

5469

2011-2012 Regular Sessions

I N S E N A T E

May 25, 2011

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the public authorities law, in relation to creating the small business technology investment fund

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

1 Section 1. The public authorities law is amended by adding a new
2 section 3154-a to read as follows:

3 S 3154-A. THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS AND TERMS
4 SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT SHALL INDICATE
5 ANOTHER OR DIFFERENT MEANING OR INTENT:

6 (A) "REGIONAL INVESTMENT FUND" SHALL MEAN A LIMITED PARTNERSHIP, A
7 LIMITED LIABILITY PARTNERSHIP, A LIMITED LIABILITY COMPANY OR A
8 NOT-FOR-PROFIT FUND THAT IS PROFESSIONALLY MANAGED BY AN EXPERIENCED
9 FUND MANAGER, IS FORMED FOR THE PURPOSE OF PROVIDING PRIVATE EQUITY TO
10 TECHNOLOGY-BASED COMPANIES IN THEIR FORMATIVE STAGES, ENCOMPASSES AT
11 LEAST TWO COUNTIES, AND INVESTS IN QUALIFIED ENTERPRISES LOCATED WITHIN
12 NEW YORK STATE.

13 (B) "QUALIFIED ENTERPRISE" SHALL MEAN A COMPANY OR A PROPOSED COMPANY
14 THAT HAS OR WILL LOCATE ITS PRINCIPAL PLACE OF BUSINESS IN NEW YORK
15 STATE, THAT IS, OR PROPOSES TO BE, ENGAGED IN THIS STATE IN RESEARCH AND
16 DEVELOPMENT OR MANUFACTURING, AND THAT DEMONSTRATES THE POTENTIAL FOR
17 SUBSTANTIAL GROWTH AND JOB DEVELOPMENT IN AN EMERGING TECHNOLOGY FIELD
18 AS DEFINED IN SECTION THIRTY-ONE HUNDRED TWO-E OF THIS ARTICLE OR AS
19 ADOPTED BY THE BOARD.

20 (C) "SEED CAPITAL" SHALL MEAN FINANCIAL ASSISTANCE TO A QUALIFIED
21 ENTERPRISE, WHICH HAS FORMULATED A DETAILED BUSINESS PLAN, FOR
22 PROOF-OF-CONCEPT OR INITIAL PRODUCT COMMERCIALIZATION.
23

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

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2. INVESTMENTS IN REGIONAL INVESTMENT FUNDS. (A) THE FOUNDATION IS AUTHORIZED TO MAKE INVESTMENTS TO ENCOURAGE AND FACILITATE THE CREATION OR EXPANSION OF REGIONAL INVESTMENT FUNDS THAT SERVE THE PURPOSES OF THIS SECTION. THE FOUNDATION'S BOARD OF DIRECTORS SHALL ADOPT CRITERIA AND GUIDELINES GOVERNING SUCH INVESTMENTS, WHICH SHALL REQUIRE THAT:

(I) THERE EXISTS A NEED FOR SEED CAPITAL IN THE REGION SERVED OR TO BE SERVED BY A REGIONAL INVESTMENT FUND;

(II) SUPPORT FOR A REGIONAL INVESTMENT FUND EXISTS FROM LOCAL GOVERNMENTS, ECONOMIC DEVELOPMENT AGENCIES, AND BUSINESS COMMUNITIES WITHIN THE REGION OR AREA TO BE SERVED BY SUCH FUND;

(III) THE REGIONAL INVESTMENT FUND HAS THE CAPACITY TO PROVIDE MANAGEMENT EXPERTISE AND OTHER VALUE-ADDED SERVICES TO ITS PORTFOLIO COMPANIES;

(IV) THE REGIONAL INVESTMENT FUND ESTABLISHES CONFLICT-OF-INTEREST PROVISIONS ACCEPTABLE TO THE FOUNDATION;

(V) TO THE MAXIMUM EXTENT FEASIBLE, THE REGIONAL INVESTMENT FUND WILL INVEST IN FIRMS WHICH HAVE THE GREATEST POTENTIAL FOR JOB CREATION;

(VI) INVESTMENTS MADE BY THE FOUNDATION IN A REGIONAL INVESTMENT FUND SHALL NOT EXCEED TWO MILLION DOLLARS AND SHALL BE MATCHED BY THE REGIONAL FUND ON AT LEAST A ONE-TO-ONE BASIS WITH MONIES, OTHER THAN STATE MONIES; AND

(VII) INVESTMENTS MADE BY A REGIONAL INVESTMENT FUND THAT INCLUDE FUNDS RECEIVED FROM THE FOUNDATION SHALL BE MADE ONLY FOR THE FINANCING AUTHORIZED BY SUBDIVISION THREE OF THIS SECTION.

(B) THE FOUNDATION SHALL MAKE INVESTMENTS IN QUALIFIED REGIONAL INVESTMENT FUNDS VIA THE ISSUANCE OF A REQUEST FOR PROPOSALS TO REGIONAL AND LOCAL ECONOMIC DEVELOPMENT ORGANIZATIONS, TECHNOLOGY DEVELOPMENT ORGANIZATIONS, RESEARCH UNIVERSITIES, AND INVESTMENT FUNDS THAT PROVIDE SMALL-SCALE INVESTMENTS IN HIGH-TECHNOLOGY COMPANIES IN NEW YORK STATE.

3. REGIONAL INVESTMENT FUNDS. (A) REGIONAL INVESTMENT FUNDS RECEIVING INVESTMENTS FROM THE FOUNDATION UNDER THIS SECTION SHALL USE SUCH FUNDS AND THE REQUIRED MATCHING FUNDS TO PROVIDE SEED CAPITAL AND FOLLOW-ON FINANCING TO QUALIFIED ENTERPRISES, PROVIDED THAT THE REGIONAL INVESTMENT FUND SHALL NOT: (I) INVEST AN AMOUNT IN ANY SINGLE QUALIFIED ENTERPRISE THAT EXCEEDS FIFTY PERCENT OF THE TOTAL INVESTMENT FROM ALL OTHER SOURCES IN ANY SUCH ENTERPRISE; OR (II) INVEST OVER FIVE HUNDRED THOUSAND DOLLARS IN ANY ONE COMPANY.

(B) A REGIONAL INVESTMENT FUND, BEFORE APPROVING ANY APPLICATION FOR FINANCIAL ASSISTANCE UNDER THIS SECTION SHALL FIND THAT: (I) THE QUALIFIED ENTERPRISE AND ITS PRODUCT OR PROCESS HAVE A REASONABLE CHANCE OF BEING COMMERCIALY SUCCESSFUL; AND (II) THE EMPLOYMENT CREATED OR MAINTAINED AS A RESULT OF THE FUND'S INVESTMENT WILL BE IN NEW YORK STATE. THE REGIONAL INVESTMENT FUND SHALL FURTHER ENSURE THAT PROVISIONS ARE IN PLACE FOR THE REPAYMENT OF THE FUNDS IF THE COMPANY RECEIVING ASSISTANCE LEAVES THE STATE.

4. REGIONAL INVESTMENT FUND REPORTING. THE FOUNDATION SHALL REQUIRE ANY REGIONAL INVESTMENT FUND RECEIVING INVESTMENTS UNDER THIS SECTION TO FILE A REPORT WITH THE FOUNDATION BY DECEMBER FIRST, TWO THOUSAND THIRTEEN AND ANNUALLY THEREAFTER UNTIL DECEMBER FIRST, TWO THOUSAND EIGHTEEN. SUCH REPORT SHALL INCLUDE:

(A) THE TOTAL AMOUNT OF FUNDS COMMITTED TO THE REGIONAL INVESTMENT FUND AND THE AMOUNT THAT HAS BEEN INVESTED;

(B) THE NET ASSET VALUE OF THE FUND;

(C) THE AMOUNT INVESTED IN EACH PORTFOLIO COMPANY FROM THE FUND AND FROM OTHER SOURCES;

1 (D) THE TYPE OF PRODUCT OR TECHNOLOGY BEING DEVELOPED BY EACH PORTFO-
2 LIO COMPANY;

3 (E) THE LOCATION OF EACH PORTFOLIO COMPANY;

4 (F) THE NUMBER OF JOBS PROJECTED TO BE CREATED AND RETAINED; AND

5 (G) SUCH OTHER INFORMATION AS THE FOUNDATION DEEMS NECESSARY.

6 5. ASSETS AND LIABILITIES. ALL OF THE ASSETS AND LIABILITIES OF THE
7 SMALL BUSINESS TECHNOLOGY INVESTMENT FUND SHALL BE MADE AVAILABLE FOR
8 THE PURPOSES OF THIS SECTION. THE BOARD SHALL PREPARE A PLAN WITHIN
9 NINETY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION TO LIQUIDATE
10 ALL CURRENT ASSETS AND LIABILITIES OF THE FUND. THE PUBLICLY-TRADED
11 ASSETS AND ANY WORKING CAPITAL SHALL BE MADE FULLY AVAILABLE FOR ALLO-
12 CATION TO REGIONAL INVESTMENT FUNDS AS SOON AS PRACTICABLE. THE BOARD
13 SHALL ALSO TAKE WHATEVER ACTIONS ARE NECESSARY TO LIQUIDATE THE REMAIN-
14 ING ASSETS OF THE SMALL BUSINESS TECHNOLOGY INVESTMENT FUND AS SOON AS
15 PRACTICABLE, BUT NOT MORE THAN TWO YEARS FOLLOWING THE EFFECTIVE DATE OF
16 THIS SECTION.

17 6. REPORT OF THE FOUNDATION. THE FOUNDATION SHALL SUBMIT TO THE GOVER-
18 NOR AND THE LEGISLATURE A SUMMARY AND EVALUATION OF THE REPORTS SUBMIT-
19 TED TO THE FOUNDATION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION AND
20 AN EVALUATION OF THE PERFORMANCE OF THE REGIONAL INVESTMENT FUNDS ON OR
21 BEFORE FEBRUARY FIRST, TWO THOUSAND FOURTEEN AND ANNUALLY THEREAFTER
22 UNTIL FEBRUARY FIRST, TWO THOUSAND NINETEEN.

23 S 2. The opening paragraph of section 3150 of the public authorities
24 law, as amended by section 4 of part C of chapter 63 of the laws of
25 2005, is amended to read as follows:

26 As used in this [section] TITLE:

27 S 3. This act shall take effect immediately.