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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, WEPRIN, KOON, GABRYSZAK, JAFFEE, LUPARDO, MAGNARELLI, FIELDS -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, JOHN, MAGEE, MAISEL, MAYERSOHN, MILLMAN, PEOPLES, REILLY, ROBINSON, SWEENEY, WEISENBERG -- 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 the small business technology seed investment program

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

Section 1. Statement of legislative findings and purpose. It is hereby found and declared that the success of new and emerging technology business enterprises with growth potential is essential to the continued economic health of New York state. It is further found that entrepreneurs and start-up ventures looking for seed capital to develop and introduce innovative products are discovering that venture capital financing for such activities is not always available. Only four percent of all venture capital invested in 2007 went to seed-stage companies. Companies looking for relatively small infusions of cash, particularly amounts under one million dollars, may find themselves shut out of the market, as venture deals keep increasing in size.

Thus, start-up and expansion of firms located in New York continues to be hampered by a lack of seed funding. Providing state financial assistance for seed capital investments in start-up technology enterprises would help strengthen and stimulate a variety of emerging industries in the state and lead to increased employment and public revenues.

The legislature further finds that the small business technology investment fund managed by the New York state foundation for science, technology and innovation is directed precisely toward these gaps.

Furthermore, new and innovative approaches to leveraging additional funds must be developed by entering into appropriate partnerships with

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

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regional seed resources to stimulate the creation of a substantial number of new businesses and new jobs.

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

S 3154-A. THE SMALL BUSINESS TECHNOLOGY SEED INVESTMENT PROGRAM. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT SHALL INDICATE A DIFFERENT MEANING OR INTENT:

(A) "REGIONAL SEED INVESTMENTS" SHALL MEAN INVESTMENTS MADE BY THE FOUNDATION IN EARLY STAGE HIGH TECH COMPANIES TO HELP EXPAND THE STATE'S ECONOMY THROUGH COLLABORATION WITH REGIONAL ORGANIZATIONS SUCH AS UNIVERSITIES, RESEARCH INSTITUTIONS, LOCAL ECONOMIC DEVELOPMENT ENTITIES, REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS AND ANGEL INVESTOR NETWORKS.

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

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

2. REGIONAL SEED CAPITAL INVESTMENT GUIDELINES. (A) THE FOUNDATION IS AUTHORIZED TO MAKE SEED CAPITAL INVESTMENTS IN QUALIFIED ENTERPRISES IN COLLABORATION WITH REGIONAL ORGANIZATIONS.

(B) THE FOUNDATION'S BOARD OF DIRECTORS SHALL ADOPT CRITERIA AND GUIDELINES GOVERNING REGIONAL SEED CAPITAL INVESTMENTS, WHICH SHALL REQUIRE THAT:

(I) INVESTMENTS ARE MADE IN FIRMS WHICH HAVE THE GREATEST POTENTIAL FOR JOB CREATION;

(II) ADEQUATE GEOGRAPHIC DISTRIBUTION IS ASSURED TO THE GREATEST EXTENT PRACTICABLE;

(III) INVESTMENTS MADE BY THE FOUNDATION SHALL NOT EXCEED ONE MILLION DOLLARS IN A SINGLE ENTERPRISE AND SHALL NOT COMMIT TO INVEST MORE THAN THREE MILLION DOLLARS THROUGH ANY SINGLE REGIONAL COLLABORATION; AND

(IV) AT LEAST ONE OF THE REGIONAL ORGANIZATIONS WITH WHICH THE FOUNDATION MAKES A REGIONAL SEED INVESTMENT HAS DEMONSTRATED EXPERTISE IN EQUITY CAPITAL INVESTMENT AND IN PROVIDING MANAGEMENT AND OTHER APPROPRIATE ASSISTANCE TO START-UP AND EARLY-STAGE COMPANIES.

3. REGIONAL SEED CAPITAL INVESTMENT LIMITATIONS. (A) THE FOUNDATION SHALL NOT INVEST AN AMOUNT IN ANY SINGLE QUALIFIED ENTERPRISE THAT EXCEEDS FIFTY PERCENT OF THE TOTAL INVESTMENT FROM ALL OTHER SOURCES IN ANY SUCH ENTERPRISE.

(B) BEFORE APPROVING ANY APPLICATION FOR FINANCIAL ASSISTANCE UNDER THIS SECTION THE FOUNDATION SHALL FIND THAT: (I) THE QUALIFIED ENTERPRISE AND ITS PRODUCT OR PROCESS HAVE A REASONABLE CHANCE OF BEING COMMERCIALLY SUCCESSFUL; (II) THE EMPLOYMENT CREATED OR MAINTAINED AS A RESULT OF THE FUND'S INVESTMENT WILL BE IN THE STATE; AND (III) PROVISIONS ARE IN PLACE FOR THE REPAYMENT OF THE FUNDS IF THE COMPANY RECEIVING ASSISTANCE LEAVES THE STATE.

4. REPORT. THE FOUNDATION SHALL SUBMIT INFORMATION PERTAINING TO THIS PROGRAM WITH ITS ANNUAL REPORT ON OR BEFORE THE FIRST OF FEBRUARY OF EACH YEAR TO THE GOVERNOR, SPEAKER OF THE ASSEMBLY, AND MAJORITY LEADER OF THE SENATE. SUCH INFORMATION SHALL INCLUDE:

(A) THE TOTAL AMOUNT OF INVESTMENTS IN QUALIFIED ENTERPRISES MADE BY THE FOUNDATION AND OTHER SOURCES;

(B) THE TYPE OF PRODUCT OR TECHNOLOGY BEING DEVELOPED BY EACH QUALIFIED ENTERPRISE;

(C) THE LOCATION OF EACH QUALIFIED ENTERPRISE;

(D) THE NUMBER OF JOBS PROJECTED TO BE CREATED AND RETAINED BY EACH QUALIFIED ENTERPRISE; AND

(E) SUCH OTHER INFORMATION AS THE FOUNDATION DEEMS NECESSARY.

5. AVAILABILITY OF ASSETS FOR PROVIDING SEED CAPITAL. ALL OF THE ASSETS AND LIABILITIES OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND MAY BE MADE AVAILABLE, ALONG WITH ANY APPROPRIATIONS TO THE FOUNDATION FOR THE PURPOSE OF PROVIDING SEED CAPITAL FUNDING, FOR THE PURPOSES OF THIS SECTION.

6. RETURNS ON THE FOUNDATION'S INVESTMENTS. ANY RETURN ON THE FOUNDATION'S INVESTMENTS IN QUALIFIED ENTERPRISES SHALL BE REINVESTED INTO THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND TO BE USED FOR FURTHER INVESTMENT OR THE OPERATIONAL COSTS OF THE FUND.

S 3. 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 4. This act shall take effect immediately.