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2011-2012 Regular Sessions

I N   S E N A T E

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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:

1     Section 1. Section 1 of chapter 174 of the laws of 1968, constituting  
2     the New York state urban development corporation act, is amended by  
3     adding a new section 44 to read as follows:  
4     S 44. 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, THAT IS, OR PROPOSES TO BE,  
19    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 3102-E OF THE PUBLIC AUTHORITIES LAW OR AS ADOPTED BY THE BOARD;  
23    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 BOARD OF DIRECTORS SHALL ADOPT CRITERIA AND GUIDELINES GOVERNING  
9 SUCH INVESTMENTS, WHICH SHALL REQUIRE THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (II) THE EMPLOYMENT CREATED OR MAINTAINED AS A RESULT OF THE FUND'S  
56 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.