

SENATE NO. 262

AN ACT PROVIDING FOR THE INVESTMENT IN ADVANCED TECHNOLOGIES IN HEALTHCARE TO STIMULATE JOB CREATION, ECONOMIC OPPORTUNITY, AND QUALITY HEALTH CARE IN THE COMMONWEALTH

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Creation of Massachusetts Advanced Technologies in Healthcare Trust Fund

2 Notwithstanding the provisions of any general or special law to the contrary, the comptroller shall
3 transfer, effective July 31, 2009, the amount of \$10,000,000 from the Tobacco Settlement Fund, as
4 established by section 2XX of chapter 29 of the General Laws, to the Massachusetts Technology
5 Park Corporation, established pursuant to Chapter 40J of the General Laws, for the creation of the
6 Massachusetts Advanced Technologies in Healthcare Trust Fund, established pursuant to section 4F
7 of Chapter 40J of the General Laws.

8 SECTION 2. Administration of Massachusetts Advanced Technologies in Healthcare Trust Fund

9 Chapter 40J of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by
10 inserting after section 4E the following new section:-

11 Section 4F. (a) There is hereby established and set up on the books of the corporation a
12 separate trust fund to be known as the Massachusetts Advanced Technologies in Healthcare Trust
13 Fund, hereinafter referred to as the fund. The corporation shall hold the fund in an account or
14 accounts separate from the other funds administered by the corporation pursuant to those provisions
15 of the second and third paragraphs of section 5 as they apply to the center fund in the corporation,

16 but which otherwise shall apply to the fund, and the provisions of section 4E, as they apply to the
17 renewable energy trust fund. There shall be credited to the fund any income derived from the
18 investment of amounts credited to the fund, and from any royalties generated as a result of any
19 awards of monies from the fund. All such amounts credited to the fund shall be held in trust and
20 used solely for activities and expenditures consistent with the public purpose of the fund as set forth
21 in subsection (b) of this section; provided, however, that any monies that remain in the fund on the
22 fifth anniversary of the enactment of this act and which have not been committed on a binding basis
23 for expenditure, as well as any amounts that are received by the corporation after such anniversary
24 date and that otherwise would have been credited to the fund pursuant to this subsection, shall be
25 returned promptly to the from the Tobacco Settlement Fund.

26 (b) The board may draw upon the fund for the public purpose of supporting the identification,
27 development, refinement, use and application of advanced technologies in healthcare by institutions
28 and companies located in the commonwealth, including but not limited to the areas of biomedical
29 research and education, health care delivery, medical devices, biotechnology, pharmaceuticals,
30 medical error reduction systems and information technology (including but not limited to the
31 development of the so-called bio-grid), in order to generate the maximum economic and public
32 health and safety benefits over time to the citizens and economy of the commonwealth, including
33 but not limited to lowering of healthcare costs and improving healthcare quality.

34 (c) Public interests to be advanced through the board's actions shall include, but not be limited to,
35 the following:

36 (i) the development, increased use, and affordability of advanced technologies in healthcare
37 in the commonwealth;

- 38 (ii) the protection and improvement of the health of the citizens of the commonwealth
39 through the provision of advanced technologies in healthcare on an affordable basis, and
40 in a manner that enhances the health care delivery system and reduces overall healthcare
41 costs,
- 42 (iii) the delivery to all citizens of the commonwealth of as many benefits as possible created
43 as a result of fostering practical applications for technical advances in the biomedical
44 and related healthcare disciplines;
- 45 (iv) the creation of additional employment opportunities in the commonwealth through the
46 development and use of advanced technologies in healthcare;
- 47 (v) the stimulation of increased public and private sector investment in, and competitive
48 advantage for, advanced technologies in healthcare and related enterprises, institutions,
49 and projects in the commonwealth;
- 50 (vi) the implementation of medical error reduction systems including systems to reduce
51 medication errors;
- 52 (vii) the implementation and provision of telemedicine and telehealth services to home care
53 patients and assisted living or nursing home residents; and
- 54 (viii) the stimulation of entrepreneurial activities in these and related enterprises, institutions,
55 and projects.

56 (d) In furtherance of these and other public purposes and interests, the board may expend monies
57 from the fund to make grants (including matching grants), contracts, loans, equity investments,
58 financial or debt service obligation assistance, or to take any other actions, in such forms, under
59 such terms and conditions and pursuant to such selection procedures as the board deems appropriate
60 and otherwise in a manner consistent with good business practices; provided, however, that the

61 board shall generally employ a preference for competitive procurements which maximize the ability
62 to leverage the commitment of federal or private funds and/or seek a reasonable return to the
63 citizens of the commonwealth in the form of royalty payments or other income streams; provided,
64 further, that the board shall endeavor to leverage the full range of the resources, expertise, and
65 participation of other state and federal agencies and instrumentalities in the design and
66 implementation of programs under this section; and provided, further, that the board has determined
67 and incorporated into the minutes of its proceedings a finding that such actions are calculated to
68 advance the public purpose and public interests set forth in this section, including, but not limited
69 to, the following:

- 70 (i) the growth of the advanced technologies in healthcare industry;
- 71 (ii) the enhancement of the availability of advanced technologies in healthcare on an
72 affordable basis to citizens in the commonwealth;
- 73 (iii) public education and training regarding advanced technologies in healthcare;
- 74 (iv) product and market development of advanced technologies in healthcare;
- 75 (v) pilot and demonstration projects and other activities designed to increase the use
76 and affordability of advanced technologies in healthcare by citizens in the
77 commonwealth;
- 78 (vi) the provision of financing in support of the development and application of
79 related technologies at all levels, including, but not limited to, basic and applied
80 research and commercialization activities; and
- 81 (vii) the aggregate purchasing and reselling of devices and products, including but not
82 limited to computerized prescription order entry systems, where such aggregate
83 purchasing will reduce the costs of acquisition for health care providers.

84 In making investments, the board may consider the inclusion, where feasible, of potential
85 participation of the fund in the future economic growth of the institutions, organizations, and
86 enterprises in which the investment is made.

87 The board shall, in consultation with the advisory committee established pursuant to subsection (i)
88 and such other advisors and consultants as the board may from time to time retain, adopt a detailed
89 plan for the application of the fund in support of the design, implementation, evaluation, and
90 assessment of an advanced technologies in healthcare program for the commonwealth, subject to
91 periodic revision by the board, that ensures that the fund shall be employed to provide financial and
92 non-financial resources to overcome barriers facing emerging advanced technologies, and
93 institutions and projects developing or using such technologies, in a prudent manner consistent with
94 the public purposes and interests set forth in this section. Said plan, to the extent practicable, may
95 consist of at least four components:

- 96 (i) "product and market development" to establish a foundation for growth and expansion of
97 the commonwealth's advanced technologies in healthcare, and related enterprise,
98 institutions and projects, including pilot and demonstration projects, production
99 incentives, and other activities designed to increase the development, production, use
100 and affordability of advanced technologies in healthcare in the commonwealth;
- 101 (ii) "training and public information" to allow for the development and dissemination of
102 complete, objective, and timely information, analysis, and policy recommendations
103 related to the advancement of the public purposes and interests of the fund;
- 104 (iii) "investment" to support the growth and expansion of advanced technologies in
105 healthcare, and related enterprises, institutions, and projects; and

106 (iv) "research and development" within the commonwealth on advanced technologies in
107 healthcare matters.

108 Said plan shall specify the expenditure of such monies from the fund to each of these
109 component activities.

110 (e) Subject to the approval of the board, investment activity of monies from the fund may
111 consist of the following: (i) an equity fund, to provide risk capital to advanced technologies in
112 healthcare enterprises, institutions, and projects; (ii) a debt fund, to provide loans to advanced
113 technologies in healthcare enterprises, institutions, projects, intermediaries, providers, and
114 users; and (iii) a market growth assistance fund, to be used to attract private capital to the equity
115 and debt funds. To implement these investment activities, the corporation is hereby authorized
116 to retain, through a bid process, a public or private sector investment fund manager or
117 managers, who shall have prior knowledge and experience in fund management and possess
118 related skills in advanced technologies in healthcare and related technologies development, to
119 direct the investment activity described herein and to seek other fund co-sponsors to contribute
120 public and private capital from the commonwealth and other states; provided, however, that
121 such capital is appropriately segregated. Said manager or managers, subject to the approval of
122 the board, shall be authorized to retain necessary services and consultants to carry out the
123 purposes of the fund. Said manager or managers shall develop a business plan to guide
124 investment decisions, which shall be approved by the board prior to any expenditures from the
125 trust fund and which shall be consistent with the provisions of the plan for the fund as adopted
126 by the board.

127 (f) The use by said corporation of monies to implement the provisions of this section shall be
128 deemed to be an essential governmental function. Notwithstanding any general or special law to the
129 contrary, the provisions of clause (a) of section 4A of this chapter shall apply to expenditures made
130 from the funds established pursuant to sections 4E and 4F; provided, however, that no such
131 expenditure shall be deemed to involve a capital facility project; provided further, that no lease or
132 license executed in furtherance of the public purpose and interests of the fund shall exceed 99 years
133 in duration, and the duration and terms shall be developed in a manner consistent with good
134 business practices; and provided further, that the corporation shall take no action which contravenes
135 the commonwealth's reversionary interest in any of its real property.

136 (g) The provisions of clause (k) of section 4 of this chapter shall not apply to disbursements from
137 the fund. Subsection (l) of section 4E of chapter 40J of the General Laws, as inserted by section
138 183 of chapter 26 of the acts of 2003, is hereby amended by striking out the sixth sentence and
139 inserting in place thereof the following four sentences:- No payments shall be required from the
140 commonwealth pursuant to any such contract prior to the fiscal year ending June 30, 2005, and the
141 aggregate payments in any one fiscal year under all such contracts on account of the green power
142 premium shall not exceed \$5 million. The execution of the foregoing agreement between the
143 corporation and the commonwealth shall constitute compliance with the provisions of section 69 of
144 chapter 4 of the acts of 2003 without regard to the date of such agreement or the date of any such
145 transfer. Notwithstanding the provisions of any general or special law to the contrary, including
146 without limitation the second paragraph of subsection (d), (i) of section 4E, the corporation shall
147 undertake, in making any disbursement from the funds established pursuant to sections 4E and 4F
148 or taking any other action with respect to such funds, to comply with the dormant commerce clause,
149 so-called, of the constitution of the United States; and (ii) neither the time limits set forth in section

150 37 of chapter 62C for filing an application for abatement nor the doctrine of laches or any similar
151 doctrine shall apply to deny an application for abatement by or on behalf of an employee or former
152 employee of the corporation to the extent that such application for abatement is based upon an
153 overpayment of tax attributable to the corporation's contributions to the simplified employee
154 pension plan maintained by the corporation, but only to the extent that such contributions were
155 made in or with respect to taxable years of an employee beginning on or after January 1, 1988. Any
156 application for abatement described in the foregoing sentence shall be subject to the requirements
157 that govern applications for abatement generally, except as specifically set forth above.

158 (h) (1) The chairman of the board shall, from recommendations submitted jointly by the executive
159 director of the Massachusetts Technology Park Corporation and the executive director of the
160 Massachusetts Health and Educational Facilities Authority, appoint an advisory committee to assist
161 the corporation in matters related to the fund and in the implementation of the provisions of this
162 section. Said advisory committee shall include not more than 15 individuals with an interest in
163 matters related to the general purpose and activities of the fund and the knowledge and experience
164 in at least one of the following areas: patient safety and medical error reduction, biomedical
165 research and education, health care delivery, medical devices, biotechnology, pharmaceuticals,
166 information technology, or the concerns of health care providers or health care users. The board
167 shall consult with said advisory committee in discharging its obligations under this section.

168 (2) Advisory committee members shall serve without compensation, but each committee
169 member shall be entitled to reimbursement for actual and necessary expenses incurred in the
170 performance of official duties. The advisory committee shall meet at least four times in each year.

171 (3) The provisions of chapter two hundred and sixty-eight A shall apply to advisory committee
172 members; provided, however, that if the corporation proposes to purchase from, sell to, borrow
173 from, contract with, award monies from the fund to, or otherwise deal with any organization or
174 enterprise in which an advisory committee member is in any way interested or involved, such
175 interest or involvement must be disclosed by such member to the advisory committee and the board
176 in advance and recorded in the minutes of the proceedings of the corporation; and provided, further,
177 that no advisory committee member having such an interest or involvement may participate in any
178 decision relating to such organization or enterprise.

179 (i) The books and records of the corporation relative to expenditures and investments of monies
180 from the fund shall be subject to a biennial audit by the auditor of the commonwealth.

181 (j) Beginning with the fiscal year ending on June 30, 2004, on or by 15th day of each quarter of
182 each year, the board, in conjunction with the advisory committee, shall submit to the governor, the
183 house and senate committees on ways and means, the house and senate committees on science and
184 technology, the joint committee on commerce and labor and the joint committee on health care the
185 following: (1) a list of recipients of grants or other monies from the fund, together with the
186 associated amounts committed from the fund and the resultant amounts that will be leveraged from
187 federal and private sources, a detailed statement of the specific costs and benefits of the award, and
188 other material elements of the award, (2) a quarterly statement of cash inflows and outflows
189 detailing the sources and uses of funds, (3) a forecast of future payments based on current binding
190 obligations, and (4) a detailed breakdown of the purposes and amounts of administrative costs
191 charges to the fund.

192 SECTION 5. Restrictions on Directors Affiliated with Participating Businesses or Participating
193 Institutions

194 (a) Section 2 of Chapter 40J of the General Laws, as appearing in the 2002 Official Edition, is
195 hereby amended by inserting in the fourth line of the definition of “participating business” after the
196 words “section six” the words “or sections 4E or 4F.”

197 (b) Section 2 of Chapter 40J of the General Laws, as appearing in the 2002 Official Edition, is
198 hereby amended by inserting in the fourth line of the definition of “participating institution” after
199 the words “section six” the words “or sections 4E or 4F.”