21 TERM OF TWO YEARS BUT MAY BE REMOVED AT THE PLEASURE OF
22 THE APPOINTING AUTHORITY.

23 (V) AN APPOINTMENT TO FILL A VACANCY SHALL BE FOR
24 THE PERIOD OF THE UNEXPIRED TERM OR UNTIL A SUCCESSOR IS
25 APPOINTED AND QUALIFIED.

26 (5) The committee shall meet as needed, but at least
27 [twice] once a year, to fulfill the purposes provided for in
28 this chapter. A majority of the members of the committee
29 constitutes a quorum. A majority of the members of the
30 committee has authority to act upon any matter properly

1 before it. The committee is authorized to establish rules for
2 its operation and shall hold public hearings, as necessary,
3 to obtain public input and make recommendations to the
4 department regarding research priorities, evaluation and
5 accountability procedures and related issues. Meetings of the
6 committee shall be conducted under 65 Pa.C.S. Ch. 7 (relating
7 to open meetings).

8 * * *

9 (6) MEMBERS SHALL RECEIVE NO PAYMENT FOR THEIR SERVICES. ←
10 MEMBERS WHO ARE NOT EMPLOYEES OF STATE GOVERNMENT SHALL BE ←
11 REIMBURSED FOR NECESSARY AND REASONABLE EXPENSES INCURRED IN
12 THE COURSE OF THEIR OFFICIAL DUTIES.

13 Section 904. Department responsibilities.

14 The department has the following powers and duties:

15 * * *

16 (3) Except as provided in section 905(f) and (g), review
17 applications and award research grants to applicants
18 consistent with the priorities established under paragraph
19 (2). Research grants may be awarded for a period not to
20 exceed [four] five years for each project.

21 * * *

22 Section 908. National Institutes of Health funding formula.

23 (a) Eligibility.--An institution that conducts research in
24 this Commonwealth and has received funding from the National
25 Institutes of Health during each of the three [immediately
26 preceding] most recent Federal fiscal years for which finalized
27 data is available from the National Institutes of Health as of
28 June 30 of the State fiscal year prior to the State fiscal year
29 in which the grant is awarded shall be eligible to receive a
30 grant pursuant to section 906(1). For one year from the

1 effective date of this act, an institution that has immediately
2 succeeded, by asset acquisition, the research function of
3 another institution that received National Institutes of Health
4 funding during any of the four immediately preceding fiscal
5 years shall be considered eligible to receive a grant pursuant
6 to section 906(1).

7 (b) Fund distribution.--Funds under this section shall be
8 distributed to eligible institutions as follows:

9 (1) Twenty percent shall be distributed to each
10 institution that receives more than \$175,000,000 as an
11 average amount from the National Institutes of Health during
12 each of the three [immediately preceding] most recent Federal
13 fiscal years[.] for which finalized data is available from
14 the National Institutes of Health as of June 30 of the State
15 fiscal year prior to the State fiscal year in which the grant
16 is awarded.

17 (2) Seventeen percent shall be distributed to each
18 institution that receives more than \$175,000,000 in federally
19 sponsored research and development obligations in the
20 [immediately available preceding] most recent Federal fiscal
21 year [as reported by] for which finalized data is available
22 from the National Science Foundation and receives more than
23 [\$60,000,000] \$50,000,000 in direct research grant funding as
24 an average amount from the National Institutes of Health
25 during [the three immediately preceding] each of the three
26 most recent Federal fiscal years[.] for which finalized data
27 is available as of June 30 of the State fiscal year prior to
28 the State fiscal year in which the grant is awarded.

29 (3) The remaining funds shall be distributed to eligible
30 institutions based on the percentage calculated by dividing

1 an institution's average direct research grant award from the
2 National Institutes of Health for [the three immediately
3 preceding] each of the three most recent Federal fiscal years
4 for which finalized data is available as of June 30 of the
5 State fiscal year prior to the State fiscal year in which the
6 grant is awarded by the sum of the average annual direct
7 research grant funding award from the National Institutes of
8 Health for all Pennsylvania-based eligible institutions
9 during the three [immediately available preceding] most
10 recent Federal fiscal years[.] for which finalized data is
11 available as of June 30 of the State fiscal year prior to the
12 State fiscal year in which the grant is awarded.

13 (4) An institution is not eligible to receive funds
14 under more than one paragraph of this subsection.

15 (5) No funds shall be given to an institution that
16 qualifies for a grant of less than \$25,000 under this
17 section. The amount of funding that would have been
18 distributed to such an institution shall be redistributed
19 proportionally to institutions that are eligible under
20 subsection(b)(3).

21 (c) Additional requirements.--An institution that receives
22 \$400,000 or more pursuant to this section shall include the
23 following information with its application under section 907(a):

24 (1) A plan for the timely licensure or commercial
25 development of research results conducted under this section,
26 including its management of intellectual property.

27 (2) Standard forms of agreement developed by the
28 institution for use in the licensing of research results.

29 (3) A plan to establish affiliations, exchanges,
30 partnerships or other cooperative efforts with postsecondary

1 educational institutions to provide programs to train
2 students and health professionals in the biomedical field.

3 (4) A description of the training opportunities provided
4 for researchers employed by the institution relating to the
5 licensing and commercial development of research.

6 (5) Outreach efforts directed toward informing
7 businesses and business organizations regarding recent
8 developments in research being conducted by the institutions.

9 (6) A plan for collaboration with an applicant, an
10 institution, a regional biomedical research center under
11 Chapter 17 or a for-profit corporation or other business
12 entity to participate in the development of research.

13 SECTION 910. ACCOUNTABILITY PROCEDURES. ←

14 (A) REQUIREMENTS.--AN APPLICANT THAT RECEIVES A RESEARCH
15 GRANT UNDER THIS CHAPTER SHALL BE SUBJECT TO A PERFORMANCE
16 REVIEW BY THE DEPARTMENT UPON COMPLETION OF A RESEARCH PROJECT
17 OR MORE OFTEN AS DEEMED NECESSARY BY THE DEPARTMENT. THE
18 PERFORMANCE REVIEW SHALL BE BASED ON AN EVALUATION PROCESS
19 DEVELOPED BY THE DEPARTMENT IN CONSULTATION WITH THE ADVISORY
20 COMMITTEE. INFORMATION SHALL BE SUBMITTED BY RESEARCH GRANT
21 RECIPIENTS AND SHALL INCLUDE, AS APPLICABLE, THE FOLLOWING:

22 (1) THE PROGRESS MADE IN ACHIEVING EXPECTED RESEARCH
23 GOALS AND OBJECTIVES.

24 (2) THE EXTENT OF CLINICAL ACTIVITIES INITIATED AND
25 COMPLETED, DETAILING THE NUMBER OF TREATMENT, PREVENTION AND
26 DIAGNOSTIC STUDIES; THE NUMBER OF HOSPITALS AND HEALTH CARE
27 PROFESSIONALS; THE NUMBER OF SUBJECTS RELATIVE TO TARGETED
28 GOALS; AND THE EXTENT OF PENETRATION OF THE STUDIES
29 THROUGHOUT THE REGION OR THIS COMMONWEALTH.

30 (3) THE NUMBER OF PEER-REVIEWED PUBLICATIONS AND THE

1 NUMBER OF LICENSES AND PATENTS FILED, INCLUDING COMMERCIAL
2 DEVELOPMENT OPPORTUNITIES.

3 (4) ANY CHANGES IN RISK FACTORS, SERVICES PROVIDED,
4 INCIDENCE OF DISEASE, DEATH FROM DISEASE, STAGE OF DISEASE AT
5 THE TIME OF DIAGNOSIS OR OTHER RELEVANT MEASURES OF THE
6 OUTCOME, IMPACT AND EFFECTIVENESS OF THE RESEARCH BEING
7 CONDUCTED.

8 (5) ANY MAJOR DISCOVERIES, NEW DRUGS AND NEW APPROACHES
9 FOR PREVENTION, DIAGNOSIS AND TREATMENT WHICH ARE
10 ATTRIBUTABLE TO THE COMPLETED RESEARCH PROJECT.

11 (5.1) ANY TECHNOLOGY TRANSFER THAT HAS OCCURRED DUE TO
12 THE COMPLETED RESEARCH PROJECT. TECHNOLOGY TRANSFER SHALL
13 INCLUDE DISCOVERIES OR PRODUCTS LICENSED TO NONPROFIT OR FOR-
14 PROFIT COMPANIES FOR FURTHER DEVELOPMENT OR
15 COMMERCIALIZATION, SPIN-OFF COMPANIES CREATED, NEW JOBS
16 CREATED, OR NEW INVESTMENTS RECEIVED TO COMMERCIALIZE THE
17 DISCOVERY OR PRODUCT.

18 (6) ANY OTHER INFORMATION DEEMED NECESSARY BY THE
19 DEPARTMENT.

20 (B) PENALTY.--NOTWITHSTANDING ANY OTHER PROVISION OF THIS
21 CHAPTER, AN APPLICANT THAT RECEIVES AN UNFAVORABLE REVIEW BY THE
22 DEPARTMENT UNDER SUBSECTION (A) MAY BE SUBJECT TO A REDUCTION IN
23 OR INELIGIBILITY FOR RESEARCH GRANT FUNDING UNDER THIS CHAPTER.

24 Section 4. Section 1702 of the act is amended by adding a
25 definition to read:

26 Section 1702. Definitions.

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

30 * * *

1 "Bioscience product." A therapeutic agent, diagnostic
2 biomedical device, process or service related to human health
3 that is developed or marketed by a for-profit or not-for-profit
4 institution or organization that is in the jurisdiction of a
5 regional biotechnology research center established under section
6 1703.

7 * * *

8 Section 5. Section 1703(a) and (j) of the act are amended
9 and the section is amended by adding a subsection to read:
10 Section 1703. Regional biotechnology research centers.

11 (a) Establishment of centers.--The department, in
12 consultation with the Department of Health, shall establish
13 three regional biotechnology research centers to facilitate
14 research and commercialization activity through the sharing of
15 funds and infrastructure.

16 * * *

17 (i.1) Application for commercialization activities.--Each
18 regional biotechnology research center created under this
19 section, acting with the approval of its board of directors,
20 shall annually submit an application to the department
21 requesting funding from the Biotechnology Commercialization
22 Account for commercialization activities in its respective
23 region. The application shall be based on a five-year funding
24 strategy. The application shall include the proposed amount of
25 money requested, the types of commercialization activities to be
26 funded, the process for identifying the commercialization
27 activities to be funded and the investment vehicle or vehicles
28 to support the commercialization activities. Regional
29 biotechnology research earnings on funds received from the
30 Biotechnology Commercialization Account under this subsection

1 shall not be subject to the provisions of subsection (g)(3). The
2 department may request any other information deemed necessary
3 related to the application by a regional biotechnology research
4 center. Prior to the conclusion of the fifth year of each five-
5 year funding strategy, the regional biotechnology research
6 center shall develop a new five-year funding strategy on which
7 its next five annual applications will be based.

8 (j) Review and report.--

9 (1) Each regional biotechnology research center shall be
10 subject to an annual performance review by the department.
11 The department may request other materials or information
12 from a regional biotechnology research center at such other
13 frequency or interval that the department deems appropriate.

14 (2) Each regional biotechnology research center shall,
15 by November 30, 2002, and annually thereafter, prepare and
16 submit a report to the department, the Department of Health,
17 the chair and minority chair of the Appropriations Committee
18 of the Senate, the chair and minority chair of the
19 Appropriations Committee of the House of Representatives, the
20 chair and minority chair of the Community and Economic
21 Development Committee of the Senate and the chair and
22 minority chair of the Commerce and Economic Development
23 Committee of the House of Representatives. This report shall
24 be in a form and manner developed by the department working
25 in cooperation with the Department of Health and shall
26 include the following:

27 (i) The current members of the board of directors
28 for the research center.

29 (ii) A description of the research facilities,
30 including space and equipment.

1 (iii) The research center's current policies for the
2 management and development of intellectual property and
3 ownership of inventions and products created during the
4 course of research conducted through the center.

5 (iv) The research center's policies on conflicts of
6 interest and the handling of confidential material.

7 (v) A listing of all organizations and for-profit
8 and nonprofit institutions utilizing the services of the
9 research center during the prior year.

10 (vi) A listing of any licenses or other contractual
11 obligations in effect or anticipated for the intellectual
12 property developed at the research center during the
13 prior year.

14 (vii) A listing of any inventions, any patent
15 applications or patents issued, any products or other
16 intellectual property developed as a result of research
17 conducted through the research center during the prior
18 year.

19 (viii) A copy of the annual operating budget for the
20 year, with a listing of the sources of all funds,
21 including financial and in-kind services, personnel,
22 equipment or other material donations and contributions
23 by all parties involved in the research center; grants
24 obtained by or through the research center; Federal funds
25 leveraged and expenditures made, including infrastructure
26 expenditures; and administrative and staffing costs.

27 (ix) Information relating to commercialization
28 activities including:

29 (A) A list of commercialization activities
30 supported by a research center in the prior year to

1 enter or develop markets for inventions, patents
2 issued, products or other intellectual property.

3 (B) The amount of moneys expended by each for-
4 profit and not-for-profit institution and
5 organization in the preceding year on
6 commercialization activities supported by a research
7 center and the amount of any return on investment to
8 the research center from those activities.

9 (C) The amount of moneys each for-profit and
10 not-for-profit institution and organization projects
11 to spend on commercialization activities supported by
12 a research center in the current year and the return
13 on investment to the research center projected from
14 that activity.

15 (D) The name of any organization within or
16 outside this Commonwealth that has committed funding
17 to a for-profit and not-for-profit institution and
18 organization in the current year for
19 commercialization activities supported by a research
20 center and the type and amount of that funding.

21 (E) A list of potential markets for the
22 bioscience product supported by a research center and
23 any and all target populations that could benefit
24 from the commercialization activity.

25 (F) Any other information deemed necessary by
26 the department related to commercialization
27 activities supported by a research center.

28 Section 6. The act is amended by adding a chapter to read:

29 CHAPTER 29

30 BIOSCIENCE RESEARCH DEVELOPMENT

1 Section 2901. Definitions.

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

5 "Advisory review panel." A panel of physicians, scientists
6 and researchers engaged by the Jonas Salk Legacy Fund Board
7 under section 2903.

8 "Bioscience industry." Research and development of
9 technology, therapies and treatments relative to human health,
10 medical and life science, including medical devices, chemical
11 and biological pharmaceuticals and the biological or
12 technological delivery of such materials.

13 "Board." The Jonas Salk Legacy Fund Board established under
14 section 2903.

15 "Bonds." Bonds, notes, instruments, refunding notes and
16 other evidences of indebtedness or obligations that the
17 Pennsylvania Economic Development Financing Authority is
18 authorized to issue pursuant to this chapter.

19 "CURE." The Commonwealth Universal Research Enhancement
20 Program established under section 903.

21 "CURE participant." A recipient of funds under section 908
22 or 909 in the fiscal year immediately preceding the effective
23 date of this chapter.

24 "CURE receipts." Up to one-half of the funds required to be
25 distributed for health and related research under section
26 306(b)(1)(iv).

27 "CURE receipts bonds." Limited obligation revenue bonds
28 issued by the Pennsylvania Economic Development Financing
29 Authority pursuant to section 2906.

30 "Department." The Department of Community and Economic

1 Development of the Commonwealth.

2 "DOH." The Department of Health of the Commonwealth.

3 "Donor-directed funds." Contributions made to the Jonas Salk
4 Legacy Fund on which a donor has placed specific use conditions.

5 "Donor funds." Contributions made to the Jonas Salk Legacy
6 Fund on which no specific use conditions have been placed by the
7 donor.

8 "Economic Development Financing Law." The act of August 23,
9 1967 (P.L.251, No.102), known as the Economic Development
10 Financing Law.

11 "Financing authority." The Pennsylvania Economic Development
12 Financing Authority established under the act of August 23, 1967
13 (P.L.251, No.102), known as the Economic Development Financing
14 Law.

15 "Fund." The Jonas Salk Legacy Fund established under section
16 2904.

17 "Incubator." A facility in which small units of space are
18 leased by new companies in the bioscience industry and in which
19 management of the facility maintains or provides access to
20 business development services for use by all companies leasing
21 space in the facility.

22 "Infrastructure project." An activity designed to expand,
23 remodel, renovate, alter or construct biomedical research
24 laboratories including biology, biochemistry, cell biology,
25 microscopy, molecular biology, virology, immunology, physiology,
26 pathology and clinical research, including any of the following:

27 (1) Wet laboratories, including tissue culture
28 laboratories, anaerobic chambers, fermenters and laboratories
29 to conduct studies related to biochemistry, molecular
30 biology, cell biology, pathology, organic chemistry and

1 physical chemistry.

2 (2) Dry laboratories, including the use of computers,
3 electronics and analytic equipment.

4 (3) Special function laboratories, including the use of
5 electrophysiology, biophysics, electron microscopes, confocal
6 microscopes, laser equipment, magnetic resonance imaging,
7 electron spin resonance spectroscopy, X-ray crystallography,
8 mass spectrometry, flow cytometry and robotic equipment.

9 (4) Clinical research centers.

10 (5) Incubator facilities to commercialize the
11 development of biomedical drugs and devices.

12 "MSA payments." Payments paid or to be paid to the
13 Commonwealth under the Master Settlement Agreement.

14 "Obligee of the financing authority" or "obligee." Any of
15 the following:

16 (1) A holder or owner of CURE receipts bonds.

17 (2) A trustee or other fiduciary for any holder or owner
18 of CURE receipts bonds.

19 (3) A provider of a letter of credit, policy of
20 municipal bond insurance or other credit enhancement or
21 liquidity facility or an agreement for interest rate
22 management for CURE receipts bonds.

23 "Opt out date." The date set by the Jonas Salk Legacy Fund
24 Board for the receipt of notice from CURE participants that they
25 do not desire to participate in the program established in this
26 chapter.

27 "Project." An infrastructure project or a starter kit
28 project, as the context may require.

29 "Program." The Jonas Salk Legacy Fund Program established
30 under section 2902.

1 "Public health research." Research concerning the protection
2 and improvement of the health of populations that:

3 (1) Builds the evidence base to guide policymaking for
4 public health practice.

5 (2) Seeks to apply research studies to health practice
6 needs.

7 (3) Translates health research in a manner to facilitate
8 its application to policy, financial and organizational
9 issues that concern the delivery of health care and social
10 services.

11 (4) Produces new insights and innovative solutions to
12 community health problems.

13 (5) Addresses an important public health need, is
14 relevant to reducing health disparities and has the potential
15 for broad impact across more than one subject area.

16 "Starter kit project." An activity to renovate, furnish and
17 equip research facilities, including the acquisition of
18 equipment and advanced instrumentation, to assist in attracting
19 highly rated research faculty to the applicant.

20 Section 2902. Jonas Salk Legacy Fund Program.

21 (a) Establishment.--There is established a program to be
22 known as the Jonas Salk Legacy Fund Program. The program shall
23 provide grants to eligible applicants for projects and for the
24 purposes set forth in section 2904(b). The board shall develop
25 eligibility criteria for applicants and projects, including
26 permitted project costs, priorities in the consideration of
27 applications and guidelines for the implementation of the
28 program, including the payment of application fees. The board
29 shall insure the funds are used to support basic and applied
30 research and economic development focused on improved health.

1 The department shall submit for publication in the Pennsylvania
2 Bulletin a notice of the date that the board will begin
3 accepting grant applications.

4 (b) Advisory review panels.--

5 (1) An advisory review panel shall be engaged by the
6 board with respect to each proposal received. Its members
7 shall be individuals who are nationally recognized
8 physicians, scientists or researchers from the same or
9 similar discipline as the project proposal under review and
10 shall not be Pennsylvania residents. A member of an advisory
11 review panel shall not have a relationship, employment or
12 otherwise, with an applicant whose project is under review by
13 the panel.

14 (2) Members of an advisory review panel shall review a
15 project proposal upon receiving it from the board. The review
16 shall be conducted in a manner that recognizes scientific and
17 technical merit and commercialization potential, on the basis
18 of scientific need, scientific method, research design,
19 adequacy of facility and qualifications of the research
20 personnel. The advisory review panel shall provide its review
21 and recommendations to the board, and the board shall
22 consider the recommendations when making a funding
23 determination. The board shall place heavier weight or
24 emphasis on an advisory review panel's recommendations
25 regarding a starter kit project than those regarding an
26 infrastructure project.

27 (c) Starter kit project.--

28 (1) A CURE participant or its affiliated medical center
29 located in this Commonwealth may submit an application to the
30 board requesting a grant for a starter kit project. The

1 application shall be on a form required by the board and
2 shall include or demonstrate all of the following:

3 (i) The applicant's name and address.

4 (ii) The location of the project.

5 (iii) A description of the project.

6 (iv) A detailed description of proposed expenditures
7 for the project.

8 (v) A detailed description of other sources of
9 financing for the project, including the match required
10 under subsection (g).

11 (vi) A detailed statement by the applicant of the
12 reasons why the project will be beneficial to the
13 bioscience industry.

14 (vii) Any other information required by the board.

15 (2) Upon determining that an application is complete,
16 the board shall forward the application to the advisory
17 review panel engaged by the board for review of the
18 feasibility of the project. The board shall also review the
19 application and shall consider the advisory review panel's
20 recommendations as required by subsection (b). Upon being
21 satisfied that all requirements for awarding a grant to the
22 applicant have been met, the board may approve the
23 application and, if approved, the board shall award the grant
24 and shall notify the applicant of such approval.

25 (d) Infrastructure projects.--

26 (1) A CURE participant or its affiliated medical center
27 located in this Commonwealth may submit an application to the
28 board requesting a grant for an infrastructure project. The
29 application shall be on a form required by the board and
30 shall include or demonstrate all of the following:

1 (i) The applicant's name and address.

2 (ii) The location of the project.

3 (iii) A description of the project.

4 (iv) A detailed description of proposed expenditures
5 for the project.

6 (v) A detailed description of other sources of
7 financing for the project, including the match required
8 by subsection (g).

9 (vi) A detailed statement by the applicant of the
10 reasons why the project will be beneficial to the
11 bioscience industry.

12 (vii) Any other information required by the board.

13 (2) Upon determining that an application is complete,
14 the board shall forward the application to the advisory
15 review panel engaged by the board for review of the
16 feasibility of the project. The board shall also review the
17 application and shall consider the advisory review panel's
18 recommendations as required under subsection (b). Upon being
19 satisfied that all requirements for awarding a grant to the
20 applicant have been met, the board may approve the
21 application, and, if approved, the board shall award the
22 grant and shall notify the applicant of such approval.

23 (e) Donor funds.--Donor funds shall be transferred by the
24 department to the DOH for use in funding the types of grants
25 authorized under section 906(2) and (3) or for other public
26 health research programs.

27 (f) Donor-directed funds.--Donor-directed funds shall be
28 used, to the extent allowed by the direction, to enhance
29 existing Commonwealth programs, including the program
30 established under this chapter. Donor-directed funds that are

1 required to be used for public health programs shall be
2 transferred to the DOH to be used as directed.

3 (g) Limitations.--

4 (1) A grant awarded for an infrastructure project or a
5 starter kit project shall not exceed 50% of the estimated
6 cost of the project as approved by the board. The balance of
7 the cost of the project shall be funded by the applicant from
8 other non-State public and private sources. Moneys derived
9 from non-State public and private sources that are used to
10 recruit or retain faculty by an eligible applicant may be
11 counted toward the match required by this paragraph.

12 (2) Subject to section 2903(1), interest earned on money
13 in the fund shall be transferred by the department to the DOH
14 to award grants for the public health research programs in
15 accordance with guidelines established by the DOH and
16 submitted annually for publication in the Pennsylvania
17 Bulletin.

18 (3) Except as provided in subsection (h), CURE
19 participants are not eligible to receive grants under the
20 program, and recipients of grants under the program are not
21 eligible for funding under CURE.

22 (h) Special provisions relating to CURE and CURE
23 participants.--

24 (1) A CURE participant shall be enrolled in the program
25 unless the CURE participant provides written notice to the
26 board by the opt out date that it does not desire to
27 participate in the program. If a CURE participant enrolled in
28 the program desires to apply for a grant under this chapter,
29 it shall apply and be approved as provided in this chapter.
30 CURE participants enrolled in the program shall also continue

1 to be eligible to receive funding under CURE through June 30,
2 2012, at the same level provided in section 908 or 909, as
3 applicable, as if none of the CURE receipts had been sold or
4 assigned under section 2905. The board shall have the
5 authority to use moneys in the fund to supplement moneys
6 available under section 908 or 909 for CURE in order to
7 continue to provide funding at this level through June 30,
8 2012. A CURE participant may use National Institutes of
9 Health funds as a match against moneys in the fund used to
10 supplement moneys available under this act for CURE in order
11 to continue to provide funding at this level through June 30,
12 2012. This commitment shall not apply to any reduction in
13 funding under CURE that occurs for reasons unrelated to the
14 sale or assignment of CURE receipts authorized under section
15 2905. After June 30, 2012, CURE participants enrolled in the
16 program shall continue to be eligible to receive funding
17 under CURE at the level then available under section 908 or
18 909.

19 (2) CURE participants that opt out of the program
20 pursuant to paragraph (1) shall continue to be eligible to
21 receive funding under CURE at the same level provided in
22 section 908 or 909, as applicable, as if none of the CURE
23 receipts had been sold or assigned pursuant to section 2905.
24 This commitment shall not apply to any reduction in funding
25 under CURE that occurs for reasons unrelated to the sale or
26 assignment of CURE receipts under section 2905.

27 (3) Notwithstanding any provision of law to the
28 contrary, the DOH is authorized to reduce the amount of a
29 grant to be awarded under CURE to a CURE participant who is
30 enrolled in the program to the extent of the amount of any

1 moneys in the fund used by the board under paragraph (1) to
2 supplement moneys available under CURE for such grant. In
3 such event, the grant agreement entered into by the DOH and
4 the CURE participant will govern the use of that portion of
5 the grant being funded by MSA payments through sections 908
6 and 909 and administered by the DOH. A separate grant
7 agreement shall be entered into by the board and the CURE
8 participant to govern the use of that portion of the grant
9 being funded by the board pursuant to paragraph (1).

10 (4) Notwithstanding any provision of law to the
11 contrary, the DOH is authorized to reduce the amount
12 available for distribution under section 906(2) and (3) to an
13 aggregate of the greater of 28.5% of all funds available to
14 the DOH under section 906 following the sale or assignment of
15 CURE receipts under section 2905 or \$10,000,000, provided
16 however, that the \$10,000,000 minimum amount shall be subject
17 to reduction in the event the amount of funds available to
18 the DOH under section 906 is reduced for reasons unrelated to
19 the sale or assignment of CURE receipts as authorized under
20 section 2905.

21 (5) Notwithstanding any provision of law to the
22 contrary, moneys received by the DOH for CURE in a fiscal
23 year may be retained by the DOH for up to an additional
24 fiscal year in order to complete the award process for a
25 particular recipient or recipients for the fiscal year in
26 which the moneys were received. The DOH may not reassign the
27 moneys to other recipients.

28 (i) Evaluation criteria relating to diversification.--In
29 reviewing applications for grants under the program, the board
30 shall evaluate the use and development of disadvantaged

1 businesses as defined in 62 Pa.C.S. § 2102 (relating to
 2 definitions). IN REVIEWING APPLICATIONS FOR GRANTS UNDER THE
 3 PROGRAM, THE BOARD SHALL GIVE PRIORITY CONSIDERATION TO PROJECTS
 4 IN THE KEYSTONE INNOVATION ZONES. The board shall develop
 5 criteria that evaluates the applicant's commitment and plan to
 6 provide fair and representative opportunities for disadvantaged
 7 businesses in its projects and in contracts relating to its
 8 projects as well as the applicant's commitment and plan to
 9 employ in the project a diverse professional and scientific work
 10 force, including minorities and women. In those cases where the
 11 board has cause to believe that an applicant receiving a grant
 12 under this chapter has failed to comply with the provisions of
 13 the applicant's plan, the applicant shall be subject to
 14 sanctions. The sanctions may include:

15 (1) Declaring the applicant ineligible to receive future
 16 grants.

17 (2) Suspending the applicant from receiving grants for a
 18 set period of time.

19 (3) Requiring repayment of a portion of the grant
 20 awarded to the applicant.

21 (j) Reports.--An applicant receiving a grant under this
 22 chapter shall report annually to the board on the progress of
 23 the project or as often as the board deems necessary.

24 Section 2903. Jonas Salk Legacy Fund Board.

25 (a) Establishment.--There is hereby established in the
 26 department the Jonas Salk Legacy Fund Board. The board shall
 27 consist of the following members:

28 (1) The Secretary of Community and Economic Development
 29 or his designee, who shall be chair of the board.

30 (2) The Secretary of Health or his designee, who shall

1 be secretary of the board.

2 (3) One individual appointed by each of the following:
3 the President pro tempore of the Senate, the Minority Leader
4 of the Senate, the Majority Leader of the House of
5 Representatives and the Minority Leader of the House of
6 Representatives, all of whom shall have professionally
7 relevant experience and none of whom may be members of the
8 General Assembly or staff of members of the General Assembly.

9 (4) Seven individuals appointed by the Governor, one of
10 whom shall be a real estate development professional, four of
11 whom shall be from the biotechnology or biomedical community,
12 one of whom shall be a commercialization professional and one
13 of whom shall be a member of the Jonas Salk family or a Jonas
14 Salk family-designated representative, in either case with
15 respect to the latter member, chosen from a list of at least
16 three people provided by the Jonas Salk family to the
17 Governor.

18 (5) Four individuals appointed by the Governor, all of
19 whom shall be representatives of an academic medical center,
20 a college or a university located in this Commonwealth. These
21 members shall be nonvoting.

22 (b) Compensation.--Members of the board shall serve without
23 compensation but shall be reimbursed for actual and reasonable
24 expenses incurred in the performance of their official duties.

25 (c) Organization.--The members shall select from among
26 themselves such officers in addition to a chairperson and
27 secretary as they shall determine.

28 (d) Terms.--Members shall serve a term of two years from the
29 date of their appointment and until their respective successors
30 are duly appointed and qualified. Members shall be eligible for

1 reappointment.

2 (e) Meetings.--The board shall meet at the call of the
3 chairperson.

4 (f) Qualified majority vote.--The consent of a qualified
5 majority vote consisting of at least one gubernatorial appointee
6 and the four legislative appointees shall be necessary for the
7 board to take action.

8 (g) Fiduciary relationship.--The members of the board shall
9 stand in a fiduciary relationship with the Commonwealth as to
10 the moneys in the fund and investments of the board.

11 (h) Liability.--Members of the board shall not be liable
12 personally on any obligations of the financing authority,
13 including the bonds of the financing authority.

14 (i) Conflict of interest.--The board shall establish
15 conflict of interest policies and procedures to which members
16 shall adhere.

17 (j) Initial appointment and vacancy.--Appointing authorities
18 shall appoint initial members to the board within 30 days of the
19 effective date of this chapter. Whenever a vacancy occurs on the
20 board, the appointing authority shall appoint a successor member
21 within 30 days of the vacancy.

22 (k) Records and meetings.--The board shall keep a record of
23 its proceedings which shall be open to inspection by the public.
24 Meetings of the board shall be conducted under 65 Pa.C.S. Ch. 7
25 (relating to open meetings).

26 (l) Staff and legal representation.--The department shall
27 provide administrative staff to the board and shall provide the
28 board with legal representation. The board shall reimburse, from
29 interest earned on moneys in the fund, the department for the
30 cost of providing these services to the board.

1 (m) Powers.--The board shall have the power and may do any
2 appropriate act necessary or convenient to carry out and
3 effectuate the purposes of this chapter. The board shall also
4 have the following powers and authority:

5 (1) To enter into contracts with investment advisors,
6 fund managers and other consultants and advisors as the board
7 deems necessary to efficiently and competently carry out the
8 provisions of this chapter.

9 (2) To solicit and accept funds from all sources.

10 (3) To form independent advisory boards and panels.

11 (4) To manage, invest and reinvest money in the fund
12 subject to the exercise of that degree of judgment, skill and
13 care under the circumstances then prevailing that persons of
14 prudence, discretion and intelligence who are familiar with
15 investment matters exercise in the management of their own
16 affairs, not in regard to speculation but in regard to
17 permanent disposition of the funds, considering the probable
18 income to be derived from the investments and the probable
19 safety of their capital.

20 (5) To hold, purchase, sell, lend, assign, transfer or
21 dispose of any securities and investments, including equity
22 securities, in which money in the fund or the accounts has
23 been invested, the proceeds of the investments, including any
24 directed commissions that have accrued to the benefit of the
25 fund as a consequence of the investments, and money belonging
26 to the fund subject to the standard of prudence in this
27 section.

28 (N) INTENT.--IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT <—
29 THE BOARD PROMOTE AND ENSURE DIVERSITY IN THE AWARDING OF GRANTS
30 UNDER THE PROGRAMS AUTHORIZED UNDER THIS ACT. THE BOARD SHALL

1 WORK TO ENHANCE THE REPRESENTATION OF DIVERSE GROUPS IN THE
2 AWARDING OF CONTRACTS AND GRANTS.

3 (1) THE BOARD IS AUTHORIZED TO INVESTIGATE INVESTMENT
4 ADVISORS, FUND MANAGERS, OTHER CONSULTANTS AND THE AWARDING
5 OF GRANTS TO ASCERTAIN WHETHER EFFECTIVE AND MEANINGFUL
6 ACTION HAS BEEN TAKEN OR WILL BE TAKEN TO ENHANCE THE
7 REPRESENTATION OF DIVERSE GROUPS IN THE AWARDING OF CONTRACTS
8 AND GRANTS.

9 (2) THE BOARD SHALL WORK TO PROMOTE AND ENSURE THAT IT
10 AND ALL CONTRACTORS AND GRANT AWARDEES AFFORD EQUAL
11 EMPLOYMENT OPPORTUNITY TO ALL PROSPECTIVE EMPLOYEES TO BE
12 EMPLOYED AND TO ALL ACTUAL EMPLOYEES EMPLOYED BY THE BOARD,
13 CONTRACTORS AND GRANTEEES.

14 (3) THE BOARD SHALL PREPARE AN ANNUAL REPORT TO THE
15 GENERAL ASSEMBLY ON THE ACTIVITIES UNDERTAKEN BY THE BOARD,
16 ITS CONTRACTORS AND AWARDS TO GRANTEEES TO PROMOTE DIVERSITY
17 AND ACCORD EQUAL EMPLOYMENT OPPORTUNITIES IN ACCORDANCE WITH
18 THIS SUBSECTION.

19 Section 2904. Jonas Salk Legacy Fund.

20 (a) Establishment.--A special fund is hereby established
21 within the State Treasury to be known as the Jonas Salk Legacy
22 Fund. The following shall be deposited into the fund:

23 (1) Proceeds of the sale or assignment of the CURE
24 receipts to the financing authority received by the
25 Commonwealth.

26 (2) Federal funds.

27 (3) Private funds, including funds from foundations,
28 donor funds and donor-directed funds, contributed to the
29 fund.

30 (4) Moneys contributed to the fund by Commonwealth

1 agencies.

2 (5) Any other moneys appropriated by the General
3 Assembly to the fund.

4 (6) Interest earned on moneys in the fund.

5 (b) Use of funds.--Moneys in the fund shall be used for the
6 grants to be awarded under the program, for the purposes set
7 forth in this chapter to pay reasonable fees to investment
8 advisors or fund managers engaged by the board pursuant to
9 section 2903 and to pay the expenses of the board in the
10 administration of the program. Moneys in the fund are hereby
11 appropriated, upon approval of the Governor, for the purposes
12 set forth in this chapter.

13 Section 2905. Sale or assignment of CURE receipts.

14 (a) Sale or assignment.--The Commonwealth is authorized,
15 with the approval of the Governor, to sell absolutely or assign
16 irrevocably, in whole or in part, to the financing authority the
17 Commonwealth's right, title and interest in and to the MSA
18 payments to the extent of the amount of the CURE receipts.
19 References in this section to the CURE receipts shall be deemed
20 to refer to the MSA payments to the extent of the amount of the
21 CURE receipts. In order to effectuate the sale or assignment,
22 the Commonwealth shall have the authority to do all of the
23 following:

24 (1) Execute sales or irrevocable assignments of all or a
25 portion of the Commonwealth's right, title and interest in
26 and to the MSA payments to the extent of the amount of the
27 CURE receipts. If sales are utilized, each sale shall be
28 deemed a true sale of property and shall be evidenced by a
29 purchase and sale agreement and such other documentation as
30 the financing authority deems necessary or desirable.

1 (2) Effectuate the sale or assignment without regard to
2 existing laws governing other property sales or financial
3 transactions by the Commonwealth.

4 (3) Enter into covenants with the financing authority
5 regarding the use of proceeds of the sale or assignment so as
6 to protect continuing tax exemption on the financing
7 authority's tax-exempt bonds, if applicable.

8 (4) Exercise such powers in accordance with such terms
9 and conditions and documentation as the financing authority
10 deems necessary or desirable.

11 (b) Deposit of proceeds.--Proceeds received by the
12 Commonwealth from the sale or assignment of CURE receipts shall
13 be deposited into the fund.

14 (c) Payments to financing authority.--Notwithstanding any
15 provision of law to the contrary, if the Commonwealth sells or
16 assigns, in whole or in part, to the financing authority the
17 Commonwealth's right, title and interest in and to the CURE
18 receipts, then to the extent of the CURE receipts sold or
19 assigned, all moneys that otherwise would be required to be paid
20 to the DOH for CURE under section 306, and all rights to receive
21 those payments whether now existing or hereafter coming into
22 existence, shall be paid directly by the State Treasurer to the
23 financing authority or its trustee immediately upon receipt by
24 the Commonwealth, deposited into a trust fund established by the
25 financing authority and pledged to pay the CURE receipts bonds
26 until all CURE receipts bonds, together with the interest on
27 those bonds, and all obligations of the financing authority
28 relating to the CURE receipts bonds are fully paid or provided
29 for. The authority of the State Treasurer to make payments to
30 the financing authority as provided in this subsection shall

1 constitute a continuing appropriation, and funds to be paid
2 pursuant to this subsection shall not lapse. All CURE receipts
3 sold or assigned to the financing authority at all times shall
4 be property of the financing authority and shall not be property
5 of the Commonwealth.

6 (d) Bankruptcy.--The financing authority shall not have the
7 right to commence a bankruptcy case under 11 U.S.C. Ch. 9
8 (relating to adjustment of debts of a municipality) so long as
9 any CURE bonds are outstanding.

10 Section 2906. CURE receipt bonds.

11 (a) Authorization.--The financing authority may issue CURE
12 receipts bonds in the manner provided in this chapter and in the
13 Economic Development Financing Law for the issuance of financing
14 authority indebtedness. In connection with the issuance of CURE
15 receipts bonds, and in order to secure the payment of the CURE
16 receipts bonds, the financing authority, in addition to its
17 other powers set forth in this chapter, shall have all powers
18 granted to it in this chapter and under the Economic Development
19 Financing Law.

20 (b) Taxability.--CURE receipts bonds may be taxable or tax-
21 exempt bonds.

22 (c) Use of proceeds.--The proceeds of an issue of CURE
23 receipts bonds shall be used to pay the purchase price for the
24 CURE receipts; to fund any required reserves, including debt
25 service reserves; to capitalize interest; and to pay costs of
26 issuance, including, but not limited to, costs of obtaining
27 credit enhancement for the CURE receipts bonds.

28 (d) Maturity.--CURE receipts bonds shall mature at such time
29 or times not exceeding 40 years from their respective dates of
30 original issue as the financing authority shall by resolution

1 determine.

2 (e) Sale.--CURE receipts bonds may be sold at public sale,
3 invited sale or private sale for the price or prices the
4 financing authority determines.

5 (f) Negotiable instruments.--CURE receipts bonds shall have
6 the qualities of negotiable instruments under 13 Pa.C.S.
7 (relating to commercial code).

8 (g) Refunding.--Subject to the provisions of this chapter
9 and the terms of CURE receipts bonds issued in accordance with
10 this chapter, the financing authority may refund any outstanding
11 CURE receipts bonds whether the debt represents principal or
12 interest, in whole or in part, at any time. For the purposes of
13 this subsection, the term "refund" and its variations means the
14 issuance and sale of obligations the proceeds of which are used
15 or are to be used for the payment or redemption of outstanding
16 obligations upon or prior to maturity.

17 (h) Interest rate management.--With respect to bonds, the
18 financing authority may negotiate and enter into interest rate
19 exchange agreements, interest rate cap agreements, collar
20 agreements, corridor agreements, ceiling agreements, floor
21 agreements, forward agreements, float agreements and other
22 similar agreements, which, in the judgment of the financing
23 authority, will assist the financing authority in managing the
24 interest costs of the financing authority.

25 (i) No debt or liability of Commonwealth.--

26 (1) CURE receipts bonds issued under this chapter shall
27 not be a debt or liability of the Commonwealth or any
28 political subdivision and shall not create or constitute any
29 indebtedness, liability or obligation of the Commonwealth or
30 any political subdivision, legal, moral or otherwise.

1 (2) CURE receipts bonds shall be payable solely from the
2 following:

3 (i) The proceeds of CURE receipts bonds.

4 (ii) The CURE receipts sold or assigned to the
5 financing authority.

6 (3) All CURE receipts bonds shall contain on their faces
7 a statement to the effect that:

8 (i) The financing authority is obligated to pay the
9 principal of or the interest on the CURE receipts bonds
10 only from its revenues, receipts or funds pledged or
11 available for their payment as authorized in this
12 chapter.

13 (ii) Neither the Commonwealth nor any political
14 subdivision is obligated to pay the principal or
15 interest.

16 (iii) Neither the faith and credit nor the taxing
17 power of the Commonwealth or any political subdivision is
18 pledged to the payment of the principal of or the
19 interest on the CURE receipts bonds.

20 (j) Nonliability.--No financing authority board member,
21 employee of the financing authority or person executing the CURE
22 receipts bonds shall be liable personally on any CURE receipts
23 bonds by reason of their issuance. CURE receipts bonds shall
24 contain a statement of the limitation set forth in this
25 subsection.

26 (k) CURE receipts bonds deemed valid.--Any CURE receipts
27 bond reciting in substance that it has been issued by the
28 financing authority to accomplish the public purposes of this
29 chapter shall be conclusively deemed in any suit, action or
30 proceeding involving the validity or enforceability of the CURE

1 receipts bonds or security for the bonds to have been issued for
2 such purpose.

3 (1) Notice and challenges.--

4 (1) The financing authority shall file a copy of any
5 resolution authorizing the issuance of CURE receipts bonds
6 adopted by it for public inspection in its office and in the
7 office of the secretary of the department, and shall publish
8 in the Pennsylvania Bulletin a notice stating the fact and
9 date of the adoption, the places where the resolution has
10 been so filed for public inspection, the date of publication
11 of the notice and that any action or proceeding of any kind
12 or nature in any court questioning the validity or proper
13 authorization of CURE receipts bonds provided for by the
14 resolution, or the validity of any covenants, agreements or
15 contract provided for by such resolution, shall be commenced
16 within ten days after the publication of the notice.

17 (2) Upon publication of notice in the Pennsylvania
18 Bulletin and if no action or proceeding questioning the
19 validity or proper authorization of CURE receipts bonds or
20 the validity of any covenants, agreements or contracts
21 provided for by the resolution shall be commenced within ten
22 days after the publication of the notice in the Pennsylvania
23 Bulletin, then all residents, taxpayers and all other persons
24 forever shall be barred and foreclosed from instituting or
25 commencing any action or proceeding in any court or pleading
26 any defense to any action or proceedings, questioning the
27 validity or proper authorization of such CURE receipts bonds
28 or the validity of the covenants, agreements or contracts,
29 and the CURE receipts bonds, covenants, agreements and
30 contracts shall be conclusively deemed to be valid and

1 binding obligations in accordance with their terms and tenor.

2 (3) After the issuance of CURE receipts bonds, all CURE
3 receipts bonds shall be conclusively presumed to be fully
4 authorized and issued by all the laws of this Commonwealth,
5 and any person shall be estopped from questioning their sale,
6 execution or delivery by the financing authority.

7 (m) Contracts with obligees of financing authority.--Except
8 as otherwise provided in any resolution of the financing
9 authority authorizing or awarding CURE receipt bonds, the terms
10 of the CURE receipts bonds and of this chapter in effect when
11 the CURE receipts bonds were authorized shall constitute a
12 contract between the financing authority and obligees of the
13 financing authority, subject to modification in such manner as
14 the resolution, the trust indenture securing the CURE receipts
15 bonds or the CURE receipts bonds shall provide.

16 (n) Commonwealth pledge; limitation of powers.--

17 (1) The Commonwealth pledges to and agrees with each
18 obligee of the financing authority that the Commonwealth will
19 not limit or alter the rights and powers vested in the
20 financing authority or otherwise created by this chapter in
21 any manner inconsistent with the obligations of the financing
22 authority to its obligees until all CURE receipts bonds at
23 any time issued, together with the interest on the CURE
24 receipts bonds, are fully paid and discharged.

25 (2) If and to the extent that the Commonwealth sells or
26 assigns CURE receipts pursuant to section 2905, the
27 Commonwealth pledges to and agrees with each obligee of the
28 financing authority that the Commonwealth will not abolish or
29 reduce the financing authority's rights to receive amounts
30 set forth in section 2905(c), including, but not limited to,

1 abolishing or reducing the amounts required to be transferred
2 to the DOH under section 306.

3 (o) CURE receipts bonds to be legal investments.--

4 (1) CURE receipts bonds issued pursuant to this chapter
5 are securities in which all of the following may properly and
6 legally invest funds, including capital, deposits or other
7 funds in their control or belonging to them:

8 (i) Government agencies.

9 (ii) Insurance companies.

10 (iii) Trust companies.

11 (iv) Banking associations, banking corporations and
12 savings banks.

13 (v) Investment companies.

14 (vi) Executors, trustees and other fiduciaries.

15 (vii) Trustees of any retirement, pension or annuity
16 fund or system of the Commonwealth.

17 (2) CURE receipts bonds issued by the financing
18 authority are securities that may properly and legally be
19 deposited with and received by a government agency for any
20 purpose for which the deposit of bonds or other obligations
21 of the Commonwealth are authorized by law.

22 (p) Additional rights.--An obligee of the financing
23 authority shall have the right in addition to all other rights
24 that may be conferred on the obligee, subject only to any
25 contractual restrictions binding upon the obligee:

26 (1) By mandamus, suit, action or proceeding at law or in
27 equity, to compel the financing authority and the members,
28 officers, agents or employees of the financing authority to
29 perform each and every term, provision and covenant contained
30 in any bond or contract of the financing authority with or

1 for the benefit of the obligee and to require the carrying
2 out of any or all covenants and agreements of the financing
3 authority and the fulfillment of all duties imposed upon the
4 financing authority by this chapter.

5 (2) By proceeding in equity, to obtain an injunction
6 against any acts or things that may be unlawful or the
7 violation of any of the rights of the obligee of the
8 financing authority.

9 (3) To require the financing authority to account as if
10 it were the trustee of an express trust for the obligees of
11 the financing authority for any pledged revenues received.

12 (4) To enforce a pledge of or security interest in
13 revenues of the financing authority securing payment of the
14 CURE receipts bonds against all Commonwealth and local public
15 officials in possession of any revenues at any time, which
16 revenues may be collected directly from such officials upon
17 notice by the obligee of the financing authority or a trustee
18 for application to the payment of the CURE receipts bonds as
19 and when due for deposits in any sinking, bond or debt
20 service fund established with the trustee at the times and in
21 the amounts specified in the CURE receipts bonds or the
22 resolution or indenture or trust agreement securing the CURE
23 receipts bonds. Any Commonwealth or local public official in
24 possession of any revenues shall make payment against receipt
25 and shall thereby be discharged from any further liability or
26 responsibility for the revenues. If the payment is to an
27 obligee of the financing authority, it shall be made against
28 surrender of the CURE receipts bonds to the payor for
29 delivery to the financing authority in the case of payment in
30 full, otherwise, it shall be made against production of the

1 CURE receipts bonds for notation on the bonds of the amount
2 of the payment. The provisions of this section with respect
3 to the enforceability and collection of revenues that secure
4 CURE receipts bonds of the financing authority shall
5 supersede any contrary or inconsistent statutory provision or
6 rule of law.

7 (5) This subsection shall be construed and applied to
8 fulfill the legislative purpose of clarifying and
9 facilitating the financing of the financing authority by
10 assuring to the obligees of the financing authority the full
11 and immediate benefit of the security for the financing
12 without delay, diminution or interference based on any
13 statute, decision, ordinance or administrative rule or
14 practice.

15 (q) Validity of pledge.--Any pledge or grant of a lien on or
16 security interest in CURE receipts made by the financing
17 authority shall be valid and binding from the time when the
18 pledge is made. The CURE receipts so pledged and thereafter
19 received by the financing authority shall immediately be subject
20 to the lien of any such pledge, lien or security interest
21 without any physical delivery of the CURE receipts or further
22 act. The lien of the pledge or security interest shall be valid
23 and binding as against all parties having claims of any kind in
24 tort, contract or otherwise against the financing authority
25 irrespective of whether the parties have notice of any such
26 pledge. Neither the resolution nor any other instrument of the
27 financing authority by which a pledge, lien or security interest
28 is created need be recorded or filed to perfect such pledge or
29 security interest.

30 (r) Security interest in funds and accounts.--Any moneys

1 deposited in any fund created by the financing authority pledged
2 to be used to pay debt service on CURE receipts bonds of the
3 financing authority, including any sinking fund or debt service
4 reserve fund, and all investments and proceeds of investments
5 thereof, shall, without further action or filing, be subjected
6 to a perfected security interest for the obligees of the
7 financing authority with respect to the CURE receipts bonds
8 until such moneys or investments shall be disbursed in
9 accordance with this chapter and subject to the terms of any
10 trust indenture or other contract between the financing
11 authority and the obligees of the financing authority with
12 respect to the CURE receipts bonds.

13 (s) Exemption from State and local taxation.--The
14 effectuation of the purposes of the financing authority is for
15 the benefit of the people of this Commonwealth, for the increase
16 of commerce and prosperity and for the improvement of health,
17 safety, welfare and living conditions. CURE receipts bonds
18 issued by the financing authority, the transfer and the income
19 from the CURE receipts bonds, including profit made on their
20 sale, are free from State and local taxation within this
21 Commonwealth. This exclusion under this subsection shall not
22 extend to gift, estate, succession or inheritance taxes or any
23 other taxes not levied directly on the CURE receipts bonds,
24 their transfer, the income from the CURE receipts bonds or the
25 realization of profits on their sale.

26 (t) Exemptions from Federal taxation.--

27 (1) If the CURE receipts bonds issued by the financing
28 authority are tax-exempt bonds for which Federal law requires
29 a private activity volume cap allocation, the department may
30 issue an allocation upon receipt of a written request by the

1 financing authority. An allocation must be issued by the
2 department prior to the approval of the resolution
3 authorizing the issuance of the bonds by the financing
4 authority.

5 (2) If gubernatorial approval is required by Federal or
6 State law, the Governor may approve the issuance of the CURE
7 receipts bonds by the financing authority upon receipt of
8 written request for approval from the financing authority.

9 The written request must state all of the following:

10 (i) The financing authority has conducted a public
11 hearing, with appropriate public notice, concerning the
12 purposes for which the bonds are to be issued.

13 (ii) A description of the project or projects that
14 will benefit from the grants being funded by the bonds.

15 (iii) A description of the grant or grants awarded
16 for the project or projects.

17 (iv) A summary of the comments made and questions
18 posed at the public hearing.

19 (u) Rights and remedies of obligees.--The rights and
20 remedies conferred upon or granted to obligees of the financing
21 authority pursuant to this chapter shall be in addition to and
22 not in limitation of rights and remedies lawfully granted to
23 obligees of the authority by resolution providing for the
24 issuance of bonds or by any trust agreement or another agreement
25 under which the CURE receipts bonds may be issued or secured.

26 Section 7. This act shall take effect immediately.