

1877

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

Introduced by Sen. ESPAILLAT -- 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 creating the bioscience facilities development program

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 finds that New York state has many assets that are critical to the
3 growth of the biotechnology industry.
4 The legislature also finds that New York state has an extensive
5 academic research base, a highly skilled labor pool and access to finan-
6 cial institutions oriented toward biotech development.
7 The legislature further finds that even with many of the critical
8 elements for growing a biotechnology cluster, New York for all intents
9 and purposes has been eclipsed by a number of other regions in the coun-
10 try.
11 Further, the legislature finds that while start-up companies are
12 established in New York, companies that are poised for rapid expansion
13 have left New York for regions that have developed vigorous biotech and
14 policies that deliberately invite, nurture and facilitate the expansion
15 of the industry and proactively address the biotech companies' need for
16 affordable laboratory space.
17 The legislature declares that biotechnology is an important economic
18 development industry for the state and that the critical impediment to
19 the successful growth of a biotech cluster in New York state is access
20 to affordable laboratory space. Therefore, the legislature hereby
21 declares the creation of the "bioscience facilities development
22 program".

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

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

4 S 16-U. THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM. 1. THE BIOSCI-
5 ENCE FACILITIES DEVELOPMENT PROGRAM IS HEREBY CREATED TO MAXIMIZE THE
6 ECONOMIC DEVELOPMENT POTENTIAL OF ACADEMIC AND COMMERCIAL BIOSCIENCE
7 ACTIVITY IN THE STATE, INCLUDING BUT NOT LIMITED TO BIOTECHNOLOGY, BIOM-
8 EDICINE, NANOMEDICINE, SPECIALTY PHARMACEUTICALS, MEDICAL DEVICES, AND
9 RELATED SCIENCES, IN ORDER TO BUILD UPON WORLD-RENOWNED RESEARCH AND
10 DEVELOPMENT ACTIVITIES IN THE BIOSCIENCES.

11 2. (A) THE CORPORATION SHALL, FROM FUNDS MADE AVAILABLE FOR THIS
12 PURPOSE, PROVIDE GRANTS TO LOCAL ECONOMIC DEVELOPMENT CORPORATIONS WHICH
13 SERVE A REGION MEETING THE CRITERIA SET FORTH IN SUBDIVISION THREE OF
14 THIS SECTION AND WHICH SHALL APPLY FOR SUCH GRANT IN A FORM AND MANNER
15 DETERMINED BY THE CORPORATION FOR THE PURPOSE OF CREATING A REVOLVING
16 LOAN FUND TO PROVIDE LOANS TO BIOSCIENCE FACILITIES TO ASSIST INDIVIDUAL
17 COMMERCIAL BIOSCIENCE COMPANIES TO REMAIN IN NEW YORK STATE.

18 (B) NO MORE THAN ONE LOCAL ECONOMIC DEVELOPMENT CORPORATION SHALL BE
19 SELECTED FROM EACH ECONOMIC REGION OF THE STATE, AS DESIGNATED PURSUANT
20 TO SECTION 230 OF THE ECONOMIC DEVELOPMENT LAW, BY THE CORPORATION TO
21 RECEIVE A GRANT PURSUANT TO THIS SECTION.

22 3. A LOCAL ECONOMIC DEVELOPMENT CORPORATION APPLYING FOR A GRANT UNDER
23 THIS SECTION SHALL:

24 (A) HAVE FIRM COMMITMENTS FROM PRIVATE AND MUNICIPAL SOURCES TO
25 PROVIDE FUNDS TO THE LOCAL ECONOMIC DEVELOPMENT CORPORATION IN AN AMOUNT
26 AT LEAST EQUAL TO THE AMOUNT OF THE GRANT; AND

27 (B) SERVE AN ECONOMIC DEVELOPMENT REGION OF THE STATE AS DESIGNATED
28 PURSUANT TO SECTION 230 OF THE ECONOMIC DEVELOPMENT LAW, WHICH REGION
29 SHALL HAVE LOCATED WITHIN IT COLLEGES, UNIVERSITIES, HOSPITALS, LABORA-
30 TORIES, AND OTHER RESEARCH INSTITUTIONS.

31 4. ELIGIBLE BORROWERS FROM THE FUND ESTABLISHED BY THE LOCAL ECONOMIC
32 DEVELOPMENT CORPORATION RECEIVING A GRANT UNDER THIS PROGRAM SHALL
33 INCLUDE EARLY AND MIDDLE STAGE BIOSCIENCE COMPANIES IN SUCH AREAS AS
34 BIOTECHNOLOGY, BIOMEDICINE, NANOMEDICINE, SPECIALTY PHARMACEUTICALS, AND
35 MEDICAL DEVICES, WITH FEWER THAN TWO HUNDRED EMPLOYEES AND WHICH HAVE
36 RECEIVED FUNDING FROM AN INSTITUTIONAL VENTURE CAPITAL FIRM IN THE TWEN-
37 TY-FOUR MONTHS PRIOR TO MAKING APPLICATION FOR A LOAN UNDER THIS SUBDI-
38 VISION, AND SHALL ALSO INCLUDE BOTH FOR-PROFIT AND NOT-FOR-PROFIT PROP-
39 erty owners and developers who are intending to develop and lease space
40 to such bioscience companies, PROVIDED, HOWEVER, THAT THE USE OF SUCH
41 FUNDS IS RESTRICTED TO THE CONSTRUCTION OF LABORATORY AND RELATED SPACE
42 AND THAT THE MAXIMUM SIZE OF SUCH LOAN SHALL BE NO MORE THAN FIFTY
43 PERCENT OF THE COST OF SUCH LABORATORY OR RELATED SPACE CONSTRUCTION.
44 SUCH LOANS UNDER THIS SUBDIVISION SHALL BE MADE FOR A PERIOD OF SEVEN TO
45 TEN YEARS AT A RATE OF SEVEN TO EIGHT PERCENT, EXCEPT THAT DURING SUCH
46 PERIOD THAT THE LOAN SHALL REMAIN OUTSTANDING, IF A BIOSCIENCE COMPANY
47 RECEIVING SUCH LOAN SHALL RELOCATE A SIGNIFICANT PORTION OF ITS OPER-
48 ATIONS, AS DETERMINED IN A LOAN AGREEMENT WITH THE LOCAL ECONOMIC DEVEL-
49 OPMENT CORPORATION, OUTSIDE NEW YORK STATE, SUCH INTEREST RATE SHALL
50 RISE TO EIGHTEEN PERCENT ON A RETROACTIVE BASIS. IF, AFTER A PERIOD OF
51 FIVE YEARS FROM THE INCEPTION OF THE LOAN, A COMPANY SHALL REMAIN IN NEW
52 YORK STATE, TWENTY-FIVE PERCENT OF THE PRINCIPAL AMOUNT OF SUCH LOAN
53 SHALL BE FORGIVEN; AND IF AFTER A PERIOD OF TEN YEARS FROM THE INCEPTION
54 OF THE LOAN, A COMPANY SHALL REMAIN IN NEW YORK STATE, FIFTY PERCENT OF
55 THE PRINCIPAL AMOUNT OF SUCH LOAN SHALL BE FORGIVEN, FURTHER PROVIDED
56 THAT IF THE AMOUNT STILL OUTSTANDING ON THE LOAN SHALL BE LESS THAN THE

1 AMOUNT FORGIVEN, THE DIFFERENCE SHALL BE REIMBURSED TO THE COMPANY. ANY
2 COMPANY RECEIVING SUCH A LOAN SHALL BE INDEPENDENTLY OWNED AND OPERATED.
3 FOR PURPOSES OF THIS SUBDIVISION, THE TERM "INDEPENDENTLY OWNED AND
4 OPERATED BUSINESS" SHALL MEAN (A) IN THE CASE OF A CORPORATION, ONE
5 WHERE NO MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF THE CORPORATION
6 IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION,
7 A SINGLE PARTNERSHIP OR A SINGLE LIMITED LIABILITY COMPANY, AND (B) IN
8 THE CASE OF A PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY, WHERE NO MORE
9 THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR OTHER BENEFICIAL INTEREST
10 IN SUCH PARTNERSHIP, ASSOCIATION OR OTHER ENTITY IS OWNED OR CONTROLLED,
11 DIRECTLY OR INDIRECTLY, BY A SINGLE CORPORATION, A SINGLE PARTNERSHIP OR
12 A SINGLE LIMITED LIABILITY COMPANY.

13 5. GRANTS RECEIVED FROM THE CORPORATION BY A LOCAL ECONOMIC DEVELOP-
14 MENT CORPORATION, EARNINGS ON SUCH MONIES, AND ANY PRINCIPAL REPAYMENTS
15 AND ANY INTEREST EARNED ON LOANS SHALL BE DEPOSITED IN A LOAN FUND
16 ACCOUNT.

17 6. THE DECISION TO APPROVE OR REJECT AN APPLICATION FOR FINANCIAL
18 ASSISTANCE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE MADE BY A
19 MAJORITY OF THE DIRECTORS OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION,
20 AND SUCH DECISION SHALL BE FINAL. NO MEMBER OF THE BOARD OR OTHER
21 GOVERNING BODY OF THE LOCAL ECONOMIC DEVELOPMENT CORPORATION SHALL
22 PARTICIPATE IN A DECISION ON A PROJECT APPLICATION WHEN SUCH MEMBER IS A
23 PARTY TO OR HAS A FINANCIAL INTEREST IN SUCH PROJECT. ANY MEMBER WHO
24 CANNOT PARTICIPATE IN A DECISION ON A PROJECT APPLICATION FOR SUCH
25 REASON SHALL NOT BE COUNTED AS A MEMBER OF THE BOARD OR OTHER GOVERNING
26 BODY FOR PURPOSES OF DETERMINING THE NUMBER OF MEMBERS REQUIRED FOR A
27 MAJORITY VOTE ON SUCH APPLICATION. NO EMPLOYEE OR OFFICER OF ANY SUCH
28 CORPORATION SHALL BE A PARTY TO OR HAVE ANY FINANCIAL INTEREST IN ANY
29 PROJECT THAT RECEIVES FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION.

30 7. THE CORPORATION MAY WITHDRAW ANY AMOUNT REMAINING FROM AN ORIGINAL
31 GRANT AND ANY EARNINGS ON SUCH GRANT, AND ANY PRINCIPAL REPAYMENTS AND
32 ANY INTEREST EARNED ON LOANS MADE FROM SUCH GRANT WHEN A MEMBER OF A
33 BOARD OF DIRECTORS, AN OFFICER OR AN EMPLOYEE OF SAID CORPORATION IS
34 PARTY TO OR HAS FINANCIAL INTERESTS IN LOAN PROJECTS; WHEN SAID LOCAL
35 ECONOMIC DEVELOPMENT CORPORATION FAILS TO COMPLY WITH THE REQUIREMENTS
36 FOR PROJECT LOANS PURSUANT TO THIS SECTION; OR WHEN SAID CORPORATION
37 MAKES NO LOANS WITHIN THE PREVIOUS FISCAL YEAR. OUTSTANDING LOANS AND
38 OTHER OBLIGATIONS PAYABLE TO SUCH LOCAL ECONOMIC DEVELOPMENT CORPORATION
39 SHALL BE ASSIGNED TO THE CORPORATION UPON SUCH TERMS AND CONDITIONS AS
40 THE CORPORATION SHALL DETERMINE.

41 8. THE LOCAL ECONOMIC DEVELOPMENT CORPORATION RECEIVING A GRANT PURSU-
42 ANT TO THIS SECTION SHALL SUBMIT ANNUAL REPORTS FOR THE PREVIOUS FISCAL
43 YEAR TO THE CORPORATION DESCRIBING THE FINANCIAL ASSISTANCE PROVIDED
44 PURSUANT TO THIS SECTION, INCLUDING: THE NUMBER OF PROJECTS ASSISTED;
45 THE AMOUNT AND TYPE OF ASSISTANCE PROVIDED; A DESCRIPTION OF THE
46 PROJECTS; THE NUMBER OF JOBS CREATED OR RETAINED; THE STATUS OF
47 OUTSTANDING LOANS, GUARANTEES, EARNINGS AND ACCOUNT BALANCES; AND SUCH
48 OTHER INFORMATION AS THE CORPORATION MAY REQUIRE.

49 9. THE CORPORATION SHALL ANNUALLY CONDUCT AN AUDIT OF EACH LOCAL
50 ECONOMIC DEVELOPMENT CORPORATION RECEIVING A GRANT TO ENSURE CONFORMITY
51 OF ALL ASPECTS OF PROGRAM ADMINISTRATION AND OF FINANCIAL ASSISTANCE
52 TRANSACTIONS WITH THE SUBSTANTIVE AND PROCEDURAL PROVISIONS OF THIS
53 SECTION. IN THE EVENT THAT THE CORPORATION FINDS INSTANCES OF SUBSTAN-
54 TIVE NONCOMPLIANCE BY AN ECONOMIC DEVELOPMENT CORPORATION WITH ANY OF
55 THE PROVISIONS OF THIS SECTION AND SUCH INSTANCES WERE, OR SHOULD HAVE
56 BEEN, KNOWN TO BE IN NONCOMPLIANCE, THE ECONOMIC DEVELOPMENT CORPORATION

1 SHALL RETURN, WITHIN THIRTY DAYS, UPON DEMAND BY THE CORPORATION, ALL
2 UNCOMMITTED GRANT FUNDS ON HAND AND PROVIDE AN ACCOUNT OF THE LOANS
3 CURRENTLY OUTSTANDING.
4 10. THE CORPORATION SHALL, ON OR BEFORE OCTOBER FIRST OF THE YEAR NEXT
5 SUCCEEDING THE EFFECTIVE DATE OF THIS SECTION, AND ON OR BEFORE EACH
6 OCTOBER FIRST THEREAFTER, SUBMIT A REPORT TO THE GOVERNOR AND THE LEGIS-
7 LATURE ON THE OPERATIONS AND ACCOMPLISHMENTS OF THE BIOSCIENCE FACILI-
8 TIES DEVELOPMENT PROGRAM. SUCH REPORT SHALL INCLUDE A SUMMARY OF THE
9 INFORMATION CONTAINED IN THE REPORTS SUBMITTED PURSUANT TO SUBDIVISION
10 EIGHT OF THIS SECTION AND OF THE RESULTS OF THE AUDITS PERFORMED BY THE
11 CORPORATION PURSUANT TO SUBDIVISION NINE OF THIS SECTION, AND SHALL SET
12 FORTH THE STATUS OF THE BIOSCIENCE FACILITIES DEVELOPMENT PROGRAM
13 REVOLVING LOAN PROGRAM FOR THE PREVIOUS FISCAL YEAR.
14 S 3. This act shall take effect immediately.