

5782

2011-2012 Regular Sessions

I N S E N A T E

June 16, 2011

Introduced by Sen. ALESI -- (at request of the Empire State Development Corporation) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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.
22 (b)(i) Assistance [from this] UNDER THE CAPITAL ACCESS program shall
23 be provided for a capital access program under which the corporation or

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

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1 its agent shall be authorized to assist small businesses that otherwise
2 find it difficult to obtain regular OR SUFFICIENT bank financing. Such
3 assistance shall take the form of deposits by the corporation or its
4 agent in the reserve funds in participating financial institutions to
5 fund loan loss reserves for loans made to such small businesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Any contract entered into pursuant to subparagraph (i) of paragraph (a) of this subdivision shall:

(i) be for a period of two years and shall be renewed for an additional two year period subject to requirements of subparagraph (ii) of paragraph (a) of this subdivision; and

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

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-u to read as follows:

S 16-U. INNOVATE NY FUND. 1. THE INNOVATE NY FUND IS HEREBY CREATED. THE PURPOSE OF THE INNOVATE NY FUND IS TO MAKE AVAILABLE STATE FUNDS TO

1 ELIGIBLE APPLICANTS TO SUPPORT EMERGING BUSINESS IDEAS AND PRODUCTS THAT
2 RESULT IN THE GROWTH OF BUSINESS WITHIN THE STATE AND THE CONCOMITANT
3 CREATION OF JOBS AND TAX REVENUES FOR THE STATE.

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

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

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

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

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

54 7. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE CORPO-
55 RATION MAY ESTABLISH A PROGRAM FUND FOR PROGRAM USE AND PAY INTO SUCH

FUND ANY ELIGIBLE FUNDS AVAILABLE TO THE CORPORATION FROM ANY SOURCE, INCLUDING MONEYS APPROPRIATED BY THE STATE.

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

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

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

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

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

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

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

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

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

DEPARTMENT OF ECONOMIC DEVELOPMENT

SMALL BUSINESS CREDIT INITIATIVE PROGRAM 55,351,534

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

4 For programs and activities authorized
5 pursuant to section sixteen-f of the new
6 york state urban development corporation
7 act, including any services and costs
8 associated with administration of such
9 programs and activities, subject to the
10 limitations imposed by federal funding
11 requirements. Notwithstanding any
12 provision of law to the contrary, such
13 moneys shall be paid by the department of
14 economic development to the new york state
15 urban development corporation from federal
16 operating grant moneys deposited in the
17 state treasury for the federal state small
18 business credit initiative. Provided
19 further that, notwithstanding any incon-
20 sistent provision of law, subject to the
21 approval of the director of the budget,
22 funds appropriated herein may be inter-
23 changed with any other item of appropri-
24 ation to be funded from the small business
25 credit initiative account 10,405,173

26 For programs and activities authorized
27 pursuant to section sixteen-k of the new
28 york state urban development corporation
29 act, including any services and costs
30 associated with administration of such
31 programs and activities, subject to the
32 limitations imposed by federal funding
33 requirements. Notwithstanding any
34 provision of law to the contrary, such
35 moneys shall be paid by the department of
36 economic development to the new york state
37 urban development corporation from federal
38 operating grant moneys deposited in the
39 state treasury for the federal state small
40 business credit initiative. Provided
41 further that, notwithstanding any incon-
42 sistent provision of law, subject to the
43 approval of the director of the budget,
44 funds appropriated herein may be inter-
45 changed with any other item of appropri-
46 ation to be funded from the small business
47 credit initiative account 18,994,204

48 For programs and activities authorized
49 pursuant to section sixteen-u of the new
50 york state urban development corporation
51 act, including any services and costs
52 associated with administration of such
53 programs and activities, subject to the
54 limitations imposed by federal funding

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

16 S 4. This act shall take effect immediately.