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

2710

2011-2012 Regular Sessions

I N S E N A T E

January 31, 2011

Introduced by Sens. GRISANTI, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the public authorities law, in relation to establishing the biosciences commercialization assistance fund within the foundation for science, technology and innovation

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

Section 1. Section 3150 of the public authorities law, as amended by section 4 of part C of chapter 63 of the laws of 2005, is amended to read as follows:

S 3150. Definitions. As used in this [section] TITLE:

1. "Foundation" shall mean the New York state foundation for science, technology and innovation created by this title;

2. "Executive director" shall mean the executive director of the foundation;

3. "Board" shall mean the New York state foundation for science, technology and innovation board;

4. "Regional partnerships" shall mean any association or group which is: (a) comprised of local economic development organizations and a center of excellence as defined by section three of part T of chapter eighty-four of the laws of two thousand two, or in the absence of such center in the region, at least one institution of higher education involved in commercialization efforts similar to such centers of excellence and may include a combination of private businesses, business support organizations, commercial lending institutions, venture capital companies, angel investor networks or foundations; (b) formed for the creation and administration of regional partnership programs; and (c) certified by the foundation as the regional partnership;

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

LBD07604-01-1

5. "Regional partnership coordinator" shall mean a nonprofit organization chosen by a regional partnership and certified by the foundation to administer the regional partnership programs;

6. "Partnership" shall mean regional partnerships; [and]

7. "Coordinator" shall mean regional partnership coordinator[.];

8. "RESEARCH ENTITY" SHALL MEAN A NOT-FOR-PROFIT COLLEGE, UNIVERSITY, MEDICAL CENTER, LABORATORY OR OTHER INSTITUTION THAT CONDUCTS AN INTENSIVE, ONGOING PROGRAM OF STUDY DIRECTED TOWARD GREATER KNOWLEDGE OF A SCIENTIFIC FOCUS AREA OR TOWARD APPLYING NEW SCIENTIFIC KNOWLEDGE TO MEET A RECOGNIZED NEED;

9. "FOCUS AREA" SHALL MEAN BIOSCIENCES RESEARCH INCLUDING, BUT NOT LIMITED TO, THE BASIC, APPLIED, OR TRANSLATIONAL RESEARCH THAT LEADS TO THE DEVELOPMENT OF THERAPEUTICS, DIAGNOSTICS, OR DEVICES, TO IMPROVE HUMAN HEALTH OR AGRICULTURE AND THAT REQUIRE FEDERAL FOOD AND DRUG ADMINISTRATION APPROVAL.

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

S 3154-A. BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND. 1. THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND IS HEREBY CREATED FOR THE PURPOSE OF:

(A) ADVANCING THE EARLY-STAGE DEVELOPMENT OF COMMERCIALLY PROMISING INVENTIONS IN THE FOCUS AREA OWNED BY RESEARCH ENTITIES LOCATED IN NEW YORK STATE;

(B) ENCOURAGING ENTREPRENEURS TO FORM NEW COMPANIES LOCATED IN NEW YORK STATE TO MANUFACTURE AND MARKET SUCH INVENTIONS;

(C) ENABLING SMALL BUSINESSES RESIDENT IN THE STATE TO CONDUCT APPLIED RESEARCH AND DEVELOPMENT NECESSARY TO COMMERCIALIZE RESEARCH ENTITY INVENTIONS; AND

(D) ENCOURAGING BUSINESSES RESIDENT IN THE STATE TO DEVELOP NEW PRODUCTS OR PROCESSES BASED ON PROMISING INVENTIONS OR TECHNOLOGIES OWNED BY SUCH BUSINESSES THROUGH GRANTS OR LOANS TO SUCH RESIDENT BUSINESSES.

2. MONIES IN THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND SHALL BE AVAILABLE TO ELIGIBLE RESEARCH ENTITIES, START-UPS, SMALL COMPANIES, AND OTHER BUSINESSES IN NEW YORK STATE, WITH ANTICIPATED COMMERCIALIZATION TIME FRAMES OF UP TO FIFTEEN YEARS, FOR DEVELOPMENT AND COMMERCIALIZATION OF PRODUCTS. THE FOUNDATION SHALL USE THE MONIES AVAILABLE IN THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND FOR:

(A) GRANTS TO RESEARCH ENTITIES LOCATED IN NEW YORK STATE TO DEVELOP COMMERCIALLY PROMISING RESEARCH DISCOVERIES IN THE FOCUS AREA BEYOND THE CONCEPTUAL STAGE IN ORDER TO FURTHER THE CHANCE OF COMMERCIALIZATION AND INCREASE MARKET VALUE. THE FOUNDATION MAY APPROVE GRANTS FOR ELIGIBLE PROJECTS, PROVIDED SUCH GRANTS DO NOT EXCEED ONE HUNDRED THOUSAND DOLLARS AND ARE USED EXCLUSIVELY TO ACCELERATE THE COMMERCIALIZATION OF DISCOVERIES THAT HAVE THE POTENTIAL TO POSITIVELY IMPACT EXISTING COMPANIES LOCATED IN NEW YORK OR LEAD TO THE FORMATION OF NEW COMPANIES LOCATED IN NEW YORK. GRANTS MAY NOT BE USED TO COMMERCIALIZE DISCOVERIES THAT WILL BE LICENSED TO FIRMS THAT DO NOT HAVE THEIR RESEARCH AND DEVELOPMENT AND MANUFACTURING FACILITIES AND AT LEAST EIGHTY PERCENT OF THEIR EMPLOYEES LOCATED IN NEW YORK STATE. THE FOUNDATION SHALL APPROVE GRANTS ONLY TO THOSE RESEARCH ENTITIES THAT CAN DEMONSTRATE THE ABILITY TO GUIDE THE DEVELOPMENT OF THE DISCOVERIES TOWARD SUCCESSFUL COMMERCIALIZATION IN THE STATE. ANY REVENUES EARNED BY THE RESEARCH ENTITY FROM THE LICENSING OF AN INVENTION DEVELOPED WITH A FOUNDATION GRANT MUST BE REINVESTED IN THE RESEARCH ENTITY'S EDUCATIONAL AND RESEARCH PROGRAMS OR TECHNOLOGY TRANSFER ACTIVITIES;

(B) INVESTMENTS IN START-UP COMPANIES FORMED BY ENTREPRENEURS TO COMMERCIALIZE INTELLECTUAL PROPERTY IN THE FOCUS AREA LICENSED FROM RESEARCH ENTITIES LOCATED IN NEW YORK STATE. THE FOUNDATION MAY APPROVE INVESTMENTS IN NEW COMPANIES BEING FORMED TO FURTHER DEVELOP, PRODUCE, AND SELL INVENTIONS LICENSED FROM RESEARCH INSTITUTIONS IN NEW YORK STATE, PROVIDED THAT THE COMPANY'S RESEARCH AND DEVELOPMENT AND/OR MANUFACTURING FACILITIES WILL BE LOCATED IN NEW YORK STATE; THE COMPANY COMMITS TO REMAINING IN THE STATE; THE INVESTMENT DOES NOT EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS PER COMPANY; AND, THE INVESTMENT IS USED SOLELY FOR OPERATING EXPENSES APPROVED BY THE FOUNDATION. IN RETURN FOR INVESTMENT BY THE FOUNDATION, THE FOUNDATION SHALL TAKE AN EQUITY POSITION IN THE COMPANY OR NEGOTIATE ROYALTY PAYMENTS BASED ON THE SALE OF ANY PRODUCTS RESULTING FROM THE LICENSED INVENTION. IN THE EVENT THAT A COMPANY MOVES ITS RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES OR MORE THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT;

(C) MATCHING GRANTS TO SMALL BUSINESSES IN NEW YORK STATE FOR COOPERATIVE APPLIED RESEARCH AND DEVELOPMENT PROJECTS IN THE FOCUS AREA WITH RESEARCH INSTITUTIONS TO TRANSLATE PROMISING DISCOVERIES OF THE RESEARCH INSTITUTION INTO COMMERCIALLY VIABLE PRODUCTS. THE FOUNDATION MAY APPROVE MATCHING GRANTS FOR PROJECTS UNDERTAKEN JOINTLY BY A RESEARCH ENTITY AND A BUSINESS INCORPORATED IN NEW YORK STATE FOR UP TO HALF OF THE COST OF PROJECTS THAT WILL APPLY DISCOVERIES OR USE THE INTELLECTUAL RESOURCES OF THE RESEARCH ENTITY TO DEVELOP NEW, OR TO IMPROVE EXISTING, COMMERCIAL MATERIALS, DEVICES, SYSTEMS, PROCESSES, OR PROTOTYPES, PROVIDED THAT THE GRANTS DO NOT EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS; THE COMPANY HAS LESS THAN ONE HUNDRED FULL-TIME EMPLOYEES, AT LEAST EIGHTY PERCENT OF WHOM WORK IN THE STATE; AND, THE COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING FACILITIES LOCATED IN THE STATE. IN THE EVENT THAT A COMPANY MOVES ITS RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES OR MORE THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT;

(D) MATCHING GRANTS AND/OR LOANS TO SMALL BUSINESSES IN NEW YORK STATE FOR COMMERCIAL DEVELOPMENT OF THEIR INNOVATIONS OR TECHNOLOGIES IN THE FOCUS AREA INTO NEW PRODUCTS OR PROCESSES TO BE MANUFACTURED IN NEW YORK. ANY REPAYMENTS OF LOANS OR EARNINGS ON INVESTMENTS MADE BY THE FOUNDATION FROM THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND SHALL BE DEPOSITED IN SUCH FUND. THE FOUNDATION MAY APPROVE GRANTS AND/OR LOANS TO BUSINESSES INCORPORATED IN NEW YORK STATE FOR UP TO ONE-THIRD OF THE COSTS, INCLUDING WORKFORCE TRAINING, ASSOCIATED WITH THE DEVELOPMENT OF NEW PRODUCTS OR PROCESSES FROM INVENTIONS OR TECHNOLOGIES OWNED BY SUCH BUSINESSES, PROVIDED THAT THE GRANT DOES NOT EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS; THE COMPANY HAS LESS THAN ONE HUNDRED FULL-TIME EMPLOYEES, AT LEAST EIGHTY PERCENT OF WHOM WORK IN THE STATE; AND, THE COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY MOVES ITS RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES OR MORE THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT; AND

(E) GRANTS TO BUSINESSES IN NEW YORK STATE TO OFFSET SOME OR ALL OF THE COSTS OF FILING FOR FEDERAL REGULATORY APPROVAL FOR NEW OR MODIFIED PRODUCTS OR PROCESSES WITHIN THE FOCUS AREA. THE FOUNDATION MAY APPROVE

GRANTS TO BUSINESSES INCORPORATED IN NEW YORK STATE PROVIDED THAT THE COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY MOVES THE MANUFACTURE OF THE PRODUCT OUT OF NEW YORK STATE WITHIN A PERIOD OF FIVE YEARS, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT. THE FOUNDATION SHALL GIVE PRIORITY TO COMPANIES WITH LESS THAN ONE HUNDRED FULL-TIME EMPLOYEES.

3. PURSUANT TO SECTION THIRTY-ONE HUNDRED FIFTY-ONE OF THIS TITLE, THE FOUNDATION SHALL PROMULGATE REGULATIONS ESTABLISHING THE APPLICATION PROCESS AND THE CRITERIA THAT WILL BE USED TO EVALUATE APPLICATIONS FOR GRANTS AND INVESTMENTS FROM THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND. SUCH REGULATIONS SHALL ALLOW A COMMERCIALIZATION TIME FRAME OF UP TO FIFTEEN YEARS. SUCH APPLICATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, A DESCRIPTION OF THE EXPECTED SIGNIFICANCE OF THE PROJECT TO NEW YORK STATE, INCLUDING THE ESTIMATED NUMBER OF JOBS THAT COULD BE CREATED AS A RESULT OF THE PROJECT. IN SELECTING APPLICATIONS FOR FUNDING THE FOUNDATION SHALL GIVE PRIORITY TO THOSE PROJECTS THAT HAVE THE GREATEST POTENTIAL FOR COMMERCIAL SUCCESS AND EVENTUAL JOB CREATION IN NEW YORK STATE OR THAT WILL HAVE THE LARGEST POSITIVE IMPACT ON THE HEALTH AND WELFARE OF THE STATE'S CITIZENS OR ON THE NATURAL OR BUILT ENVIRONMENT.

S 3. Notwithstanding any other law to the contrary, any appropriations to the New York state foundation for science, technology and innovation board from the general fund, local assistance account for the incentive program part of the research development program established pursuant to section 209-p of the executive law that have not been expended or committed, as well as any other appropriations that may be so designated, may be made available for the purposes of the biosciences commercialization assistance fund.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.