

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 580
PROPOSED COMMITTEE SUBSTITUTE S580-PCS55459-TD-63

Short Title: N.C. Life Science Development Corp. Act.

(Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED
AN ACT TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND.
The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53A of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Life Science Development Act.

"§ 53A -100. Purpose and definitions.

(a) Purpose. – The General Assembly finds that life science companies generate employment opportunities for the State, expand local tax bases, and engage in the discovery, development, and commercialization of new pharmaceuticals, biologic products, medical devices, and diagnostic products. The General Assembly finds that there exists in the State a serious shortage of credit for life science companies to finance new and expanded facilities and acquire equipment for the production and delivery of life science products and services. The purpose of this Article is to create a mechanism to provide financing to businesses in need of facilities or equipment for the production or delivery of products and services in the life sciences that will build permanent production facilities in North Carolina.

(b) Definitions. – The following definitions apply in this Article:

(1) Board. – The board of directors of the corporation.

(2) Corporation. – The North Carolina Life Science Development Corporation.

(3) Designated investor. – A person who purchases an equity interest in a qualified entity and who is issued an equity certificate pursuant to G.S. 53A-105.

(4) Equity certificate. – A contract between the Fund and a designated investor setting forth the amount of investment, the return on the investment, and the repayment terms of the investment.

(5) Fund. – The North Carolina Life Science Loan Fund, LLC.

(6) Incorporator. – The president of the North Carolina Biotechnology Center, a North Carolina nonprofit corporation established and funded by the State of North Carolina.

(7) Life science company. – A company engaged in any of the following:

a. Biotechnology, including agricultural and industrial uses.

b. Pharmaceuticals.

c. Biologic products.



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- d. Human health care and medical devices.
- e. Diagnostic devices.
- f. Service laboratories or facilities providing support services to the foregoing companies.

(8) Person. – An individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.

(9) Tax credit certificate. – A certificate issued by the Secretary of Revenue to a designated investor under which a tax credit is issued to the designated investor pursuant to G.S. 105-129.115.

"§ 53A-101. North Carolina Life Science Development Corporation.

(a) Creation. – The North Carolina Life Science Development Corporation is a 501(c)(3) entity organized to administer this Article. The incorporator must form the corporation by filing articles of incorporation for the corporation with the Secretary of State. The corporation must adopt bylaws and operational policies that are consistent with this Article.

(b) Purposes. – The purposes of the corporation to be specified in the articles of incorporation must include the following:

- (1) To organize the Fund.
- (2) To manage the Fund.
- (3) To determine when a tax credit certificate must be issued.
- (4) To perform other duties permitted by North Carolina law and consistent with the requirements of this Article.

(c) Conflict of Interest. – The corporation must adopt conflict of interest policies that include all of the following provisions:

- (1) A prohibition on an employee, officer, or director of the corporation or a member of the same household as an employee, officer, or director of the corporation from having any financial interest in a company to which the entity makes loans.
- (2) A prohibition on an employee, officer, or director of the corporation or a member of the same household as an employee, officer, or director of the corporation from accepting employment in a company to which the entity makes loans for a period of at least six months before and after the service of the employee, officer, or director with the entity.

(d) Prohibition. – The corporation is prohibited from pledging the credit or taxing power of the State or any political subdivision of the State, or making its debts payable out of any moneys or resources except those of the corporation. The obligations of the corporation are not obligations of the State or any political subdivision of the State but are obligations of the corporation payable solely and only from the corporation's resources.

"§ 53A-102. Board of Directors.

The incorporator must name the initial board of directors of the corporation for terms set forth in the corporation's bylaws. The incorporator must exercise due care to assure that the persons named provide the board with the requisite financial, business, and scientific experience necessary in order to carry out the duties of the corporation. The initial board of the corporation consists of nine members, including the president of the North Carolina Biotechnology Center and the North Carolina Secretary of Commerce, who shall be permanent ex officio voting members of the board. After the initial board is named, vacancies will be filled and new directors elected by the board in the manner provided by the corporation's bylaws.

The president of the North Carolina Biotechnology Center shall serve as chair of the board and the North Carolina Secretary of Commerce shall serve as vice-chair.

"§ 53A-103. North Carolina Life Science Development Fund.

(a) Organization. – The board must form a for-profit limited liability company under Chapter 57C of the General Statutes known as the North Carolina Life Science Development Fund, LLC. The corporation is the sole managing member of the limited liability company.

(b) Purpose. – The Fund may make loans to life science companies for the following purposes:

(1) The acquisition or expansion of capital facilities in North Carolina and to acquire capital equipment to be located in North Carolina.

(2) Regulatory, documentation, and other costs required to make the facilities or equipment to be located in North Carolina operational.

(c) Investments in the Fund. – The Fund is organized to accept nonmanaging member investments from designated investors that pay a designated rate of return and a scheduled redemption, in accordance with rules adopted by the corporation. Investments by designated investors in the Fund are permissible investments under applicable laws of the State for State-chartered banks, State-chartered savings and loan associations, State-chartered credit unions, State-chartered industrial loan corporations, domestic insurance companies, or any combination of these entities.

(d) Management Fee. – The corporation may collect a management fee from the Fund. The fee may not exceed the amount needed to pay for reasonable and necessary costs and expenses of the corporation for the activities described in this Article. The corporation is not entitled to receive any other compensation from the Fund.

"§ 53A-104. Loans by North Carolina Life Science Development Fund.

(a) Loan Criteria. – The board must determine to what extent and when the Fund should loan funds to qualified life science companies engaged in manufacturing based on the evaluation of the following factors:

(1) Borrower's written business plan.

(2) Borrower's written manufacturing or service plan.

(3) Borrower's history of attracting operating capital from investors, grants, or other lenders.

(4) Borrower's management team.

(5) Borrower's demonstration of engaging in high-tech manufacturing or service in North Carolina.

(6) Borrower's job creation potential in North Carolina.

(7) Borrower's financial resources.

(8) Any other factors considered by the board to be consistent with this Article.

(b) Loan Cap. – The maximum cumulative amount loaned to any borrower may not exceed thirty million dollars (\$30,000,000).

"§ 53A-105. Equity certificates.

(a) Equity Certificate. – Each designated investor will receive from the Fund an equity certificate. Once issued, an equity certificate is binding on the Fund and the corporation and may not be modified, terminated, or rescinded. An equity certificate must reflect all of the following:

(1) That the investor is a nonmanaging member of the Fund.

(2) The amount of the investment.

(3) The dates and amounts of each guaranteed return on the investment.

(4) The date upon which the investment will be returned to the investor.

(5) That the corporation will issue a tax credit certificate when required by subsection (b) of this section.

(b) Payment. – The corporation must determine at least 20 days prior to the due date of any payment to a designated investor required by an equity certificate whether the Fund will be able to make the payment in full, taking into consideration the cash flow needs of the Fund,

including funding its continuing operations and obligations to the corporation for costs and expenses. In the event the corporation determines there will be a shortfall, the corporation must issue the designated investor a tax credit certificate. The tax credit certificate must include all of the following information:

- (1) The amount of the initial equity investment.
- (2) The rate of return on the invested capital.
- (3) The calculation formula for determining the scheduled aggregate return on the initial equity investment.
- (4) The due date of the payment.
- (5) The amount of the shortfall for which a tax credit may be claimed under Article 3L of Chapter 105 of the General Statutes.

"§ 53A-106. Cap on tax credit certificates.

(a) Cap Amount. – At no time may the total unpaid amount of the issued equity certificates and the remaining obligations of the Fund to designated investors as reflected in the equity certificates backed by potential tax credit certificates exceed one hundred million dollars (\$100,000,000). The chair and vice-chair of the board may by unanimous vote require that the Fund repay to the State any or all of the tax credits taken pursuant to a tax credit certificate issued under G.S. 53A-105. The decision of the chair and vice-chair is binding on the corporation and on the Fund. Upon payment, the cap on equity certificates under this subsection is increased to the extent of the payment.

(b) Outstanding Issuances. – So long as a tax credit certificate has been issued and has not been repaid as permitted in subsection (a) of this section, the board must determine, on or before each fifth anniversary of the first issuance of the tax credit certificates, and more frequently if the board wishes, whether and to what extent the Fund has the ability to repay the State for the tax credits, considering the Fund's outstanding obligations, ongoing operation, and need for further lending as contemplated in this Article. The board must include this information in the report required by G.S. 53A-107.

"§ 53A-107. Annual audit and report.

(a) Audits. – Each calendar year, the corporation must conduct an audit of the activities of the Fund to be made as described in this subsection. The audit must be conducted by an independent auditor engaged by the board. Except for the contract for auditing services, the independent auditor may have no business, contractual, or other connection to the corporation or to the Fund.

(b) Reports. – The corporation must publish an annual report of the activities conducted by the Fund. The annual report must include all of the following:

- (1) A copy of the audit of the Fund as required by subsection (a) of this section.
- (2) A review of the progress of the corporation in implementing the purposes stated in G.S. 53A-101 and the business plan of the Fund.
- (3) A description and amount of the issuance of any tax credit certificates issued under this Article.

"§ 53A-108. Dissolution.

Upon dissolution of the Fund, the corporation will be liquidated and dissolved, and any assets owned by the Fund or the corporation must be distributed to the State."

SECTION 2. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"Life Science Development Tax Credits.

"§ 105-129.100. Tax credit.

(a) Credit. – A taxpayer that receives a tax credit certificate from the North Carolina Life Science Development Corporation under Article 4 of Chapter 53A of the General Statutes is allowed a tax credit equal to one hundred percent (100%) of the amount specified in the

1 certificate. The credit is allowed against the franchise tax levied in Article 3 of this Chapter, the
2 premium tax levied in Article 8B of this Chapter, and the income taxes levied in Article 4 of
3 this Chapter.

4 (b) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax
5 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
6 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
7 provisions governing a refund of an overpayment by the taxpayer of the tax imposed. In
8 computing the amount of tax against which multiple credits are allowed, nonrefundable credits
9 are subtracted before refundable credits.

10 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
11 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does
12 not distribute the credit among any of its owners. The pass-through entity is considered the
13 taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a
14 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity,
15 the credit allowed under this Article does not affect the entity's payment of tax on behalf of its
16 owners.

17 (d) Substantiation. – A taxpayer allowed a credit under this Article must maintain and
18 make available for inspection any information or records required by the Secretary. The burden
19 of proving eligibility for a credit and the amount of the credit rests upon the taxpayer.

20 **"§ 105-129.101. Reports.**

21 The Department of Revenue must publish by May 1 of each year the following information,
22 itemized by taxpayer, for the 12-month period ending the preceding December 31:

23 (1) The number of taxpayers that claimed a credit allowed in this Article.

24 (2) The amount of each credit claimed and the taxes against which it was
25 applied.

26 (3) The total cost to the General Fund of the credits claimed."

27 **SECTION 3.** Section 2 of this act is effective for taxable years beginning on or after
28 January 1, 2010. The remainder of this act is effective when it becomes law.