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IN ASSEMBLY

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Introduced by M. of A. MORELLE, SWEENEY, SCHIMMINGER, DESTITO, ENGLEBRIGHT, BOYLAND, MAGNARELLI, STIRPE -- Multi-Sponsored by -- M. of A. KOON -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the New York state urban development corporation act, in relation to high-technology working capital loan guarantees

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

Section 1. Legislative findings and declarations. The legislature hereby finds that economic expansion in tomorrow's economy will flow from scientific and technological advances. Indeed, technological innovation has been at the root of nearly all job creation throughout the twentieth century and will remain the engine of economic growth in the twenty-first, leading to the creation of a broad spectrum of higher paying jobs.

The legislature further finds that high-technology economic development must have a high priority for immediate action to set the stage for retooling our industrial base to meet the challenges of tomorrow's technology-based economy.

The legislature further finds that the economic well-being of New York state would be served by new and innovative approaches to financing the small business which traditionally has had difficulty in gaining access to capital markets and which are severely hampered in their expansion activities by their diminished access to capital.

The legislature further finds that decentralized economic development programs enlisting the hands-on expertise of the local economic development communities are much better able to serve small, local businesses than centralized state programs.

Therefore, the legislature declares that the economic interests of New York state and the well-being of local communities would be served by supporting and stimulating the small high-technology enterprises that

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

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add economic value to New York providing a broad spectrum of high-paying jobs and that will become the growth industries of tomorrow, and that state assistance in this regard is necessary and proper.

S 2. Section 1 of chapter 174 of the laws of 1968 constituting the New York state urban development corporation act is amended by adding a new section 16-t to read as follows:

S 16-T. HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE PROGRAM. 1. FOR PURPOSES OF THIS SECTION: (A) "HIGH-TECHNOLOGY BUSINESS" SHALL MEAN A BUSINESS THAT IS DEVELOPING OR OFFERING A PRODUCT OR SERVICE BASED ON LEADING-EDGE TECHNOLOGY OR SCIENTIFIC RESEARCH, OR IS OR HAS RECENTLY COMPLETED RESEARCH AND DEVELOPMENT DESIGNED TO IMPROVE SUCH PRODUCT OR SERVICE, OR HAS RECENTLY COMPLETED AND IS COMMENCING TO MARKET A PROTOTYPE OF SUCH PRODUCT OR SERVICE.

(B) "ELIGIBLE BUSINESS" SHALL MEAN A HIGH-TECHNOLOGY BUSINESS THAT IS RESIDENT IN THIS STATE, IS INDEPENDENTLY OWNED AND OPERATED, AND EMPLOYS TWO HUNDRED OR FEWER PERSONS ON A FULL-TIME BASIS.

(C) "ELIGIBLE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION" SHALL MEAN A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION ESTABLISHED PURSUANT TO SECTION THIRTY-ONE HUNDRED TWO-D OF THE PUBLIC AUTHORITIES LAW.

(D) "LOAN GUARANTEE" SHALL MEAN THE GUARANTEE OF UP TO EIGHTY PERCENT OF A WORKING CAPITAL LOAN MADE TO AN ELIGIBLE BUSINESS BY A COMMERCIAL BANK, PROVIDED THAT NO MORE THAN EIGHTY THOUSAND DOLLARS MAY BE GUARANTEED FOR ANY ONE LOAN.

2. THE CORPORATION SHALL ESTABLISH A FUND TO BE KNOWN AS THE "HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE FUND" AND SHALL PAY INTO SUCH FUND ANY MONIES MADE AVAILABLE TO THE CORPORATION FOR SUCH FUND FROM ANY SOURCE. THE MONIES HELD IN OR CREDITED TO THE FUND SHALL BE EXPENDED SOLELY FOR THE PURPOSES SET FORTH IN THIS SECTION.

3. THE CORPORATION IS HEREBY AUTHORIZED TO ALLOCATE THE AUTHORITY TO APPROVE LOAN GUARANTEES, IN A TOTAL AMOUNT OF NO MORE THAN FOUR TIMES THE AMOUNT OF THE MONIES APPROPRIATED TO THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE FUND, WHICH SHALL BE USED SOLELY FOR THE PURPOSE OF PROVIDING SECURITY FOR LOAN GUARANTEES MADE PURSUANT TO THIS SECTION. THE CORPORATION SHALL ALLOCATE SUCH AUTHORITY AMONG ELIGIBLE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS AS FOLLOWS:

(A) FIFTY PERCENT DIVIDED EQUALLY AMONG THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS APPLYING FOR AND PROVIDED WITH SUCH AUTHORITY BY THE CORPORATION; AND

(B) FIFTY PERCENT ACCORDING TO A FORMULA WEIGHTED IN FAVOR OF THOSE REGIONAL DEVELOPMENT ORGANIZATIONS SERVING AREAS WITH THE GREATEST LEVELS OF NEED AND OF HIGH-TECHNOLOGY ECONOMIC ACTIVITY AS DETERMINED BY THE CORPORATION, AND WHICH HAVE BEEN ALLOCATED LOAN GUARANTEE AUTHORITY BY THE CORPORATION IN PARAGRAPH (A) OF THIS SUBDIVISION.

4. EACH REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION THAT IS APPROVED BY THE CORPORATION FOR LOAN GUARANTEE AUTHORITY SHALL BE REQUIRED TO:

(A) HAVE AVAILABLE TO IT STAFF WITH SUFFICIENT EXPERTISE TO ANALYZE APPLICATIONS FOR LOAN GUARANTEES AND TO REGULARLY MONITOR THE FINANCIAL, TECHNOLOGICAL, AND MARKETING PROGRESS OF CLIENTS RECEIVING LOAN GUARANTEES;

(B) HAVE AN EFFECTIVE PLAN TO MARKET ITS SERVICES TO SMALL, HIGH-TECHNOLOGY BUSINESSES THROUGH SUCH ENTITIES AS CHAMBERS OF COMMERCE, INDUSTRY TRADE ASSOCIATIONS, LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS, AND COMMERCIAL BANKS;

(C) HAVE ESTABLISHED A LOAN GUARANTEE COMMITTEE COMPOSED OF FIVE OR MORE PERSONS EXPERIENCED IN COMMERCIAL LENDING OR IN THE OPERATION OF A FOR-PROFIT, HIGH-TECHNOLOGY BUSINESS. SUCH LOAN COMMITTEE SHALL REVIEW

EVERY APPLICATION TO THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION FOR A LOAN GUARANTEE PURSUANT TO THIS SECTION, SHALL ASSESS THE REASONABLENESS OF THE APPLICANT'S BUSINESS PLAN AND THE LIKELIHOOD THAT THE APPLICANT WILL SUCCESSFULLY COMPLETE ITS BUSINESS PLAN AND REPAY THE WORKING CAPITAL LOAN, AND SHALL RECOMMEND TO THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF THE REGIONAL TECHNOLOGY ORGANIZATION SUCH ACTION AS THE COMMITTEE DEEMS APPROPRIATE.

5. THE CORPORATION SHALL APPROVE OR DISAPPROVE APPLICATIONS FROM ELIGIBLE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS FOR LOAN GUARANTEE AUTHORITY BASED UPON THE ABILITY OF THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION TO ADMINISTER SUCH AUTHORITY PURSUANT TO THE REQUIREMENTS OF THIS SECTION. APPLICATIONS FROM ELIGIBLE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS TO THE CORPORATION FOR LOAN GUARANTEE AUTHORITY SHALL:

(A) DESCRIBE THE LOAN GUARANTEE COMMITTEE, APPROPRIATE STAFF, AND OTHER SOURCES OF EXPERTISE AND ASSISTANCE AVAILABLE TO THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION, IF ANY;

(B) DESCRIBE ITS PLAN TO MARKET THE PROGRAM TO SMALL, HIGH-TECHNOLOGY FIRMS;

(C) EXPLAIN THE METHODS AND CRITERIA TO BE USED IN DETERMINING FIRMS ELIGIBLE FOR LOAN GUARANTEES; AND

(D) CONTAIN SUCH OTHER INFORMATION AS THE CORPORATION DEEMS APPROPRIATE.

6. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION ALLOCATED LOAN GUARANTEE AUTHORITY BY THE CORPORATION SHALL USE ITS LOAN GUARANTEE AUTHORIZATION SUBJECT TO THE TERMS, CONDITIONS AND RESTRICTIONS SET FORTH IN THIS SECTION, TO PROVIDE LOAN GUARANTEES TO ELIGIBLE BUSINESSES FOR PROJECTS THAT ARE SCIENTIFICALLY OR TECHNOLOGICALLY FEASIBLE, THAT ARE COMMERCIALLY FEASIBLE, AND THAT DEMONSTRATE A SUBSTANTIAL LIKELIHOOD OF PROVIDING INCREASES IN NET NEW PERMANENT JOBS. EACH WORKING CAPITAL LOAN THAT RECEIVES A LOAN GUARANTEE PURSUANT TO THIS SECTION SHALL BE SECURED BY A SECURITY AGREEMENT, CHATTEL PAPER, LOAN AGREEMENT, OR BY SUCH OTHER INSTRUMENTS OR DOCUMENTS AS DEEMED NECESSARY BY THE REGIONAL TECHNOLOGY ORGANIZATION APPROVING THE LOAN GUARANTEE. NO LOAN GUARANTEE SHALL BE APPROVED FOR A WORKING CAPITAL LOAN WITH A TERM EXCEEDING FIVE YEARS. EACH LOAN GUARANTEE MADE PURSUANT TO THIS SECTION SHALL BE BACKED BY A MINIMUM RESERVE, HELD BY THE CORPORATION IN THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE FUND, AS SET FORTH IN SUBDIVISION THREE OF THIS SECTION.

7. THE DECISION TO APPROVE OR REJECT AN APPLICATION FROM AN ELIGIBLE BUSINESS FOR A LOAN GUARANTEE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE MADE BY A MAJORITY OF THE DIRECTORS OF THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION AND SUCH DECISION SHALL BE FINAL. NO MEMBER OF THE BOARD OR OTHER GOVERNING BODY OF A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL PARTICIPATE IN A DECISION ON A PROJECT APPLICATION WHEN SUCH MEMBER IS A PARTY TO OR HAS A FINANCIAL INTEREST IN SUCH PROJECT. ANY MEMBER WHO CANNOT PARTICIPATE IN A DECISION ON A PROJECT APPLICATION FOR SUCH REASON SHALL NOT BE COUNTED AS A MEMBER OF THE BOARD OR OTHER GOVERNING BODY FOR PURPOSES OF DETERMINING THE NUMBER OF MEMBERS REQUIRED FOR A MAJORITY VOTE ON SUCH APPLICATION.

8. NO EMPLOYEE OR OFFICER OF ANY REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL BE A PARTY TO OR HAVE ANY FINANCIAL INTEREST IN ANY PROJECT THAT RECEIVES FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION.

9. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL NOT APPROVE ANY LOAN GUARANTEE AUTHORIZED BY THIS SECTION UNLESS THE FOLLOWING CONDITIONS ARE MET:

(A) THE APPLICANT FOR A LOAN GUARANTEE HAS DEMONSTRATED THAT THERE IS LITTLE PROSPECT OF OBTAINING THE LOAN WITHOUT THE GUARANTEE;

(B) THE APPLICANT FOR SUCH GUARANTEE HAS A MINIMUM EQUITY INTEREST OF AT LEAST TEN PERCENT IN THE BUSINESS OR PROJECT;

(C) THERE IS A REASONABLE PROSPECT OF REPAYMENT OF THE WORKING CAPITAL LOAN;

(D) THE PROJECT IS LOCATED IN THE REGION REPRESENTED BY THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION;

(E) THE PROJECT WILL COMPLY WITH ANY APPLICABLE ENVIRONMENTAL RULES OR REGULATIONS;

(F) THE APPLICANT FOR A GUARANTEE HAS CERTIFIED THAT IT WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR ANY APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, OR AGE; AND

(G) A STAFF MEMBER OR A REPRESENTATIVE OF THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION ACTING IN AN OFFICIAL CAPACITY HAS PERSONALLY VISITED THE PROJECT SITE AND/OR THE APPLICANT'S PLACE OF BUSINESS.

10. LOAN GUARANTEES SHALL NOT BE APPROVED BY A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION FOR WORKING CAPITAL LOANS:

(A) WHERE THE PROCEEDS WOULD CONTRIBUTE TO OR RESULT IN THE RELOCATION OF ANY BUSINESS OPERATION FROM ONE MUNICIPALITY WITHIN THE STATE TO ANOTHER, EXCEPT UNDER ONE OF THE FOLLOWING CONDITIONS:

(I) WHEN A BUSINESS IS RELOCATING WITHIN A MUNICIPALITY WITH A POPULATION OF AT LEAST ONE MILLION WHERE THE GOVERNING BODY OF SUCH MUNICIPALITY APPROVES SUCH RELOCATION; OR

(II) THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION NOTIFIES EACH MUNICIPALITY FROM WHICH SUCH BUSINESS OPERATION WILL BE RELOCATED AND EACH MUNICIPALITY AGREES TO SUCH RELOCATION;

(B) TO BUSINESSES THAT DO NOT QUALIFY AS HIGH-TECHNOLOGY BUSINESSES; OR

(C) WHERE THE PROCEEDS WOULD BE USED, DIRECTLY OR INDIRECTLY, FOR PAYMENT, DISTRIBUTION, OR AS A LOAN, TO OWNERS, PARTNERS OR SHAREHOLDERS OF THE APPLICANT ENTERPRISE, EXCEPT AS ORDINARY INCOME FOR SERVICES RENDERED.

11. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION MAY CHARGE APPLICATION AND LOAN GUARANTEE FEES PURSUANT TO A SCHEDULE OF FEES ADOPTED BY THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION AND APPROVED BY THE CORPORATION.

12. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION IS AUTHORIZED TO REISSUE ANY OF ITS LOAN GUARANTEE ALLOCATION AFTER ANY LOAN FOR WHICH IT INITIALLY ISSUED A GUARANTEE HAS BEEN RETIRED, UNLESS ITS ALLOCATION HAS BEEN WITHHELD OR REVOKED PURSUANT TO THE PROVISIONS OF SUBDIVISION FIFTEEN OF THIS SECTION, OR PROVIDED THAT THE RESERVE MAINTAINED BY THE CORPORATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION IS DEEMED BY THE CORPORATION TO BE INSUFFICIENT TO PROVIDE ADEQUATE SECURITY FOR AUTHORIZED AND ALLOCATED LOAN GUARANTEES. IN THE EVENT THAT A LOAN FOR WHICH A LOAN GUARANTEE WAS ISSUED UNDER THIS SECTION IS DEFAULTED AND THE GUARANTEE MUST BE PAID BY THE CORPORATION FROM SUCH RESERVE, THE CORPORATION MAY WITHHOLD, FROM THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION ISSUING SUCH GUARANTEE, REUSE OF A PORTION OF ITS AUTHORIZED GUARANTEE ALLOCATION UNTIL SUCH TIME AS A RESERVE EXISTS EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL AMOUNT OF AUTHORIZED AND ALLOCATED LOAN GUARANTEES, OR SOME LESSER AMOUNT AS THE CORPORATION MAY DEEM SUFFICIENT TO PROVIDE ADEQUATE SECURITY FOR AUTHORIZED AND ALLOCATED LOAN GUARANTEES.

13. THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL SUBMIT ANNUAL REPORTS TO THE CORPORATION DESCRIBING THE FINANCIAL ASSISTANCE

PROVIDED PURSUANT TO THIS SECTION, INCLUDING: THE NUMBER OF LOAN GUARANTEES PROVIDED; THE AMOUNT AND TERM OF EACH WORKING CAPITAL LOAN GUARANTEED; A DESCRIPTION OF THE BUSINESS OR PROJECT RECEIVING EACH GUARANTEE; THE NUMBER OF JOBS CREATED OR RETAINED; AND SUCH OTHER INFORMATION AS THE CORPORATION MAY REQUIRE.

14. THE CORPORATION SHALL PROMULGATE RULES AND REGULATIONS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT SETTING FORTH PROCEDURES TO BE FOLLOWED BY, AND THE RESPONSIBILITIES AND OBLIGATIONS OF, REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS AND THE CORPORATION. SUCH RULES AND REGULATIONS SHALL INCLUDE DETERMINANTS FOR DECIDING WHEN A LOAN GUARANTEED PURSUANT TO THIS SECTION IS IN DEFAULT AND WOULD REQUIRE REPAYMENT FROM THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE FUND AND SHALL BE CONSISTENT WITH THE PROGRAM PLAN REQUIRED BY SUBDIVISION NINETEEN OF SECTION ONE HUNDRED OF THE ECONOMIC DEVELOPMENT LAW.

15. THE CORPORATION SHALL PERIODICALLY AND ANNUALLY AUDIT EACH REGIONAL TECHNOLOGY ORGANIZATION TO ENSURE CONFORMITY OF ALL ASPECTS OF FINANCIAL ASSISTANCE TRANSACTIONS WITH THE SUBSTANTIVE AND PROCEDURAL PROVISIONS OF THIS SECTION. IN THE EVENT THAT THE CORPORATION FINDS INSTANCES OF SUBSTANTIVE NONCOMPLIANCE BY A REGIONAL TECHNOLOGY ORGANIZATION WITH ANY OF THE PROVISIONS OF THIS SECTION AND SUCH INSTANCES WERE, OR SHOULD HAVE BEEN, KNOWN TO BE IN NONCOMPLIANCE, THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL NOT BE AUTHORIZED TO ISSUE ANY UNUSED PORTION OF ITS GUARANTEE AUTHORIZATION. THE CORPORATION MAY REVOKE OR WITHHOLD THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION'S ALLOCATION UNTIL SUCH TIME AS THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION IS IN FULL COMPLIANCE WITH ALL OF THE PROVISIONS OF THIS SECTION.

16. THE CORPORATION SHALL, ON OR BEFORE OCTOBER FIRST, TWO THOUSAND ELEVEN AND ON OR BEFORE EACH OCTOBER FIRST THEREAFTER, SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE ON THE OPERATIONS AND ACCOMPLISHMENTS OF THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE PROGRAM. SUCH REPORT SHALL INCLUDE A SUMMARY OF THE INFORMATION CONTAINED IN THE REPORTS SUBMITTED PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION AND OF THE RESULTS OF THE AUDITS PERFORMED BY THE CORPORATION PURSUANT TO SUBDIVISION FIFTEEN OF THIS SECTION, AND SHALL SET FORTH THE STATUS OF THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE PROGRAM, INCLUDING ALLOCATIONS, PAYMENTS TO COVER DEFAULTED LOANS, AND FUND RESERVE BALANCE.

S 3. This act shall take effect immediately.