

8452

2011-2012 Regular Sessions

I N A S S E M B L Y

June 16, 2011

Introduced by M. of A. SCHIMMINGER, SCARBOROUGH, LUPARDO, GABRYSZAK, MORELLE -- Multi-Sponsored by -- M. of A. BRONSON, RAMOS, REILLY, ROBERTS, RUSSELL, SPANO, ZEBROWSKI -- (at request of the Empire State Development) -- read once and referred to the Committee on Economic Development

AN ACT to amend the New York state urban development corporation act, in relation to the capital access program and to provide for a new Innovate NY fund; and making appropriations for the support of government

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

1 Section 1. Section 16-k of section 1 of chapter 174 of the laws of
2 1968, constituting the New York state urban development corporation act,
3 as added by section 1 of part J of chapter 413 of the laws of 1999, is
4 amended to read as follows:
5 S 16-k. Capital access program. 1. Definitions. For the purposes of
6 this section:
7 (a) "Financial institution", means any bank, trust company, savings
8 bank, savings and loan association or cooperative bank chartered by the
9 state or any national banking association, federal savings and loan
10 association or federal savings bank OR ANY COMMUNITY DEVELOPMENT FINAN-
11 CIAL INSTITUTION OR COMMUNITY-BASED LENDING ORGANIZATION; provided,
12 however, that the financial institution has its principal office located
13 in the state.
14 (b) "Participating financial institution" shall mean any financial
15 institution participating in the program established by this section.
16 (c) "Small business" shall have the same meaning as set forth in
17 section 131 of the economic development law, whose primary place of
18 business is in New York state.
19 2. (a) The corporation, or its agent, shall establish a capital access
20 program to provide a loan loss reserve to assist small businesses that
21 otherwise find it difficult to obtain regular bank financing.

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

1 (b)(i) Assistance [from this] UNDER THE CAPITAL ACCESS program shall
2 be provided for a capital access program under which the corporation or
3 its agent shall be authorized to assist small businesses that otherwise
4 find it difficult to obtain regular OR SUFFICIENT bank financing. Such
5 assistance shall take the form of deposits by the corporation or its
6 agent in the reserve funds in participating financial institutions to
7 fund loan loss reserves for loans made to such small businesses.

8 (ii) Any financial institution desiring to become a participating
9 financial institution shall execute an agreement in such form as the
10 corporation or its agent may prescribe, which agreement shall contain
11 the terms and provisions set forth in paragraph (c) of this subdivision
12 and such other terms and provisions as the corporation or its agent may
13 deem necessary or appropriate.

14 (c) A participating financial institution originating a loan to a
15 small business pursuant to this section shall:

16 (i) provide a plan to the corporation or its agent for the marketing
17 of the capital access program TO SMALL BUSINESSES, INCLUDING THOSE in
18 highly distressed areas and to minority- and women-owned businesses,
19 with appropriate lending objectives identified by the financial institu-
20 tion for such areas and businesses;

21 (ii) disperse funds for the purposes of expansion, facility/technology
22 upgrading, start-up and working capital;

23 (iii) not disperse funds which exceed an amount greater than five
24 hundred thousand dollars;

25 (iv) set aside an amount, specified OR AGREED TO by the corporation or
26 its agent, [but which shall not be] FROM BOTH THE PARTICIPATING FINAN-
27 CIAL ORGANIZATION AND THE SMALL BUSINESS, NOT less than [one and one-
28 half] THREE percent nor more than [three and one-half] SEVEN percent of
29 the principal amount of the loan, WHEREBY THE AMOUNT CONTRIBUTED BY THE
30 SMALL BUSINESS DOES NOT EXCEED FIFTY PERCENT OF THE TOTAL AMOUNT
31 CONTRIBUTED BY THE SMALL BUSINESS AND THE FINANCIAL INSTITUTION, into a
32 loan loss reserve which the institution shall maintain, applicable to
33 all such loans by said institution to small businesses pursuant to this
34 section; AND

35 (v) [obtain from the small business an amount equal to the reserve
36 contribution made by the participating financial institution with
37 respect to such loan;

38 (vi) set aside such amount into said loan loss reserve maintained by
39 the participating financial institution applicable to all loans pursuant
40 to this section; and

41 (vii)] certify to the corporation or its agent in such a fashion and
42 with such supporting information as the corporation or its agent shall
43 prescribe, that it has made such loan and has set aside its contribution
44 and the [equal] contribution of the small business.

45 (d) The corporation or its agent shall after such certification as
46 provided in subparagraph [(vii)] (V) of paragraph (c) of this subdivi-
47 sion, transfer to the participating financial institution an amount
48 equal to the total of the contributions of the participating financial
49 institution and the small business or such additional amount up to one
50 hundred fifty percent of such contributions as determined by the corpo-
51 ration or its agent. The participating financial institution shall set
52 aside such amount so received into said loan loss reserve.

53 (e) In the event the participating financial institution suffers a
54 loss on any such loan, it may in its discretion draw upon the funds in
55 such loan loss reserve to repay the loan in whole or in part.

1 (f) All amounts set aside by the participating financial institution
2 into said loan loss reserve shall be in an account at said institution.

3 (g) Earnings or interest from the principal of said loan loss reserve
4 accounts shall be:

5 (i) maintained in the account and held as additional loan loss
6 reserves; and

7 (ii) available to the corporation or its agent at any time and from
8 time to time, to be used to defray the costs of administering the
9 program or to replenish the loan loss reserve account of the corporation
10 or its agent.

11 (H) THE CORPORATION SHALL ASSURE ADEQUATE GEOGRAPHIC DISTRIBUTION OF
12 PARTICIPATING FINANCIAL INSTITUTIONS THROUGHOUT THE STATE TO THE EXTENT
13 FEASIBLE.

14 3. Administration of the capital access program. (a) The corporation
15 is hereby authorized to do the following:

16 (i) enter into a contract with A THIRD PARTY FINANCIAL INSTITUTION,
17 WHICH MAY BE the New York business development corporation, [hereinafter
18 referred to as NYBDC,] established under section 210 of the banking law,
19 to act as the agent of the corporation with respect to the adminis-
20 tration of the program, PROVIDED THAT THE SELECTION OF A THIRD PARTY
21 OTHER THAN THE NEW YORK BUSINESS DEVELOPMENT CORPORATION SHALL BE MADE
22 PURSUANT TO A COMPETITIVE PROCESS;

23 (ii) conduct an annual review and assessment of the performance of the
24 [NYBDC] THIRD PARTY in its capacity as agent for the corporation to
25 determine whether the contract referenced in subparagraph (i) of this
26 paragraph should be renewed for an additional two year period. The
27 review shall be based on whether the [NYBDC] THIRD PARTY AGENT has
28 satisfactorily met the terms and conditions of the contract;

29 (iii) where an initial determination finds that the [NYBDC's] THIRD
30 PARTY AGENT'S performance is unsatisfactory, allow the [NYBDC] THIRD
31 PARTY AGENT the opportunity to take corrective action;

32 (iv) where a final review of the [NYBDC's] THIRD PARTY AGENT'S
33 performance continues to conclude that the [NYBDC's] THIRD PARTY AGENT'S
34 performance is unsatisfactory, submit to the speaker of the assembly and
35 the temporary president of the senate its recommendation to terminate
36 the contract with the [NYBDC] THIRD PARTY AGENT and transfer the
37 contract to another agent; and

38 (v) promulgate rules and regulations with respect to the implementa-
39 tion of the capital access program established by this section and any
40 other rules and regulations necessary to fulfill the purposes of this
41 section, in accordance with the state administrative procedure act, and
42 WHICH shall be consistent with the program plan required by subdivision
43 19 of section 100 of the economic development law.

44 (b) Any contract entered into pursuant to subparagraph (i) of para-
45 graph (a) of this subdivision shall:

46 (i) be for a period of two years and shall be renewed for an addi-
47 tional two year period subject to requirements of subparagraph (ii) of
48 paragraph (a) of this subdivision; and

49 (ii) provide for compensation for expenses incurred by the [NYBDC]
50 THIRD PARTY AGENT in connection with its services as agent and for such
51 other services as the corporation may deem appropriate including, but
52 not limited to the use of the premises, personnel and personal property
53 of the [NYBDC] THIRD PARTY AGENT.

54 S 2. Section 1 of chapter 174 of the laws of 1968, constituting the
55 New York state urban development corporation act, is amended by adding a
56 new section 16-u to read as follows:

1 S 16-U. INNOVATE NY FUND. 1. THE INNOVATE NY FUND IS HEREBY CREATED.
2 THE PURPOSE OF THE INNOVATE NY FUND IS TO MAKE AVAILABLE STATE FUNDS TO
3 ELIGIBLE APPLICANTS TO SUPPORT EMERGING BUSINESS IDEAS AND PRODUCTS THAT
4 RESULT IN THE GROWTH OF BUSINESS WITHIN THE STATE AND THE CONCOMITANT
5 CREATION OF JOBS AND TAX REVENUES FOR THE STATE.

6 2. ELIGIBLE APPLICANTS FOR INNOVATE NY FUNDS MAY INCLUDE REGIONAL AND
7 LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS, TECHNOLOGY DEVELOPMENT ORGAN-
8 IZATIONS, RESEARCH UNIVERSITIES, AND INVESTMENT FUNDS THAT PROVIDE
9 SEED-STAGE INVESTMENTS IN NEW YORK STATE COMPANIES.

10 3. FUNDING FROM THE INNOVATE NY FUND MAY BE MADE AVAILABLE TO THE
11 APPLICANT FOR INVESTMENT IN BENEFICIARY COMPANIES. IN ORDER TO BE ELIGI-
12 BLE FOR AN INVESTMENT THAT INCLUDES INNOVATE NY INVESTMENT FUNDS, A
13 BENEFICIARY COMPANY MUST: (A) BE, OR AGREE IN WRITING TO BE, LOCATED IN
14 NEW YORK STATE; (B) BE IN THE SEED-STAGE OF DEVELOPMENT, AS DEFINED BY
15 THE CORPORATION; (C) DEMONSTRATE A POTENTIAL FOR SUBSTANTIAL GROWTH AND
16 JOB DEVELOPMENT IN AN EMERGING TECHNOLOGY FIELD, AS DEFINED IN SECTION
17 THIRTY-ONE HUNDRED TWO-E OF THE PUBLIC AUTHORITIES LAW OR IN REGULATIONS
18 AS ADOPTED BY THE CORPORATION; AND (D) HAVE THE POTENTIAL TO GENERATE
19 ADDITIONAL ECONOMIC ACTIVITY IN NEW YORK STATE. INVESTMENT PRIORITY
20 SHALL BE GIVEN TO BENEFICIARY COMPANIES INVOLVED IN COMMERCIALIZATION OF
21 RESEARCH AND DEVELOPMENT OR HIGH TECHNOLOGY MANUFACTURING.

22 4. THE CORPORATION SHALL ESTABLISH A COMPETITIVE PROCESS FOR THE EVAL-
23 UATION OF APPLICANTS FOR THE INNOVATE NY INVESTMENT FUND. APPLICANTS
24 SHALL BE EVALUATED ON CRITERIA INCLUDING, BUT NOT LIMITED TO, THE APPLI-
25 CANT'S: (A) TRACK RECORD OF SUCCESS IN RAISING INVESTMENT FUNDS AND
26 SUCCESSFULLY INVESTING THEM; (B) CAPACITY TO PERFORM DUE DILIGENCE AND
27 TO PROVIDE MANAGEMENT EXPERTISE AND OTHER VALUE-ADDED SERVICES TO BENE-
28 FICIARY COMPANIES; (C) FINANCIAL RESOURCES FOR IDENTIFYING AND INVESTING
29 IN SEED-STAGE COMPANIES; (D) ABILITY TO SECURE NON-STATE MATCHING
30 PROGRAM INVESTMENT FUNDS AT A RATIO THAT IS EQUAL TO OR GREATER THAN ONE
31 TO ONE (1:1); (E) ABILITY TO EVALUATE THE COMMERCIAL POTENTIAL OF EMERG-
32 ING TECHNOLOGIES; (F) ABILITY TO SECURE PARTNERSHIPS WITH LOCAL OR
33 REGIONAL INVESTORS; (G) ADOPTION OF CONFLICT OF INTEREST PROVISIONS
34 ACCEPTABLE TO THE CORPORATION; AND (H) OTHER CRITERIA THAT THE CORPO-
35 RATION DETERMINES IS RELEVANT TO MAKING INVESTMENT DECISIONS CONSISTENT
36 WITH THE PURPOSES OF THE FUND AS SET FORTH IN SUBDIVISION ONE OF THIS
37 SECTION. WHEN AWARDING FUNDS PURSUANT TO THIS SUBDIVISION, THE CORPO-
38 RATION SHALL ASSURE THAT THE APPLICANTS DEMONSTRATE THE NEED FOR SEED
39 CAPITAL IN THE AREAS SERVED BY THE APPLICANT AND PROVIDE FOR ADEQUATE
40 GEOGRAPHIC DISTRIBUTION OF AWARDS TO BENEFICIARY COMPANIES THROUGHOUT
41 THE STATE TO THE EXTENT FEASIBLE. THE CORPORATION SHALL DISTRIBUTE
42 FUNDS PROMPTLY PURSUANT TO A DISBURSEMENT PROCESS AGREED TO BETWEEN THE
43 CORPORATION AND APPLICANT TO ENABLE THE APPLICANT TO FULFILL COMMITMENTS
44 TO BENEFICIARY COMPANIES IN A TIMELY MANNER.

45 5. AT THE TIME THE APPLICANT HAS INVESTED FIFTY PERCENT OF THE INNO-
46 VATE NY FUNDS COMMITTED TO SUCH APPLICANT AND ANNUALLY THEREAFTER,
47 AGGREGATE INVESTMENTS OF INNOVATE NY FUNDS BY SUCH APPLICANT IN BENEFI-
48 CIARY COMPANIES SHALL BE LEVERAGED WITH PRIVATE SOURCES OF CAPITAL
49 EXCLUDING INVESTMENTS AFTER THE INITIAL FUNDING ROUND AT A RATIO EQUAL
50 TO OR GREATER THAN TWO TO ONE (2:1).

51 6. THE INNOVATE NY FUND SHALL NOT INVEST AN AMOUNT IN ANY SINGLE BENE-
52 FICIARY COMPANY THAT EXCEEDS FIVE HUNDRED THOUSAND DOLLARS, OR SEVEN
53 HUNDRED FIFTY THOUSAND DOLLARS IN THE CASE OF ANY INDIVIDUAL BIOTECHNOL-
54 OGY-RELATED BENEFICIARY, AT ANY ONE TIME, SUBJECT TO CERTAIN EXCEPTIONS
55 TO BE ESTABLISHED BY RULES AND REGULATIONS OF THE CORPORATION.

1 7. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE CORPO-
2 RATION MAY ESTABLISH A PROGRAM FUND FOR PROGRAM USE AND PAY INTO SUCH
3 FUND ANY ELIGIBLE FUNDS AVAILABLE TO THE CORPORATION FROM ANY SOURCE,
4 INCLUDING MONEYS APPROPRIATED BY THE STATE.

5 8. THE CORPORATION SHALL SUBMIT A REPORT ANNUALLY ON DECEMBER THIRTY-
6 FIRST TO THE DIRECTOR OF THE BUDGET, THE TEMPORARY PRESIDENT OF THE
7 SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE
8 AND THE MINORITY LEADER OF THE ASSEMBLY DETAILING (A) THE TOTAL AMOUNT
9 OF FUNDS COMMITTED TO EACH APPLICANT THAT RECEIVES FUNDS AND THE AMOUNT
10 OF SUCH FUNDS THAT HAS BEEN INVESTED BY EACH SUCH APPLICANT; (B) THE
11 AMOUNT OF INNOVATE NY AND PRIVATE FUNDS INVESTED IN EACH BENEFICIARY
12 COMPANY; (C) THE TYPE OF PRODUCT OR TECHNOLOGY BEING DEVELOPED OR
13 PRODUCED BY EACH BENEFICIARY COMPANY; (D) THE LOCATION OF EACH BENEFICI-
14 ARY COMPANY; (E) THE NUMBER OF JOBS PROJECTED TO BE CREATED OR RETAINED;
15 AND (F) SUCH OTHER INFORMATION AS THE CORPORATION DEEMS NECESSARY.

16 9. THE CORPORATION IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGU-
17 LATIONS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT AS ARE
18 NECESSARY TO FULFILL THE PURPOSES OF THIS SECTION, INCLUDING WITH
19 RESPECT TO REASONABLE MANAGEMENT FEES, PROMOTES, SHARE OF RETURN AND
20 OTHER FEES AND CHARGES OF APPLICANTS THAT RECEIVE FUNDS, AND TO PROVIDE
21 FOR THE REPAYMENT OF FUNDS RECEIVED BY THE BENEFICIARY COMPANY IF THE
22 BENEFICIARY COMPANY LEAVES NEW YORK STATE WITHIN A PERIOD OF TIME TO BE
23 ESTABLISHED BY THE CORPORATION.

24 10. IN ACCORDANCE WITH THE RULES AND REGULATIONS TO BE PROMULGATED BY
25 THE CORPORATION, THE CORPORATION MAY IMPOSE FEES, ESTABLISH REPAYMENT
26 TERMS AND PROVIDE FOR EQUITY PARTICIPATION BY THE CORPORATION IN
27 CONNECTION WITH INVESTMENTS FROM THE INNOVATE NY FUND.

28 11. THE PROVISIONS OF SECTION TEN AND SUBDIVISION TWO OF SECTION
29 SIXTEEN OF THIS ACT SHALL NOT APPLY TO ASSISTANCE PROVIDED UNDER THIS
30 SECTION.

31 S 3. a) The several amounts specified in this act for aid to locali-
32 ties, or so much thereof as shall be sufficient to accomplish the
33 purposes designated by the appropriations, are hereby appropriated and
34 authorized to be paid as hereinafter provided, to the respective public
35 officers and for the several purposes specified.

36 b) Where applicable, appropriations made by this act for expenditures
37 from federal grants for aid to localities may be allocated for spending
38 from federal grants for any grant period beginning, during, or prior to,
39 the state fiscal year beginning on April 1, 2011 except as otherwise
40 provided.

41 c) No moneys appropriated by this act shall be available for payment
42 until a certificate of approval has been issued by the director of the
43 budget, who shall file such certificate with the department of audit and
44 control, the chairperson of the senate finance committee and the chair-
45 person of the assembly ways and means committee.

46 d) The appropriation contained within this section is based on the
47 amount of federal moneys estimated to become available within the funds
48 for which this appropriation provides. Disbursements from this appropri-
49 ation shall be limited to the actual amounts received in such funds from
50 the federal government.

51 e) The appropriations contained in this act shall be available for the
52 fiscal year beginning on April 1, 2011 except as otherwise provided.

DEPARTMENT OF ECONOMIC DEVELOPMENT

SMALL BUSINESS CREDIT INITIATIVE PROGRAM 55,351,534

Special Revenue Funds - Federal
Federal Operating Grant Fund
Small Business Credit Initiative Account

For programs and activities authorized pursuant to section sixteen-f of the new york state urban development corporation act, including any services and costs associated with administration of such programs and activities, subject to the limitations imposed by federal funding requirements. Notwithstanding any provision of law to the contrary, such moneys shall be paid by the department of economic development to the new york state urban development corporation from federal operating grant moneys deposited in the state treasury for the federal state small business credit initiative. Provided further that, notwithstanding any inconsistent provision of law, subject to the approval of the director of the budget, funds appropriated herein may be interchanged with any other item of appropriation to be funded from the small business credit initiative account 10,405,173

For programs and activities authorized pursuant to section sixteen-k of the new york state urban development corporation act, including any services and costs associated with administration of such programs and activities, subject to the limitations imposed by federal funding requirements. Notwithstanding any provision of law to the contrary, such moneys shall be paid by the department of economic development to the new york state urban development corporation from federal operating grant moneys deposited in the state treasury for the federal state small business credit initiative. Provided further that, notwithstanding any inconsistent provision of law, subject to the approval of the director of the budget, funds appropriated herein may be interchanged with any other item of appropriation to be funded from the small business credit initiative account 18,994,204

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5 requirements. Notwithstanding any
6 provision of law to the contrary, such
7 moneys shall be paid by the department of
8 economic development to the new york state
9 urban development corporation from federal
10 operating grant moneys deposited in the
11 state treasury for the federal state small
12 business credit initiative. Provided
13 further that, notwithstanding any incon-
14 sistent provision of law, subject to the
15 approval of the director of the budget,
16 funds appropriated herein may be inter-
17 changed with any other item of appropri-
18 ation to be funded from the small business
19 credit initiative account 25,952,157

20 S 4. This act shall take effect immediately.