

MEMORANDUM

To: *Senate Ways & Means Committee*
Margarita Prentice – Chair
Joseph Zarelli – Ranking Minority Member
Senate Labor, Commerce, Research & Development Committee
Jeanne Kohl-Welles – Chair
Linda Evans Parlette – Ranking Minority Member
House Appropriations Committee
Helen Sommers – Chair
Gary Alexander – Ranking Minority Member
House Technology, Energy & Communications Committee
Jeff Morris – Chair
Larry Crouse – Ranking Minority Member

Fr: Lee L. Huntsman, Executive Director, Life Sciences Discovery Fund

Date: December 1, 2005

Re: **Report to the Legislature: Potential for Royalty Income via the Life Sciences Discovery Fund**

Engrossed Second Substitute Senate Bill 5581, passed by the Legislature and signed by the Governor during the 2005 Regular Session, created the Life Sciences Discovery Fund Authority. A provision in the Bill states: “By December 1, 2005, the executive director of the life sciences discovery fund authority shall explore and make recommendations to the legislature regarding the potential for the state to receive royalty income and direct it to the higher education legacy trust fund.”

Initial Assessment

The Life Sciences Discovery Fund (LSDF) is in the early stages of development. The initial assessment of the desirability and practicality of attaching royalty income requirements to LSDF grants provided below is based on advice from knowledgeable observers, a preliminary scan of examples in other states, and a forecast of the kinds of support the LSDF is likely to provide. These observations strongly support the promise of the LSDF to enhance economic development in the life sciences, but they do not suggest that it will be possible to generate significant revenue from technology transfer. This assessment may change as the LSDF programs become better defined, and the Authority will continue to revisit the question of royalty payments as grant-making activity is designed.

Purpose of LSDF and Likely Programs

The LSDF has been created to “promote life sciences research to foster a preventive and predictive vision of the next generation of health-related innovations, to enhance the competitive position of Washington State in this vital sector of the economy, and to improve the quality and delivery of health care for the people of Washington.” It is expected that this purpose will be achieved by making grants to research institutions in the state. However, it seems certain that these grants will be largely focused on enhancing the ability of the institutions to compete for external support. In other words, the LSDF funds will be used to leverage new research grants or commercialization investments from non-state sources, not to provide the primary support for the research activity.

Practical Limitations and Advice from Experienced Observers

When institutions receive research grants from the federal government, foundations, or companies, they have to agree to established policies regarding the licensing of intellectual property and the

distribution of license payments. Over the years, those policies have evolved in response to the recognition that: a) the primary goal is to facilitate the movement of technology ideas out of institutions that do not have technology development as their central purpose; b) most technology transfer activities do not return significant royalties and cumulatively there isn't a great deal of money at stake; and c) many technology transfer deals prove to be complicated negotiations that are easily stifled by multiple partners and agreements. Finally, royalty agreements span several years during which many other parties have invested substantial resources to bring the resulting products to market (likely orders of magnitude more than the LSDF investment), creating significant accounting, oversight, and collection responsibilities. Consequently, nearly all funding agencies have decided to assign both the responsibility for and the returns from technology transfer to the institutions. This facilitates technology commercialization and the financial benefits, if any, are available to help the institutions pursue their missions.

Combining this national experience with the fact that the LSDF expects to be a catalyst, using relatively small amounts to leverage much larger support from non-state sources, it seems impractical for the Authority to collect a share of technology transfer revenues. Its share would be small in any case, and the complexities could be an impediment to successful transfer.

Advice from people experienced in this arena, both locally and nationally, confirms the idea that the LSDF might best assign its rights to the institutions rather than try to collect technology transfer revenues. The Bio21 Steering Committee, which created the proposal for the LSDF, was widely counseled that the Fund should not attempt to recover royalties from intellectual property that may result from the projects it supports. One national expert has observed that he is not aware of any program where state support of research institutions involves a return of technology transfer revenues to the state.

Conclusion and Caveats

Based on advice from experts, experience around the nation, and initial projections about LSDF operation, it appears that it will be neither practical nor desirable to require that a portion of technology transfer revenues be returned to the Fund or to the state. There are several caveats regarding this conclusion however: a) the Trustees will decide the policies of the Authority, and they have not yet considered this issue; b) conceivably the policy could be different for different programs developed by the Authority; and c) discussions with institutions and experience with Fund programs could lead to other ideas about the possibility of LSDF participation in technology transfer revenues. So, while it appears unwise to pursue such participation based on what we know at this point, the Authority will consider the issue as new programs are developed. However, based on the experience of like programs, Washington State can expect to receive a profitable return on its investment in the LSDF in the form of economic development, both in the research sector and in the life sciences industry.

Submitted by:

Lee L. Huntsman
Executive Director
Life Sciences Discovery Fund Authority
(206) 543 5333