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

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DelMONTE, SCHIMMINGER, KOON, GABRYSZAK, JAFFEE, LUPARDO, MAGNARELLI, FIELDS -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, JOHN, MAGEE, MAISEL, MAYERSOHN, McENENY, MILLMAN, PEOPLES-STOKES, REILLY, ROBINSON, SWEENEY, WEISENBERG -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to creating the small business technology investment fund

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

Section 1. The public authorities law is amended by adding a new section 3154-a to read as follows:

S 3154-A. THE SMALL BUSINESS TECHNOLOGY 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, A LIMITED LIABILITY PARTNERSHIP, A LIMITED LIABILITY COMPANY OR A NOT-FOR-PROFIT FUND THAT IS PROFESSIONALLY MANAGED BY AN EXPERIENCED FUND MANAGER, IS 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 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 MANUFACTURING, AND THAT DEMONSTRATES THE POTENTIAL FOR SUBSTANTIAL GROWTH AND JOB DEVELOPMENT IN AN EMERGING TECHNOLOGY FIELD

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

AS DEFINED IN SECTION THIRTY-ONE HUNDRED TWO-E OF THIS ARTICLE OR AS ADOPTED BY THE BOARD.

(C) "SEED CAPITAL" SHALL MEAN FINANCIAL ASSISTANCE TO A QUALIFIED ENTERPRISE, WHICH HAS FORMULATED A DETAILED BUSINESS PLAN, FOR PROOF-OF-CONCEPT OR INITIAL PRODUCT COMMERCIALIZATION.

2. INVESTMENTS IN REGIONAL INVESTMENT FUNDS. (A) THE FOUNDATION IS AUTHORIZED TO MAKE INVESTMENTS TO ENCOURAGE AND FACILITATE THE CREATION OR EXPANSION OF REGIONAL INVESTMENT FUNDS THAT SERVE THE PURPOSES OF THIS SECTION. THE FOUNDATION'S 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 SERVED BY SUCH FUND;

(III) THE REGIONAL INVESTMENT FUND HAS THE CAPACITY TO PROVIDE MANAGEMENT EXPERTISE AND OTHER VALUE-ADDED SERVICES TO ITS PORTFOLIO COMPANIES;

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

(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 FOUNDATION IN A REGIONAL INVESTMENT FUND SHALL NOT EXCEED TWO MILLION DOLLARS AND SHALL BE MATCHED BY THE REGIONAL FUND ON AT LEAST A ONE-TO-ONE BASIS WITH MONIES, OTHER THAN STATE MONIES; AND

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

(B) THE FOUNDATION 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.

3. REGIONAL INVESTMENT FUNDS. (A) REGIONAL INVESTMENT FUNDS RECEIVING INVESTMENTS FROM THE FOUNDATION UNDER THIS SECTION 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.

(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; AND (II) THE EMPLOYMENT CREATED OR MAINTAINED AS A RESULT OF THE FUND'S INVESTMENT WILL BE IN NEW YORK STATE. THE REGIONAL INVESTMENT FUND SHALL FURTHER ENSURE THAT PROVISIONS ARE IN PLACE FOR THE REPAYMENT OF THE FUNDS IF THE COMPANY RECEIVING ASSISTANCE LEAVES THE STATE.

4. REGIONAL INVESTMENT FUND REPORTING. THE FOUNDATION SHALL REQUIRE ANY REGIONAL INVESTMENT FUND RECEIVING INVESTMENTS UNDER THIS SECTION TO FILE A REPORT WITH THE FOUNDATION BY DECEMBER FIRST, TWO THOUSAND ELEVEN AND ANNUALLY THEREAFTER UNTIL DECEMBER FIRST, TWO THOUSAND SIXTEEN. 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 FOUNDATION DEEMS NECESSARY.

5. ASSETS AND LIABILITIES. ALL OF THE ASSETS AND LIABILITIES OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND SHALL BE MADE AVAILABLE FOR THE PURPOSES OF THIS SECTION. 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 FUND. THE PUBLICLY-TRADED ASSETS AND ANY WORKING CAPITAL SHALL BE MADE FULLY AVAILABLE FOR ALLOCATION TO REGIONAL INVESTMENT FUNDS AS SOON AS PRACTICABLE. 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.

6. REPORT OF THE FOUNDATION. THE FOUNDATION SHALL SUBMIT TO THE GOVERNOR AND THE LEGISLATURE A SUMMARY AND EVALUATION OF THE REPORTS SUBMITTED TO THE FOUNDATION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION AND AN EVALUATION OF THE PERFORMANCE OF THE REGIONAL INVESTMENT FUNDS ON OR BEFORE FEBRUARY FIRST, TWO THOUSAND TWELVE AND ANNUALLY THEREAFTER UNTIL FEBRUARY FIRST, TWO THOUSAND SEVENTEEN.

S 2. The opening paragraph of 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:

As used in this [section] TITLE:

S 3. This act shall take effect immediately.