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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 800**      Session of  
2007

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

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REFERRED TO FINANCE, MAY 8, 2007

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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.

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

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

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

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

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

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

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

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

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

28 Section 305. Investment of fund and accounts.

29 \* \* \*

30 (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.