S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. ESPAILLAT, PEOPLES-STOKES, TOWNS, JOHN, BING, MAGNARELLI, MORELLE, DESTITO -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BOYLAND, CARROZZA, CUSICK, FARRELL, GUNTHER, KOON, LIFTON, MAGEE, RAMOS, SWEENEY -- 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 creating the bioscience facilities development program

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 finds that New York state has many assets that are critical to the growth of the biotechnology industry.

The legislature also finds that New York state has an extensive academic research base, a highly skilled labor pool and access to financial institutions oriented toward biotech development.

The legislature further finds that even with many of the critical elements for growing a biotechnology cluster, New York for all intents and purposes has been eclipsed by a number of other regions in the country.

Further, the legislature finds that while start-up companies are established in New York, companies that are poised for rapid expansion have left New York for regions that have developed vigorous biotech and policies that deliberately invite, nurture and facilitate the expansion of the industry and proactively addressing the biotech companies' need for affordable laboratory space.

The legislature declares that biotechnology is an important economic development industry for the state and that the critical impediment to the successful growth of a biotech cluster in New York state is access to affordable laboratory space. Therefore, the legislature hereby declares the creation of the "bioscience facilities development program".

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

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. THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM. 1. THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM IS HEREBY CREATED TO MAXIMIZE THE ECONOMIC DEVELOPMENT POTENTIAL OF ACADEMIC AND COMMERCIAL BIOSCIENCE ACTIVITY IN THE STATE, INCLUDING BUT NOT LIMITED TO BIOTECHNOLOGY, BIOMEDICINE, NANOMEDICINE, SPECIALTY PHARMACEUTICALS, MEDICAL DEVICES, AND RELATED SCIENCES, IN ORDER TO BUILD UPON WORLD-RENOWNED RESEARCH AND DEVELOPMENT ACTIVITIES IN THE BIOSCIENCES.

2. THE CORPORATION SHALL, FROM FUNDS MADE AVAILABLE FOR THIS PURPOSE, PROVIDE A GRANT TO A LOCAL ECONOMIC DEVELOPMENT CORPORATION WHICH SERVES A REGION MEETING THE CRITERIA SET FORTH IN SUBDIVISION 3 OF THIS SECTION AND WHICH SHALL APPLY FOR SUCH GRANT IN A FORM AND MANNER DETERMINED BY THE CORPORATION FOR THE PURPOSE OF CREATING A REVOLVING LOAN FUND TO PROVIDE LOANS TO BIOSCIENCE FACILITIES TO ASSIST INDIVIDUAL COMMERCIAL BIOSCIENCE COMPANIES TO REMAIN IN NEW YORK STATE.

3. A LOCAL ECONOMIC DEVELOPMENT CORPORATION APPLYING FOR A GRANT UNDER THIS SECTION SHALL:

(A) HAVE FIRM COMMITMENTS FROM PRIVATE AND MUNICIPAL SOURCES TO PROVIDE FUNDS TO THE LOCAL ECONOMIC DEVELOPMENT CORPORATION IN AN AMOUNT AT LEAST EQUAL TO THE AMOUNT OF THE GRANT; AND

(B) SERVE AN ECONOMIC DEVELOPMENT REGION OF THE STATE AS DESIGNATED PURSUANT TO SECTION 230 OF THE ECONOMIC DEVELOPMENT LAW, WHICH REGION SHALL HAVE LOCATED WITHIN IT COLLEGES, UNIVERSITIES, HOSPITALS, LABORATORIES, AND OTHER RESEARCH INSTITUTIONS.

4. ELIGIBLE BORROWERS FROM THE FUND ESTABLISHED BY THE LOCAL ECONOMIC DEVELOPMENT CORPORATION RECEIVING A GRANT UNDER THIS PROGRAM SHALL INCLUDE EARLY AND MIDDLE STAGE BIOSCIENCE COMPANIES IN SUCH AREAS AS BIOTECHNOLOGY, BIOMEDICINE, NANOMEDICINE, SPECIALTY PHARMACEUTICALS, AND MEDICAL DEVICES, WITH FEWER THAN TWO HUNDRED EMPLOYEES AND WHICH HAVE RECEIVED FUNDING FROM AN INSTITUTIONAL VENTURE CAPITAL FIRM IN THE TWENTY-FOUR MONTHS PRIOR TO MAKING APPLICATION FOR A LOAN UNDER THIS SUBDIVISION, AND SHALL ALSO INCLUDE BOTH FOR-PROFIT AND NOT-FOR-PROFIT PROPERTY OWNERS AND DEVELOPERS WHO ARE INTENDING TO DEVELOP AND LEASE SPACE TO SUCH BIOSCIENCE COMPANIES, PROVIDED, HOWEVER, THAT THE USE OF SUCH FUNDS IS RESTRICTED TO THE CONSTRUCTION OF LABORATORY AND RELATED SPACE AND THAT THE MAXIMUM SIZE OF SUCH LOAN SHALL BE NO MORE THAN FIFTY PERCENT OF THE COST OF SUCH LABORATORY OR RELATED SPACE CONSTRUCTION. SUCH LOANS UNDER THIS SUBDIVISION SHALL BE MADE FOR A PERIOD OF SEVEN TO TEN YEARS AT A RATE OF SEVEN TO EIGHT PERCENT, EXCEPT THAT DURING SUCH PERIOD THAT THE LOAN SHALL REMAIN OUTSTANDING, IF A BIOSCIENCE COMPANY RECEIVING SUCH LOAN SHALL RELOCATE A SIGNIFICANT PORTION OF ITS OPERATIONS, AS DETERMINED IN A LOAN AGREEMENT WITH THE LOCAL ECONOMIC DEVELOPMENT CORPORATION, OUTSIDE NEW YORK STATE, SUCH INTEREST RATE SHALL RISE TO EIGHTEEN PERCENT ON A RETROACTIVE BASIS. IF, AFTER A PERIOD OF FIVE YEARS FROM THE INCEPTION OF THE LOAN, A COMPANY SHALL REMAIN IN NEW YORK STATE, TWENTY-FIVE PERCENT OF THE PRINCIPAL AMOUNT OF SUCH LOAN SHALL BE FORGIVEN; AND IF AFTER A PERIOD OF TEN YEARS FROM THE INCEPTION OF THE LOAN, A COMPANY SHALL REMAIN IN NEW YORK STATE, FIFTY PERCENT OF THE PRINCIPAL AMOUNT OF SUCH LOAN SHALL BE FORGIVEN, FURTHER PROVIDED THAT IF THE AMOUNT STILL OUTSTANDING ON THE LOAN SHALL BE LESS THAN THE AMOUNT FORGIVEN, THE DIFFERENCE SHALL BE REIMBURSED TO THE COMPANY. ANY COMPANY RECEIVING SUCH A LOAN SHALL BE INDEPENDENTLY OWNED AND OPERATED. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "INDEPENDENTLY OWNED AND OPERATED BUSINESS" SHALL MEAN (A) IN THE CASE OF A CORPORATION, ONE

WHERE NO MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF THE CORPORATION IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION, A SINGLE PARTNERSHIP OR A SINGLE LIMITED LIABILITY COMPANY, AND (B) IN THE CASE OF A PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY, WHERE NO MORE THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR OTHER BENEFICIAL INTEREST IN SUCH PARTNERSHIP, ASSOCIATION OR OTHER ENTITY IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION, A SINGLE PARTNERSHIP OR A SINGLE LIMITED LIABILITY COMPANY.

5. GRANTS RECEIVED FROM THE CORPORATION BY THE LOCAL ECONOMIC DEVELOPMENT CORPORATION, EARNINGS ON SUCH MONIES, AND ANY PRINCIPAL REPAYMENTS AND ANY INTEREST EARNED ON LOANS SHALL BE DEPOSITED IN A LOAN FUND ACCOUNT.

6. THE DECISION TO APPROVE OR REJECT AN APPLICATION FOR FINANCIAL ASSISTANCE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE MADE BY A MAJORITY OF THE DIRECTORS OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION, AND SUCH DECISION SHALL BE FINAL. NO MEMBER OF THE BOARD OR OTHER GOVERNING BODY OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION 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. NO EMPLOYEE OR OFFICER OF ANY SUCH CORPORATION SHALL BE A PARTY TO OR HAVE ANY FINANCIAL INTEREST IN ANY PROJECT THAT RECEIVES FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION.

7. THE CORPORATION MAY WITHDRAW ANY AMOUNT REMAINING FROM AN ORIGINAL GRANT AND ANY EARNINGS ON SUCH GRANT, AND ANY PRINCIPAL REPAYMENTS AND ANY INTEREST EARNED ON LOANS MADE FROM SUCH GRANT WHEN A MEMBER OF A BOARD OF DIRECTORS, AN OFFICER OR AN EMPLOYEE OF SAID CORPORATION IS PARTY TO OR HAS FINANCIAL INTERESTS IN LOAN PROJECTS; WHEN SAID LOCAL ECONOMIC DEVELOPMENT CORPORATION FAILS TO COMPLY WITH THE REQUIREMENTS FOR PROJECT LOANS PURSUANT TO THIS SECTION; OR WHEN SAID CORPORATION MAKES NO LOANS WITHIN THE PREVIOUS FISCAL YEAR. OUTSTANDING LOANS AND OTHER OBLIGATIONS PAYABLE TO SUCH LOCAL ECONOMIC DEVELOPMENT CORPORATION SHALL BE ASSIGNED TO THE CORPORATION UPON SUCH TERMS AND CONDITIONS AS THE CORPORATION SHALL DETERMINE.

8. THE LOCAL ECONOMIC DEVELOPMENT CORPORATION RECEIVING SUCH GRANT SHALL SUBMIT ANNUAL REPORTS FOR THE PREVIOUS FISCAL YEAR TO THE CORPORATION DESCRIBING THE FINANCIAL ASSISTANCE PROVIDED PURSUANT TO THIS SECTION, INCLUDING: THE NUMBER OF PROJECTS ASSISTED; THE AMOUNT AND TYPE OF ASSISTANCE PROVIDED; A DESCRIPTION OF THE PROJECTS; THE NUMBER OF JOBS CREATED OR RETAINED; THE STATUS OF OUTSTANDING LOANS, GUARANTEES, EARNINGS AND ACCOUNT BALANCES; AND SUCH OTHER INFORMATION AS THE CORPORATION MAY REQUIRE.

9. THE CORPORATION SHALL ANNUALLY CONDUCT AN AUDIT OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION RECEIVING A GRANT TO ENSURE CONFORMITY OF ALL ASPECTS OF PROGRAM ADMINISTRATION AND 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 SUCH AN ECONOMIC DEVELOPMENT CORPORATION WITH ANY OF THE PROVISIONS OF THIS SECTION AND SUCH INSTANCES WERE, OR SHOULD HAVE BEEN, KNOWN TO BE IN NONCOMPLIANCE, THE ECONOMIC DEVELOPMENT CORPORATION SHALL RETURN, WITHIN THIRTY DAYS, UPON DEMAND BY THE CORPORATION, ALL UNCOMMITTED GRANT FUNDS ON HAND AND PROVIDE AN ACCOUNT OF THE LOANS CURRENTLY OUTSTANDING.

10. THE CORPORATION SHALL, ON OR BEFORE OCTOBER 1, 2010, AND ON OR BEFORE EACH OCTOBER FIRST THEREAFTER, SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE ON THE OPERATIONS AND ACCOMPLISHMENTS OF THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM. SUCH REPORT SHALL INCLUDE A SUMMARY OF THE INFORMATION CONTAINED IN THE REPORTS SUBMITTED PURSUANT TO SUBDIVISION 8 OF THIS SECTION AND OF THE RESULTS OF THE AUDITS PERFORMED BY THE CORPORATION PURSUANT TO SUBDIVISION 9 OF THIS SECTION, AND SHALL SET FORTH THE STATUS OF THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM REVOLVING LOAN PROGRAM FOR THE PREVIOUS FISCAL YEAR.

S 3. This act shall take effect immediately.