S T A T E O F N E W Y O R K

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I N S E N A T E

January 13, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the New York state urban development corporation act and the public authorities law, in relation to creating the seed-NY investment fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 44 to read as follows:

S 44. THE SEED-NY INVESTMENT FUND. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT SHALL INDICATE ANOTHER OR DIFFERENT MEANING OR INTENT:

(A) "REGIONAL INVESTMENT FUND" SHALL MEAN A LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, A LIMITED LIABILITY COMPANY OR A NOT-FOR-PROFIT FUND UNDER EXPERIENCED PROFESSIONAL MANAGEMENT THAT IS FAMILIAR WITH SEED CAPITAL INVESTMENT, APPROPRIATE BUSINESS PRACTICES AND TECHNOLOGY-ORIENTED PRODUCTS AND SERVICES, AND FORMED FOR THE PURPOSE OF PROVIDING PRIVATE EQUITY TO TECHNOLOGY-BASED COMPANIES IN THEIR FORMATIVE STAGES, ENCOMPASSES AT LEAST TWO COUNTIES, AND INVESTS IN QUALIFIED ENTERPRISES LOCATED WITHIN NEW YORK STATE.

(B) "QUALIFIED ENTERPRISE" SHALL MEAN:

(I) A COMPANY OR A PROPOSED COMPANY THAT HAS OR WILL LOCATE ITS PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE, THAT IS, OR PROPOSES TO BE, ENGAGED IN THIS STATE IN RESEARCH AND DEVELOPMENT OR HIGH TECHNOLOGY MANUFACTURING, AND THAT DEMONSTRATES THE POTENTIAL FOR SUBSTANTIAL GROWTH AND JOB DEVELOPMENT IN AN EMERGING TECHNOLOGY FIELD AS DEFINED IN SECTION 3102-E OF THE PUBLIC AUTHORITIES LAW OR AS ADOPTED BY THE BOARD; AND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(II) IS FORMULATING, HAS FORMULATED, OR IS EXECUTING A DETAILED BUSINESS PLAN FOR PROOF-OF-CONCEPT OR INITIAL PRODUCT COMMERCIALIZATION.

(C) "SEED CAPITAL" SHALL MEAN FINANCIAL ASSISTANCE TO A QUALIFIED ENTERPRISE, IN RETURN FOR EQUITY OR DEBT SECURITIES OR ROYALTIES.

2. INVESTMENTS IN REGIONAL INVESTMENT FUNDS. (A) THE CORPORATION SHALL MAKE INVESTMENTS TO ENCOURAGE AND FACILITATE THE CREATION OR EXPANSION OF REGIONAL INVESTMENT FUNDS THAT SERVE THE PURPOSES OF THIS SECTION. THE BOARD OF DIRECTORS SHALL ADOPT CRITERIA AND GUIDELINES GOVERNING SUCH INVESTMENTS, WHICH SHALL REQUIRE THAT:

(I) THERE EXISTS A NEED FOR SEED CAPITAL IN THE REGION SERVED OR TO BE SERVED BY A REGIONAL INVESTMENT FUND;

(II) SUPPORT FOR A REGIONAL INVESTMENT FUND EXISTS FROM LOCAL GOVERNMENTS, ECONOMIC DEVELOPMENT AGENCIES, AND BUSINESS COMMUNITIES WITHIN THE REGION OR AREA TO BE SERVICED BY SUCH FUND;

(III) THE REGIONAL INVESTMENT FUND HAS THE CAPACITY TO PERFORM DUE DILIGENCE IN MAKING INVESTMENT DECISIONS, AND TO PROVIDE MANAGEMENT EXPERTISE AND OTHER VALUE-ADDED SERVICES TO ITS PORTFOLIO COMPANIES WHICH SERVICES MAY INCLUDE ACCESS TO CAPITAL, BUSINESS EXPERTISE, TECHNOLOGY COMMERCIALIZATION SERVICES AND A NETWORK OF RESOURCES IN ORDER TO ADVANCE THE DEVELOPMENT OF NEW TECHNOLOGIES;

(IV) THE REGIONAL INVESTMENT FUND ESTABLISHES CONFLICT-OF-INTEREST PROVISIONS ACCEPTABLE TO THE CORPORATION;

(V) TO THE MAXIMUM EXTENT FEASIBLE, THE REGIONAL INVESTMENT FUND WILL INVEST IN FIRMS WHICH HAVE THE GREATEST POTENTIAL FOR JOB CREATION;

(VI) INVESTMENTS MADE BY THE CORPORATION IN A REGIONAL INVESTMENT FUND SHALL NOT EXCEED FIVE MILLION DOLLARS AND, SHALL BE MATCHED BY THE REGIONAL FUND ON AT LEAST A ONE-TO-ONE BASIS WITH MONIES, OTHER THAN STATE MONIES, UNLESS THE BOARD FINDS THAT A REDUCED MATCHING REQUIREMENT WILL FURTHER THE PURPOSES OF THIS SECTION; AND

(VII) INVESTMENTS MADE BY A REGIONAL INVESTMENT FUND THAT INCLUDE FUNDS RECEIVED FROM THE CORPORATION SHALL BE MADE ONLY FOR THE FINANCING AUTHORIZED BY SUBDIVISION 3 OF THIS SECTION.

(B) (I) THE CORPORATION SHALL MAKE INVESTMENTS IN QUALIFIED REGIONAL INVESTMENT FUNDS VIA THE ISSUANCE OF A REQUEST FOR PROPOSALS TO REGIONAL AND LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS, TECHNOLOGY DEVELOPMENT ORGANIZATIONS, RESEARCH UNIVERSITIES, AND INVESTMENT FUNDS THAT PROVIDE SMALL-SCALE INVESTMENTS IN HIGH-TECHNOLOGY COMPANIES IN NEW YORK STATE.

(II) IN AWARDING FUNDS PURSUANT TO THIS SUBDIVISION, THE CORPORATION SHALL ASSURE ADEQUATE GEOGRAPHIC DISTRIBUTION TO THE EXTENT FEASIBLE.

3. REGIONAL INVESTMENT FUNDS. (A) REGIONAL INVESTMENT FUNDS RECEIVING INVESTMENTS FROM THE CORPORATION UNDER THIS ACT SHALL USE SUCH FUNDS AND THE REQUIRED MATCHING FUNDS TO PROVIDE SEED CAPITAL AND FOLLOW-ON FINANCING TO QUALIFIED ENTERPRISES, PROVIDED THAT THE REGIONAL INVESTMENT FUND SHALL NOT:

(I) INVEST AN AMOUNT IN ANY SINGLE QUALIFIED ENTERPRISE THAT EXCEEDS FIFTY PERCENT OF THE TOTAL INVESTMENT FROM ALL OTHER SOURCES IN ANY SUCH ENTERPRISE; OR

(II) INVEST OVER FIVE HUNDRED THOUSAND DOLLARS IN ANY ONE COMPANY, OR SEVEN HUNDRED FIFTY THOUSAND DOLLARS IN THE CASE OF A BIOTECHNOLOGY COMPANY, AT ANY ONE TIME.

(B) A REGIONAL INVESTMENT FUND, BEFORE APPROVING ANY APPLICATION FOR FINANCIAL ASSISTANCE UNDER THIS SECTION, SHALL FIND THAT:

(I) THE QUALIFIED ENTERPRISE AND ITS PRODUCT OR PROCESS HAVE A REASONABLE CHANCE OF BEING COMMERCIALLY SUCCESSFUL;

(II) THE EMPLOYMENT CREATED OR MAINTAINED AS A RESULT OF THE FUND'S INVESTMENT WILL BE IN NEW YORK STATE; AND

(III) PROVISIONS ARE IN PLACE FOR THE REPAYMENT OF THE FUNDS IF THE COMPANY RECEIVING ASSISTANCE LEAVES THE STATE.

4. REGIONAL INVESTMENT FUND REPORTING. THE CORPORATION SHALL REQUIRE ANY REGIONAL INVESTMENT FUND RECEIVING INVESTMENTS UNDER THIS SECTION TO FILE A REPORT WITH THE CORPORATION BY DECEMBER 1, 2012 AND ANNUALLY THEREAFTER. SUCH REPORT SHALL INCLUDE:

(A) THE TOTAL AMOUNT OF FUNDS COMMITTED TO THE REGIONAL INVESTMENT FUND AND THE AMOUNT THAT HAS BEEN INVESTED;

(B) THE NET ASSET VALUE OF THE FUND;

(C) THE AMOUNT INVESTED IN EACH PORTFOLIO COMPANY FROM THE FUND AND FROM OTHER SOURCES;

(D) THE TYPE OF PRODUCT OR TECHNOLOGY BEING DEVELOPED BY EACH PORTFOLIO COMPANY;

(E) THE LOCATION OF EACH PORTFOLIO COMPANY;

(F) THE NUMBER OF JOBS PROJECTED TO BE CREATED AND RETAINED; AND

(G) SUCH OTHER INFORMATION AS THE CORPORATION DEEMS NECESSARY.

5. REPORT OF THE CORPORATION. THE CORPORATION SHALL SUBMIT TO THE GOVERNOR AND THE LEGISLATURE A SUMMARY AND EVALUATION OF THE REPORTS SUBMITTED TO THE CORPORATION PURSUANT TO SUBDIVISION 4 OF THIS SECTION AND AN EVALUATION OF THE PERFORMANCE OF THE REGIONAL INVESTMENT FUNDS ON OR BEFORE FEBRUARY 1, 2013 AND ANNUALLY THEREAFTER.

S 2. The public authorities law is amended by adding a new section 3154-a to read as follows:

S 3154-A. SMALL BUSINESS INVESTMENT FUND ASSETS AND LIABILITIES. 1. ALL OF THE ASSETS AND LIABILITIES OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND ESTABLISHED PURSUANT TO APPROPRIATIONS MADE BY VARIOUS CHAPTERS OF THE LAW INCLUDING, BUT NOT LIMITED TO CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-ONE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-FIVE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SEVEN, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-EIGHT, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-NINE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-ONE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-TWO, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-THREE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-FOUR, AND CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-FIVE, SHALL BE MADE AVAILABLE FOR THE SEED-NY INVESTMENT FUND ESTABLISHED PURSUANT TO SECTION FORTY-FOUR OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION ACT.

2. THE BOARD SHALL PREPARE A PLAN, WITHIN NINETY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, TO LIQUIDATE ALL CURRENT ASSETS AND LIABILITIES OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND.

3. THE PUBLICLY-TRADED ASSETS AND ANY WORKING CAPITAL SHALL BE MADE FULLY AVAILABLE TO THE SEED-NY INVESTMENT FUND ESTABLISHED PURSUANT TO SECTION FORTY-FOUR OF SECTION ONE OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION ACT FOR ALLOCATION TO REGIONAL INVESTMENT FUNDS AS SOON AS PRACTICABLE.

4. THE BOARD SHALL ALSO TAKE WHATEVER ACTIONS ARE NECESSARY TO LIQUIDATE THE REMAINING ASSETS OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND AS SOON AS PRACTICABLE, BUT NOT MORE THAN TWO YEARS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION.

S 3. This act shall take effect immediately.