

3080

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the New York state urban development corporation act, in relation to high-technology working capital loan guarantees

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 hereby finds that economic expansion in tomorrow's economy will flow
3 from scientific and technological advances. Indeed, technological inno-
4 vation has been at the root of nearly all job creation throughout the
5 twentieth century and will remain the engine of economic growth in the
6 twenty-first, leading to the creation of a broad spectrum of higher
7 paying jobs.
8 The legislature further finds that high-technology economic develop-
9 ment must have a high priority for immediate action to set the stage for
10 retooling our industrial base to meet the challenges of tomorrow's tech-
11 nology-based economy.
12 The legislature further finds that the economic well-being of New York
13 state would be served by new and innovative approaches to financing the
14 small business which traditionally has had difficulty in gaining access
15 to capital markets and which are severely hampered in their expansion
16 activities by their diminished access to capital.
17 The legislature further finds that decentralized economic development
18 programs enlisting the hands-on expertise of the local economic develop-
19 ment communities are much better able to serve small, local businesses
20 than centralized state programs.
21 Therefore, the legislature declares that the economic interests of New
22 York state and the well-being of local communities would be served by
23 supporting and stimulating the small high-technology enterprises that
24 add economic value to New York providing a broad spectrum of high-paying

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

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1 jobs and that will become the growth industries of tomorrow, and that
2 state assistance in this regard is necessary and proper.

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

6 S 16-T. HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE PROGRAM. 1. FOR
7 PURPOSES OF THIS SECTION: (A) "HIGH-TECHNOLOGY BUSINESS" SHALL MEAN A
8 BUSINESS THAT IS DEVELOPING OR OFFERING A PRODUCT OR SERVICE BASED ON
9 LEADING-EDGE TECHNOLOGY OR SCIENTIFIC RESEARCH, OR IS OR HAS RECENTLY
10 COMPLETED RESEARCH AND DEVELOPMENT DESIGNED TO IMPROVE SUCH PRODUCT OR
11 SERVICE, OR HAS RECENTLY COMPLETED AND IS COMMENCING TO MARKET A PROTO-
12 TYPE OF SUCH PRODUCT OR SERVICE.

13 (B) "ELIGIBLE BUSINESS" SHALL MEAN A HIGH-TECHNOLOGY BUSINESS THAT IS
14 RESIDENT IN THIS STATE, IS INDEPENDENTLY OWNED AND OPERATED, AND EMPLOYS
15 TWO HUNDRED OR FEWER PERSONS ON A FULL-TIME BASIS.

16 (C) "ELIGIBLE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION" SHALL MEAN
17 A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION ESTABLISHED PURSUANT TO
18 SECTION THIRTY-ONE HUNDRED TWO-D OF THE PUBLIC AUTHORITIES LAW.

19 (D) "LOAN GUARANTEE" SHALL MEAN THE GUARANTEE OF UP TO EIGHTY PERCENT
20 OF A WORKING CAPITAL LOAN MADE TO AN ELIGIBLE BUSINESS BY A COMMERCIAL
21 BANK, PROVIDED THAT NO MORE THAN EIGHTY THOUSAND DOLLARS MAY BE GUARAN-
22 TEED FOR ANY ONE LOAN.

23 2. THE CORPORATION SHALL ESTABLISH A FUND TO BE KNOWN AS THE
24 "HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE FUND" AND SHALL PAY INTO
25 SUCH FUND ANY MONIES MADE AVAILABLE TO THE CORPORATION FOR SUCH FUND
26 FROM ANY SOURCE. THE MONIES HELD IN OR CREDITED TO THE FUND SHALL BE
27 EXPENDED SOLELY FOR THE PURPOSES SET FORTH IN THIS SECTION.

28 3. THE CORPORATION IS HEREBY AUTHORIZED TO ALLOCATE THE AUTHORITY TO
29 APPROVE LOAN GUARANTEES, IN A TOTAL AMOUNT OF NO MORE THAN FOUR TIMES
30 THE AMOUNT OF THE MONIES APPROPRIATED TO THE HIGH-TECHNOLOGY WORKING
31 CAPITAL LOAN GUARANTEE FUND, WHICH SHALL BE USED SOLELY FOR THE PURPOSE
32 OF PROVIDING SECURITY FOR LOAN GUARANTEES MADE PURSUANT TO THIS SECTION.
33 THE CORPORATION SHALL ALLOCATE SUCH AUTHORITY AMONG ELIGIBLE REGIONAL
34 TECHNOLOGY DEVELOPMENT ORGANIZATIONS AS FOLLOWS:

35 (A) FIFTY PERCENT DIVIDED EQUALLY AMONG THE REGIONAL TECHNOLOGY DEVEL-
36 OPMENT ORGANIZATIONS APPLYING FOR AND PROVIDED WITH SUCH AUTHORITY BY
37 THE CORPORATION; AND

38 (B) FIFTY PERCENT ACCORDING TO A FORMULA WEIGHTED IN FAVOR OF THOSE
39 REGIONAL DEVELOPMENT ORGANIZATIONS SERVING AREAS WITH THE GREATEST
40 LEVELS OF NEED AND OF HIGH-TECHNOLOGY ECONOMIC ACTIVITY AS DETERMINED BY
41 THE CORPORATION, AND WHICH HAVE BEEN ALLOCATED LOAN GUARANTEE AUTHORITY
42 BY THE CORPORATION IN PARAGRAPH (A) OF THIS SUBDIVISION.

43 4. EACH REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION THAT IS APPROVED
44 BY THE CORPORATION FOR LOAN GUARANTEE AUTHORITY SHALL BE REQUIRED TO:

45 (A) HAVE AVAILABLE TO IT STAFF WITH SUFFICIENT EXPERTISE TO ANALYZE
46 APPLICATIONS FOR LOAN GUARANTEES AND TO REGULARLY MONITOR THE FINANCIAL,
47 TECHNOLOGICAL, AND MARKETING PROGRESS OF CLIENTS RECEIVING LOAN GUARAN-
48 TEES;

49 (B) HAVE AN EFFECTIVE PLAN TO MARKET ITS SERVICES TO SMALL, HIGH-TECH-
50 NOLOGY BUSINESSES THROUGH SUCH ENTITIES AS CHAMBERS OF COMMERCE, INDUS-
51 TRY TRADE ASSOCIATIONS, LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS, AND
52 COMMERCIAL BANKS;

53 (C) HAVE ESTABLISHED A LOAN GUARANTEE COMMITTEE COMPOSED OF FIVE OR
54 MORE PERSONS EXPERIENCED IN COMMERCIAL LENDING OR IN THE OPERATION OF A
55 FOR-PROFIT, HIGH-TECHNOLOGY BUSINESS. SUCH LOAN COMMITTEE SHALL REVIEW
56 EVERY APPLICATION TO THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION

1 FOR A LOAN GUARANTEE PURSUANT TO THIS SECTION, SHALL ASSESS THE REASON-
2 ABLENESS OF THE APPLICANT'S BUSINESS PLAN AND THE LIKELIHOOD THAT THE
3 APPLICANT WILL SUCCESSFULLY COMPLETE ITS BUSINESS PLAN AND REPAY THE
4 WORKING CAPITAL LOAN, AND SHALL RECOMMEND TO THE BOARD OF DIRECTORS OR
5 OTHER GOVERNING BODY OF THE REGIONAL TECHNOLOGY ORGANIZATION SUCH ACTION
6 AS THE COMMITTEE DEEMS APPROPRIATE.

7 5. THE CORPORATION SHALL APPROVE OR DISAPPROVE APPLICATIONS FROM
8 ELIGIBLE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS FOR LOAN GUARAN-
9 TEE AUTHORITY BASED UPON THE ABILITY OF THE REGIONAL TECHNOLOGY DEVELOP-
10 MENT ORGANIZATION TO ADMINISTER SUCH AUTHORITY PURSUANT TO THE REQUIRE-
11 MENTS OF THIS SECTION. APPLICATIONS FROM ELIGIBLE REGIONAL TECHNOLOGY
12 DEVELOPMENT ORGANIZATIONS TO THE CORPORATION FOR LOAN GUARANTEE AUTHORI-
13 TY SHALL:

14 (A) DESCRIBE THE LOAN GUARANTEE COMMITTEE, APPROPRIATE STAFF, AND
15 OTHER SOURCES OF EXPERTISE AND ASSISTANCE AVAILABLE TO THE REGIONAL
16 TECHNOLOGY DEVELOPMENT ORGANIZATION, IF ANY;

17 (B) DESCRIBE ITS PLAN TO MARKET THE PROGRAM TO SMALL, HIGH-TECHNOLOGY
18 FIRMS;

19 (C) EXPLAIN THE METHODS AND CRITERIA TO BE USED IN DETERMINING FIRMS
20 ELIGIBLE FOR LOAN GUARANTEES; AND

21 (D) CONTAIN SUCH OTHER INFORMATION AS THE CORPORATION DEEMS APPROPRI-
22 ATE.

23 6. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION ALLOCATED LOAN GUAR-
24 ANTEE AUTHORITY BY THE CORPORATION SHALL USE ITS LOAN GUARANTEE AUTHORI-
25 ZATION SUBJECT TO THE TERMS, CONDITIONS AND RESTRICTIONS SET FORTH IN
26 THIS SECTION, TO PROVIDE LOAN GUARANTEES TO ELIGIBLE BUSINESSES FOR
27 PROJECTS THAT ARE SCIENTIFICALLY OR TECHNOLOGICALLY FEASIBLE, THAT ARE
28 COMMERCIALY FEASIBLE, AND THAT DEMONSTRATE A SUBSTANTIAL LIKELIHOOD OF
29 PROVIDING INCREASES IN NET NEW PERMANENT JOBS. EACH WORKING CAPITAL
30 LOAN THAT RECEIVES A LOAN GUARANTEE PURSUANT TO THIS SECTION SHALL BE
31 SECURED BY A SECURITY AGREEMENT, CHATTEL PAPER, LOAN AGREEMENT, OR BY
32 SUCH OTHER INSTRUMENTS OR DOCUMENTS AS DEEMED NECESSARY BY THE REGIONAL
33 TECHNOLOGY ORGANIZATION APPROVING THE LOAN GUARANTEE. NO LOAN GUARANTEE
34 SHALL BE APPROVED FOR A WORKING CAPITAL LOAN WITH A TERM EXCEEDING FIVE
35 YEARS. EACH LOAN GUARANTEE MADE PURSUANT TO THIS SECTION SHALL BE
36 BACKED BY A MINIMUM RESERVE, HELD BY THE CORPORATION IN THE HIGH-TECH-
37 NOLOGY WORKING CAPITAL LOAN GUARANTEE FUND, AS SET FORTH IN SUBDIVISION
38 THREE OF THIS SECTION.

39 7. THE DECISION TO APPROVE OR REJECT AN APPLICATION FROM AN ELIGIBLE
40 BUSINESS FOR A LOAN GUARANTEE PURSUANT TO THE PROVISIONS OF THIS SECTION
41 SHALL BE MADE BY A MAJORITY OF THE DIRECTORS OF THE REGIONAL TECHNOLOGY
42 DEVELOPMENT ORGANIZATION AND SUCH DECISION SHALL BE FINAL. NO MEMBER OF
43 THE BOARD OR OTHER GOVERNING BODY OF A REGIONAL TECHNOLOGY DEVELOPMENT
44 ORGANIZATION SHALL PARTICIPATE IN A DECISION ON A PROJECT APPLICATION
45 WHEN SUCH MEMBER IS A PARTY TO OR HAS A FINANCIAL INTEREST IN SUCH
46 PROJECT. ANY MEMBER WHO CANNOT PARTICIPATE IN A DECISION ON A PROJECT
47 APPLICATION FOR SUCH REASON SHALL NOT BE COUNTED AS A MEMBER OF THE
48 BOARD OR OTHER GOVERNING BODY FOR PURPOSES OF DETERMINING THE NUMBER OF
49 MEMBERS REQUIRED FOR A MAJORITY VOTE ON SUCH APPLICATION.

50 8. NO EMPLOYEE OR OFFICER OF ANY REGIONAL TECHNOLOGY DEVELOPMENT
51 ORGANIZATION SHALL BE A PARTY TO OR HAVE ANY FINANCIAL INTEREST IN ANY
52 PROJECT THAT RECEIVES FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION.

53 9. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL NOT APPROVE
54 ANY LOAN GUARANTEE AUTHORIZED BY THIS SECTION UNLESS THE FOLLOWING
55 CONDITIONS ARE MET:

1 (A) THE APPLICANT FOR A LOAN GUARANTEE HAS DEMONSTRATED THAT THERE IS
2 LITTLE PROSPECT OF OBTAINING THE LOAN WITHOUT THE GUARANTEE;

3 (B) THE APPLICANT FOR SUCH GUARANTEE HAS A MINIMUM EQUITY INTEREST OF
4 AT LEAST TEN PERCENT IN THE BUSINESS OR PROJECT;

5 (C) THERE IS A REASONABLE PROSPECT OF REPAYMENT OF THE WORKING CAPITAL
6 LOAN;

7 (D) THE PROJECT IS LOCATED IN THE REGION REPRESENTED BY THE REGIONAL
8 TECHNOLOGY DEVELOPMENT ORGANIZATION;

9 (E) THE PROJECT WILL COMPLY WITH ANY APPLICABLE ENVIRONMENTAL RULES OR
10 REGULATIONS;

11 (F) THE APPLICANT FOR A GUARANTEE HAS CERTIFIED THAT IT WILL NOT
12 DISCRIMINATE AGAINST ANY EMPLOYEE OR ANY APPLICANT FOR EMPLOYMENT
13 BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, OR AGE; AND

14 (G) A STAFF MEMBER OR A REPRESENTATIVE OF THE REGIONAL TECHNOLOGY
15 DEVELOPMENT ORGANIZATION ACTING IN AN OFFICIAL CAPACITY HAS PERSONALLY
16 VISITED THE PROJECT SITE AND/OR THE APPLICANT'S PLACE OF BUSINESS.

17 10. LOAN GUANTEES SHALL NOT BE APPROVED BY A REGIONAL TECHNOLOGY
18 DEVELOPMENT ORGANIZATION FOR WORKING CAPITAL LOANS:

19 (A) WHERE THE PROCEEDS WOULD CONTRIBUTE TO OR RESULT IN THE RELOCATION
20 OF ANY BUSINESS OPERATION FROM ONE MUNICIPALITY WITHIN THE STATE TO
21 ANOTHER, EXCEPT UNDER ONE OF THE FOLLOWING CONDITIONS:

22 (I) WHEN A BUSINESS IS RELOCATING WITHIN A MUNICIPALITY WITH A POPU-
23 LATION OF AT LEAST ONE MILLION WHERE THE GOVERNING BODY OF SUCH MUNICI-
24 PALITY APPROVES SUCH RELOCATION; OR

25 (II) THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION NOTIFIES EACH
26 MUNICIPALITY FROM WHICH SUCH BUSINESS OPERATION WILL BE RELOCATED AND
27 EACH MUNICIPALITY AGREES TO SUCH RELOCATION;

28 (B) TO BUSINESSES THAT DO NOT QUALIFY AS HIGH-TECHNOLOGY BUSINESSES;
29 OR

30 (C) WHERE THE PROCEEDS WOULD BE USED, DIRECTLY OR INDIRECTLY, FOR
31 PAYMENT, DISTRIBUTION, OR AS A LOAN, TO OWNERS, PARTNERS OR SHAREHOLDERS
32 OF THE APPLICANT ENTERPRISE, EXCEPT AS ORDINARY INCOME FOR SERVICES
33 RENDERED.

34 11. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION MAY CHARGE APPLICA-
35 TION AND LOAN GUARANTEE FEES PURSUANT TO A SCHEDULE OF FEES ADOPTED BY
36 THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION AND APPROVED BY THE
37 CORPORATION.

38 12. A REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION IS AUTHORIZED TO
39 REISSUE ANY OF ITS LOAN GUARANTEE ALLOCATION AFTER ANY LOAN FOR WHICH IT
40 INITIALLY ISSUED A GUARANTEE HAS BEEN RETIRED, UNLESS ITS ALLOCATION HAS
41 BEEN WITHHELD OR REVOKED PURSUANT TO THE PROVISIONS OF SUBDIVISION
42 FIFTEEN OF THIS SECTION, OR PROVIDED THAT THE RESERVE MAINTAINED BY THE
43 CORPORATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION IS DEEMED BY
44 THE CORPORATION TO BE INSUFFICIENT TO PROVIDE ADEQUATE SECURITY FOR
45 AUTHORIZED AND ALLOCATED LOAN GUANTEES. IN THE EVENT THAT A LOAN FOR
46 WHICH A LOAN GUARANTEE WAS ISSUED UNDER THIS SECTION IS DEFAULTED AND
47 THE GUARANTEE MUST BE PAID BY THE CORPORATION FROM SUCH RESERVE, THE
48 CORPORATION MAY WITHHOLD, FROM THE REGIONAL TECHNOLOGY DEVELOPMENT
49 ORGANIZATION ISSUING SUCH GUARANTEE, REUSE OF A PORTION OF ITS AUTHOR-
50 IZED GUARANTEE ALLOCATION UNTIL SUCH TIME AS A RESERVE EXISTS EQUAL TO
51 TWENTY-FIVE PERCENT OF THE TOTAL AMOUNT OF AUTHORIZED AND ALLOCATED LOAN
52 GUANTEES, OR SOME LESSER AMOUNT AS THE CORPORATION MAY DEEM SUFFICIENT
53 TO PROVIDE ADEQUATE SECURITY FOR AUTHORIZED AND ALLOCATED LOAN GUARAN-
54 TEES.

55 13. THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL SUBMIT
56 ANNUAL REPORTS TO THE CORPORATION DESCRIBING THE FINANCIAL ASSISTANCE

1 PROVIDED PURSUANT TO THIS SECTION, INCLUDING: THE NUMBER OF LOAN GUAR-
2 ANTEES PROVIDED; THE AMOUNT AND TERM OF EACH WORKING CAPITAL LOAN GUAR-
3 ANTEED; A DESCRIPTION OF THE BUSINESS OR PROJECT RECEIVING EACH GUARAN-
4 TEE; THE NUMBER OF JOBS CREATED OR RETAINED; AND SUCH OTHER INFORMATION
5 AS THE CORPORATION MAY REQUIRE.

6 14. THE CORPORATION SHALL PROMULGATE RULES AND REGULATIONS IN ACCORD-
7 ANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT SETTING FORTH PROCE-
8 DURES TO BE FOLLOWED BY, AND THE RESPONSIBILITIES AND OBLIGATIONS OF,
9 REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATIONS AND THE CORPORATION. SUCH
10 RULES AND REGULATIONS SHALL INCLUDE DETERMINANTS FOR DECIDING WHEN A
11 LOAN GUARANTEED PURSUANT TO THIS SECTION IS IN DEFAULT AND WOULD REQUIRE
12 REPAYMENT FROM THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE FUND
13 AND SHALL BE CONSISTENT WITH THE PROGRAM PLAN REQUIRED BY SUBDIVISION
14 NINETEEN OF SECTION ONE HUNDRED OF THE ECONOMIC DEVELOPMENT LAW.

15 15. THE CORPORATION SHALL PERIODICALLY AND ANNUALLY AUDIT EACH
16 REGIONAL TECHNOLOGY ORGANIZATION TO ENSURE CONFORMITY OF ALL ASPECTS OF
17 FINANCIAL ASSISTANCE TRANSACTIONS WITH THE SUBSTANTIVE AND PROCEDURAL
18 PROVISIONS OF THIS SECTION. IN THE EVENT THAT THE CORPORATION FINDS
19 INSTANCES OF SUBSTANTIVE NONCOMPLIANCE BY A REGIONAL TECHNOLOGY ORGAN-
20 IZATION WITH ANY OF THE PROVISIONS OF THIS SECTION AND SUCH INSTANCES
21 WERE, OR SHOULD HAVE BEEN, KNOWN TO BE IN NONCOMPLIANCE, THE REGIONAL
22 TECHNOLOGY DEVELOPMENT ORGANIZATION SHALL NOT BE AUTHORIZED TO ISSUE ANY
23 UNUSED PORTION OF ITS GUARANTEE AUTHORIZATION. THE CORPORATION MAY
24 REVOKE OR WITHHOLD THE REGIONAL TECHNOLOGY DEVELOPMENT ORGANIZATION'S
25 ALLOCATION UNTIL SUCH TIME AS THE REGIONAL TECHNOLOGY DEVELOPMENT ORGAN-
26 IZATION IS IN FULL COMPLIANCE WITH ALL OF THE PROVISIONS OF THIS
27 SECTION.

28 16. THE CORPORATION SHALL, ON OR BEFORE OCTOBER FIRST, TWO THOUSAND
29 ELEVEN AND ON OR BEFORE EACH OCTOBER FIRST THEREAFTER, SUBMIT A REPORT
30 TO THE GOVERNOR AND THE LEGISLATURE ON THE OPERATIONS AND ACCOMPLISH-
31 MENTS OF THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE PROGRAM.
32 SUCH REPORT SHALL INCLUDE A SUMMARY OF THE INFORMATION CONTAINED IN THE
33 REPORTS SUBMITTED PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION AND
34 OF THE RESULTS OF THE AUDITS PERFORMED BY THE CORPORATION PURSUANT TO
35 SUBDIVISION FIFTEEN OF THIS SECTION, AND SHALL SET FORTH THE STATUS OF
36 THE HIGH-TECHNOLOGY WORKING CAPITAL LOAN GUARANTEE PROGRAM, INCLUDING
37 ALLOCATIONS, PAYMENTS TO COVER DEFAULTED LOANS, AND FUND RESERVE
38 BALANCE.

39 S 3. This act shall take effect immediately.