

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 527

Short Title: Life Science Development Act. (Public)

Sponsors: Senators Hartsell, Brunstetter, Clodfelter; and Rucho.

Referred to: Commerce.

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND EMPLOYMENT AND ENCOURAGE PRIVATE INVESTMENTS
3 IN LIFE SCIENCE FACILITIES AND EQUIPMENT IN THIS STATE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 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 to facilitate the establishment of permanent life science
17 production and service 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 document that evidences ownership of an equity
25 interest in a qualified entity by a designated investor and that sets forth the
26 amount of investment, the return on the investment, and the repayment terms
27 of the investment.
28 (4) Life science company. – A company engaged in any of the following:
29 a. Biotechnology, including agricultural and industrial uses.
30 b. Pharmaceuticals.
31 c. Biologic products.
32 d. Medical devices.
33 e. Diagnostic devices.
34 f. Service laboratories or facilities providing support services to the
35 foregoing companies.
36 (5) Immediate family. – A parent, child, or sibling or the spouse of one of these
37 relations.



- 1 (6) Nonprofit corporation. – The nonprofit corporation established pursuant to
2 G.S. 105-129.106A.
3 (7) Qualified entity. – A business entity that satisfies all of the conditions of
4 G.S. 105-129.107.
5 (8) Tax credit certificate. – A certificate issued by the Secretary to a designated
6 investor under which a tax credit is issued to the designated investor.

7 **"§ 105-129.106A Development corporation.**

8 (a) The Secretary of Commerce and the President of the North Carolina Biotechnology
9 Center shall cause to be filed with the Secretary of State articles of incorporation organizing a
10 nonprofit corporation pursuant to Chapter 55A of the General Statutes to perform the functions
11 described in this Article. The articles of incorporation shall provide as follows:

- 12 (1) The primary purpose of the nonprofit corporation shall be to foster the
13 development of the life science industry in this State.
14 (2) Upon dissolution, all assets of the nonprofit corporation shall revert to the
15 State.
16 (3) The State of North Carolina shall be the sole voting members of the
17 nonprofit corporation.
18 (4) The articles of incorporation shall not be amended except by the voting
19 members of the nonprofit corporation.
20 (5) The nonprofit corporation shall have no power to impose dues, assessments,
21 admission and transfer fees upon its voting members.

22 Except as otherwise provided in this section, the Governor and the State Treasurer shall jointly
23 vote the State's interest in the nonprofit corporation.

24 (b) The initial board of directors of the nonprofit corporation shall be composed of the
25 Secretary of Commerce, the Secretary, and the President of the North Carolina Biotechnology
26 Center. The initial board of directors shall organize the affairs of the nonprofit corporation. The
27 initial board of directors shall adopt bylaws providing for the subsequent election of additional
28 directors, which shall include at least one director nominated by the President Pro Tempore of
29 the Senate and one member nominated by the Speaker of the House of Representatives.

30 **"§ 105-129.107. Qualified entities.**

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

- 33 (1) The entity is established as a for-profit limited liability company pursuant to
34 Chapter 57C of the General Statutes whose sole purpose is to foster
35 economic development in this State by making loans to life science
36 companies to finance any of the following:
37 a. The acquisition or expansion of capital facilities in this State.
38 b. The acquisition of capital equipment to be located at facilities in this
39 State.
40 c. Regulatory, documentation, and other costs required to make the
41 facilities and equipment to be located in North Carolina operational.
42 (2) The entity does not make loans for any property located outside of this State.
43 (3) The entity has as its sole managing member the nonprofit corporation.
44 (4) The entity raises funds for making loans to life science companies by issuing
45 equity certificates for investments made by designated investors with a
46 specified rate of return on those investments.
47 (5) Equity certificates issued by the entity reflect all of the following:
48 a. That the holder of the equity certificate is a nonmanaging member of
49 the entity.
50 b. The amount of the investment.
51 c. The date and amount of each return on the investment.

- 1 d. The dates and amounts to redeem the equity certificate.
2 e. That the entity is not obligated to provide the return on investment
3 nor the equity redemption except as funds are available as provided
4 in G.S. 105-129.108.
5 f. That the holder of the equity certificate may be entitled to a tax credit
6 as provided in this Article.
7 g. That the Secretary receives a copy of the equity certificate.
8 (6) The entity provides a copy of each equity certificate to the Secretary.
9 (7) The total amount payable under equity certificates, including tax certificates
10 that have already been issued and for which the State has not been
11 reimbursed by the entity, does not exceed one hundred million dollars
12 (\$100,000,000) at any time. To the extent to which the entity has reimbursed
13 the State for tax certificates that it has issued, the total amount due may be
14 increased, but not to exceed one hundred million dollars (\$100,000,000).
15 (8) The total amount of outstanding loans from the entity to any one life science
16 company does not exceed thirty million dollars (\$30,000,000) at any time.
17 (9) The entity has adopted conflict of interest policies that include a prohibition
18 on an employee, officer, or director of the entity, or a member of the same
19 household as or the immediate family of an employee, officer, or director of
20 the entity, from having any economic interest in an investor in the entity or a
21 company to which the entity makes in excess of limits, or in violation of
22 disclosure requirements, set by the board of directors of the nonprofit
23 corporation.
24 (10) The organizational documents of the entity require that upon dissolution all
25 assets of the entity revert to the State.
26 (11) The organizational documents of the entity require the entity to pay
27 reasonable costs and expenses to the nonprofit corporation that serves as the
28 managing member, but do not allow the managing member to receive any
29 other compensation from the entity.
30 (12) The organizational documents of the entity provide that other than payments
31 to designated investors, all cash flow or profits of the entity must be used
32 only for the purposes of this Article, including the operating expenses of the
33 entity.
34 (13) The entity makes loans to life science companies for facilities or equipment
35 to be located in this State based on an evaluation of the following factors:
36 a. The borrower's written business plan.
37 b. The borrower's written manufacturing or service plan.
38 c. The borrower's history of attracting operating capital from investors,
39 grants, or other lenders.
40 d. The borrower's management team.
41 e. The borrower's demonstration of engaging in the life science industry
42 in this State.
43 f. The borrower's job creation potential in this State.
44 g. The borrower's financial resources.
45 h. Any other factors deemed by the entity to be relevant to the
46 likelihood of the success of the project and not inconsistent with this
47 Article.
48 (14) On at least an annual basis, the entity contracts with an independent auditor
49 to perform an audit of all activities of the entity to be completed within three
50 months after the end of the entity's fiscal year and, except for the contract for

1 auditing services, the independent auditor has no business, contractual, or
2 other connection to the entity or its managing member.

3 (15) The bylaws of the entity require that the audit described under subdivision
4 (14) of this subsection be submitted to the board of directors of the entity's
5 managing member, the Governor, and the Joint Legislative Commission on
6 Governmental Operations.

7 (16) On at least an annual basis, the entity publishes a report of the activities
8 conducted by the entity that includes a review of the progress of the entity in
9 implementing the purposes stated in G.S. 105-129.105 and the business plan
10 of the entity, a report of the calculation of outstanding equity certificates and
11 tax credits pursuant to subdivision (7) of this subsection, and a description,
12 including amounts, of the issuance of any tax credit certificates.

13 (17) The organizational documents of the entity require the entity to comply with
14 the requirements of Chapter 132 of the General Statutes and Article 33 of
15 Chapter 143 of the General Statutes as if the entity were a State agency.

16 (b) Certification Statement. – Upon written request from time to time by the entity
17 accompanied by a certification under oath that each of the requirements of subsection (a) of this
18 section have been met, the Secretary must within 30 days issue a statement of qualification for
19 the entity if the Secretary finds the certification to be satisfactory. The Secretary may obtain
20 from the entity upon request any information as reasonable to determine whether the
21 certification is accurate.

22 (c) No Pledge. – Neither a qualifying entity nor the nonprofit corporation that is the
23 sole managing member of a qualifying entity has any power to pledge the credit or taxing
24 power of the State or any political subdivision of the State, or to make its debts payable out of
25 any moneys or resources except those of the qualifying entity or the nonprofit corporation. The
26 obligations of the qualifying entity and the nonprofit corporation are not obligations of the State
27 or any political subdivision of the State but are obligations of the qualifying entity or non-profit
28 corporation payable solely and only from the qualifying entity's or nonprofit corporation's
29 resources.

30 **"§ 105-129.108. Tax credit.**

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

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

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

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

43 (4) The due date of the payment.

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

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

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

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

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

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

19 **"§ 105-129.109. Substantiation.**

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

27 **"§ 105-129.110. Reports.**

28 The Department of Revenue must include in the economic incentives report required by
29 G.S. 105-256 the following information, itemized by taxpayer:

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

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

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

34 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
35 2011.