

4198

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 30, 2009

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Introduced by M. of A. SCHIMMINGER, SWEENEY, MORELLE, DESTITO, TOWNS,  
SCHROEDER -- Multi-Sponsored by -- M. of A. COLTON, JOHN, KOON,  
MAGNARELLI, McENENY, MILLMAN -- read once and referred to the Commit-  
tee on Small Business

AN ACT to amend the public authorities law, in relation to recodifica-  
tion of the small business innovation research program and the awards  
made thereunder within the New York state foundation for science,  
technology and innovation; and to repeal section 3102-c of such law  
relating to the small business innovation research program

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

1     Section 1. Legislative intent. The state small business innovation  
2 research (SBIR) program, which began in 1984, was designed to provide  
3 assistance to New York's newer high technology companies, helping them  
4 compete for a greater share of the federal research contracts under the  
5 federal SBIR program. The state program was highly successful, increas-  
6 ing the amount of federal SBIR dollars coming into the state from under  
7 five million dollars annually to over thirty million dollars by 1991. As  
8 importantly, state assistance under this program greatly increased the  
9 ability of federal SBIR Phase I award winners to compete for much larger  
10 SBIR Phase II awards. Although the state SBIR statute remains in effect,  
11 the state stopped funding the program after its initial success, in part  
12 because of disagreement over how to allocate limited funds among the  
13 rapidly increasing number of federal SBIR award winners. Consequently,  
14 the number of state winners dramatically decreased. This act recodifies  
15 the small business innovation research program within the public author-  
16 ities law under the auspices of the foundation for science, technology  
17 and innovation, and clarifies how funds will be allocated so that the  
18 program can begin anew to assist small high technology companies to  
19 compete for federal SBIR funds, which will help them grow and provide  
20 new jobs for New York citizens.

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

LBD06825-01-9

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

3 S 3154-A. SMALL BUSINESS INNOVATION RESEARCH PROGRAM. 1. AS USED IN  
4 THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

5 (A) "SMALL BUSINESS INNOVATION RESEARCH PROGRAM" OR "SBIR" MEANS THAT  
6 PROGRAM, ENACTED PURSUANT TO THE SMALL BUSINESS INNOVATION DEVELOPMENT  
7 ACT OF 1982 (P.L. 97-219), WHICH PROVIDES FUNDS TO SMALL BUSINESSES TO  
8 CONDUCT INNOVATIVE RESEARCH HAVING COMMERCIAL APPLICATION.

9 (B) "SMALL BUSINESS" MEANS A CORPORATION, PARTNERSHIP, LIMITED LIABIL-  
10 ITY COMPANY, SOLE PROPRIETORSHIP, OR INDIVIDUAL, OPERATING A BUSINESS  
11 FOR PROFIT, WITH TWO HUNDRED FIFTY EMPLOYEES OR FEWER, INCLUDING EMPLOY-  
12 EES EMPLOYED IN ANY SUBSIDIARY OR AFFILIATED CORPORATION OR OTHER ENTI-  
13 TY, WHICH OTHERWISE MEETS THE REQUIREMENTS OF THE FEDERAL SMALL BUSINESS  
14 INNOVATION RESEARCH PROGRAM.

15 2. (A) WITHIN THIRTY DAYS OF THE PUBLIC ANNOUNCEMENT OF THE SMALL  
16 BUSINESS INNOVATION RESEARCH PROGRAM PHASE I AWARD WINNERS BY THE APPRO-  
17 PRIATE FEDERAL AGENCY, THE FOUNDATION SHALL CONTACT ALL PHASE I AWARD  
18 RECIPIENTS WHOSE PRINCIPAL PLACE OF BUSINESS IS LOCATED IN THIS STATE,  
19 PROVIDE THEM WITH INFORMATION CONCERNING THE PROGRAM AUTHORIZED PURSUANT  
20 TO THIS SECTION, AND ADVISE THEM OF THE REQUIREMENTS RELATING THERETO.  
21 ANY SUCH RECIPIENT, AT LEAST THIRTY DAYS PRIOR TO THE COMPLETION OF ITS  
22 SBIR PHASE I GRANT PERIOD, MAY, AT ITS DISCRETION, SUBMIT TO THE FOUNDA-  
23 TION A NOTICE OF ITS DESIRE TO SECURE RESEARCH FUNDING PURSUANT TO THE  
24 PROVISIONS OF THIS SECTION, ALONG WITH A COPY OF ITS ORIGINAL FEDERAL  
25 SBIR PROPOSAL AND SUCH ADDITIONAL INFORMATION AS THE FOUNDATION MAY  
26 REQUIRE TO ASSIST IT IN DETERMINING THE ELIGIBILITY OF SUCH RECIPIENT  
27 FOR THIS PROGRAM.

28 (B) IN ADDITION TO RECEIPT OF AN SBIR AWARD, ANY SMALL BUSINESS SHALL  
29 MEET THE FOLLOWING CRITERIA:

30 I. SUCH SMALL BUSINESS'S PRINCIPAL PLACE OF BUSINESS SHALL BE LOCATED  
31 IN THIS STATE;

32 II. SUCH SMALL BUSINESS SHALL CERTIFY THAT THE RESEARCH TO BE  
33 CONDUCTED WILL BE PERFORMED SOLELY IN THIS STATE;

34 III. NO MONEYS SHALL BE EXPENDED FOR TRAVEL, EQUIPMENT, OR FACILITIES;  
35 AND

36 IV. NOT MORE THAN ONE-THIRD OF ANY MONEYS AWARDED TO A FIRM BY THE  
37 FOUNDATION MAY BE USED TO CONTRACT FOR RESEARCH OR OTHER RELATED  
38 SERVICES.

39 (C) UPON A FINDING BY THE FOUNDATION THAT: (I) A PHASE I AWARD RECIPI-  
40 ENT WHOSE PRINCIPAL PLACE OF BUSINESS IS IN NEW YORK HAS SATISFACTORILY  
41 MET ALL THE REQUIREMENTS OF THIS SECTION AND ANY ADDITIONAL REQUIREMENTS  
42 THE FOUNDATION MAY DEEM NECESSARY; PROVIDED, HOWEVER, THAT ANY SUCH  
43 ADDITIONAL REQUIREMENTS SHALL NOT ARBITRARILY EXCLUDE A PARTICULAR GROUP  
44 OR GROUPS OF TECHNOLOGIES OR COMPANIES; AND (II) THE RESEARCH CONDUCTED  
45 MAY RESULT IN THE DEVELOPMENT OF INNOVATIVE TECHNOLOGY HAVING THE POTEN-  
46 TIAL TO LEAD TO COMMERCIALIZATION OR FABRICATION WITHIN NEW YORK OF NEW  
47 OR IMPROVED PRODUCTS, PROCESSES, OR SERVICES, THE FOUNDATION SHALL NOTI-  
48 FY SUCH SMALL BUSINESS THAT IT WILL AWARD THE FIRM A RESEARCH CONTRACT.  
49 SUCH CONTRACT SHALL BE COMPATIBLE WITH AND A CONTINUATION OF THE  
50 RESEARCH TO BE PERFORMED UNDER THE SBIR CONTRACT AWARDED BY THE FEDERAL  
51 AGENCY INVOLVED AND SHALL BE CALCULATED AS FOLLOWS: (I) THE AMOUNT OF  
52 EACH CONTRACT SHALL EQUAL THE AMOUNT OF THE FEDERAL SBIR AWARD OR FIFTY  
53 THOUSAND DOLLARS, WHICHEVER IS LESS; PROVIDED, HOWEVER, THAT THE TOTAL  
54 AMOUNT OF ALL SUCH CONTRACTS SHALL NOT EXCEED THE AMOUNT APPROPRIATED  
55 FOR THIS PURPOSE, OR (II) IN THE EVENT THAT THE TOTAL, POSSIBLE, MAXIMUM  
56 AMOUNT OF ALL CONTRACTS, SUCH TOTAL, POSSIBLE, MAXIMUM AMOUNT CALCULATED

1 ON THE BASIS OF MATCHING EACH FEDERAL SBIR AWARD IN AN AMOUNT EQUAL TO  
2 THE AMOUNT OF SUCH AWARD, OR FIFTY THOUSAND DOLLARS, WHICHEVER IS LESS,  
3 EXCEEDS THE TOTAL AMOUNT APPROPRIATED FOR THIS PURPOSE, THE AMOUNT OF  
4 EACH CONTRACT SHALL BE REDUCED BY A RATIO EQUAL TO THE AMOUNT APPROPRI-  
5 ATED FOR THIS PURPOSE DIVIDED BY THE TOTAL, POSSIBLE, MAXIMUM AMOUNT OF  
6 ALL CONTRACTS TO BE AWARDED.

7 (D) THE FOUNDATION SHALL ESTABLISH RULES AND REGULATIONS FOR THE SMALL  
8 BUSINESS INNOVATION RESEARCH PROGRAM, INCLUDING AWARD SELECTION CRITE-  
9 RIA, WHICH SHALL SERVE AS THE BASIS FOR AWARDS FUNDED UNDER THIS  
10 PROGRAM.

11 3. THE FOUNDATION SHALL NOT DISBURSE ANY MONEYS TO A SMALL BUSINESS  
12 UNTIL:

13 (A) SUCH SMALL BUSINESS HAS COMPLETED ITS SBIR PHASE I RESEARCH;

14 (B) ITS FINAL PHASE I REPORT WITH RESPECT THERETO HAS BEEN ACCEPTED BY  
15 THE FEDERAL AGENCY INVOLVED;

16 (C) ITS PHASE II RESEARCH PROPOSAL HAS BEEN PROPERLY SUBMITTED TO THE  
17 FEDERAL AGENCY INVOLVED; AND

18 (D) IT HAS SUBMITTED COPIES OF ITS FINAL PHASE I REPORT AND ITS PHASE  
19 II PROPOSAL TO THE FOUNDATION.

20 4. CONSISTENT WITH FEDERAL SBIR PROCEDURES, THE FOUNDATION SHALL NOT  
21 DISCLOSE PROPRIETARY INFORMATION WHEN REQUESTED NOT TO DO SO BY PARTIC-  
22 IPANTS IN THIS PROGRAM.

23 5. THE FOUNDATION SHALL ANNUALLY SUBMIT A REPORT TO THE GOVERNOR, THE  
24 TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY  
25 DETAILING THE RESULTS OF THE PROGRAM, INCLUDING BUT NOT LIMITED TO THE  
26 NUMBER OF NEW YORK SMALL BUSINESSES APPLYING FOR SBIR AWARDS, THE NUMBER  
27 RECEIVING PHASE I AWARDS, THE NUMBER RECEIVING PHASE II AWARDS, ANY  
28 PRODUCTS OR PROCESSES DEVELOPED AS A RESULT OF THE SBIR RESEARCH  
29 INVOLVED, ANY PATENTS APPLIED FOR OR LICENSES GRANTED BASED ON THE SBIR  
30 RESEARCH INVOLVED, AN ABSTRACT OF THE SBIR PHASE I AND II WORK PERFORMED  
31 BY NEW YORK FIRMS, AND ANY OTHER INFORMATION PERTINENT IN EVALUATING THE  
32 PROGRAM.

33 6. THE FOUNDATION SHALL CONDUCT A PROGRAM TO INFORM SMALL BUSINESSES  
34 OF THE FEDERAL SBIR PROGRAM AND THIS NEW YORK STATE PROGRAM IN ORDER TO  
35 ENSURE THAT ALL FIRMS HAVE THE OPPORTUNITY TO PARTICIPATE IN THESE  
36 PROGRAMS.

37 7. THE FOUNDATION SHALL FACILITATE AND PROMOTE THE ESTABLISHMENT OF  
38 JOINT SMALL BUSINESS-UNIVERSITY TECHNOLOGY COUNCILS AT THE CENTERS FOR  
39 ADVANCED TECHNOLOGY AND OTHER UNIVERSITIES WITHIN THE STATE WHEREBY  
40 SMALL FIRMS AND UNIVERSITY EXPERTS CAN FACILITATE THE TRANSFER OF TECH-  
41 NOLOGY AND WORK TOGETHER ON RESEARCH PROJECTS RELATED TO THE SBIR  
42 PROGRAM OR OTHER RESEARCH PROJECTS OF MUTUAL INTEREST.

43 8. THE PROVISIONS OF THIS SECTION SHALL BE EFFECTIVE IF, AND AS LONG  
44 AS, FEDERAL FINANCIAL PARTICIPATION IS AVAILABLE THEREFOR PURSUANT TO  
45 THE SMALL BUSINESS INNOVATION DEVELOPMENT ACT OF 1982.

46 S 3. Section 3102-c of the public authorities law is REPEALED.

47 S 4. For the purposes of the small business innovation research  
48 program, the New York state foundation for science, technology and inno-  
49 vation shall be deemed a continuation of the New York state science and  
50 technology foundation, repealed pursuant to chapter 624 of the laws of  
51 1999. Any and all contracts entered into between any small business and  
52 such foundation in effect upon the effective date of this act shall  
53 remain in effect pursuant to the terms of such contracts and shall be  
54 binding upon such foundation.

55 S 5. This act shall take effect immediately.