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I N   A S S E M B L Y

February 15, 2012

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Introduced by M. of A. RYAN -- read once and referred to the Committee  
on Economic Development

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;  
22    5. "Regional partnership coordinator" shall mean a nonprofit organiza-  
23    tion chosen by a regional partnership and certified by the foundation to  
24    administer the regional partnership programs;  
25    6. "Partnership" shall mean regional partnerships; [and]  
26    7. "Coordinator" shall mean regional partnership coordinator[.];

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

LBD07604-01-1

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

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

11 S 2. The public authorities law is amended by adding a new section  
12 3154-a to read as follows:

13 S 3154-A. BIOSCIENCES COMMERCIALIZATION ASSISTANCE FUND. 1. THE BIOS-  
14 CIENCES COMMERCIALIZATION ASSISTANCE FUND IS HEREBY CREATED FOR THE  
15 PURPOSE OF:

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

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

21 (C) ENABLING SMALL BUSINESSES RESIDENT IN THE STATE TO CONDUCT APPLIED  
22 RESEARCH AND DEVELOPMENT NECESSARY TO COMMERCIALIZE RESEARCH ENTITY  
23 INVENTIONS; AND

24 (D) ENCOURAGING BUSINESSES RESIDENT IN THE STATE TO DEVELOP NEW  
25 PRODUCTS OR PROCESSES BASED ON PROMISING INVENTIONS OR TECHNOLOGIES  
26 OWNED BY SUCH BUSINESSES THROUGH GRANTS OR LOANS TO SUCH RESIDENT BUSI-  
27 NESSES.

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

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

52 (B) INVESTMENTS IN START-UP COMPANIES FORMED BY ENTREPRENEURS TO  
53 COMMERCIALIZE INTELLECTUAL PROPERTY IN THE FOCUS AREA LICENSED FROM  
54 RESEARCH ENTITIES LOCATED IN NEW YORK STATE. THE FOUNDATION MAY APPROVE  
55 INVESTMENTS IN NEW COMPANIES BEING FORMED TO FURTHER DEVELOP, PRODUCE,  
56 AND SELL INVENTIONS LICENSED FROM RESEARCH INSTITUTIONS IN NEW YORK

1 STATE, PROVIDED THAT THE COMPANY'S RESEARCH AND DEVELOPMENT AND/OR MANU-  
2 FACTURING FACILITIES WILL BE LOCATED IN NEW YORK STATE; THE COMPANY  
3 COMMITS TO REMAINING IN THE STATE; THE INVESTMENT DOES NOT EXCEED ONE  
4 HUNDRED FIFTY THOUSAND DOLLARS PER COMPANY; AND, THE INVESTMENT IS USED  
5 SOLELY FOR OPERATING EXPENSES APPROVED BY THE FOUNDATION. IN RETURN FOR  
6 INVESTMENT BY THE FOUNDATION, THE FOUNDATION SHALL TAKE AN EQUITY POSI-  
7 TION IN THE COMPANY OR NEGOTIATE ROYALTY PAYMENTS BASED ON THE SALE OF  
8 ANY PRODUCTS RESULTING FROM THE LICENSED INVENTION. IN THE EVENT THAT A  
9 COMPANY MOVES ITS RESEARCH AND DEVELOPMENT OR MANUFACTURING FACILITIES  
10 OR MORE THAN TWENTY PERCENT OF ITS EMPLOYEES OUT OF THE STATE, THE FOUN-  
11 DATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL TO AT LEAST  
12 FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT;

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

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

49 (E) GRANTS TO BUSINESSES IN NEW YORK STATE TO OFFSET SOME OR ALL OF  
50 THE COSTS OF FILING FOR FEDERAL REGULATORY APPROVAL FOR NEW OR MODIFIED  
51 PRODUCTS OR PROCESSES WITHIN THE FOCUS AREA. THE FOUNDATION MAY APPROVE  
52 GRANTS TO BUSINESSES INCORPORATED IN NEW YORK STATE PROVIDED THAT THE  
53 COMPANY HAS ITS PRINCIPAL RESEARCH AND DEVELOPMENT AND MANUFACTURING  
54 FACILITIES LOCATED IN THE STATE. IN THE EVENT THE COMPANY MOVES THE  
55 MANUFACTURE OF THE PRODUCT OUT OF NEW YORK STATE WITHIN A PERIOD OF FIVE  
56 YEARS, THE FOUNDATION SHALL REQUIRE THE COMPANY TO REPAY AN AMOUNT EQUAL

1 TO AT LEAST FIVE TIMES THE FOUNDATION'S TOTAL INVESTMENT. THE FOUNDATION  
2 SHALL GIVE PRIORITY TO COMPANIES WITH LESS THAN ONE HUNDRED FULL-TIME  
3 EMPLOYEES.

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

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

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