

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 800 Session of
2007

INTRODUCED BY CORMAN, WONDERLING, A. WILLIAMS, EICHELBERGER,
TOMLINSON, PIPPY, O'PAKE, ROBBINS, BRUBAKER, ORIE AND EARLL,
MAY 8, 2007

REFERRED TO FINANCE, MAY 8, 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," adding
14 definitions; further providing for the Health Venture
15 Investment Account; establishing the Biotechnology
16 Commercialization Account; further providing for the
17 investment of fund and accounts; providing for authorized
18 investment for the Biotechnology Commercialization Account;
19 and further providing for use of the Tobacco Settlement Fund
20 and for regional biotechnology research centers.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

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

26 Section 302. Definitions.

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

4 "Accounts." The Health Endowment Account for Long-Term Hope
5 established in section 303(b) [and], the Health Venture
6 Investment Account established in section 303(c)[.] and the
7 Biotechnology Commercialization Account established in section
8 303(d).

9 "Board." The Tobacco Settlement Investment Board established
10 in section 304(a).

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

25 Section 303. Establishment of special fund and account.

26 (a) Tobacco Settlement Fund.--There is hereby established a
27 special fund known as the Tobacco Settlement Fund. Except as
28 provided in subsection (b), all payments received by the
29 Commonwealth pursuant to the Master Settlement Agreement shall
30 be deposited by the Treasury Department in the fund.

(b) Health Account.--There is hereby established within the fund the Health Endowment Account for Long-Term Hope. The following amounts shall be deposited by the Treasury Department into the account:

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

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

(3) Earnings derived from the investment of the money in the fund after deduction of investment expenses, including such earnings as may have accrued prior to the effective date of this chapter.

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

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

(c) Health Venture Investment Account.--There is hereby established within the fund the Health Venture Investment Account. Money received as a result of investments from the Health Venture Investment Account shall be deposited into the Health Venture Investment Account.

(d) Biotechnology Commercialization Account.--There is hereby established within the fund the Biotechnology Commercialization Account.

Section 2. Section 305(f) and (g) of the act are amended and the section is amended by adding a subsection to read:

Section 305. Investment of fund and accounts.

* * *

(f) Authorized investment vehicles for the Health Venture

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

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

- 26 (1) Each general partner must:
- 27 (i) contribute 2% of the aggregate committee capital
28 as a general partner; and
- 29 (ii) subordinate 5% of the board's contribution in
30 terms of the distribution schedule, putting the general

1 partner in a first loss position with respect to the
2 board.

3 (2) The partnership must provide a preferred return of
4 no less than 5% to all limited partners.

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

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

13 (5) The board must be reimbursed for expenses for
14 attending limited partner advisory/valuation committee
15 meetings and partnership annual meetings.

16 (6) The partnership must issue to the board audited
17 financial statements on the basis of Generally Accepted
18 Accounting Principles.

19 (g.1) Authorized investment for Biotechnology
20 Commercialization Account.--The department may invest the money
21 in the Biotechnology Commercialization Account in investments in
22 or grants to the regional biotechnology research centers
23 established under Chapter 17 to support commercialization
24 activities in the respective region of each center which meet
25 the standard of prudence set forth in subsection (a).

26 * * *

27 Section 3. Section 306 of the act is amended to read:

28 Section 306. Use of Tobacco Settlement Fund.

29 (a) Annual report.--The Governor shall report on the fund in
30 the annual budget which shall include the amounts appropriated

1 to each program.

2 (b) Appropriations.--

3 (1) The General Assembly hereby appropriates funds in
4 the fund in accordance with the following percentages based
5 on actual funds received in each year or upon receipt of the
6 final annual payment:

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

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

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

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

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

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

27 (vii) [Eight] Four percent for the expansion of the
28 PACENET program pursuant to Chapter 23.

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

1 (ix) Two percent for deposit into the Biotechnology
2 Commercialization Account pursuant to this chapter for
3 commercialization activities.

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

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

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

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

17 (3) Lapses from moneys provided for health care,
18 biotechnology or any other health-related investments shall
19 be reallocated to the Health Venture Investment Account for
20 use in succeeding years.

21 (4) Lapses from moneys provided for commercialization
22 activities shall be reallocated to the Biotechnology
23 Commercialization Account for use in succeeding years.

24 Section 4. Section 1702 of the act is amended by adding
25 definitions 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.

6 * * *

7 "Commercialization activity." Any activity that assists a
8 for-profit or not for-profit bioscience institution or
9 organization in the jurisdiction of a regional biotechnology
10 research center in the testing, production and licensing or sale
11 of a bioscience product or leads to the testing, the access or
12 creation of markets for the production, licensing or sale of a
13 bioscience product. The term includes, but is not limited to,
14 legal and business consulting services and expenses, assessing
15 the patentability of bioscience products, obtaining patent
16 protection for such bioscience products in the United States and
17 internationally, testing and marketing activities for bioscience
18 products and negotiating licensing or commercialization
19 agreements with licenses as well as development of new
20 technology transfer programs.

21 * * *

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

25 (a) Establishment of centers.--The department, in
26 consultation with the Department of Health, shall establish
27 three regional biotechnology research centers to facilitate
28 research and commercialization activity through the sharing of
29 funds and infrastructure.

30 * * *

1 (i.1) Application for commercialization activities.--Each
2 regional biotechnology research center created under Chapter 17,
3 acting with the approval of its board of directors, shall submit
4 an application to the department requesting funding for
5 commercialization activities in its respective region. Each
6 application shall be submitted based on a five-year proposal for
7 funding. Prior to the conclusion of the five-year term, the
8 regional biotechnology research center must reapply for the next
9 five-year term. The application shall include the proposed
10 amount of money requested, the types of commercialization
11 activities to be funded, the process for identifying the
12 commercialization activities to be funded and the investment
13 vehicle or vehicles to support the commercialization activities,
14 which shall include a proposed return to the Health Endowment
15 Account as contemplated by subsection (g)(3). The department may
16 request any other information deemed necessary related to the
17 application by the centers. The board may delegate to the
18 department administrative oversight of the activities of the
19 research centers.

20 (j) Review and report.--

21 (1) Each regional biotechnology research center shall be
22 subject to an annual performance review by the department.

23 (2) Each regional biotechnology research center shall,
24 by November 30, 2002, and annually thereafter, prepare and
25 submit a report to the department, the Department of Health,
26 the chair and minority chair of the Appropriations Committee
27 of the Senate, the chair and minority chair of the
28 Appropriations Committee of the House of Representatives, the
29 chair and minority chair of the Community and Economic
30 Development Committee of the Senate and the chair and

1 minority chair of the Commerce and Economic Development
2 Committee of the House of Representatives. This report shall
3 be in a form and manner developed by the department working
4 in cooperation with the Department of Health and shall
5 include the following:

6 (i) The current members of the board of directors
7 for the research center.

8 (ii) A description of the research facilities,
9 including space and equipment.

10 (iii) The research center's current policies for the
11 management and development of intellectual property and
12 ownership of inventions and products created during the
13 course of research conducted through the center.

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

16 (v) A listing of all organizations and for-profit
17 and nonprofit institutions utilizing the services of the
18 research center during the prior year.

19 (vi) A listing of any licenses or other contractual
20 obligations in effect or anticipated for the intellectual
21 property developed at the research center during the
22 prior year.

23 (vii) A listing of any inventions, any patent
24 applications or patents issued, any products or other
25 intellectual property developed as a result of research
26 conducted through the research center during the prior
27 year.

28 (viii) A copy of the annual operating budget for the
29 year, with a listing of the sources of all funds,
30 including financial and in-kind services, personnel,

1 equipment or other material donations and contributions
2 by all parties involved in the research center; grants
3 obtained by or through the research center; Federal funds
4 leveraged and expenditures made, including infrastructure
5 expenditures; and administrative and staffing costs.

6 (ix) The following as relates to commercialization
7 activities:

8 (A) A list of commercialization activities
9 supported by a center in the prior year to enter or
10 develop markets for inventions, patents issued,
11 products or other intellectual property.

12 (B) The amount of moneys expended by each for-
13 profit and nonprofit institution and organization in
14 the preceding year on commercialization activities
15 supported by a center and the amount of any return on
16 investment to the center from those activities.

17 (C) The amount of moneys each for-profit and
18 nonprofit institution and organization projects to
19 spend on commercialization activity supported by a
20 center in the current year and the return on
21 investment to the center projected from that
22 activity.

23 (D) The name of any organization within or
24 outside this Commonwealth that has committed funding
25 to each for-profit and nonprofit institution and
26 organization in the current year for
27 commercialization activities supported by a center
28 and the type and amount of that funding.

29 (E) A list of potential markets for the
30 bioscience product supported by a center and any and

1 all target populations that could benefit from the
2 commercialization activity.

3 (F) Any other information deemed necessary by
4 the board related to commercialization activities
5 supported by a center.

6 Section 6. This act shall take effect in 60 days.