

3553

2015-2016 Regular Sessions

I N   S E N A T E

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Introduced by Sens. ESPAILLAT, PERKINS -- 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-x to read as follows:

4 S 16-X. 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.