

5255--A

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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, SCHROEDER -- 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 -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

1 Section 1. Legislative findings and declarations. The legislature
2 finds that New York state has many assets that are critical to the
3 growth of the biotechnology industry.
4 The legislature also finds that New York state has an extensive
5 academic research base, a highly skilled labor pool and access to finan-
6 cial institutions oriented toward biotech development.
7 The legislature further finds that even with many of the critical
8 elements for growing a biotechnology cluster, New York for all intents
9 and purposes has been eclipsed by a number of other regions in the coun-
10 try.
11 Further, the legislature finds that while start-up companies are
12 established in New York, companies that are poised for rapid expansion
13 have left New York for regions that have developed vigorous biotech and
14 policies that deliberately invite, nurture and facilitate the expansion
15 of the industry and proactively addressing the biotech companies' need
16 for affordable laboratory space.
17 The legislature declares that biotechnology is an important economic
18 development industry for the state and that the critical impediment to
19 the successful growth of a biotech cluster in New York state is access

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

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1 to affordable laboratory space. Therefore, the legislature hereby
2 declares the creation of the "bioscience facilities development
3 program".

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

7 S 16-T. THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM. 1. THE BIOSCI-
8 ENCE FACILITIES DEVELOPMENT PROGRAM IS HEREBY CREATED TO MAXIMIZE THE
9 ECONOMIC DEVELOPMENT POTENTIAL OF ACADEMIC AND COMMERCIAL BIOSCIENCE
10 ACTIVITY IN THE STATE, INCLUDING BUT NOT LIMITED TO BIOTECHNOLOGY, BIOM-
11 EDICINE, NANOMEDICINE, SPECIALTY PHARMACEUTICALS, MEDICAL DEVICES, AND
12 RELATED SCIENCES, IN ORDER TO BUILD UPON WORLD-RENOWNED RESEARCH AND
13 DEVELOPMENT ACTIVITIES IN THE BIOSCIENCES.

14 2. (A) THE CORPORATION SHALL, FROM FUNDS MADE AVAILABLE FOR THIS
15 PURPOSE, PROVIDE GRANTS TO LOCAL ECONOMIC DEVELOPMENT CORPORATIONS WHICH
16 SERVE A REGION MEETING THE CRITERIA SET FORTH IN SUBDIVISION THREE OF
17 THIS SECTION AND WHICH SHALL APPLY FOR SUCH GRANT IN A FORM AND MANNER
18 DETERMINED BY THE CORPORATION FOR THE PURPOSE OF CREATING A REVOLVING
19 LOAN FUND TO PROVIDE LOANS TO BIOSCIENCE FACILITIES TO ASSIST INDIVIDUAL
20 COMMERCIAL BIOSCIENCE COMPANIES TO REMAIN IN NEW YORK STATE.

21 (B) NO MORE THAN ONE LOCAL ECONOMIC DEVELOPMENT CORPORATION SHALL BE
22 SELECTED FROM EACH ECONOMIC REGION OF THE STATE, AS DESIGNATED PURSUANT
23 TO SECTION 230 OF THE ECONOMIC DEVELOPMENT LAW, BY THE CORPORATION TO
24 RECEIVE A GRANT PURSUANT TO THIS SECTION.

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

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

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

34 4. ELIGIBLE BORROWERS FROM THE FUND ESTABLISHED BY THE LOCAL ECONOMIC
35 DEVELOPMENT CORPORATION RECEIVING A GRANT UNDER THIS PROGRAM SHALL
36 INCLUDE EARLY AND MIDDLE STAGE BIOSCIENCE COMPANIES IN SUCH AREAS AS
37 BIOTECHNOLOGY, BIOMEDICINE, NANOMEDICINE, SPECIALTY PHARMACEUTICALS, AND
38 MEDICAL DEVICES, WITH FEWER THAN TWO HUNDRED EMPLOYEES AND WHICH HAVE
39 RECEIVED FUNDING FROM AN INSTITUTIONAL VENTURE CAPITAL FIRM IN THE TWEN-
40 TY-FOUR MONTHS PRIOR TO MAKING APPLICATION FOR A LOAN UNDER THIS SUBDI-
41 VISION, AND SHALL ALSO INCLUDE BOTH FOR-PROFIT AND NOT-FOR-PROFIT PROP-
42 erty owners and developers who are intending to develop and lease space
43 to such bioscience companies, provided, however, that the use of such
44 funds is restricted to the construction of laboratory and related space
45 and that the maximum size of such loan shall be no more than fifty
46 percent of the cost of such laboratory or related space construction.
47 SUCH LOANS UNDER THIS SUBDIVISION SHALL BE MADE FOR A PERIOD OF SEVEN TO
48 TEN YEARS AT A RATE OF SEVEN TO EIGHT PERCENT, EXCEPT THAT DURING SUCH
49 PERIOD THAT THE LOAN SHALL REMAIN OUTSTANDING, IF A BIOSCIENCE COMPANY
50 RECEIVING SUCH LOAN SHALL RELOCATE A SIGNIFICANT PORTION OF ITS OPER-
51 ATIONS, AS DETERMINED IN A LOAN AGREEMENT WITH THE LOCAL ECONOMIC DEVEL-
52 OPMENT CORPORATION, OUTSIDE NEW YORK STATE, SUCH INTEREST RATE SHALL
53 RISE TO EIGHTEEN PERCENT ON A RETROACTIVE BASIS. IF, AFTER A PERIOD OF
54 FIVE YEARS FROM THE INCEPTION OF THE LOAN, A COMPANY SHALL REMAIN IN NEW
55 YORK STATE, TWENTY-FIVE PERCENT OF THE PRINCIPAL AMOUNT OF SUCH LOAN
56 SHALL BE FORGIVEN; AND IF AFTER A PERIOD OF TEN YEARS FROM THE INCEPTION

1 OF THE LOAN, A COMPANY SHALL REMAIN IN NEW YORK STATE, FIFTY PERCENT OF
2 THE PRINCIPAL AMOUNT OF SUCH LOAN SHALL BE FORGIVEN, FURTHER PROVIDED
3 THAT IF THE AMOUNT STILL OUTSTANDING ON THE LOAN SHALL BE LESS THAN THE
4 AMOUNT FORGIVEN, THE DIFFERENCE SHALL BE REIMBURSED TO THE COMPANY. ANY
5 COMPANY RECEIVING SUCH A LOAN SHALL BE INDEPENDENTLY OWNED AND OPERATED.
6 FOR PURPOSES OF THIS SUBDIVISION, THE TERM "INDEPENDENTLY OWNED AND
7 OPERATED BUSINESS" SHALL MEAN (A) IN THE CASE OF A CORPORATION, ONE
8 WHERE NO MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF THE CORPORATION
9 IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION,
10 A SINGLE PARTNERSHIP OR A SINGLE LIMITED LIABILITY COMPANY, AND (B) IN
11 THE CASE OF A PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY, WHERE NO MORE
12 THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR OTHER BENEFICIAL INTEREST
13 IN SUCH PARTNERSHIP, ASSOCIATION OR OTHER ENTITY IS OWNED OR CONTROLLED,
14 DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION, A SINGLE PARTNERSHIP OR
15 A SINGLE LIMITED LIABILITY COMPANY.

16 5. GRANTS RECEIVED FROM THE CORPORATION BY A LOCAL ECONOMIC DEVELOP-
17 MENT CORPORATION, EARNINGS ON SUCH MONIES, AND ANY PRINCIPAL REPAYMENTS
18 AND ANY INTEREST EARNED ON LOANS SHALL BE DEPOSITED IN A LOAN FUND
19 ACCOUNT.

20 6. THE DECISION TO APPROVE OR REJECT AN APPLICATION FOR FINANCIAL
21 ASSISTANCE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE MADE BY A
22 MAJORITY OF THE DIRECTORS OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION,
23 AND SUCH DECISION SHALL BE FINAL. NO MEMBER OF THE BOARD OR OTHER
24 GOVERNING BODY OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION SHALL
25 PARTICIPATE IN A DECISION ON A PROJECT APPLICATION WHEN SUCH MEMBER IS A
26 PARTY TO OR HAS A FINANCIAL INTEREST IN SUCH PROJECT. ANY MEMBER WHO
27 CANNOT PARTICIPATE IN A DECISION ON A PROJECT APPLICATION FOR SUCH
28 REASON SHALL NOT BE COUNTED AS A MEMBER OF THE BOARD OR OTHER GOVERNING
29 BODY FOR PURPOSES OF DETERMINING THE NUMBER OF MEMBERS REQUIRED FOR A
30 MAJORITY VOTE ON SUCH APPLICATION. NO EMPLOYEE OR OFFICER OF ANY SUCH
31 CORPORATION SHALL BE A PARTY TO OR HAVE ANY FINANCIAL INTEREST IN ANY
32 PROJECT THAT RECEIVES FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION.

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

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

52 9. THE CORPORATION SHALL ANNUALLY CONDUCT AN AUDIT OF EACH LOCAL
53 ECONOMIC DEVELOPMENT CORPORATION RECEIVING A GRANT TO ENSURE CONFORMITY
54 OF ALL ASPECTS OF PROGRAM ADMINISTRATION AND OF FINANCIAL ASSISTANCE
55 TRANSACTIONS WITH THE SUBSTANTIVE AND PROCEDURAL PROVISIONS OF THIS
56 SECTION. IN THE EVENT THAT THE CORPORATION FINDS INSTANCES OF SUBSTAN-

1 TIVE NONCOMPLIANCE BY AN ECONOMIC DEVELOPMENT CORPORATION WITH ANY OF
2 THE PROVISIONS OF THIS SECTION AND SUCH INSTANCES WERE, OR SHOULD HAVE
3 BEEN, KNOWN TO BE IN NONCOMPLIANCE, THE ECONOMIC DEVELOPMENT CORPORATION
4 SHALL RETURN, WITHIN THIRTY DAYS, UPON DEMAND BY THE CORPORATION, ALL
5 UNCOMMITTED GRANT FUNDS ON HAND AND PROVIDE AN ACCOUNT OF THE LOANS
6 CURRENTLY OUTSTANDING.

7 10. THE CORPORATION SHALL, ON OR BEFORE OCTOBER FIRST OF THE YEAR NEXT
8 SUCCEEDING THE EFFECTIVE DATE OF THIS SECTION, AND ON OR BEFORE EACH
9 OCTOBER FIRST THEREAFTER, SUBMIT A REPORT TO THE GOVERNOR AND THE LEGIS-
10 LATURE ON THE OPERATIONS AND ACCOMPLISHMENTS OF THE BIOSCIENCE FACILI-
11 TIES DEVELOPMENT PROGRAM. SUCH REPORT SHALL INCLUDE A SUMMARY OF THE
12 INFORMATION CONTAINED IN THE REPORTS SUBMITTED PURSUANT TO SUBDIVISION
13 EIGHT OF THIS SECTION AND OF THE RESULTS OF THE AUDITS PERFORMED BY THE
14 CORPORATION PURSUANT TO SUBDIVISION NINE OF THIS SECTION, AND SHALL SET
15 FORTH THE STATUS OF THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM
16 REVOLVING LOAN PROGRAM FOR THE PREVIOUS FISCAL YEAR.

17 S 3. This act shall take effect immediately.