

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. MAGNARELLI, MORELLE, DESTITO, DelMONTE, SCHIM-
MINGER, JAFFEE, BENEDETTO, LUPARDO, KOON, HOYT, CAHILL, MILLMAN,
STIRPE, BOYLAND, ESPAILLAT, JOHN, HOOPER -- Multi-Sponsored by -- M.
of A. BRENNAN, GREENE, MARKEY, McENENY, PEOPLES, PHEFFER, REILLY,
SWEENEY, WEISENBERG, ZEBROWSKI -- 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 establishing
the biosciences commercialization assistance fund within the founda-
tion for science, technology and innovation

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

1 Section 1. Section 3150 of the public authorities law, as amended by
2 section 4 of part C of chapter 63 of the laws of 2005, is amended to
3 read as follows:
4 S 3150. Definitions. As used in this [section] TITLE:
5 1. "Foundation" shall mean the New York state foundation for science,
6 technology and innovation created by this title;
7 2. "Executive director" shall mean the executive director of the foun-
8 dation;
9 3. "Board" shall mean the New York state foundation for science, tech-
10 nology and innovation board;
11 4. "Regional partnerships" shall mean any association or group which
12 is: (a) comprised of local economic development organizations and a
13 center of excellence as defined by section three of part T of chapter
14 eighty-four of the laws of two thousand two, or in the absence of such
15 center in the region, at least one institution of higher education
16 involved in commercialization efforts similar to such centers of excel-
17 lence and may include a combination of private businesses, business
18 support organizations, commercial lending institutions, venture capital
19 companies, angel investor networks or foundations; (b) formed for the

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

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1 creation and administration of regional partnership programs; and (c)
2 certified by the foundation as the regional partnership;

3 5. "Regional partnership coordinator" shall mean a nonprofit organiza-
4 tion chosen by a regional partnership and certified by the foundation to
5 administer the regional partnership programs;

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

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

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

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

18 S 2. The public authorities law is amended by adding a new section
19 3154-a to read as follows:

20 S 3154-A. BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND. 1. THE BIOS-
21 CIENCES COMMERCIALIZATION ASSISTANCE FUND IS HEREBY CREATED FOR THE
22 PURPOSE OF:

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

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

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

31 (D) ENCOURAGING BUSINESSES RESIDENT IN THE STATE TO DEVELOP NEW
32 PRODUCTS OR PROCESSES BASED ON PROMISING INVENTIONS OR TECHNOLOGIES
33 OWNED BY SUCH BUSINESSES THROUGH GRANTS OR LOANS TO SUCH RESIDENT BUSI-
34 NESSES.

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

41 (A) GRANTS TO RESEARCH ENTITIES LOCATED IN NEW YORK STATE TO DEVELOP
42 COMMERCIALY PROMISING RESEARCH DISCOVERIES IN THE FOCUS AREA BEYOND THE
43 CONCEPTUAL STAGE IN ORDER TO FURTHER THE CHANCE OF COMMERCIALIZATION AND
44 INCREASE MARKET VALUE. THE FOUNDATION MAY APPROVE GRANTS FOR ELIGIBLE
45 PROJECTS, PROVIDED SUCH GRANTS DO NOT EXCEED ONE HUNDRED THOUSAND
46 DOLLARS AND ARE USED EXCLUSIVELY TO ACCELERATE THE COMMERCIALIZATION OF
47 DISCOVERIES THAT HAVE THE POTENTIAL TO POSITIVELY IMPACT EXISTING COMPA-
48 NIES LOCATED IN NEW YORK OR LEAD TO THE FORMATION OF NEW COMPANIES
49 LOCATED IN NEW YORK. GRANTS MAY NOT BE USED TO COMMERCIALIZE DISCOVERIES
50 THAT WILL BE LICENSED TO FIRMS THAT DO NOT HAVE THEIR RESEARCH AND
51 DEVELOPMENT AND MANUFACTURING FACILITIES AND AT LEAST EIGHTY PERCENT OF
52 THEIR EMPLOYEES LOCATED IN NEW YORK STATE. THE FOUNDATION SHALL APPROVE
53 GRANTS ONLY TO THOSE RESEARCH ENTITIES THAT CAN DEMONSTRATE THE ABILITY
54 TO GUIDE THE DEVELOPMENT OF THE DISCOVERIES TOWARD SUCCESSFUL COMMER-
55 CIALIZATION IN THE STATE. ANY REVENUES EARNED BY THE RESEARCH ENTITY
56 FROM THE LICENSING OF AN INVENTION DEVELOPED WITH A FOUNDATION GRANT

1 MUST BE REINVESTED IN THE RESEARCH ENTITY'S EDUCATIONAL AND RESEARCH
2 PROGRAMS OR TECHNOLOGY TRANSFER ACTIVITIES;

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

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

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

1 (E) GRANTS TO BUSINESSES IN NEW YORK STATE TO OFFSET SOME OR ALL OF
2 THE COSTS OF FILING FOR FEDERAL REGULATORY APPROVAL FOR NEW OR MODIFIED
3 PRODUCTS OR PROCESSES WITHIN THE FOCUS AREA. THE FOUNDATION MAY APPROVE
4 GRANTS TO BUSINESSES INCORPORATED IN NEW YORK STATE PROVIDED THAT THE
5 COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING
6 FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY MOVES THE
7 MANUFACTURE OF THE PRODUCT OUT OF NEW YORK STATE WITHIN A PERIOD OF FIVE
8 YEARS, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL
9 TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT. THE FOUNDATION
10 SHALL GIVE PRIORITY TO COMPANIES WITH LESS THAN ONE HUNDRED FULL-TIME
11 EMPLOYEES.

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

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

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