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I N S E N A T E

March 30, 2012

Introduced by Sen. GOLDEN -- 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 economic development law, in relation to establishing the New York incubator network

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

1 Section 1. Legislative intent. The legislature hereby recognizes that
2 supporting a statewide network of university or college affiliated busi-
3 ness incubators, selected on a competitive basis that maintain not only
4 physical facilities, but also most current industry best practice busi-
5 ness development services is a cost effective approach to supporting
6 start-up and early stage companies and helping the state's creative
7 entrepreneurs successfully transition technological breakthroughs with
8 commercial potential from the laboratory to the marketplace. This
9 investment in university affiliated business incubators will support
10 regional development and local economic diversification, job creation,
11 and the retention of the state's vast resources of intellectual capital.
12 S 2. The economic development law is amended by adding a new section
13 361 to read as follows:

14 S 361. NEW YORK INCUBATOR NETWORK. THE COMMISSIONER, IN COOPERATION
15 WITH THE DIVISION OF SCIENCE, TECHNOLOGY AND INNOVATION IS AUTHORIZED TO
16 ACCEPT APPLICATIONS AND DESIGNATE INCUBATORS AS PART OF THE NEW YORK
17 ACADEMIC INCUBATOR NETWORK. SUCH DESIGNATIONS SHALL BE MADE IN ACCORD-
18 ANCE WITH THE STANDARDS AND CRITERIA SET FORTH IN SUBDIVISION TWO OF
19 THIS SECTION. INCUBATORS SO DESIGNATED SHALL BE ELIGIBLE FOR SUPPORT
20 FROM THE URBAN DEVELOPMENT CORPORATION, AND FOR SUCH ADDITIONAL SUPPORT
21 AS MAY OTHERWISE BE PROVIDED BY LAW.

22 1. AS USED IN THIS SECTION: (A) "INCUBATOR" MEANS AN ACADEMIC INCUBA-
23 TOR FACILITY AS DEFINED IN SUBPARAGRAPH (VI) OF PARAGRAPH (E) OF SUBDI-
24 VISION TWELVE-G OF SECTION TWO HUNDRED TEN OF THE TAX LAW;

25 (B) "APPLICANT" MEANS A COLLEGE OR UNIVERSITY, OR COLLEGE OR UNIVERSI-
26 TY-AFFILIATED RESEARCH INSTITUTE OR FOUNDATION PROVIDING A BASE FOR AN
27 INCUBATOR; AND

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

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1 (C) "DIVISION" MEANS THE DIVISION OF SCIENCE, TECHNOLOGY AND INNO-
2 VATION.

3 2. THE DIVISION SHALL:

4 (A) IDENTIFY AREAS FOR WHICH INCUBATORS THAT ARE RELATED TO INDUSTRIES
5 WITH SIGNIFICANT POTENTIAL FOR ECONOMIC GROWTH AND DEVELOPMENT IN NEW
6 YORK STATE AND TECHNOLOGICAL AREAS THAT ARE RELATED TO THE ENHANCEMENT
7 OF PRODUCTIVITY IN VARIOUS INDUSTRIES LOCATED THROUGHOUT NEW YORK STATE;

8 (B) AID IN THE ESTABLISHMENT OF INCUBATORS AT ACCREDITED UNIVERSITIES
9 AND COLLEGES THROUGHOUT THE STATE TO THE EXTENT POSSIBLE IN AREAS WHERE
10 THERE IS NOT ALREADY SIGNIFICANT SUPPORT FOR BUSINESS INCUBATION;

11 (C) PURSUANT TO THE STANDARDS ADHERING TO AN INCUBATOR, ESTABLISH
12 CONGRUENT CRITERIA THAT APPLICANTS MUST SATISFY FOR DESIGNATION AS AN
13 INCUBATOR FOR THE PURPOSES OF A DESIGNATION AS A MEMBER OF THE NETWORK,
14 INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

15 (I) AN ESTABLISHED RECORD OF, OR PLAN TO CONFORM TO, BEST PRACTICES
16 INCLUDING CLEAR POLICIES FOR BUSINESS ENTRY AND GRADUATION;

17 (II) A COMPREHENSIVE SUITE OF ENTREPRENEURIAL MENTORING PRACTICES
18 INCLUDING ADVISING, COACHING, PLANNING AND CONNECTING TO FUNDING SOURC-
19 ES;

20 (III) THE CAPACITY TO SECURE SUBSTANTIAL PRIVATE AND OTHER NON-STATE
21 GOVERNMENTAL FUNDING FOR THE PROPOSED INCUBATOR, NOT INCLUDING DIRECT
22 SUPPORT FROM THE SPONSORING ACADEMIC INSTITUTION OR RELATED FOUNDATION,
23 IN AMOUNTS AT LEAST EQUAL TO THE TOTAL OF SUPPORT SOUGHT FROM THE STATE
24 OR ITS DIVISIONS;

25 (IV) THE ABILITY AND WILLINGNESS TO COOPERATE WITH OTHER LOCAL,
26 REGIONAL AND STATEWIDE ECONOMIC DEVELOPMENT ORGANIZATIONS, STATEWIDE
27 BUSINESS INCUBATOR ASSOCIATIONS, BUSINESS SUPPORT NETWORKS, VENTURE AND
28 ANGEL CAPITAL FUNDING SOURCES, AND WORKFORCE DEVELOPMENT ADVOCATES; AND

29 (V) THE CAPACITY TO COLLABORATE WITH BUSINESS AND INDUSTRY INDIVIDUAL-
30 LY AND AS PART OF A STATEWIDE INCUBATOR ASSOCIATION;

31 (D) ESTABLISH SUCH REQUIREMENTS AS IT DEEMS APPROPRIATE FOR THE
32 FORMAT, CONTENT AND FILING OF APPLICATIONS FOR DESIGNATION AS INCUBA-
33 TORS;

34 (E) ESTABLISH SUCH PROCEDURES AS IT DEEMS APPROPRIATE FOR THE EVALU-
35 ATION OF APPLICATIONS FOR DESIGNATION AS INCUBATORS, INCLUDING THE
36 ESTABLISHMENT OF A REVIEW PANEL COMPOSED OF STATEWIDE RECOGNIZED EXPERTS
37 IN BUSINESS INCUBATION;

38 (F) UPON THE APPROVAL OF AN APPLICATION BY THE COMMISSIONER, CONFER AN
39 INCUBATOR DESIGNATION UPON A SUCCESSFUL APPLICANT UNLESS OTHERWISE
40 REVOKED BY THE COMMISSIONER IN CONSULTATION WITH THE DIVISION; AND

41 (G) THE COMMISSIONER SHALL APPROVE AND PROMULGATE RULES AND REGU-
42 LATIONS FOR SELECTION OF INCUBATORS AND SHALL MAKE FINAL DESIGNATIONS
43 REGARDING ALL MATTERS RELATING TO THE STATUS OF AN APPLICANT OR INCUBA-
44 TOR.

45 3. (A) (I) FROM SUCH FUNDS AS MAY BE APPROPRIATED OR OTHERWISE AUTHOR-
46 IZED FOR THIS PURPOSE BY THE LEGISLATURE, THE URBAN DEVELOPMENT CORPO-
47 RATION SHALL PROVIDE FINANCIAL SUPPORT, THROUGH CONTRACTS OR OTHER
48 MEANS, TO ENHANCE AND ACCELERATE THE DEVELOPMENT OF SUCH INCUBATORS.
49 FUNDS RECEIVED PURSUANT TO THIS SUBDIVISION MAY BE USED FOR PURCHASE OF
50 EQUIPMENT AND FIXTURES, EMPLOYMENT OF DIRECT SERVICE STAFF AND PROVISION
51 OF INTERNSHIPS SERVING THE INCUBATOR, BUT NOT PRIMARILY SERVING AS
52 EMPLOYEES OF MEMBER FIRMS LEASING SPACE IN AN INCUBATOR, AND OTHER
53 PURPOSES APPROVED BY THE DIVISION, BUT MAY NOT BE USED FOR CAPITAL
54 CONSTRUCTION OF REAL PROPERTY.

55 (II) BEGINNING IN THE FOURTH ACADEMIC YEAR FOLLOWING THE ACADEMIC YEAR
56 IN WHICH AN INCUBATOR IS FIRST DESIGNATED, THE INCUBATOR SHALL PRESENT

1 TO THE COMMISSIONER A REPORT CATALOGING ITS REVENUE AND EXPENSES, THE
2 NUMBER OF PRIVATE SECTOR FIRMS THAT HAVE LEASED SPACE IN THE INCUBATOR,
3 THE NUMBER OF COMPANIES THAT HAVE GRADUATED FROM AN INCUBATOR, WHETHER
4 SUCH GRADUATING COMPANIES HAVE REMAINED IN NEW YORK STATE, AND BEST
5 ESTIMATES AS TO THE NUMBER OF FULL TIME EQUIVALENT POSITIONS CREATED BY
6 INCUBATOR MEMBER COMPANIES AND THEIR SUCCESSORS FOR A PERIOD OF FIVE
7 YEARS UPON GRADUATION. THE DIVISION SHALL EVALUATE SUCH INCUBATOR'S
8 PERFORMANCE ACCORDING TO THE ABOVE LISTED CRITERIA, AND SHALL PRESENT
9 ITS FINDINGS TO THE COMMISSIONER WHO SHALL MAKE A BINDING RECOMMENDATION
10 WHETHER SUCH INCUBATOR SHALL RETAIN ITS STATUS AS A MEMBER OF THE
11 NETWORK.

12 (III) THE DIVISION CAN RECOMMEND, SUBJECT TO THE APPROVAL OF THE
13 COMMISSIONER, ADDITIONAL MEMBERS TO THE NETWORK ACCORDING TO THE CRITE-
14 RIA ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION.

15 (B) ADDITIONAL FUNDING OF THE OPERATIONS OF EACH INCUBATOR RECIPIENT
16 IN THE NETWORK SHALL BE BASED UPON A SHOWING THAT: THE INCUBATOR CONTIN-
17 UES TO COMPLY WITH THE CRITERIA ESTABLISHED BY THE COMMISSIONER IN
18 CONSULTATION WITH THE DIVISION PURSUANT TO PARAGRAPH (B) OF SUBDIVISION
19 TWO OF THIS SECTION; A DEMONSTRATION OF ASSISTANCE TO EMERGING BUSI-
20 NESSES IN NEW YORK STATE; COMPLIANCE WITH THE RULES, REGULATIONS AND
21 GUIDELINES OF THE URBAN DEVELOPMENT CORPORATION, IN PARTICULAR, AND THE
22 DIVISION; AND COMPLIANCE WITH ANY CONTRACTS BETWEEN THE URBAN DEVELOP-
23 MENT CORPORATION AND THE DESIGNATED INCUBATOR.

24 (C) EACH INCUBATOR SHALL REPORT ON AN ANNUAL BASIS ON ITS ACTIVITIES
25 TO THE COMMISSIONER IN A MANNER AND ACCORDING TO THE SCHEDULE ESTAB-
26 LISHED BY THE DIVISION, AND SHALL PROVIDE SUCH ADDITIONAL INFORMATION AS
27 THE COMMISSIONER MAY REQUIRE. THE DIVISION SHALL EVALUATE INCUBATOR
28 OPERATIONS USING METHODS SUCH AS SITE VISITS, REPORTING OF SPECIFIED
29 INFORMATION AND REVIEW EVALUATIONS USING EXPERTS IN ENTREPRENEURIAL
30 DEVELOPMENT. IF THE DIVISION IS UNSATISFIED WITH THE PROGRESS OF AN
31 INCUBATOR MEMBER IT SHALL NOTIFY SUCH INCUBATOR OF THE RESULTS OF ITS
32 EVALUATIONS AND FINDINGS OF DEFICIENCIES IN THE OPERATION OF SUCH INCU-
33 BATOR AND SHALL ALLOW AND COOPERATE WITH SUCH INCUBATORS TO REMEDY SUCH
34 FINDINGS IN A TIMELY MANNER. IF SUCH FACTORS ARE NOT REMEDIED, THE
35 COMMISSIONER MAY WITHDRAW THE STATE FUNDING SUPPORT, IN PART UNTIL SUCH
36 DEFICIENCIES ARE REMEDIED, OR IN WHOLE IMMEDIATELY FOLLOWING THE WITH-
37 DRAWAL OF AN INCUBATOR NETWORK DESIGNATION.

38 4. BEGINNING NO LATER THAN THE END OF THE FOURTH YEAR OF THE FORMATION
39 OF THE NETWORK, THE COMMISSIONER SHALL MAKE A BIENNIAL REPORT OF THE
40 INCUBATOR NETWORK PROGRAM TO THE GOVERNOR AND THE SPEAKER OF THE ASSEM-
41 BLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE LEGISLATIVE COMMITTEES
42 ON ECONOMIC DEVELOPMENT AND TO THE FISCAL COMMITTEES NOT LATER THAN
43 DECEMBER THIRTY-FIRST OF EACH ENUMERATED YEAR. SUCH REPORT SHALL
44 INCLUDE, BUT NOT BE LIMITED TO, A LIST OF IMMEDIATE PAST AND ACTIVE
45 TENANTS OF THE INCUBATORS IN THE NETWORK, THE RESULTS OF THE DIVISION'S
46 EVALUATION OF EACH INCUBATOR, A DESCRIPTION OF THE ACHIEVEMENTS OF EACH
47 INCUBATOR, ANY DEFICIENCIES IN THE OPERATION OF EACH INCUBATOR, REMEDIAL
48 ACTIONS RECOMMENDED BY THE DIVISION, REMEDIAL ACTIONS TAKEN BY THE INCU-
49 BATOR, A DESCRIPTION OF BUSINESS ASSISTANCE PROVIDED BY EACH INCUBATOR,
50 A DESCRIPTION OF ANY EXTERNAL FUNDING ATTRACTED BY THE INCUBATOR, PART-
51 NERSHIPS ENTERED INTO BY THE INCUBATOR, THE AMOUNT OF FINANCIAL ASSIST-
52 ANCE PROVIDED BY THE STATE, INCLUDING THE URBAN DEVELOPMENT CORPORATION,
53 AND THE LEVEL OF MATCHING FUNDS PROVIDED EACH INCUBATOR, AND A
54 DESCRIPTION OF THE USE OF SUCH MONIES TO THE EXTENT THAT SUCH DISCLOSURE
55 DOES NOT COMPROMISE GENERALLY ACCEPTED BUSINESS CONFIDENTIALITY STAND-
56 ARDS.

1 S 3. During state fiscal year 2012-2013, the urban development corpo-
2 ration is authorized to commit a total of two hundred fifty thousand
3 dollars in unrestricted assets previously appropriated or otherwise
4 conferred upon the New York state foundation for science, technology and
5 innovation pursuant to subdivisions 11 and 12 of section 360 of the
6 economic development law to implement the creation and establishment of
7 the New York incubator network.

8 S 4. This act shall take effect immediately.