

March 12, 2009

S 580. N.C. LIFE SCIENCE DEVELOPMENT CORP. ACT. Filed 3/11/09. *TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND.*

Enacts new Article 4 in GS Chapter 53A, entitled the North Carolina Life Science Loan Fund Act, which establishes the North Carolina Life Science Development Corporation (Corporation) and the North Carolina Life Science Loan Fund (Fund) to promote long-term investment in life science and other basic scientific research by facilitating the transfer of new discoveries into commercial development, new employment, and further scientific advances. Defines *life science company* as a company engaged in any of the following: (1) biotechnology, including agricultural and industrial uses; (2) pharmaceuticals; (3) biologic products; (4) human health care and medical devices; (5) diagnostic services; and (6) service laboratories or facilities providing support services to the foregoing companies.

Requires the president of the North Carolina Biotechnology Center to cause articles of incorporation to be filed with the Secretary of State in order to form the Corporation for the purpose of organizing and managing the Fund. Provides for the establishment of a Board of Directors consisting of nine members, including the NC Biotechnology Center president and the Secretary of Commerce as permanent ex officio voting members. Requires the Corporation to cause the Fund to publish an annual report of activities and present the report to the Governor and the Joint Legislative Committee on Governmental Operations. Specifies information to be included in the report. Also provides for authority, management, management fees, and dissolution of the Corporation.

Requires the Corporation to organize the Fund as a private, for-profit, limited liability company having the Corporation as its sole managing member. Provides that the Fund makes loans to life science companies for (1) the acquisition or expansion of capital facilities and the acquisition of capital equipment located in the state and (2) regulatory, documentation, and other costs required to make the facilities or equipment to be located in the state operational. Authorizes the Fund to accept nonmanaging member investments from designated investors that pay a designated rate of return and scheduled redemption. Enumerates a list of factors in determining to what extent and when the Fund loans funds to qualified life science companies or other companies engaged in high-tech manufacturing. Prohibits the Fund from making a loan or loans to any borrower in excess of \$30 million. Requires an annual audit of the Fund by the Corporation. Sets forth procedures for each designated investor to receive an equity certificate from the Fund, and when applicable, receive (1) payments from the Fund or (2) a tax credit certificate issued by the Secretary of Revenue (Secretary). Provides for the transfer and registration of certificates. Lists permissible investments by designated investors.

Enacts new Article 3L of GS Chapter 105, entitled Life Science Development Tax Credits, to provide for a tax credit equal to 100% of the amount specified on the tax credit certificate issued by the Secretary to the Corporation for distribution to designated investors. Provides that this credit is allowed against a franchise tax levied in Article 3, the premium tax levied in Article 8B, or income taxes levied in Article 4 of GS Chapter 105. Any unused portion of a credit may be carried forward for the succeeding seven years. Requires that the taxpayer maintain and make available to the Secretary records substantiating the credit claimed. Requires that the Department of Revenue publish by May 1 of each year, for the 12-month period ending the preceding December 31, (1) the number of taxpayers claiming the credit, (2) the amount each credit claimed and the taxes against which it was applied, and (3) the total cost to the General Fund of the credits claimed.

Intro. by Hoyle.

GS 53A, 105

July 2, 2009

S 580. N.C. LIFE SCIENCE DEVELOPMENT CORP. ACT. Filed 3/11/09. Senate committee substitute makes the following changes to 1st edition. Renames proposed new Article 4 in GS Chapter 53A as the "Life Science Development Act" (was, the "Life Science Loan Fund"). Amends and reorganizes proposed Article 4 as follows.

Combines certain provisions in the former findings and purpose section and definition section into new GS 53A-100, which provides that the Article's purpose 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. Modifies the definition of *designated investor* to mean a person who purchases an equity interest in a qualified entity (was, in the Life Science Loan Fund) and who is issued an equity certificate pursuant to GS 53A-105. Deletes that a transferee of a certificate or contingent tax credit is to be considered a designated investor. Defines *incorporator* as the president of the NC Biotechnology Center, a NC nonprofit corporation established and funded by the state. Makes conforming and technical changes.

Amends proposed GS 53A-101 (was, GS 53A-103) to delete that the NC Life Science Development Corporation (Corporation) must include in its articles of incorporation that its purpose is to receive returns from the Life Science Loan Fund (Fund) to pay for management and operations of the Corporation. Provides that the articles of incorporation must include that the corporation's purpose is to determine when a tax credit certificate must be issued (was, to certify when tax credits must be issued by the Secretary of Revenue subject to redemption by designated investors in the Fund). Specifies that the Corporation must adopt conflict of interest policies that include (1) a prohibition on an employee, officer, or director of the Corporation or a member of the same household as one of those individuals from having a financial interest in a company to which the entity makes loans and (2) a prohibition on an employee, officer, or director of the Corporation or a member of the same household as one of those individuals from accepting employment in a company to which the entity makes loans for a period of at least six months before and after service of the individual with the entity. Makes technical changes.

Deletes conflict of interest provision in proposed GS 53A-102 (was, GS 53A-105). Moves the provision requiring the Corporation to publish an annual report to proposed GS 53A-107 (Annual audit and report). Deletes that the report must be presented to the Governor and the Joint Legislative Commission on Governmental Operations. Makes stylistic and technical changes.

Provides in proposed GS 53A-104 (was, GS 53A-110) that the board of directors (board) (was, the Corporation's chief executive officer, subject to the approval by the board) must determine to what extent and when the Fund should loan funds to qualified life science companies engaging in manufacturing based on specified factors. Also makes technical changes.

Modifies in proposed GS 53A-105 (was, GS 53A-112) that the equity certificate must reflect, in addition to other information, that the Corporation will issue a tax credit certificate when required by subsection (b) of the statute (was, that the obligations of the Fund are backed by contingent tax credits to be issued by the Secretary of Revenue, if required by the provision). Deletes that the Fund is required to provide the Secretary of Revenue (Secretary) with a certified copy of each equity certificate simultaneously with its issuance to the designated investor. Provides that in the event the Corporation determines that there will be a shortfall, the Corporation must issue the designated investor a tax credit certificate (was, the Corporation must notify the investor and the Secretary in writing at least 10 days before the due date of the payment and that the Secretary would then deliver a tax credit certificate to the investor within five days). Provides that the applicable information required to be provided to the Secretary in former proposed GS 53A-112, instead, be included on the tax credit certificate issued to the investor. Deletes provisions regarding redemption, transfer, and registration of the certificate, and calculation of the tax credit.

Provides in proposed GS 53A-106 (Cap on tax credit certificates) that the board must determine by the fifth anniversary of the first issuance of tax credit certificates, or more frequently if the board desires, 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. Allows that the chair and vice-chair of the board, upon a unanimous vote, require the Fund to repay to the state any and all tax credits taken pursuant to a tax credit certificate. Upon payment, the cap on equity certificates is increased to the extent of the payment.

Deletes the statutes that (1) directed the board of the Corporation to select a chief executive officer whose duties are to be determined by the board, (2) provided for powers and effectiveness of the Corporation, and (3) provided for severability of the act's provisions. Specifies that upon dissolution of the Fund the corporation is to be liquidated and dissolved and any assets owned by *the Fund* or the Corporation must be distributed to the state. Makes conforming and technical changes throughout Article 4.

Reorganizes and makes conforming changes to proposed Article 3L of GS Chapter 105, Life Science Development Tax Credits. Deletes that any unused portion of a credit may be carried forward for the seven succeeding years. Provides that if the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. Provides for pass-through entities. Deletes that no credit will be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. Also makes technical changes.

Specifies that the provisions providing for the tax credit are effective for taxable years beginning on or after January 1, 2010.