

4483

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sen. ALESÌ -- 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, 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:

1 Section 1. Chapter 174 of the laws of 1968 constituting the New York
2 state urban development corporation act, is amended by adding a new
3 section 45 to read as follows:

4 S 45. THE SEED-NY INVESTMENT FUND. 1. DEFINITIONS. FOR THE PURPOSES
5 OF THIS SECTION, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING
6 MEANINGS UNLESS THE CONTEXT SHALL INDICATE ANOTHER OR DIFFERENT MEANING
7 OR INTENT:

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

16 (B) "QUALIFIED ENTERPRISE" SHALL MEAN:

17 (I) A COMPANY OR A PROPOSED COMPANY THAT HAS OR WILL LOCATE ITS PRIN-
18 CIPAL PLACE OF BUSINESS IN NEW YORK STATE, AND THAT IS, OR PROPOSES TO
19 BE, ENGAGED IN THIS STATE IN RESEARCH AND DEVELOPMENT OR HIGH TECHNOLOGY
20 MANUFACTURING, AND THAT DEMONSTRATES THE POTENTIAL FOR SUBSTANTIAL
21 GROWTH AND JOB DEVELOPMENT IN AN EMERGING TECHNOLOGY FIELD AS DEFINED IN
22 SECTION THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW OR AS
23 ADOPTED BY THE CORPORATION; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (I) THE QUALIFIED ENTERPRISE AND ITS PRODUCT OR PROCESS HAVE A REASON-
55 ABLE CHANCE OF BEING COMMERCIALY SUCCESSFUL;

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

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

5 4. REGIONAL INVESTMENT FUND REPORTING. THE CORPORATION SHALL REQUIRE
6 ANY REGIONAL INVESTMENT FUND RECEIVING INVESTMENTS UNDER THIS SECTION TO
7 FILE A REPORT WITH THE CORPORATION BY DECEMBER FIRST, TWO THOUSAND
8 TWELVE AND ANNUALLY THEREAFTER. SUCH REPORT SHALL INCLUDE:

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

11 (B) THE NET ASSET VALUE OF THE FUND;

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

14 (D) THE TYPE OF PRODUCT OR TECHNOLOGY BEING DEVELOPED BY EACH PORTFO-
15 LIO COMPANY;

16 (E) THE LOCATION OF EACH PORTFOLIO COMPANY;

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

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

19 5. REPORT OF THE CORPORATION. THE CORPORATION SHALL SUBMIT TO THE
20 GOVERNOR AND THE LEGISLATURE A SUMMARY AND EVALUATION OF THE REPORTS
21 SUBMITTED TO THE CORPORATION PURSUANT TO SUBDIVISION FOUR OF THIS
22 SECTION AND AN EVALUATION OF THE PERFORMANCE OF THE REGIONAL INVESTMENT
23 FUNDS ON OR BEFORE FEBRUARY FIRST, TWO THOUSAND THIRTEEN AND ANNUALLY
24 THEREAFTER.

25 6. SMALL BUSINESS INVESTMENT FUND ASSETS AND LIABILITIES. (A) ALL OF
26 THE ASSETS AND LIABILITIES OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT
27 FUND ESTABLISHED PURSUANT TO APPROPRIATIONS MADE BY VARIOUS CHAPTERS OF
28 THE LAW INCLUDING, BUT NOT LIMITED TO CHAPTER FIFTY-THREE OF THE LAWS OF
29 NINETEEN HUNDRED EIGHTY-ONE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN
30 HUNDRED EIGHTY-FIVE, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED
31 EIGHTY-SIX, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-
32 SEVEN, CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-EIGHT,
33 CHAPTER FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-NINE, CHAPTER
34 FIFTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY, CHAPTER FIFTY-THREE
35 OF THE LAWS OF NINETEEN HUNDRED NINETY-ONE, CHAPTER FIFTY-THREE OF THE
36 LAWS OF NINETEEN HUNDRED NINETY-TWO, CHAPTER FIFTY-THREE OF THE LAWS OF
37 NINETEEN HUNDRED NINETY-THREE, CHAPTER FIFTY-THREE OF THE LAWS OF NINE-
38 TEEN HUNDRED NINETY-FOUR, AND CHAPTER FIFTY-THREE OF THE LAWS OF NINE-
39 TEEN HUNDRED NINETY-FIVE, SHALL BE MADE AVAILABLE FOR THE SEED-NY
40 INVESTMENT FUND ESTABLISHED PURSUANT TO THIS SECTION.

41 (B) THE CORPORATION SHALL PREPARE A PLAN, WITHIN NINETY DAYS FOLLOWING
42 THE EFFECTIVE DATE OF THIS SECTION, TO LIQUIDATE ALL CURRENT ASSETS AND
43 LIABILITIES OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND.

44 (C) THE PUBLICLY-TRADED ASSETS AND ANY WORKING CAPITAL SHALL BE MADE
45 FULLY AVAILABLE TO THE SEED-NY INVESTMENT FUND ESTABLISHED PURSUANT TO
46 THIS SECTION.

47 (D) THE CORPORATION SHALL ALSO TAKE WHATEVER ACTIONS ARE NECESSARY TO
48 LIQUIDATE THE REMAINING ASSETS OF THE SMALL BUSINESS TECHNOLOGY INVEST-
49 MENT FUND AS SOON AS PRACTICABLE, BUT NOT MORE THAN TWO YEARS FOLLOWING
50 THE EFFECTIVE DATE OF THIS SECTION.

51 S 2. The governor, on or before June 27, 2011 and as part of the
52 state's application that will be submitted to the United States treasury
53 department to receive funding from the Federal Small Business Jobs Act
54 of 2010 (P.L. 11-240), shall allocate not less than \$25,000,000 of New
55 York's portion of such federal moneys to the seed-NY investment fund for
56 the purpose of providing assistance to established regional investment

1 funds. Upon receipt of the federal moneys, the governor and the legisla-
2 ture shall immediately appropriate the amount allocated to the seed-NY
3 investment fund in the state's application to the New York state urban
4 development corporation for the purpose of carrying out the provisions
5 of section 45 of the New York state urban development corporation act as
6 added by section one of this act.

7 S 3. This act shall take effect immediately.