

2290

2009-2010 Regular Sessions

I N S E N A T E

February 17, 2009

Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and
when printed to be committed to the Committee on Commerce, Economic
Development and Small Business

AN ACT to amend the public authorities law, in relation to establishing
the biosciences commercialization assistance fund within the founda-
tion for science, technology and innovation

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

1 Section 1. Section 3150 of the public authorities law, as amended by
2 section 4 of part C of chapter 63 of the laws of 2005, is amended to
3 read as follows:
4 S 3150. Definitions. As used in this [section] TITLE:
5 1. "Foundation" shall mean the New York state foundation for science,
6 technology and innovation created by this title;
7 2. "Executive director" shall mean the executive director of the foun-
8 dation;
9 3. "Board" shall mean the New York state foundation for science, tech-
10 nology and innovation board;
11 4. "Regional partnerships" shall mean any association or group which
12 is: (a) comprised of local economic development organizations and a
13 center of excellence as defined by section three of part T of chapter
14 eighty-four of the laws of two thousand two, or in the absence of such
15 center in the region, at least one institution of higher education
16 involved in commercialization efforts similar to such centers of excel-
17 lence and may include a combination of private businesses, business
18 support organizations, commercial lending institutions, venture capital
19 companies, angel investor networks or foundations; (b) formed for the
20 creation and administration of regional partnership programs; and (c)
21 certified by the foundation as the regional partnership;

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

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

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

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

6 8. "RESEARCH ENTITY" SHALL MEAN A NOT-FOR-PROFIT COLLEGE, UNIVERSITY,
7 MEDICAL CENTER, LABORATORY OR OTHER INSTITUTION THAT CONDUCTS AN INTEN-
8 SIVE, ONGOING PROGRAM OF STUDY DIRECTED TOWARD GREATER KNOWLEDGE OF A
9 SCIENTIFIC FOCUS AREA OR TOWARD APPLYING NEW SCIENTIFIC KNOWLEDGE TO
10 MEET A RECOGNIZED NEED;

11 9. "FOCUS AREA" SHALL MEAN BIOSCIENCES RESEARCH INCLUDING, BUT NOT
12 LIMITED TO, THE BASIC, APPLIED, OR TRANSLATIONAL RESEARCH THAT LEADS TO
13 THE DEVELOPMENT OF THERAPEUTICS, DIAGNOSTICS, OR DEVICES, TO IMPROVE
14 HUMAN HEALTH OR AGRICULTURE AND THAT REQUIRE FEDERAL FOOD AND DRUG
15 ADMINISTRATION APPROVAL.

16 S 2. The public authorities law is amended by adding a new section
17 3154-a to read as follows:

18 S 3154-A. BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND. 1. THE BIOS-
19 CIENCES COMMERCIALIZATION ASSISTANCE FUND IS HEREBY CREATED FOR THE
20 PURPOSE OF:

21 (A) ADVANCING THE EARLY-STAGE DEVELOPMENT OF COMMERCIALY PROMISING
22 INVENTIONS IN THE FOCUS AREA OWNED BY RESEARCH ENTITIES LOCATED IN NEW
23 YORK STATE;

24 (B) ENCOURAGING ENTREPRENEURS TO FORM NEW COMPANIES LOCATED IN NEW
25 YORK STATE TO MANUFACTURE AND MARKET SUCH INVENTIONS;

26 (C) ENABLING SMALL BUSINESSES RESIDENT IN THE STATE TO CONDUCT APPLIED
27 RESEARCH AND DEVELOPMENT NECESSARY TO COMMERCIALIZE RESEARCH ENTITY
28 INVENTIONS; AND

29 (D) ENCOURAGING BUSINESSES RESIDENT IN THE STATE TO DEVELOP NEW
30 PRODUCTS OR PROCESSES BASED ON PROMISING INVENTIONS OR TECHNOLOGIES
31 OWNED BY SUCH BUSINESSES THROUGH GRANTS OR LOANS TO SUCH RESIDENT BUSI-
32 NESSES.

33 2. MONIES IN THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND SHALL
34 BE AVAILABLE TO ELIGIBLE RESEARCH ENTITIES, START-UPS, SMALL COMPANIES,
35 AND OTHER BUSINESSES IN NEW YORK STATE, WITH ANTICIPATED COMMERCIALIZA-
36 TION TIME FRAMES OF UP TO FIFTEEN YEARS, FOR DEVELOPMENT AND COMMERCIAL-
37 IZATION OF PRODUCTS. THE FOUNDATION SHALL USE THE MONIES AVAILABLE IN
38 THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND FOR:

39 (A) GRANTS TO RESEARCH ENTITIES LOCATED IN NEW YORK STATE TO DEVELOP
40 COMMERCIALY PROMISING RESEARCH DISCOVERIES IN THE FOCUS AREA BEYOND THE
41 CONCEPTUAL STAGE IN ORDER TO FURTHER THE CHANCE OF COMMERCIALIZATION AND
42 INCREASE MARKET VALUE. THE FOUNDATION MAY APPROVE GRANTS FOR ELIGIBLE
43 PROJECTS, PROVIDED SUCH GRANTS DO NOT EXCEED ONE HUNDRED THOUSAND
44 DOLLARS AND ARE USED EXCLUSIVELY TO ACCELERATE THE COMMERCIALIZATION OF
45 DISCOVERIES THAT HAVE THE POTENTIAL TO POSITIVELY IMPACT EXISTING COMPA-
46 NIES LOCATED IN NEW YORK OR LEAD TO THE FORMATION OF NEW COMPANIES
47 LOCATED IN NEW YORK. GRANTS MAY NOT BE USED TO COMMERCIALIZE DISCOVERIES
48 THAT WILL BE LICENSED TO FIRMS THAT DO NOT HAVE THEIR RESEARCH AND
49 DEVELOPMENT AND MANUFACTURING FACILITIES AND AT LEAST EIGHTY PERCENT OF
50 THEIR EMPLOYEES LOCATED IN NEW YORK STATE. THE FOUNDATION SHALL APPROVE
51 GRANTS ONLY TO THOSE RESEARCH ENTITIES THAT CAN DEMONSTRATE THE ABILITY
52 TO GUIDE THE DEVELOPMENT OF THE DISCOVERIES TOWARD SUCCESSFUL COMMER-
53 CIALIZATION IN THE STATE. ANY REVENUES EARNED BY THE RESEARCH ENTITY
54 FROM THE LICENSING OF AN INVENTION DEVELOPED WITH A FOUNDATION GRANT
55 MUST BE REINVESTED IN THE RESEARCH ENTITY'S EDUCATIONAL AND RESEARCH
56 PROGRAMS OR TECHNOLOGY TRANSFER ACTIVITIES;

1 (B) INVESTMENTS IN START-UP COMPANIES FORMED BY ENTREPRENEURS TO
2 COMMERCIALIZE INTELLECTUAL PROPERTY IN THE FOCUS AREA LICENSED FROM
3 RESEARCH ENTITIES LOCATED IN NEW YORK STATE. THE FOUNDATION MAY APPROVE
4 INVESTMENTS IN NEW COMPANIES BEING FORMED TO FURTHER DEVELOP, PRODUCE,
5 AND SELL INVENTIONS LICENSED FROM RESEARCH INSTITUTIONS IN NEW YORK
6 STATE, PROVIDED THAT THE COMPANY'S RESEARCH AND DEVELOPMENT AND/OR MANU-
7 FACTURING FACILITIES WILL BE LOCATED IN NEW YORK STATE; THE COMPANY
8 COMMITS TO REMAINING IN THE STATE; THE INVESTMENT DOES NOT EXCEED ONE
9 HUNDRED FIFTY THOUSAND DOLLARS PER COMPANY; AND, THE INVESTMENT IS USED
10 SOLELY FOR OPERATING EXPENSES APPROVED BY THE FOUNDATION. IN RETURN FOR
11 INVESTMENT BY THE FOUNDATION, THE FOUNDATION SHALL TAKE AN EQUITY POSI-
12 TION IN THE COMPANY OR NEGOTIATE ROYALTY PAYMENTS BASED ON THE SALE OF
13 ANY PRODUCTS RESULTING FROM THE LICENSED INVENTION. IN THE EVENT THAT A
14 COMPANY MOVES ITS RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES
15 OR MORE THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUN-
16 DATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST
17 FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT;

18 (C) MATCHING GRANTS TO SMALL BUSINESSES IN NEW YORK STATE FOR COOPER-
19 ATIVE APPLIED RESEARCH AND DEVELOPMENT PROJECTS IN THE FOCUS AREA WITH
20 RESEARCH INSTITUTIONS TO TRANSLATE PROMISING DISCOVERIES OF THE RESEARCH
21 INSTITUTION INTO COMMERCIALLY VIABLE PRODUCTS. THE FOUNDATION MAY
22 APPROVE MATCHING GRANTS FOR PROJECTS UNDERTAKEN JOINTLY BY A RESEARCH
23 ENTITY AND A BUSINESS INCORPORATED IN NEW YORK STATE FOR UP TO HALF OF
24 THE COST OF PROJECTS THAT WILL APPLY DISCOVERIES OR USE THE INTELLECTUAL
25 RESOURCES OF THE RESEARCH ENTITY TO DEVELOP NEW, OR TO IMPROVE EXISTING,
26 COMMERCIAL MATERIALS, DEVICES, SYSTEMS, PROCESSES, OR PROTOTYPES,
27 PROVIDED THAT THE GRANTS DO NOT EXCEED ONE HUNDRED FIFTY THOUSAND
28 DOLLARS; THE COMPANY HAS LESS THAN ONE HUNDRED FULL-TIME EMPLOYEES, AT
29 LEAST EIGHTY PERCENT OF WHOM WORK IN THE STATE; AND, THE COMPANY HAS ITS
30 PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING FACILITIES LOCATED
31 IN THE STATE. IN THE EVENT THAT A COMPANY MOVES ITS RESEARCH AND DEVEL-
32 OPMENT OR MANUFACTURING FACILITIES OR MORE THAN TWENTY PERCENT OF ITS
33 EMPLOYEES OUT OF THE STATE, THE FOUNDATION SHALL REQUIRE THE COMPANY TO
34 REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL
35 INVESTMENT;

36 (D) MATCHING GRANTS AND/OR LOANS TO SMALL BUSINESSES IN NEW YORK STATE
37 FOR COMMERCIAL DEVELOPMENT OF THEIR INNOVATIONS OR TECHNOLOGIES IN THE
38 FOCUS AREA INTO NEW PRODUCTS OR PROCESSES TO BE MANUFACTURED IN NEW
39 YORK. ANY REPAYMENTS OF LOANS OR EARNINGS ON INVESTMENTS MADE BY THE
40 FOUNDATION FROM THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND SHALL
41 BE DEPOSITED IN SUCH FUND. THE FOUNDATION MAY APPROVE GRANTS AND/OR
42 LOANS TO BUSINESSES INCORPORATED IN NEW YORK STATE FOR UP TO ONE-THIRD
43 OF THE COSTS, INCLUDING WORKFORCE TRAINING, ASSOCIATED WITH THE DEVELOP-
44 MENT OF NEW PRODUCTS OR PROCESSES FROM INVENTIONS OR TECHNOLOGIES OWNED
45 BY SUCH BUSINESSES, PROVIDED THAT THE GRANT DOES NOT EXCEED TWO HUNDRED
46 FIFTY THOUSAND DOLLARS; THE COMPANY HAS LESS THAN ONE HUNDRED FULL-TIME
47 EMPLOYEES, AT LEAST EIGHTY PERCENT OF WHOM WORK IN THE STATE; AND, THE
48 COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING
49 FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY MOVES ITS
50 RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES OR MORE THAN TWENTY
51 PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUNDATION SHALL REQUIRE
52 THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST FIVE TIMES THE FOUNDA-
53 TION'S TOTAL INVESTMENT; AND

54 (E) GRANTS TO BUSINESSES IN NEW YORK STATE TO OFFSET SOME OR ALL OF
55 THE COSTS OF FILING FOR FEDERAL REGULATORY APPROVAL FOR NEW OR MODIFIED
56 PRODUCTS OR PROCESSES WITHIN THE FOCUS AREA. THE FOUNDATION MAY APPROVE

1 GRANTS TO BUSINESSES INCORPORATED IN NEW YORK STATE PROVIDED THAT THE
2 COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING
3 FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY MOVES THE
4 MANUFACTURE OF THE PRODUCT OUT OF NEW YORK STATE WITHIN A PERIOD OF FIVE
5 YEARS, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL
6 TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT. THE FOUNDATION
7 SHALL GIVE PRIORITY TO COMPANIES WITH LESS THAN ONE HUNDRED FULL-TIME
8 EMPLOYEES.

9 3. PURSUANT TO SECTION THIRTY-ONE HUNDRED FIFTY-ONE OF THIS TITLE, THE
10 FOUNDATION SHALL PROMULGATE REGULATIONS ESTABLISHING THE APPLICATION
11 PROCESS AND THE CRITERIA THAT WILL BE USED TO EVALUATE APPLICATIONS FOR
12 GRANTS AND INVESTMENTS FROM THE BIOSCIENCES COMMERCIALIZATION ASSISTANCE
13 FUND. SUCH REGULATIONS SHALL ALLOW A COMMERCIALIZATION TIME FRAME OF UP
14 TO FIFTEEN YEARS. SUCH APPLICATIONS SHALL INCLUDE, BUT NOT BE LIMITED
15 TO, A DESCRIPTION OF THE EXPECTED SIGNIFICANCE OF THE PROJECT TO NEW
16 YORK STATE, INCLUDING THE ESTIMATED NUMBER OF JOBS THAT COULD BE CREATED
17 AS A RESULT OF THE PROJECT. IN SELECTING APPLICATIONS FOR FUNDING THE
18 FOUNDATION SHALL GIVE PRIORITY TO THOSE PROJECTS THAT HAVE THE GREATEST
19 POTENTIAL FOR COMMERCIAL SUCCESS AND EVENTUAL JOB CREATION IN NEW YORK
20 STATE OR THAT WILL HAVE THE LARGEST POSITIVE IMPACT ON THE HEALTH AND
21 WELFARE OF THE STATE'S CITIZENS OR ON THE NATURAL OR BUILT ENVIRONMENT.

22 S 3. Notwithstanding any other law to the contrary, any appropriations
23 to the New York state foundation for science, technology and innovation
24 board from the general fund, local assistance account for the incentive
25 program part of the research development program established pursuant to
26 section 209-p of the executive law that have not been expended or
27 committed, as well as any other appropriations that may be so desig-
28 nated, may be made available for the purposes of the biosciences commer-
29 cialization assistance fund.

30 S 4. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law; provided, however, that effective immediate-
32 ly, the addition, amendment and/or repeal of any rule or regulation
33 necessary for the implementation of this act on its effective date is
34 authorized and directed to be made and completed on or before such
35 effective date.