

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. MAGNARELLI, FIELDS, LUPARDO, MILLMAN, PHEFFER, SCHIMMINGER, KOON, MARKEY, DESTITO, STIRPE -- Multi-Sponsored by -- M. of A. BRENNAN, BRODSKY, CLARK, ESPAILLAT, HOOPER, MCENENY, ROBINSON -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the public authorities law, in relation to creating a commercialization assistance fund in the New York state foundation for science, technology and innovation

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 finds and
2 declares that research universities in New York state are at the fore-
3 front of scientific research that will lead to the discovery of new
4 technologies with significant commercial potential. It is further found
5 that universities often do not have the resources or experience to
6 develop their scientific discoveries beyond the conceptual stage and
7 that the early-stage development of commercially promising university
8 inventions would increase the market value of such inventions and the
9 likelihood that they would be commercialized in New York state. Improve-
10 ments in value and accelerated product development within the state from
11 the further development of university inventions would benefit the
12 universities and would benefit the public through the creation of high-
13 quality jobs, thus enabling the state to capitalize on its investments
14 in academic research infrastructure.

15 The legislature further finds and declares that entrepreneurs at or
16 associated with universities frequently do not have the resources to
17 turn academic inventions into commercial products and that small busi-
18 nesses resident in New York state may not have sufficient resources to
19 assume the entire cost of applied research and development required to
20 translate academic discoveries into commercial products. This situation
21 leads to university licensing of intellectual property to out-of-state
22 firms and the loss of potential employment for the state's citizens.
23 Therefore, the legislature finds that it is necessary to assist univer-

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

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sities with the early-stage development of commercially promising inventions, to assist entrepreneurs in forming companies in New York state to commercialize such inventions, and to assist existing small companies with commercialization of university discoveries.

The legislature further finds that many small businesses resident in New York state have, or have access to, promising inventions and technologies the further development of which could result in production of successful commercial products in the state providing high-quality jobs to the state's citizens. Often, these small businesses are not able to invest amounts sufficient to translate these inventions and technologies into successful products and require outside assistance. Such assistance at the early stage of product development is frequently not available from market sources such as venture capitalists and banks. Thus, the legislature finds that a program of state assistance is needed to enable the successful commercialization of promising inventions and technologies by small businesses resident in New York state in order to create employment opportunities for the state's citizens.

S 2. 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;

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[.]; AND

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 SUBJECT OR TOWARD APPLYING NEW SCIENTIFIC KNOWLEDGE TO MEET A RECOGNIZED NEED.

S 3. The public authorities law is amended by adding a new section 3154-a to read as follows:

S 3154-A. COMMERCIALIZATION ASSISTANCE FUND. 1. THE COMMERCIALIZATION ASSISTANCE FUND IS HEREBY CREATED FOR THE PURPOSE OF: (A) ADVANCING THE EARLY-STAGE DEVELOPMENT OF COMMERCIALY PROMISING INVENTIONS 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;

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

4 (D) ENCOURAGING SMALL BUSINESSES RESIDENT IN THE STATE TO DEVELOP NEW
5 PRODUCTS OR PROCESSES BASED ON PROMISING INVENTIONS OR TECHNOLOGIES
6 OWNED BY SUCH BUSINESSES THROUGH GRANTS OR LOANS TO SUCH RESIDENT BUSI-
7 NESSES.

8 2. THE FOUNDATION SHALL USE THE MONIES AVAILABLE IN THE COMMERCIALIZA-
9 TION ASSISTANCE FUND FOR:

10 (A) GRANTS TO RESEARCH ENTITIES LOCATED IN NEW YORK STATE TO DEVELOP
11 COMMERCIALY PROMISING RESEARCH DISCOVERIES BEYOND THE CONCEPTUAL STAGE
12 IN ORDER TO FURTHER THE CHANCE OF COMMERCIALIZATION AND INCREASE MARKET
13 VALUE;

14 (B) INVESTMENTS IN START-UP COMPANIES FORMED BY ENTREPRENEURS TO
15 COMMERCIALIZE INTELLECTUAL PROPERTY LICENSED FROM RESEARCH ENTITIES
16 LOCATED IN NEW YORK STATE;

17 (C) MATCHING GRANTS TO SMALL BUSINESSES IN NEW YORK STATE FOR COOPER-
18 ATIVE APPLIED RESEARCH AND DEVELOPMENT PROJECTS WITH RESEARCH INSTI-
19 TUTIONS TO TRANSLATE PROMISING DISCOVERIES OF THE RESEARCH INSTITUTION
20 INTO COMMERCIALY VIABLE PRODUCTS; AND

21 (D) MATCHING GRANTS AND/OR LOANS TO SMALL BUSINESSES IN NEW YORK STATE
22 FOR COMMERCIAL DEVELOPMENT OF THEIR INNOVATIONS OR TECHNOLOGIES INTO NEW
23 PRODUCTS OR PROCESSES TO BE MANUFACTURED IN NEW YORK. ANY REPAYMENTS OF
24 LOANS OR EARNINGS ON INVESTMENTS MADE BY THE FOUNDATION FROM THE COMMER-
25 CIALIZATION ASSISTANCE FUND SHALL BE DEPOSITED IN SUCH FUND.

26 3. THE FOUNDATION MAY APPROVE GRANTS FOR ELIGIBLE PROJECTS AUTHORIZED
27 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, PROVIDED
28 SUCH GRANTS DO NOT EXCEED ONE HUNDRED THOUSAND DOLLARS AND ARE USED
29 EXCLUSIVELY TO ACCELERATE THE COMMERCIALIZATION OF DISCOVERIES THAT HAVE
30 THE POTENTIAL TO POSITIVELY IMPACT EXISTING COMPANIES LOCATED IN NEW
31 YORK OR LEAD TO THE FORMATION OF NEW COMPANIES LOCATED IN NEW YORK.
32 GRANTS MAY NOT BE USED TO COMMERCIALIZE DISCOVERIES THAT WILL BE
33 LICENSED TO FIRMS THAT DO NOT HAVE THEIR RESEARCH AND DEVELOPMENT AND
34 MANUFACTURING FACILITIES AND AT LEAST EIGHTY PERCENT OF THEIR EMPLOYEES
35 LOCATED IN NEW YORK STATE. THE FOUNDATION SHALL APPROVE GRANTS ONLY TO
36 THOSE RESEARCH ENTITIES THAT CAN DEMONSTRATE THE ABILITY TO GUIDE THE
37 DEVELOPMENT OF THE DISCOVERIES TOWARD SUCCESSFUL COMMERCIALIZATION IN
38 THE STATE. ANY REVENUES EARNED BY THE RESEARCH ENTITY FROM THE LICENSING
39 OF AN INVENTION DEVELOPED WITH A FOUNDATION GRANT MUST BE REINVESTED IN
40 THE RESEARCH ENTITY'S EDUCATIONAL AND RESEARCH PROGRAMS OR TECHNOLOGY
41 TRANSFER ACTIVITIES.

42 4. THE FOUNDATION MAY APPROVE INVESTMENTS AUTHORIZED UNDER PARAGRAPH
43 (B) OF SUBDIVISION TWO OF THIS SECTION IN NEW COMPANIES BEING FORMED TO
44 FURTHER DEVELOP, PRODUCE, AND SELL INVENTIONS LICENSED FROM RESEARCH
45 INSTITUTIONS IN NEW YORK STATE, PROVIDED THAT THE COMPANY'S RESEARCH AND
46 DEVELOPMENT AND/OR MANUFACTURING FACILITIES WILL BE LOCATED IN NEW YORK
47 STATE; THE COMPANY COMMITS TO REMAINING IN THE STATE; THE INVESTMENT
48 DOES NOT EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS PER COMPANY; AND, THE
49 INVESTMENT IS USED SOLELY FOR OPERATING EXPENSES APPROVED BY THE FOUNDA-
50 TION. IN RETURN FOR INVESTMENT BY THE FOUNDATION, THE FOUNDATION SHALL
51 TAKE AN EQUITY POSITION IN THE COMPANY OR NEGOTIATE ROYALTY PAYMENTS
52 BASED ON THE SALE OF ANY PRODUCTS RESULTING FROM THE LICENSED INVENTION.
53 IN THE EVENT THAT A COMPANY MOVES ITS RESEARCH AND DEVELOPMENT OR MANU-
54 FACTURING FACILITIES OR MORE THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF
55 THE STATE, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT
56 EQUAL TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT.

1 5. THE FOUNDATION MAY APPROVE MATCHING GRANTS AUTHORIZED UNDER PARA-
2 GRAPH (C) OF SUBDIVISION TWO OF THIS SECTION FOR PROJECTS UNDERTAKEN
3 JOINTLY BY A RESEARCH ENTITY AND A BUSINESS INCORPORATED IN NEW YORK
4 STATE FOR UP TO HALF OF THE COST OF PROJECTS THAT WILL APPLY DISCOVERIES
5 OR USE THE INTELLECTUAL RESOURCES OF THE RESEARCH ENTITY TO DEVELOP NEW,
6 OR TO IMPROVE EXISTING, COMMERCIAL MATERIALS, DEVICES, SYSTEMS, PROC-
7 ESSES, OR PROTOTYPES, PROVIDED THAT THE GRANTS DO NOT EXCEED ONE HUNDRED
8 FIFTY THOUSAND DOLLARS; THE COMPANY HAS LESS THAN ONE HUNDRED FULL-TIME
9 EMPLOYEES, AT LEAST EIGHTY PERCENT OF WHOM WORK IN THE STATE; AND, THE
10 COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING
11 FACILITIES LOCATED IN THE STATE. IN THE EVENT THAT A COMPANY MOVES ITS
12 RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES OR MORE THAN TWENTY
13 PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUNDATION SHALL REQUIRE
14 THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDA-
15 TION'S TOTAL INVESTMENT.

16 6. THE FOUNDATION MAY APPROVE GRANTS AND/OR LOANS AUTHORIZED UNDER
17 PARAGRAPH (D) OF SUBDIVISION TWO OF THIS SECTION TO BUSINESSES INCORPO-
18 RATED IN NEW YORK STATE FOR UP TO ONE-THIRD OF THE COSTS ASSOCIATED WITH
19 THE DEVELOPMENT OF NEW PRODUCTS OR PROCESSES FROM INVENTIONS OR TECHNOL-
20 OGIES OWNED BY SUCH BUSINESSES, PROVIDED THAT THE GRANT DOES NOT EXCEED
21 ONE HUNDRED FIFTY THOUSAND DOLLARS; THE COMPANY HAS LESS THAN ONE
22 HUNDRED FULL-TIME EMPLOYEES, AT LEAST EIGHTY PERCENT OF WHOM WORK IN THE
23 STATE; AND, THE COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND
24 MANUFACTURING FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY
25 MOVES ITS RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES OR MORE
26 THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUNDATION
27 SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE
28 TIMES THE FOUNDATION'S TOTAL INVESTMENT.

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

41 S 4. Notwithstanding any other law to the contrary, any appropriations
42 to the New York state foundation for science, technology and innovation
43 board from the general fund, local assistance account for the incentive
44 program part of the research development program established pursuant to
45 section 209-p of the executive law that have not been expended or
46 committed shall be made available for the purposes of the commercializa-
47 tion assistance fund.

48 S 5. This act shall take effect on the one hundred eightieth day after
49 it shall have become a law; provided, however, that effective immediate-
50 ly, the addition, amendment and/or repeal of any rule or regulation
51 necessary for the implementation of this act on its effective date are
52 authorized and directed to be made and completed on or before such
53 effective date.