

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

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

18 S 2. Section 3150 of the public authorities law, as amended by section  
19 4 of part C of chapter 63 of the laws of 2005, is amended to read as  
20 follows:

21 S 3150. Definitions. As used in this [section] TITLE:

22 1. "Foundation" shall mean the New York state foundation for science,  
23 technology and innovation created by this title;

24 2. "Executive director" shall mean the executive director of the foun-  
25 dation;

26 3. "Board" shall mean the New York state foundation for science, tech-  
27 nology and innovation board;

28 4. "Regional partnerships" shall mean any association or group which  
29 is: (a) comprised of local economic development organizations and a  
30 center of excellence as defined by section three of part T of chapter  
31 eighty-four of the laws of two thousand two, or in the absence of such  
32 center in the region, at least one institution of higher education  
33 involved in commercialization efforts similar to such centers of excel-  
34 lence and may include a combination of private businesses, business  
35 support organizations, commercial lending institutions, venture capital  
36 companies, angel investor networks or foundations; (b) formed for the  
37 creation and administration of regional partnership programs; and (c)  
38 certified by the foundation as the regional partnership;

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

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

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

44 8. "RESEARCH ENTITY" SHALL MEAN A NOT-FOR-PROFIT COLLEGE, UNIVERSITY,  
45 MEDICAL CENTER, LABORATORY OR OTHER INSTITUTION THAT CONDUCTS AN INTEN-  
46 SIVE, ONGOING PROGRAM OF STUDY DIRECTED TOWARD GREATER KNOWLEDGE OF A  
47 SCIENTIFIC SUBJECT OR TOWARD APPLYING NEW SCIENTIFIC KNOWLEDGE TO MEET A  
48 RECOGNIZED NEED.

49 S 3. The public authorities law is amended by adding a new section  
50 3154-a to read as follows:

51 S 3154-A. COMMERCIALIZATION ASSISTANCE FUND. 1. THE COMMERCIALIZATION  
52 ASSISTANCE FUND IS HEREBY CREATED FOR THE PURPOSE OF: (A) ADVANCING THE  
53 EARLY-STAGE DEVELOPMENT OF COMMERCIALY PROMISING INVENTIONS OWNED BY  
54 RESEARCH ENTITIES LOCATED IN NEW YORK STATE;

55 (B) ENCOURAGING ENTREPRENEURS TO FORM NEW COMPANIES LOCATED IN NEW  
56 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.