

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55170-RB-17 (03/05)

Short Title: N.C. Life Science Development Corp. Act. (Public)

Sponsors: Senators Hoyle, Clodfelter and Jenkins.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE NORTH CAROLINA LIFE SCIENCE LOAN FUND.
3 The General Assembly of North Carolina enacts:
4 SECTION 1. Chapter 53A of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 4.
7 Life Science Loan Fund.

8 "§ 53A-100. Title.

9 This Article is known as the North Carolina Life Science Loan Fund Act.

10 "§ 53A-101. Findings; purpose.

11 The General Assembly finds and declares that:

- 12 (1) North Carolina is home to numerous life science companies with capital
13 needs, including companies engaged in the discovery and development of
14 new pharmaceuticals, biologic products, medical devices, and diagnostic
15 products.
- 16 (2) Many of these companies have the potential to create substantial new
17 employment opportunities if funds are available for the construction of
18 manufacturing and service facilities.
- 19 (3) There exists in the State of North Carolina a serious shortage of credit for
20 life science companies to finance new and expanded facilities and acquire
21 equipment for the production and delivery of life science products and
22 services.
- 23 (4) Private enterprise and federal and State governmental programs have not
24 adequately met the credit needs of life science companies for capital
25 improvements.
- 26 (5) Access to affordable debt financing is likely to be further limited in the wake
27 of the current economic downturn and credit crisis.
- 28 (6) It is necessary and appropriate to create the North Carolina Life Science
29 Loan Fund for the purpose of providing financing to businesses in need of
30 facilities or equipment for the production or delivery of products and
31 services, primarily in the life sciences, but also to other high technology
32 businesses which will build permanent production facilities in North
33 Carolina, generating much needed employment opportunities and expanding
34 local tax bases.



- 1 (7) The goal is to create a self-sustaining fund for this purpose, but the General
2 Assembly believes tax credits and funding for initial operations are
3 necessary and appropriate to jump start this initiative.
4 (8) The North Carolina Life Science Development Corporation and the North
5 Carolina Life Science Loan Fund shall be established to help the State and
6 its people, in a time of national economic distress, realize the potential of
7 their vast long-term investment in life science and other basic scientific
8 research by facilitating the transfer of new discoveries into commercial
9 development, new employment, and further scientific advances.

10 **"§ 53A-102. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Board. – The board of directors of the Corporation.
13 (2) Corporation. – The North Carolina Life Science Development Corporation
14 created under G.S. 53A-103.
15 (3) Designated investor. – A person who purchases an equity interest in the
16 Fund and who is issued a certificate pursuant to G.S. 53A-112. For the
17 purposes of this Article, a transferee of a certificate or contingent tax credit
18 shall be considered a designated investor.
19 (4) Equity certificate. – A contract between the Fund and a designated investor
20 setting forth the amount of investment, the return on the investment, and the
21 repayment terms of the investment.
22 (5) Fund. – The North Carolina Life Science Loan Fund, L.L.C., established
23 pursuant to G.S. 53A-109.
24 (6) Life science company. – A company engaged in any of the following:
25 a. Biotechnology, including agricultural and industrial uses.
26 b. Pharmaceuticals.
27 c. Biologic products.
28 d. Human health care and medical devices.
29 e. Diagnostic devices.
30 f. Service laboratories or facilities providing support services to the
31 foregoing companies.
32 (7) Person. – An individual, partnership, limited liability company, corporation,
33 association, organization, business trust, estate, trust, or any other legal or
34 commercial entity.
35 (8) Tax credit certificate. – A certificate issued by the Secretary of Revenue to a
36 designated investor under which a tax credit is issued to the designated
37 investor pursuant to G.S. 53A-117.

38 **"§ 53A-103. North Carolina Life Science Development Corporation.**

39 (a) The president of the North Carolina Biotechnology Center, a North Carolina
40 nonprofit corporation established and funded by the State of North Carolina, shall cause articles
41 of incorporation for the Corporation to be filed with the Secretary of State. In addition to the
42 articles of incorporation, the Corporation shall adopt bylaws and operational policies that are
43 consistent with this Article. The Corporation shall be a 501 (c)(3) entity organized to assist the
44 State as set forth in this Article.

45 (b) The purposes of the Corporation to be specified in the articles of incorporation shall
46 include the following:

- 47 (1) To organize the Fund.
48 (2) To manage the Fund.
49 (3) To certify when tax credits must be issued by the Secretary of Revenue
50 subject to redemption by designated investors in the Fund.

1 (4) To receive returns from the Fund to pay for the management and operations
2 of the Corporation.

3 (5) To perform other duties permitted by North Carolina law and consistent with
4 the requirements of this Article.

5 (c) The Corporation is prohibited from pledging the credit or taxing power of the State
6 or any political subdivision of the State, or making its debts payable out of any moneys or
7 resources except those of the Corporation. The obligations of the Corporation are not
8 obligations of the State or any political subdivision of the State but are obligations of the
9 Corporation payable solely and only from the Corporation's resources.

10 (d) The Corporation is authorized to expend and invest funds, enter into contracts,
11 insure against loss, and perform any other act necessary to carry out its purposes.

12 **"§ 53A-104. Incorporator.**

13 The president of the North Carolina Biotechnology Center shall serve as the incorporator of
14 the Corporation.

15 **"§ 53A-105. Board of Directors.**

16 (a) The incorporator shall name the initial Board of Directors of the Corporation for
17 terms set forth in the Corporation's bylaws. In doing so, the incorporator shall exercise due care
18 to assure that persons named shall provide the Board with the requisite financial, business, and
19 scientific experience necessary in order to carry out the duties of the Corporation as established
20 in this Article. The initial Board of Directors of the Corporation shall consist of nine members,
21 including the president of the North Carolina Biotechnology Center and the North Carolina
22 Secretary of Commerce, who shall be permanent ex officio voting members of the Board. After
23 the initial Board of Directors is named, vacancies shall be filled and new directors shall be
24 elected by the Board in the manner set forth in the Corporation's bylaws.

25 (b) The president of the North Carolina Biotechnology Center shall serve as chair of the
26 Board and the North Carolina Secretary of Commerce shall serve as vice-chair.

27 (c) Members of the Board shall be subject to restrictions on conflicts of interest
28 specified in the organizational documents of the Corporation. Members shall not have any
29 interest in any entity to which the Fund loans money.

30 (d) The Corporation shall cause the Fund to publish an annual report of the activities
31 conducted by the Fund, and present the report to the Governor and the Joint Legislative
32 Committee on Governmental Operations. The annual report shall contain the following:

33 (1) A copy of the audit of the Fund.

34 (2) A review of the progress of the Corporation in implementing the purposes
35 stated in G.S. 53A-101 and the business plan of the Fund.

36 (3) A description of the issuance or transfer of any tax credit certificate issued
37 under this Article.

38 **"§ 53A-106. Management.**

39 The Board of the Corporation shall select a chief executive officer whose duties shall be
40 determined by the Board. The chief executive officer may, with the permission of the Board,
41 retain such managers, consultants, employees, and agents as shall be appropriate to accomplish
42 the purposes of the Fund.

43 **"§ 53A-107. Management fee; additional financial assistance.**

44 The Corporation may collect a management fee from the Fund. The fee shall be no more
45 than necessary to pay for reasonable and necessary costs and expenses of the Corporation for
46 the activities and personnel described in this Article. The Corporation shall not be entitled to
47 receive any other compensation from the Fund.

48 **"§ 53A-108. Dissolution.**

49 Upon the dissolution of the Fund, the Corporation shall be liquidated and dissolved. Upon
50 dissolution of the Corporation, any assets owned by the Corporation shall be distributed to the
51 State.

"§ 53A-109. Organization of North Carolina Life Science Development Fund.

(a) The Corporation shall organize the North Carolina Life Science Development Fund, L.L.C. The Fund shall be organized as a private, for-profit, limited liability company under North Carolina law having the Corporation as its sole managing member.

(b) The Fund shall 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) The Fund shall be organized to accept nonmanaging member investments from designated investors that pay a designated rate of return and a scheduled redemption, in accordance with rules developed and adopted by the Corporation.

"§ 53A-110. Loans by North Carolina Life Science Development Fund.

(a) The Corporation's chief executive officer, subject to the approval of the Board, shall determine to what extent and when the Fund should loan funds to qualified life science companies or other companies engaged in high-tech 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 deemed by the Board to be consistent with this Article.

(b) The Fund shall not make a loan or loans to any borrower in excess of thirty million dollars (\$30,000,000).

"§ 53A-111. Annual audits.

Each calendar year, the Corporation shall cause an audit of the activities of the Fund to be made as described in this section. The audit shall 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. The report shall be delivered to the Board.

"§ 53A-112. Equity certificates and tax credit certificates.

(a) Each designated investor shall receive from the Fund an equity certificate which shall 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 shall be returned to the investor.

(5) That the obligations of the Fund to the designated investor are backed by contingent tax credits to be issued by the Secretary of Revenue, if so required by the provision of this section.

(b) The Fund shall provide to the Secretary of Revenue a certified copy of each equity certificate simultaneously with its issuance to the designated investor. Once the equity certificate is issued, it shall be binding on the Fund and the Corporation and may not be modified, terminated, or rescinded. At no time shall the total amount of the issued tax credit certificates and the remaining obligations of the Fund to designated investors as reflected in the

1 equity certificates and backed by contingent tax certificates exceed one hundred million dollars
2 (\$100,000,000).

3 (c) The Corporation shall determine at least 20 days prior to the due date of any
4 payment to a designated investor required by an equity certificate whether the Fund will be able
5 to make the payment in full, taking into consideration the cash flow needs of the Fund,
6 including funding its continuing operations and obligations to the Corporation for costs and
7 expenses. In the event the Corporation determines there will be a shortfall, the Corporation
8 shall notify both the designated investor and the Secretary of Revenue of the shortfall in writing
9 at least 10 days before the due date of the payment. The Corporation shall also provide to the
10 Secretary of Revenue a copy of the equity certificate and shall certify under oath to the
11 Secretary of Revenue the following information:

12 (1) The rate of return on the invested capital.

13 (2) The amount of the initial equity investment.

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

16 (4) The due date of the payment.

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

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

19 Within five days thereafter, the Secretary of Revenue shall deliver to the Corporation a tax
20 credit certificate for each designated investor in the amount certified by the Corporation to be
21 due, which certificate may be redeemed as provided herein.

22 (d) A tax credit certificate may be redeemed only on or after the due date of the
23 shortfall and only for a tax year that begins during the calendar year of the due date stated on
24 the certificate.

25 (e) In calculating the amount of the tax credit, the return to the designated investor
26 cannot be more or less than the return that was provided at the issuance of the equity certificate.
27 **§ 53A-113. Transfer and registration of certificates.**

28 (a) A tax credit certificate and the related tax credit may be transferred by the
29 designated investor. The Corporation shall develop a system for registration of any tax credit
30 certificate and related contingent tax credit issued or transferred under this Article. The system
31 also shall permit verification that any tax credit claimed upon a tax return is valid and any
32 transfers of the tax credit certificate and related tax credit were made in accordance with the
33 requirements of this Article.

34 (b) A tax credit certificate issued or transferred under this Article is not a security under
35 Chapter 78A of the General Statutes.

36 **§ 53A-114. Powers and effectiveness.**

37 (a) This Article may not be construed as a restriction or limitation upon any power
38 which the Corporation might otherwise have under any other law of this State, and the
39 provisions of this Article are cumulative to those powers. This Article shall be construed to
40 provide a complete, additional, and alternative method for performing the duties authorized and
41 shall be regarded as bestowing supplemental, additional powers to those conferred by any other
42 laws.

43 (b) The provisions of any contract entered into by the Corporation or the Fund may not
44 be compromised, diminished, invalidated, or affected by either of the following:

45 (1) The level, timing, or degree of success of the Fund or the loans made by the
46 Fund.

47 (2) The extent to which loans made by the Fund are successful in accomplishing
48 any economic development objectives.

49 **§ 53A-115. Permissible investments.**

50 Investments by designated investors in the Fund are permissible investments under
51 applicable laws of the State for State-chartered banks, State-chartered savings and loan

1 associations, State-chartered credit unions, State-chartered industrial loan corporations,
2 domestic insurance companies, or any combination thereof.

3 **"§ 53A-116. Severability.**

4 If any provision of this act or its application is held invalid, the invalidity does not affect
5 other provisions or applications of this act that can be given effect without the invalid
6 provisions or application, and to this end the provisions of this act are severable."

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

9 "Article 3L.

10 "Life Science Development Tax Credits.

11 **"§ 105-129.100. Tax credit.**

12 (a) Credit. – A taxpayer that presents a tax credit certificate is allowed a tax credit equal
13 to one hundred percent (100%) of the amount specified in the certificate. A tax credit certificate
14 is a certificate issued by the Secretary of Revenue to the North Carolina Life Science
15 Development Corporation under Article 4 of Chapter 53A of the General Statutes for
16 distribution to designated investors.

17 (b) Taxes Credited. – The credit provided in this section is allowed against the franchise
18 tax levied in Article 3 of this Chapter, the premium tax levied in Article 8B of this Chapter, or
19 the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against
20 which a credit will be claimed when filing the return on which the credit is claimed. This
21 election is binding. The credit may not exceed the tax against which it is applied. Any unused
22 portion of a credit may be carried forward for the succeeding seven years. Any carryforwards
23 of a credit must be claimed against the same tax.

24 **"§ 105-129.101. Substantiation.**

25 To claim a credit allowed by this Article, the taxpayer should provide any information
26 reasonably required by the Secretary of Revenue. Each taxpayer claiming a credit under this
27 Article must maintain and make available for inspection by the Secretary of Revenue any
28 records the Secretary considers necessary to determine and verify the amount of the credit to
29 which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of
30 the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
31 maintain adequate records or to make them available for inspection.

32 **"§ 105-129.102. Reports.**

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

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

39 **SECTION 3.** This act is effective when it becomes law.