

4198

2009-2010 Regular Sessions

I N A S S E M B L Y

January 30, 2009

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.

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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

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

(D) THE FOUNDATION SHALL ESTABLISH RULES AND REGULATIONS FOR THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM, INCLUDING AWARD SELECTION CRITERIA, WHICH SHALL SERVE AS THE BASIS FOR AWARDS FUNDED UNDER THIS PROGRAM.

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

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

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

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

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

4. CONSISTENT WITH FEDERAL SBIR PROCEDURES, THE FOUNDATION SHALL NOT DISCLOSE PROPRIETARY INFORMATION WHEN REQUESTED NOT TO DO SO BY PARTICIPANTS IN THIS PROGRAM.

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

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

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

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

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

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

S 5. This act shall take effect immediately.