

4078

2013-2014 Regular Sessions

I N S E N A T E

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Introduced by Sens. GOLDEN, BALL, BONACIC, GALLIVAN, GRIFFO, GRISANTI, MAZIARZ, RANZENHOFER, SEWARD, VALESKY, ZELDIN -- 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 the New York state small business incubator support act

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

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds and declares that the path to prosperity and the economic recovery  
3 of New York state lies in job creation and in broadening economic choice  
4 and career opportunities for all citizens of this state, and that  
5 achieving these goals can be accelerated by the enhancement of the  
6 state's innovation and entrepreneurial spirit via the growth and devel-  
7 opment of business incubator programs that provide entrepreneurial,  
8 economic, and business development support and resources.

9 The legislature further finds that the goal and purpose of business  
10 incubation programs that include physical space or are virtual incu-  
11 bation programs is to develop financially stable successful firms by  
12 providing a comprehensive array of entrepreneurial supports, resources,  
13 and services, including management guidance, technical assistance,  
14 consulting, mentoring, education, networking opportunities, access to  
15 capital and markets, tailored to the individual needs of the business  
16 entities being incubated.

17 The legislature further finds that the concept of business incubation  
18 and business development programs originated in New York in 1959 when  
19 Joseph Mancuso opened the Batavia Industrial Center in a Batavia factory  
20 building, a concept that has since spread from New York throughout the  
21 country and the world, to the extent that there are now an estimated  
22 1,400 incubators in North America, and 7,000 in the world.

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

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1 The legislature further finds that it has been conclusively demon-  
2 strated that firms originating and graduating from a New York state  
3 incubator program have a markedly better chance of remaining in and  
4 expanding employment opportunities in New York state compared to firms  
5 that begin outside an incubator environment, that entrepreneurial coun-  
6 seling and mentoring has a significant positive effect on firm growth,  
7 development, and sustainability, and that research has shown that the  
8 success of business incubation programs and the resulting intensifica-  
9 tion of the entrepreneurial ethos in an area can often rise above  
10 regional economic conditions, so long as high level in-incubator factors  
11 are maintained, such as qualified staff, program comprehensiveness and  
12 integration, adherence to best practices, the extent of participation by  
13 client entrepreneurs in the program, and the vitality and composition of  
14 the advisory board.

15 The legislature further finds that these important programs are  
16 supported by a mixed variety of local sponsorships, public and private  
17 foundation grants, rental and program fee revenues, and other sources of  
18 funds, many of them short-term and unstable, and that such instability  
19 can act as a barrier that stifles the ability of the business incubation  
20 program to meet its goals and achieve maximum effectiveness in job  
21 creation and economic impact.

22 The legislature further declares that any incubator support program to  
23 be successful shall require metrics of incubators that requires that in  
24 order to retain designation, such incubators must provide evidence for  
25 evaluation of the relative success of their programs, allow for compar-  
26 ison of program effectiveness to other programs similarly composed,  
27 targeted, and situated, provide evidence of program and service quality,  
28 demonstrate the value provided to clients, demonstrate continued imple-  
29 mentation of best practices, and assure that the program continues to  
30 meet the requirements for designation.

31 The legislature therefore declares that it is in every respect appro-  
32 priate public policy to provide support for incubators in New York, as a  
33 means of increasing economic opportunity and choice to the citizens of  
34 this state, maintaining high standards for incubation programs, and  
35 building and expanding the economy of this state.

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

39 S 16-V. NEW YORK STATE BUSINESS INCUBATOR SUPPORT ACT. 1. NEW YORK  
40 STATE INCUBATORS. THE CORPORATION SHALL DESIGNATE PROGRAMS WHICH ON  
41 APPLICATION MEET THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION AS  
42 NEW YORK STATE INCUBATORS, AND SHALL PROVIDE SUPPORT AND SERVICES  
43 DESCRIBED IN THIS SECTION OR WHICH AS MAY OTHERWISE BE AVAILABLE BY AND  
44 THROUGH THE CORPORATION OR, ASSISTED BY THE COMMISSIONER OF ECONOMIC  
45 DEVELOPMENT AND IN CONSULTATION WITH THE DEPARTMENT OF ECONOMIC DEVELOP-  
46 MENT, BY AND THROUGH THE DEPARTMENT OF ECONOMIC DEVELOPMENT. "NEW YORK  
47 STATE INCUBATOR" SHALL MEAN A BUSINESS INCUBATION PROGRAM WHICH ALSO  
48 PROVIDES PHYSICAL SPACE OR WHICH IS A VIRTUAL INCUBATION PROGRAM THAT  
49 HAS BEEN DESIGNATED UPON APPLICATION BY THE CORPORATION AS A NEW YORK  
50 STATE INCUBATOR PURSUANT TO THIS SECTION AND WHICH THEREBY BECOMES  
51 ELIGIBLE FOR BENEFITS, SUPPORT, SERVICES, AND PROGRAMS AVAILABLE PURSU-  
52 ANT TO SUCH DESIGNATION.

53 2. REQUIREMENTS FOR DESIGNATION. A PROGRAM WISHING TO BE DESIGNATED AS  
54 A NEW YORK STATE INCUBATOR PURSUANT TO THIS SECTION SHALL HAVE BEEN IN  
55 EXISTENCE AS A PROGRAM WITH, IN, OR AS THE CURRENT ORGANIZATION FOR, A  
56 PERIOD OF AT LEAST THREE FISCAL YEARS PRIOR TO THE CURRENT FISCAL YEAR,

1 OR DEMONSTRATE CONTINUITY OF STAFFING, PROGRAM, AND PURPOSE SHOWING A  
2 CONTINUATION OF THE PROGRAM THROUGH ANOTHER AUSPICE OR GOVERNING ENTITY,  
3 AND SHALL PROVIDE THE FOLLOWING IN A MANNER PRESCRIBED BY THE CORPO-  
4 RATION:

5 (A) UNLESS OTHERWISE STATED, FOR THE CURRENT AND TWO PREVIOUS FISCAL  
6 YEARS THE PROGRAM PROVIDES, POSSESSES, OR HAS DEVELOPED AT LEAST TWELVE  
7 OF THE FOLLOWING PROGRAMS, SERVICES, AND ATTRIBUTES, INCLUDING SUBPARA-  
8 GRAPH (XIII) OF THIS PARAGRAPH REGARDING STABILITY AND SUPPORT AND  
9 SUBPARAGRAPH (XVIII) OF THIS PARAGRAPH REGARDING THE STRATEGIC PLAN:

10 (I) AN INTEGRATED ARRAY OF SERVICES WHICH INCLUDES MANAGEMENT GUID-  
11 ANCE, TECHNICAL ASSISTANCE, CONSULTING, MENTORING, BUSINESS PLAN DEVEL-  
12 OPMENT, AID IN CREATION OF THE BUSINESS ENTITY, AND ONGOING COUNSELING;

13 (II) ENTREPRENEURIAL EDUCATION OF AT LEAST THIRTY HOURS OF CLASSROOM  
14 INSTRUCTION AND TEN HOURS OF TECHNICAL ASSISTANCE, OR THE EQUIVALENT IN  
15 INDIVIDUALIZED COUNSELING AND MENTORING SERVICES FOR CLIENTS;

16 (III) OPPORTUNITIES FOR CLIENTS TO NETWORK, COLLABORATE WITH OTHER  
17 BUSINESS PROGRAMS, AND GAIN ACCESS TO SERVICES, INCLUDING THROUGH SUCH  
18 PROGRAMS AS THE SMALL BUSINESS DEVELOPMENT CENTER, THE LOCAL OR AREA  
19 CHAMBER OF COMMERCE OR OTHER BUSINESS ASSOCIATION, PROGRAMS OF THE SMALL  
20 BUSINESS ADMINISTRATION, AND/OR OTHER SIMILAR BUSINESS ORGANIZATIONS,  
21 ASSOCIATIONS, AND PROGRAMS;

22 (IV) ACCESS TO CAPITAL VIA REFERRAL OR OTHER ARRANGEMENTS WITH FINAN-  
23 CIAL INSTITUTIONS, VENTURE CAPITALISTS, ANGEL INVESTORS, INVESTMENT  
24 FUNDS MANAGED OR FINANCED BY STATE OR LOCAL ECONOMIC DEVELOPMENT ORGAN-  
25 IZATIONS, OR OTHER SIMILAR OR EQUIVALENT CAPITAL SOURCES, EVIDENCED BY  
26 WRITTEN AGREEMENTS, MEMORANDUMS OF UNDERSTANDING, LETTERS OF INTENT, OR  
27 OTHER ENDORSEMENTS ACCEPTABLE TO THE CORPORATION, AND INCLUDING READYING  
28 CLIENTS FOR THE FINANCIAL MEETINGS AND INTERVIEWS;

29 (V) AID IN ACCESSING MARKETS, VIA BID ASSISTANCE OR ACCESS PROGRAMS  
30 THAT MAY INCLUDE BUT ARE NOT LIMITED TO LITERATURE REVIEW, ESTABLISHMENT  
31 OF A RESOURCE DOCUMENTS ROOM (PHYSICAL OR VIRTUAL), OPPORTUNITY NOTIFI-  
32 CATION OF LOCAL, STATE, AND FEDERAL GOVERNMENTAL AND PRIVATE OPPORTU-  
33 NITIES, AND IDENTIFICATION OF AND INTRODUCTIONS TO POTENTIAL FIRST  
34 CUSTOMERS;

35 (VI) PHYSICAL OFFICE SPACE AND/OR LABORATORY SPACE AND/OR MANUFACTUR-  
36 ING SPACE UNDER A WRITTEN AGREEMENT FOR A PERIOD NOT TO EXCEED FIVE  
37 YEARS FOR ANY INDIVIDUAL INCUBATOR CLIENT, PROVIDED THAT THE AVERAGE  
38 PERIOD DURING WHICH SPACE IS PROVIDED FOR ALL SUCH CLIENTS ACCESSING  
39 SPACE SHALL NOT EXCEED THREE YEARS;

40 (VII) POLICIES REQUIRING PARTICIPATION BY CLIENTS IN THE INCUBATOR  
41 PROGRAM, INCLUDING DISQUALIFICATION OR SUSPENSION FROM THE PROGRAM FOR  
42 FAILURE TO PARTICIPATE;

43 (VIII) CRITERIA FOR GRADUATION FROM THE PROGRAM OR PHYSICAL SPACE, AND  
44 TERMS AND CONDITIONS FOR ONGOING RELATIONSHIPS, IF ANY, BETWEEN THE  
45 INCUBATOR AND THE CLIENT;

46 (IX) AT LEAST FIFTY PERCENT OF THE TOTAL INCUBATOR BUDGET PROVIDED  
47 FROM SOURCES OTHER THAN TENANT RENTS AND FEES AND IN-KIND SUPPORT FROM  
48 THE SPONSORING ENTITY, MUST BE FROM SOURCES OTHER THAN NEW YORK STATE  
49 GOVERNMENT AGENCIES;

50 (X) AN INDEPENDENT COMMUNITY-BASED BOARD OR ADVISORY BOARD THAT  
51 INCLUDES ONE OR MORE EXECUTIVE OFFICERS OF FIRMS THAT HAVE GRADUATED  
52 FROM THE INCUBATOR, AND ONE OR MORE PROFESSIONALS IN ONE OF THE FOLLOW-  
53 ING AREAS: ACCOUNTING, INTELLECTUAL PROPERTY, LAW (BUSINESS OR CORPO-  
54 RATE), OR ECONOMIC DEVELOPMENT;

55 (XI) AN INDEPENDENT ADVISORY COUNCIL OR RELATED NETWORK THAT INCLUDES  
56 ONE OR MORE EXECUTIVE OFFICERS OF FIRMS THAT HAVE GRADUATED FROM THE

1 INCUBATOR, AND INDIVIDUALS WITH EXPERTISE IN AREAS APPROPRIATE TO THE  
2 SECTOR OR CONCENTRATION OF CLIENTS, AND THE MISSION AND GOAL OF THE  
3 INCUBATOR;

4 (XII) A PROFESSIONAL MANAGEMENT AND SERVICE DELIVERY TEAM WITH EXPERI-  
5 ENCE, EXPERTISE, OR CREDENTIALS IN MANAGEMENT, ENTREPRENEURSHIP, BUSI-  
6 NESS DEVELOPMENT, OR OTHER EQUIVALENT AREAS;

7 (XIII) INSTITUTIONAL STABILITY AND LONG TERM VIABILITY, INDICATED BY:  
8 THE SPONSOR'S COMMITMENT TO FINANCIALLY AND PROGRAMMATICALLY MAINTAIN  
9 THE INCUBATOR FOR AT LEAST TWO YEARS IN ADDITION TO THE CURRENT FISCAL  
10 YEAR; RECEIPT OF AT LEAST TWO NON-STATE PUBLIC AND PRIVATE GRANT AND/OR  
11 OTHER REVENUE SOURCES INCLUDING PROPERTY RENTALS AND PROGRAM FEES THAT  
12 ARE OR HAVE PROVEN TO BE PREDICTABLE AND RELIABLE; AND MANAGEABLE DEBT  
13 SERVICE NOT EXCEEDING AN AVERAGE OF TWENTY-FIVE PERCENT OF TOTAL BUDGET  
14 (EXCLUSIVE OF ANY IN-YEAR CASH ADVANCES AGAINST PROGRAM OR GRANT REVEN-  
15 UES);

16 (XIV) A LIMITATION TO TWENTY PERCENT OR LESS OF THE TOTAL INCUBATOR  
17 BUDGET FOR ADMINISTRATIVE COSTS, WHICH INCLUDES ONLY THAT PORTION OF THE  
18 SALARIES AND BENEFITS OF THE CHIEF EXECUTIVE OFFICER, ANY DEPUTY OR  
19 ASSISTANT TO THE CHIEF EXECUTIVE OFFICER, AND THE CHIEF FINANCIAL OFFI-  
20 CER OR CONTROLLER, WHICH CANNOT BE ATTRIBUTED TO PROGRAMS OR SERVICES  
21 FUNDED FROM NON-STATE REVENUES OR NOT OTHERWISE PAID BY THE INCUBATOR  
22 SPONSOR FROM ITS OWN SOURCES;

23 (XV) ACCESS BY CLIENTS TO MENTORING, ADVISORY, OR EDUCATIONAL  
24 SERVICES, INCLUDING CLASSROOM TEACHING, FROM INDIVIDUALS WHO ARE  
25 LAWYERS, PROFESSIONAL ACCOUNTANTS, OR INDIVIDUALS WHO HAVE BEEN IN BUSI-  
26 NESS AT AN EXECUTIVE LEVEL FOR AT LEAST FIVE YEARS;

27 (XVI) A WRITTEN OR OTHERWISE DEMONSTRABLE CONNECTION TO REGIONAL  
28 SOURCES OF INNOVATION AND EXPERTISE OR SOURCES OF HUMAN RESOURCES,  
29 INCLUDING BUT NOT LIMITED TO A COLLEGE OR UNIVERSITY, AN INDEPENDENT  
30 RESEARCH INSTITUTION, A BUSINESS ASSOCIATION, OR TO EMPLOYEES, MEMBERS,  
31 OR GRADUATES FROM ANY OF SUCH SOURCES, AND THE PROGRAMS OR ACTIVITIES BY  
32 WHICH SUCH SOURCES CAN AND HAVE PROCURED OR PROVIDED SERVICES AND EXPER-  
33 TISE TO ADVANCE CLIENT DEVELOPMENT;

34 (XVII) EVIDENCE THAT THE INCUBATOR IS A CENTER OF ENTREPRENEURIAL  
35 ACTIVITIES OF A CITY, REGION, OR DISTRESSED PORTION THEREOF, AS DOCU-  
36 MENTED BY PROGRAMS AND ACTIVITIES COORDINATED WITH COUNTY OR LOCAL  
37 ECONOMIC DEVELOPMENT ORGANIZATIONS, INVESTOR AND FINANCIAL CLUBS OR  
38 INSTITUTIONS, OR STUDENT OR YOUTH-ORIENTED ENTREPRENEURIAL ACTIVITIES.  
39 FOR PURPOSES OF THIS PARAGRAPH, DISTRESS MAY BE DEMONSTRATED BY LOCATION  
40 OF THE PROGRAM OR ITS CLIENTS IN A FEDERAL HISTORICALLY UNDERUTILIZED  
41 BUSINESS ZONE (HUB ZONE) OR EMPOWERMENT ZONE, AN AREA THAT IS OR WAS A  
42 NEW YORK STATE EMPIRE ZONE, OR CENSUS DATA DEMONSTRATING LOWER MEDIAN  
43 INCOME AND EMPLOYMENT, AND HIGHER POVERTY THAN IN THE SURROUNDING COMMU-  
44 NITIES WITHIN THE COUNTY OR CITY, PLUS LOWER ACCESS TO CAPITAL, BUSINESS  
45 FORMATION STATISTICS, AND OTHER SIMILAR FACTORS; AND

46 (XVIII) A STRATEGIC PLAN THAT DESCRIBES THE IMPACT ON THE REGIONAL  
47 ENTREPRENEURIAL ECOSYSTEM THAT THE INCUBATOR IS INTENDED TO HAVE AND  
48 COMMITS THE INCUBATOR TO BEST INCUBATION PRACTICES AND DESCRIBES A  
49 DEFINED PROCESS THAT ACCELERATES COMMERCIALIZATION AND DEVELOPMENT FOR A  
50 CLIENT COMPANY OR ENTITY THROUGH PROVISION OF TECHNICAL ASSISTANCE,  
51 DIRECT MENTORSHIP, ENTREPRENEURIAL EDUCATION, AND BUSINESS DEVELOPMENT  
52 SERVICES, INCLUDING DEVELOPMENT OF A BUSINESS PLAN AND MARKETS, DEVELOP-  
53 MENT OF THE MANAGEMENT TEAM AND AID IN DEVELOPMENT OF PRODUCT, CUSTOM-  
54 ERS, AND LOCAL OR REGIONAL SUPPLY CHAIN PARTNERS, ACCESS TO INVESTMENT,  
55 AND LAUNCHING OF A SUCCESSFUL BUSINESS WHICH WILL EMPLOY NEW YORKERS;

1 (B) ANNUALLY DEMONSTRATE THAT IT MEETS THE GOALS OF CREATING JOBS AND  
2 INCUBATING BUSINESSES WITH SURVIVAL RATES IN EXCESS OF AVERAGE STARTUPS,  
3 AND THAT THE PROGRAM HAS A STRATEGIC PLAN TO CONTINUE TO MEET SUCH GOALS  
4 FOR THE THREE YEARS SUCCEEDING DESIGNATION AND THAT COMMITS THE PROGRAM  
5 TO IMPLEMENTING BEST PRACTICES. SUCH DEMONSTRATION SHALL INCLUDE A  
6 COMMITMENT BY THE SPONSOR TO CONTINUE TO MAINTAIN THE PROGRAM FOR AT  
7 LEAST THREE YEARS AFTER SUCH DESIGNATION. PROGRAMS SHALL PROVIDE THE  
8 FOLLOWING DATA FOR: (I) THE PROGRAM YEAR JUST COMPLETED, (II) THE ACCU-  
9 MULATED DATA FOR THE THREE YEARS THAT INCLUDES THE PROGRAM YEAR JUST  
10 COMPLETED AND THE PRECEDING TWO YEARS, THE FIRST YEAR OF WHICH SHALL BE  
11 CONSIDERED THE BASE YEAR, AND (III) USING THE FIRST YEAR OF DATA AS THE  
12 BASE YEAR, THE INCREASE OR DECREASE IN EACH FACTOR APPLICABLE FROM THE  
13 INITIAL OR BASE YEAR:

14 (1) NUMBER OF CLIENTS SERVED IN THE INCUBATOR;

15 (2) TOTAL NUMBER OF GRADUATES;

16 (3) NUMBER OF GRADUATE FIRMS THAT ARE STILL IN BUSINESS OR HAVE BEEN  
17 MERGED OR ACQUIRED;

18 (4) THE FOLLOWING DATA FOR FIRMS IN THE INCUBATION PROGRAM, REPORTED  
19 AS AGGREGATE DATA:

20 I. THE NUMBER OF INDIVIDUALS EMPLOYED FULL TIME OR FULL TIME EQUIV-  
21 ALENTS, INCLUDING COMPANY PRINCIPALS, WHO ARE WORKING OR ARE INTENDED TO  
22 WORK FULL WEEKS FOR A YEAR;

23 II. COMPENSATION PAID;

24 III. GROSS REVENUES OF FIRMS;

25 IV. FIRM DEBT FINANCING FROM ALL SOURCES, INCLUDING BANK, FAMILY,  
26 FRIENDS, AND OTHER LOAN SOURCES;

27 V. EQUITY CAPITAL FINANCING FROM ALL SOURCES;

28 VI. GRANT FUNDS FROM ALL SOURCES;

29 VII. WHERE APPLICABLE AND AVAILABLE, THE NUMBER OF FULL TIME EQUIV-  
30 ALENT JOBS, CONTRACT VALUATION, AND/OR OTHER ECONOMIC VALUATION,  
31 PROVIDED BY NEW YORK STATE SUPPLIERS TO FIRMS THAT ARE INCUBATOR  
32 CLIENTS;

33 (5) NUMBERS OF BUSINESSES THAT ON GRADUATION FROM THE INCUBATOR MOVED  
34 TO THE SURROUNDING COMMUNITY, OR WITHIN A REGIONAL DISTRESSED AREA, OR  
35 WITHIN NEW YORK STATE;

36 (6) NUMBERS OF INDIVIDUALS COUNSELED, MENTORED, ATTENDED CLASSES,  
37 COMPLETED BUSINESS PLANS;

38 (7) A DESCRIPTION OF THE ENTREPRENEURIAL AND ECONOMIC IMPACT THAT THE  
39 INCUBATOR HAS HAD ON THE SURROUNDING REGION AND COMMUNITY THAT CAN BE  
40 ATTRIBUTED TO RESOURCES ASSEMBLED BY THE INCUBATOR OR TO PERSONS PARTIC-  
41 IPATING IN ITS PROGRAMS IN ROLES INCLUDING BUT NOT LIMITED TO ADVISORS,  
42 MENTORS, INVESTORS, ENTREPRENEURS-IN-RESIDENCE, PROFESSIONAL-SERVICE  
43 PROVIDERS, STUDENT INTERNS. THE DESCRIPTION SHALL INsofar AS POSSIBLE  
44 INCLUDE SUCH QUANTIFIABLE FACTORS AND OUTCOMES AS INCREASED NUMBER OF  
45 STARTUPS, INCREASED BUSINESS OR FINANCINGS (INCLUDING AMONG INDIVIDUALS  
46 AND ENTITIES WHICH ARE NOT CLIENTS), WIDELY-ATTENDED PROGRAMS AND EVENTS  
47 SPONSORED BY THE INCUBATOR OR PRODUCED IN COLLABORATION WITH OTHER  
48 INSTITUTIONS OR BUSINESS ASSOCIATIONS OR PROGRAMS, NEWS STORIES,  
49 OUTREACH AND ATTENDANCE OF ENTREPRENEURIAL EVENTS AND CLASSES INTO NEW  
50 OR NON-TRADITIONAL GROUPS WITHIN THE COMMUNITY, SURVEYS, ENDORSEMENTS BY  
51 PUBLIC OFFICIALS, ECONOMIC-DEVELOPMENT AND BUSINESS-ATTRACTION PROFES-  
52 SIONALS, AND LEADERS OF BUSINESS ASSOCIATIONS, AND OTHER SIMILAR SIGNIF-  
53 ICANT FACTORS.

54 THE PROGRAM SHALL ALSO PROVIDE TO THE CORPORATION THE TWO MOST RECENT  
55 AUDITED FINANCIAL STATEMENTS OF THE SPONSORING ENTITY WHOSE ENGAGEMENT  
56 SCOPE INCLUDES THE INCUBATOR PROGRAM, OR IF NO SPONSORING ENTITY, THEN

1 OF THE INCUBATOR PROGRAM. SUCH FINAL STATEMENTS SHALL BE PREPARED BY AN  
2 INDEPENDENT AUDITING FIRM WHOSE PRINCIPALS ARE CERTIFIED PUBLIC ACCOUNT-  
3 ANTS LICENSED BY THE STATE EDUCATION DEPARTMENT.

4 3. DESIGNATION. (A) THE CORPORATION SHALL DESIGNATE APPLICANTS WHICH  
5 MEET THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION AS NEW YORK  
6 STATE INCUBATORS.

7 (B) AS A CONDITION OF MAINTAINING DESIGNATION, EACH INCUBATOR SHALL  
8 ANNUALLY SUBMIT TO THE CORPORATION IN A MANNER AND ACCORDING TO A SCHED-  
9 ULE ESTABLISHED BY THE CORPORATION:

10 (I) UPDATED INFORMATION AS REQUIRED IN PARAGRAPH (B) OF SUBDIVISION  
11 TWO OF THIS SECTION, MAINTAINING THE INITIAL BASE YEAR IN ORDER TO MEAS-  
12 URE THE INCREASE OR DECREASE IN EACH FACTOR OR DATA;

13 (II) ITS STRATEGIC PLAN, AS UPDATED ALONG WITH A BRIEF DESCRIPTION OF  
14 ITS SUCCESS IN MEETING THE GOALS OF ITS STRATEGIC PLAN;

15 (III) A STATEMENT THAT THE ITEMS LISTED IN PARAGRAPH (A) OF SUBDIVI-  
16 SION TWO OF THIS SECTION ARE STILL APPLICABLE TO THE OPERATIONS OF THE  
17 INCUBATOR, OR ANY CHANGE IN APPLICABILITY; AND

18 (IV) SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER MAY REQUIRE.

19 (C) THE CORPORATION SHALL DESIGN SIMPLIFIED FORMS TO AID IN THE  
20 SUBMISSION OF THE DATA REQUIRED IN THIS SUBDIVISION, WHICH MAY BE  
21 SUBMITTED ELECTRONICALLY. SUCH FORMS SHALL STATE THE PURPOSES OF THE  
22 REQUIRED DATA SUBMISSIONS.

23 (D) THE CORPORATION SHALL EVALUATE THE OPERATIONS OF THE INCUBATOR  
24 USING METHODS INCLUDING BUT NOT LIMITED TO SITE VISITS, REPORTS PURSUANT  
25 TO SPECIFIED INFORMATION, AND REVIEW EVALUATIONS. IF THE CORPORATION IS  
26 UNSATISFIED WITH THE PROGRESS OF AN INCUBATOR, THE CORPORATION SHALL  
27 NOTIFY SUCH INCUBATOR OF THE RESULTS OF ITS EVALUATIONS AND THE FINDINGS  
28 OF DEFICIENCIES IN ITS OPERATIONS AND SHALL ALLOW AND COOPERATE WITH  
29 SUCH INCUBATOR TO REMEDY SUCH FINDINGS IN A TIMELY MANNER. FOR NEW YORK  
30 STATE INCUBATORS WHICH RECEIVE SUSTAINING OPERATING GRANTS PURSUANT TO  
31 PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION, SUCH EVALUATIONS  
32 SHALL INCLUDE PEER REVIEW AND SHALL TAKE PLACE NO LESS THAN ONCE EVERY  
33 THREE YEARS OR MORE OFTEN FOR ANY INDIVIDUAL INCUBATOR WHICH IS A RECIP-  
34 IENT OF SUCH GRANT AT THE DISCRETION OF THE CORPORATION. SUCH PEER  
35 REVIEW SHALL BE IMPLEMENTED THROUGH CONTRACT WITH A STATE ASSOCIATION,  
36 AS PROVIDED IN SUBDIVISION EIGHT OF THIS SECTION, AND SHALL RESULT IN A  
37 WRITTEN REPORT THAT INCLUDES PROGRAMMATIC AND FISCAL EVALUATION OF THE  
38 INCUBATION PROGRAM AND RECOMMENDATIONS FOR IMPROVEMENT. MEMBERS OF SUCH  
39 PEER REVIEW GROUP SHALL INCLUDE OPERATORS OF OTHER INCUBATOR PROGRAMS, A  
40 SIGNIFICANT PORTION OF WHOM SHALL BE DIRECTORS OR OPERATORS OF INCUBA-  
41 TORS WHICH ARE LOCATED OUTSIDE OF NEW YORK STATE.

42 4. GRANTS. (A) SUSTAINING OPERATING GRANTS. A PROGRAM DESIGNATED AS A  
43 NEW YORK STATE INCUBATOR SHALL BE ELIGIBLE FOR AN OPERATING GRANT IN AN  
44 AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS FROM FUNDS  
45 AVAILABLE TO THE CORPORATION OR OTHERWISE APPROPRIATED THEREFOR,  
46 PROVIDED HOWEVER THAT:

47 (I) ANY SUCH GRANT SHALL BE MATCHED ON A TWO-TO-ONE BASIS BY THE  
48 INSTITUTION RECEIVING THE FUNDS AND COLLABORATIVE PARTNERS IN THE FORM  
49 OF CASH OR IN-KIND PERSONNEL, EQUIPMENT, MATERIAL DONATIONS, AND OTHER  
50 FACILITY AND OPERATIONS EXPENDITURES, PROVIDED THAT NO MORE THAN FIFTY  
51 PERCENT OF SUCH MATCH SHALL BE IN-KIND;

52 (II) A PROGRAM APPLYING FOR A GRANT SHALL DEMONSTRATE FINANCIAL  
53 STABILITY AND LONG TERM VIABILITY, AS PROVIDED IN SUBPARAGRAPH (XIII) OF  
54 PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION;

1 (III) A GRANT RECIPIENT SHALL AGREE TO PROVIDE DATA AS REQUIRED TO THE  
2 DEPARTMENT AND SHALL AGREE TO CONFORM TO BEST PRACTICES AS OUTLINED BY  
3 STATE AND/OR NATIONAL BUSINESS INCUBATOR ASSOCIATIONS; AND

4 (IV) FAILURE TO ABIDE BY THE REQUIREMENTS OF THIS SUBDIVISION OR TO  
5 CURE A DEFAULT AFTER REVIEW AND AGREEMENT WITH THE CORPORATION SHALL  
6 RESULT IN LOSS OF THE GRANT AND DISQUALIFICATION OF THE DESIGNEE AS A  
7 NEW YORK STATE INCUBATOR.

8 (B) PLANNING GRANTS. A SPONSOR SEEKING TO DEVELOP AN INCUBATOR PROGRAM  
9 MAY BE ELIGIBLE FOR A PLANNING GRANT IN AN AMOUNT NOT TO EXCEED FIFTEEN  
10 THOUSAND DOLLARS. A SPONSOR SEEKING TO OBTAIN A PLANNING GRANT SHALL  
11 PROVIDE THE FOLLOWING BASIC DATA AND OTHER INFORMATION TO DEMONSTRATE  
12 VIABILITY TO THE SATISFACTION OF THE CORPORATION:

13 (I) NAME, FINANCIAL STRENGTH, HISTORY, CORPORATE FORM, AND EVIDENCE OF  
14 THE COMMITMENT AND FINANCIAL AND PROGRAMMATIC ABILITY OF THE SPONSOR AND  
15 ITS CONSULTANTS AND COLLABORATORS TO BRING THE PROJECT TO COMPLETION AND  
16 TO SUSTAIN THE PROJECT FOR AT LEAST THREE YEARS AFTER CREATION, INCLUD-  
17 ING RELEVANT SIGNED COPIES OF FEDERAL TAX RETURNS FOR THE PRIOR TWO  
18 YEARS;

19 (II) A BUSINESS PLAN DETAILING ESTIMATED FINANCING COSTS AND SOURCES,  
20 STAFFING, PROGRAM DESIGN, HOW IT WILL MEET SPACE SIZE AND COSTS REQUIRE-  
21 MENTS FOR AT LEAST FIVE YEARS, INCLUDING EVIDENCE THAT IT HAS OR WILL  
22 SHORTLY HAVE COMPLETE OR CONTINGENT CONTROL OF THE SPACE, AND PROJECT  
23 TIMELINE, OUTCOMES AND DELIVERABLES;

24 (III) THE KINDS AND NUMBERS OF SHORT AND LONG TERM JOBS ANTICIPATED TO  
25 BE CREATED BY AND THROUGH THE PROJECT, THE TARGET AREAS FOR CLIENT INCU-  
26 BATION, AND HOW THE PROJECT WILL RECRUIT AND SELECT THE COMPANIES IT  
27 WILL ACCEPT FOR INCUBATION;

28 (IV) THE QUALIFICATIONS THAT MAKE THE PROJECT A UNIQUE AND/OR NECES-  
29 SARY ECONOMIC PRIORITY FOR THE REGION, MUNICIPALITY, OR COMMUNITY, BY  
30 CREATING JOBS AND ECONOMIC INVESTMENT AND DEVELOPMENT, LEADING COMMUNITY  
31 REVITALIZATION, AND OTHER SIMILAR FACTORS;

32 (V) WHETHER THE PROJECT HAS BEEN ENDORSED BY AREA MUNICIPAL OR OTHER  
33 AREA REPRESENTATIVE PUBLIC OFFICIALS, AND AREA BUSINESS ASSOCIATIONS;

34 (VI) WHETHER THE PROJECT OR A PHASE OF THE PROJECT HAS BEEN AWARDED  
35 STATE OR OTHER FUNDING, THE AMOUNT OF FUNDING RECEIVED, WHETHER ANY  
36 EXPENDITURE FOR THE PROJECT HAS BEEN MADE PRIOR TO THE DATE OF THE  
37 APPLICATION; AND

38 (VII) A STATEMENT THAT THE APPLICANT IN THIS OR SOME OTHER FORM HAS  
39 NOT PREVIOUSLY RECEIVED A PLANNING GRANT PURSUANT TO THIS SECTION.

40 (C) STABILIZATION GRANTS. A PROGRAM WHICH HAS RECEIVED A PLANNING  
41 GRANT, AND WHICH OTHERWISE MEETS THE REQUIREMENTS OF PARAGRAPH (A) OF  
42 SUBDIVISION TWO OF THIS SECTION, INCLUDING SUBPARAGRAPHS (XIII) AND  
43 (XVIII) OF SUCH PARAGRAPH, SHALL BE ELIGIBLE FOR A STABILIZATION GRANT  
44 IN AN ANNUAL AMOUNT NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS FROM  
45 FUNDS AVAILABLE TO THE CORPORATION OR APPROPRIATED THEREFOR. A PROGRAM  
46 MAY NOT RECEIVE MORE THAN THREE SUCH STABILIZATION GRANTS, WHICH SHALL  
47 ONLY BE AVAILABLE ON SUCCESSIVE YEARS, AND ONLY FOR SO LONG AS THE  
48 PROGRAM MEETS THE REQUIREMENTS OF PARAGRAPH (A) OF SUBDIVISION TWO OF  
49 THIS SECTION, INCLUDING SUBPARAGRAPHS (XIII) AND (XVIII) OF SUCH PARA-  
50 GRAPH.

51 (D) CAPITAL ASSISTANCE. THE CORPORATION SHALL MAKE PROGRAMS DESIGNATED  
52 AS NEW YORK STATE INCUBATORS OR WHICH ARE IN RECEIPT OF OR HAVE APPLIED  
53 FOR PLANNING OR STABILIZATION GRANTS, AWARE OF OPPORTUNITIES FOR CAPITAL  
54 FUNDING OR GRANTS BY OR THROUGH THE CORPORATION OR THE DEPARTMENT OF  
55 ECONOMIC DEVELOPMENT.

1 (E) NO DEDUCTION. IN ADDITION TO THE FOREGOING REQUIREMENTS, AN INCU-  
2 BATOR SPONSOR SHALL AGREE TO DEDICATE ALL FUNDS FROM ANY GRANTS OR  
3 SUPPORT RECEIVED PURSUANT TO THIS SUBDIVISION EXCEPT FOR PARAGRAPH (D)  
4 OF THIS SUBDIVISION WHICH IS SUBJECT TO SEPARATE AGREEMENTS, TO THE  
5 OPERATIONS OF THE INCUBATOR OR THE PLANNING THEREFOR WITHOUT DEDUCTIONS  
6 FOR OVERHEAD, INDIRECT COSTS, OR FACILITIES AND ADMINISTRATION CHARGES  
7 OF SUCH SPONSOR.

8 5. PROCUREMENT. (A) A CLIENT OF A NEW YORK STATE INCUBATOR DESIGNATED  
9 PURSUANT TO THIS SECTION SHALL BE DEEMED A SMALL BUSINESS CONCERN PURSU-  
10 ANT TO SUBDIVISION 6 OF SECTION 163 OF THE STATE FINANCE LAW, AND TO  
11 PARAGRAPH N OF SUBDIVISION 2 OF SECTION 161 OF SUCH LAW. THE CORPORATION  
12 SHALL COLLABORATE WITH THE COMMISSIONER OF THE OFFICE OF GENERAL  
13 SERVICES AND THE COMMISSIONER OF ECONOMIC DEVELOPMENT WHO SHALL USE HIS  
14 OR HER MEMBERSHIP ON THE STATE PROCUREMENT COUNCIL, TO ADVANCE, TARGET,  
15 AND DEVELOP PROCUREMENT PROGRAMS FOR THE PURCHASE OF SERVICES AND  
16 COMMODITIES, INCLUDING TECHNOLOGIES OR COMMODITIES THAT ARE RECYCLED OR  
17 REMANUFACTURED, TOWARD CLIENTS OF NEW YORK STATE INCUBATORS. THE CORPO-  
18 RATION SHALL ADDITIONALLY, THROUGH MEMBERSHIP ON THE STATE PROCUREMENT  
19 COUNCIL AND COLLABORATION WITH THE COMMISSIONER OF GENERAL SERVICES AND  
20 OTHER STATE AGENCIES, DEVELOP OPPORTUNITIES FOR TEAMING ON CONTRACTS  
21 BETWEEN SMALL BUSINESS CONCERNS WHICH ARE CLIENTS OF NEW YORK STATE  
22 INCUBATORS AND OTHER BUSINESS ENTITIES WHICH MAY PROVIDE RESOURCES OR  
23 CREDIT NECESSARY FOR THE SUCCESSFUL COMPLETION OF CONTRACT REQUIREMENTS  
24 FOR SUCH COMMODITIES, SERVICES, OR TECHNOLOGIES BY SUCH SMALL BUSINESS  
25 CONCERNS.

26 (B) THE CORPORATION SHALL PROPOSE AND IMPLEMENT AN INCUBATOR RATE FOR  
27 ACCESS BY CLIENTS OF NEW YORK STATE INCUBATORS TO THE PROCUREMENT OPPOR-  
28 TUNITIES NEWSLETTER WEBSITE AND TO ENHANCED ACCESS SERVICES OF THE NEWS-  
29 LETTER. SUCH RATE SHALL IN NO CASE BE MORE THAN THE MARGINAL COST OF  
30 PROVIDING SUCH ACCESS TO CLIENTS OF NEW YORK STATE INCUBATORS. ADDI-  
31 TIONALLY THE CORPORATION SHALL PROVIDE ACCESS TO BIDLINK BY CLIENTS OF  
32 NEW YORK STATE INCUBATORS AT A RATE NO GREATER THAN THE LOWEST RATE PAID  
33 BY ANY USER OF THE SERVICE. IF THE LOWEST RATE PAID BY A USER OF THE  
34 SERVICE IS ZERO, THEN THAT SHALL BE THE RATE FOR ACCESS BY CLIENTS OF  
35 NEW YORK STATE INCUBATORS.

36 6. INCUBATORS AS EDUCATIONAL ENTITIES. REAL PROPERTY OWNED OR LEASED  
37 BY A NEW YORK STATE INCUBATOR WHICH IS A NONPROFIT ORGANIZATION HAVING  
38 TAX EXEMPT STATUS UNDER SECTION 501(C)(3) OF THE UNITED STATES INTERNAL  
39 REVENUE CODE, OR WHICH IS A NEW YORK STATE INCUBATOR OWNED AND SPONSORED  
40 BY A NONPROFIT ORGANIZATION HAVING SUCH TAX EXEMPT STATUS, OR WHICH IS  
41 AFFILIATED WITH A COLLEGE CHARTERED BY THE REGENTS OF THE STATE OF NEW  
42 YORK OR A COLLEGE INCORPORATED BY SPECIAL ACT OF THE LEGISLATURE, AND  
43 WHICH IS USED FOR THE PURPOSES DESCRIBED IN THIS SECTION OF TRAINING,  
44 EDUCATING, MENTORING, AND DEVELOPING CLIENT ENTREPRENEURS AND BUSINESS  
45 ENTITIES, WHICH ARE THE CRITERIA FOR DESIGNATION OF A PROGRAM AS A NEW  
46 YORK STATE INCUBATOR, SHALL BE DEEMED TO BE PROPERTY OF AN EDUCATIONAL  
47 CORPORATION FOR PURPOSES OF SECTION 420-A OF THE REAL PROPERTY TAX LAW,  
48 INCLUDING ANY CLASSROOMS, CONFERENCE ROOMS, LABORATORY, MEETING SPACE,  
49 ADMINISTRATION AREA, KITCHEN AREA, PARKING, STORAGE, OR OTHER AREA WHICH  
50 IS USED PRIMARILY TO PROVIDE DIRECT AND INDIRECT SERVICES TO RESIDENT  
51 CLIENTS OF SUCH FACILITY, AND INCLUDING SPACE FOR RESIDENT CLIENTS'  
52 OFFICES PURSUANT TO A LICENSE OR LEASE BETWEEN SUCH INCUBATOR AND RESI-  
53 DENT CLIENTS, NOTWITHSTANDING THAT SUCH RESIDENT CLIENTS MAY, OR MAY NOT  
54 BE, NOT-FOR-PROFIT ORGANIZATIONS. THE EXEMPTION PROVIDED FOR IN THE  
55 PRECEDING SENTENCE SHALL ALSO APPLY TO A PROGRAM WHICH MEETS THE  
56 REQUIREMENTS ESTABLISHED THEREIN, BUT WHICH IS A PROGRAM THAT THE CORPO-



1 RATION HAS DETERMINED IS ELIGIBLE TO RECEIVE OR IS RECEIVING STABILIZA-  
2 TION GRANTS PURSUANT TO THIS SECTION. ANY PORTION OF SUCH REAL PROPERTY  
3 WHICH IS LEASED OR LICENSED TO AN INDIVIDUAL OR BUSINESS ENTITY WHICH IS  
4 NOT A RESIDENT CLIENT OF THE NEW YORK STATE INCUBATOR OR THE PROGRAM  
5 DESCRIBED IN THIS SUBDIVISION WHICH IS ELIGIBLE TO RECEIVE OR IS RECEIV-  
6 ING STABILIZATION GRANTS, OR WHICH DOES NOT OTHERWISE MEET THE REQUIRE-  
7 MENTS OF SUBDIVISION 1 OF SUCH SECTION 420-A OF THE REAL PROPERTY TAX  
8 LAW, SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISION 2 OF SECTION  
9 420-A OF THE REAL PROPERTY TAX LAW.

10 7. OTHER ASSISTANCE. THE CORPORATION SHALL MAKE SUCH OTHER AID,  
11 ASSISTANCE, AND RESOURCES AVAILABLE TO NEW YORK STATE INCUBATORS AND  
12 THEIR CLIENTS AS HE OR SHE SHALL DEEM USEFUL AND APPROPRIATE FOR THE  
13 FURTHERANCE OF THE PURPOSES OF THIS ACT, INCLUDING WITHOUT LIMITATION  
14 TECHNICAL ASSISTANCE, AID IN MARKETING, AID IN REACHING AND PROVIDING  
15 ENTREPRENEURSHIP TRAINING OPPORTUNITIES TO SUCH MARGINALIZED GROUPS AS  
16 THOSE COMPOSED OF INDIVIDUALS WHO ARE MINORITY, FEMALE, DISABLED, OR  
17 POOR, AND OTHERS, CURRICULUM DEVELOPMENT, AND OTHER SERVICES AND  
18 RESOURCES. THE CORPORATION SHALL ALSO SEEK ASSISTANCE FROM OTHER STATE  
19 AGENCIES IN THE DEVELOPMENT OF PROCUREMENT AND MARKETING RESOURCES AND  
20 TRAINING OPPORTUNITIES FOR NEW YORK STATE INCUBATORS AND THEIR CLIENTS.

21 8. SERVICE CONTRACT. THE CORPORATION SHALL CONTRACT WITH A STATEWIDE  
22 ENTITY WHICH IS A MEMBERSHIP ASSOCIATION OF INCUBATORS AND OTHERS AND  
23 WHICH HAS EXPERTISE IN PROVIDING SERVICES TO INCUBATORS FOR THE PURPOSE  
24 OF PROVIDING SERVICES TO ENTITIES DESIGNATED AS NEW YORK STATE INCUBA-  
25 TORS AND TO ENTITIES SEEKING TO APPLY OR APPLYING TO BECOME NEW YORK  
26 STATE INCUBATORS OR WHICH OTHERWISE ARE INCLUDED AS RECIPIENTS OF  
27 SERVICES PURSUANT TO THIS SECTION. SUCH SERVICES SHALL INCLUDE ADVISING  
28 CONCERNING BEST PRACTICES OF INCUBATION AND DEVELOPMENT OF PLANS TO  
29 INCORPORATE AND INTEGRATE SUCH PRACTICES, DEVELOPMENT OF DATA CONCERNING  
30 INCUBATION IN THIS STATE AND RECOMMENDATIONS FOR IMPROVEMENT, AID IN  
31 MARKETING AND EVENT SPONSORSHIP, AND SUCH OTHER SERVICES AS THE CORPO-  
32 RATION SHALL DEEM NECESSARY AND APPROPRIATE TO THE STRENGTHENING OF  
33 BUSINESS INCUBATION IN THIS STATE.

34 S 3. This act shall take effect immediately.