

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 530
Committee Substitute Favorable 4/1/09
Committee Substitute #2 Favorable 4/16/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H530-PCS80506-SV-62

Short Title: Life Sciences Development Act.

(Public)

Sponsors:

Referred to:

March 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE AN INCENTIVE FOR INVESTING IN CAPITAL FACILITIES IN
3 THE LIFE SCIENCES IN THIS STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 105 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 3M.

8 "Life Sciences Investments.

9 "**§ 105-129.105. Findings and purpose.**

10 The General Assembly finds that life science companies generate employment
11 opportunities for the State, expand local tax bases, and engage in the discovery, development,
12 and commercialization of new pharmaceuticals, biologic products, medical devices, and
13 diagnostic products. The General Assembly finds that there exists in the State a serious
14 shortage of credit for life science companies to finance new and expanded facilities and acquire
15 equipment for the production and delivery of life science products and services. The purpose of
16 this Article is to create a mechanism for delivery of products and services in the life sciences
17 that will build permanent production facilities in North Carolina.

18 "**§ 105-129.106. Definitions.**

19 The following definitions apply in this Article:

- 20 (1) Designated investor. – A person who purchases an equity interest in a
21 qualified entity and who is issued an equity certificate.
22 (2) Economic interest. – Matters involving a business with which associated, as
23 defined in G.S. 138A-3.
24 (3) Equity certificate. – A contract between a qualified entity and a designated
25 investor setting forth the amount of investment, the return on the investment,
26 and the repayment terms of the investment.
27 (4) Life science company. – A company engaged in any of the following:
28 a. Biotechnology, including agricultural and industrial uses.
29 b. Pharmaceuticals.
30 c. Biologic products.
31 d. Medical devices.
32 e. Diagnostic devices.



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1 f. Service laboratories or facilities providing support services to the
2 foregoing companies.

3 (5) Immediate family. – A parent, child, or sibling or the spouse of one of these
4 relations.

5 (6) Qualified entity. – A business entity that satisfies all of the conditions of
6 G.S. 105-129.107.

7 (7) Tax credit certificate. – A certificate issued by the Secretary to a designated
8 investor under which a tax credit is issued to the designated investor.

9 **"§ 105-129.107. Qualified entities.**

10 (a) Requirements. – A qualified entity is a business entity that satisfies all of the
11 following conditions:

12 (1) The entity is established as a for-profit limited liability company pursuant to
13 Chapter 57C of the General Statutes whose sole purpose is to foster
14 economic development in this State by making loans to life science
15 companies to finance any of the following:

16 a. The acquisition or expansion of capital facilities in this State.

17 b. The acquisition of capital equipment to be located at facilities in this
18 State.

19 c. Regulatory, documentation, and other costs required to make the
20 facilities and equipment to be located in North Carolina operational.

21 (2) The entity does not make loans for any property located outside of this State.

22 (3) The entity has as its sole managing member a nonprofit 501(c)(3)
23 corporation organized pursuant to Chapter 55A of the General Statutes that
24 satisfies all of the following conditions:

25 a. The primary purpose of the corporation is to foster the development
26 of the life science industry in this State.

27 b. The board of directors of the nonprofit corporation includes the
28 Secretary of Commerce serving as vice-chair and the President of the
29 North Carolina Biotechnology Center serving as chair.

30 c. The bylaws of the corporation provide that upon dissolution all assets
31 of the corporation revert to the State.

32 (4) The entity raises funds for making loans to life science companies by issuing
33 equity certificates for investments made by designated investors and by
34 specifying a rate of return on those investments.

35 (5) Equity certificates issued by the entity reflect all of the following:

36 a. That the holder of the equity certificate is a nonmanaging member of
37 the entity.

38 b. The amount of the investment.

39 c. The date and amount of each return on the investment.

40 d. The dates and amounts to redeem the equity certificate.

41 e. That the entity is not obligated to provide the return on investment
42 nor the equity redemption except as funds are available as provided
43 in G.S. 105-129.108.

44 f. That the holder of the equity certificate may be entitled to a tax credit
45 as provided in this Article.

46 g. That the Secretary receives a copy of the equity certificate.

47 (6) The entity provides a copy of each equity certificate to the Secretary.

48 (7) The total amount payable under equity certificates, including tax certificates
49 that have already been issued and for which the State has not been
50 reimbursed by the entity, does not exceed one hundred million dollars
51 (\$100,000,000) at any time. To the extent to which the entity has reimbursed

- 1 the State for tax certificates that it has issued, the total amount due may be
2 increased, but not to exceed one hundred million dollars (\$100,000,000).
- 3 (8) The total amount of outstanding loans from the entity to any one life science
4 company does not exceed thirty million dollars (\$30,000,000) at any time.
- 5 (9) The entity has adopted conflict of interest policies that include a prohibition
6 on an employee, officer, or director of the entity, or a member of the same
7 household as or the immediate family of an employee, officer, or director of
8 the entity, from having any economic interest in an investor in the entity or a
9 company to which the entity makes loans.
- 10 (10) The bylaws of the entity require that upon dissolution all assets of the entity
11 revert to the State.
- 12 (11) The bylaws of the entity require the entity to pay reasonable costs and
13 expenses to the nonprofit corporation that serves as the managing member,
14 but do not allow the managing member to receive any other compensation
15 from the entity.
- 16 (12) The bylaws provide that other than payments to designated investors, all
17 cash flow or profits of the entity must be used only for the purposes of this
18 Article.
- 19 (13) The entity makes loans to life science companies for facilities or equipment
20 to be located in this State based on an evaluation of the following factors:
- 21 a. The borrower's written business plan.
22 b. The borrower's written manufacturing or service plan.
23 c. The borrower's history of attracting operating capital from investors,
24 grants, or other lenders.
25 d. The borrower's management team.
26 e. The borrower's demonstration of engaging in the life science industry
27 in this State.
28 f. The borrower's job creation potential in this State.
29 g. The borrower's financial resources.
30 h. Any other factors deemed by the entity to be relevant to the
31 likelihood of the success of the project and not inconsistent with this
32 Article.
- 33 (14) On at least an annual basis, the entity contracts with an independent auditor
34 to perform an audit of all activities of the entity to be completed within three
35 months after the end of the entity's fiscal year and, except for the contract for
36 auditing services, the independent auditor has no business, contractual, or
37 other connection to the entity or its managing member.
- 38 (15) The bylaws of the entity require that the audit described under subdivision
39 (14) of this subsection be submitted to the board of directors of the entity's
40 managing member, the Governor, and the Joint Legislative Committee on
41 Governmental Operations.
- 42 (16) On at least an annual basis, the entity publishes a report of the activities
43 conducted by the entity that includes a review of the progress of the entity in
44 implementing the purposes stated in G.S. 105-129.105 and the business plan
45 of the entity and a description, including amounts, of the issuance of any tax
46 credit certificates.
- 47 (17) The bylaws of the entity require the entity to comply with the requirements
48 of Chapter 132 of the General Statutes and Article 33 of Chapter 143 of the
49 General Statues as if the entity were a State agency.
- 50 (b) Certification Statement. – Upon written request from time to time by the entity
51 accompanied by a certification under oath that each of the requirements of subsection (a) of this

1 section have been met, the Secretary must within 30 days issue a statement of qualification for
2 the entity if the Secretary finds the certification to be satisfactory. The Secretary may obtain
3 from the entity upon request any information as reasonable to determine whether the
4 certification is accurate.

5 (c) No Pledge. – Neither a qualifying entity nor the corporation that is the sole
6 managing member of a qualifying entity has any power to pledge the credit or taxing power of
7 the State or any political subdivision of the State, or to make its debts payable out of any
8 moneys or resources except those of the qualifying entity or the corporation. The obligations of
9 the qualifying entity and the corporation are not obligations of the State or any political
10 subdivision of the State but are obligations of the qualifying entity or corporation payable
11 solely and only from the qualifying entity's or corporation's resources.

12 **"§ 105-129.108. Tax credit.**

13 (a) Notification from Qualifying Entity. – When a qualifying entity determines that it
14 will be unable to make a payment required under an equity certificate, the entity must notify in
15 writing both the designated investor and the Secretary of the entity's inability to make the
16 payment. This notice must be made at least 30 days before the due date of the payment. The
17 entity may consider its cash flow needs, including funding its continuing operations and
18 obligations to other investors or its managing member, in making this determination. The
19 notification to the Secretary required under this subsection must be made under oath and
20 contain the following information:

21 (1) The amount of the initial equity investment.

22 (2) The rate of return on the invested capital.

23 (3) The calculation formula for determining the scheduled aggregate return on
24 the initial equity investment.

25 (4) The due date of the payment.

26 (5) The amount of the tax credit that should be issued.

27 (6) The designated investor to whom the payment is due.

28 (b) Issuance of Tax Certificate. – Within 30 days after receiving a notification from a
29 qualifying entity under subsection (a) of this section, the Secretary must deliver to the
30 qualifying entity a tax credit certificate for each designated investor in the amount certified by
31 the qualifying entity to be due. The tax credit certificate must be in an amount equal to the
32 amount of the required payment that the qualifying entity certifies it is unable to make.

33 (c) Credit. – A taxpayer that presents a tax credit certificate is allowed a tax credit equal
34 to one hundred percent (100%) of the amount specified in the certificate. The credit provided in
35 this section is allowed against the franchise tax levied in Article 3 of this Chapter, the income
36 taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this
37 Chapter.

38 (d) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax
39 liability against which it is imposed for the taxable year reduced by the sum of all credits
40 allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is
41 governed by the provisions governing a refund of an overpayment by the taxpayer of the tax
42 imposed. In computing the amount of tax against which multiple credits are allowed,
43 nonrefundable credits are subtracted before refundable credits.

44 (e) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
45 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does
46 not distribute the credit among any of its owners. The pass-through entity is considered the
47 taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a
48 pass-through entity indicates that the entity is paying tax on behalf of the owners of the equity,
49 the credit allowed under this Article does not affect the entity's payment of tax on behalf of its
50 owners.

51 **"§ 105-129.109. Substantiation.**

1 To claim a credit allowed by this Article, the taxpayer must provide any information
2 required by the Secretary. Each taxpayer claiming a credit under this Article must maintain and
3 make available for inspection by the Secretary any records the Secretary considers necessary to
4 determine and verify the amount of the credit to which the taxpayer is entitled. The burden of
5 proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no
6 credit may be allowed to a taxpayer that fails to maintain adequate records or to make them
7 available for inspection.

8 **"§ 105-129.110. Reports.**

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

- 11 (1) The number of taxpayers that claimed a credit allowed in this Article.
12 (2) The amount of each credit claimed and the taxes against which it was
13 applied.
14 (3) The total cost to the General Fund of the credits claimed."

15 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
16 2010.