

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE DRS85160-MC-154 (3/12)

Short Title: NC Life Sciences Development Corporation Act.

(Public)

Sponsors: Senator Rand.

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 creating 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 Sciences Loan Fund Act.'

10 "§ 53A-101. Findings; purpose.

11 (a) The General Assembly finds and declares the following:

- 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.



* D R S 8 5 1 6 0 - M C - 1 5 4 *

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

37 **§ 53A-103. North Carolina Life Science Development Corporation.**

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

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

- 46 (1) To organize the Fund.
47 (2) To manage the Fund.
48 (3) To certify when tax credits must be issued by the Secretary of Revenue
49 subject to redemption by designated investors in the Fund.
50 (4) To receive returns from the Fund to pay for the management and operations
51 of the corporation.

1 (5) To perform other duties permitted by North Carolina law and consistent with
2 the requirements of this legislation.

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

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

10 **"§ 53A-104. Incorporator.**

11 The president of the North Carolina Biotechnology Center shall serve as the incorporator of
12 the corporation.

13 **"§ 53A-105. Board of directors.**

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

23 (b) The president of the North Carolina Biotechnology Center shall serve as chair of the
24 board and the North Carolina Secretary of Commerce shall serve as vice chair.

25 (c) Members of the board shall be subject to restrictions on conflicts of interest
26 specified in the organizational documents of the corporation. Members shall not have any
27 interest in any entity to which the Fund loans money.

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

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

32 (2) A review of the progress of the corporation in implementing the purposes
33 stated in G.S. 53A-101 and the business plan of the Fund.

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

36 **"§ 53A-106. Management.**

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

41 **"§ 53A-107. Management fee; additional financial assistance.**

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

46 **"§ 53A-108. Dissolution.**

47 Upon the dissolution of the Fund, the corporation shall be liquidated and dissolved. Upon
48 dissolution of the corporation, any assets owned by the corporation shall be distributed to the
49 State.

50 **"§ 53A-109. Organization of North Carolina Life Science Development Fund.**

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

4 (b) The Fund shall make loans to life science companies for the following purposes:

5 (1) For the acquisition or expansion of capital facilities in North Carolina and to
6 acquire capital equipment to be located in North Carolina.

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

9 (c) The North Carolina Life Science Development Fund shall be organized to accept
10 nonmanaging member investments from designated investors that pay a designated rate of
11 return and a scheduled redemption, in accordance with rules developed and adopted by the
12 corporation.

13 **"§ 53A-110. Loans by North Carolina Life Science Development Fund.**

14 (a) The corporation's chief executive officer, subject to the approval of the board, shall
15 determine to what extent and when the Fund should loan funds to qualified life science
16 companies or other companies engaged in high-tech manufacturing based on the evaluation of
17 the following factors, as well as other factors deemed by the board to be consistent with this
18 act:

19 (1) Borrower's written business plan.

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

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

23 (4) Borrower's management team.

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

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

27 (7) Borrower's financial resources.

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

30 **"§ 53A-111. Annual audits.**

31 Each calendar year, the corporation shall cause an audit of the activities of the Fund to be
32 made as described in this section. The audit shall be conducted by an independent auditor
33 engaged by the board of the corporation. Except for the contract for auditing services, the
34 independent auditor may have no business, contractual, or other connection to the corporation
35 or to the Fund. The report shall be delivered to the board.

36 **"§ 53A-112. Equity certificates and tax credits certificates.**

37 (a) Each designated investor shall receive from the Fund an equity certificate which
38 shall reflect the following:

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

40 (2) The amount of the investment.

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

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

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

46 (b) The Fund shall provide to the Secretary of Revenue a certified copy of each equity
47 certificate simultaneously with its issuance to the designated investor. Once the equity
48 certificate is issued, it shall be binding on the Fund and the corporation and may not be
49 modified, terminated, or rescinded. At no time shall the total amount of the issued tax credit
50 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 shall
8 notify in writing at least 10 days before the due date both the designated investor and the
9 Secretary of Revenue of the shortfall and shall provide to the Secretary a copy of the equity
10 certificate and shall certify under oath to the Secretary the following information:

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

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

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

15 (4) The due date of the payment.

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

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

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

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

24 (e) In calculating the amount of the tax credit, the return to the designated investor
25 cannot be more or less than the return that was provided at the issuance of the equity
26 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 shall also 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 creating a new
8 Article to read:

9 "Article 3L.

10 "Life Science Development Tax Credits.

11 **"§ 105-129.100. Definitions.**

12 As used in this Article, the term 'tax credit certificate' means a certificate issued by the
13 Secretary of Revenue pursuant to G.S. 53A-112.

14 **"§ 105-129.101. Credit.**

15 (a) Credit. – A taxpayer that presents a tax credit certificate is allowed a tax credit equal
16 to one hundred percent (100%) of the amount specified in the certificate.

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 income taxes levied in Article 4 of this Chapter, or
19 the premium tax levied in Article 8B of this Chapter. The taxpayer must elect the tax against
20 which a credit will be claimed when filing the return on which the first installment of the credit
21 is claimed. This election is binding. The credit may not exceed the tax against which it is
22 applied. Any unused portion of a credit may be carried forward for the succeeding seven years.
23 Any carryforwards of a credit must be claimed against the same tax.

24 **"§ 105-129.102. Substantiation.**

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

32 **"§ 105-129.103. 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.