

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  
Senate Finance Committee Substitute Adopted 8/7/09

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.  
33 f. Service laboratories or facilities providing support services to the  
34 foregoing companies.



- 1           (5)    Immediate family. – A parent, child, or sibling or the spouse of one of these  
2           relations.  
3           (6)    Qualified entity. – A business entity that satisfies all of the conditions of  
4           G.S. 105-129.107.  
5           (7)    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    **"§ 105-129.107. Qualified entities.**

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

- 10           (1)    The entity is established as a for-profit limited liability company pursuant to  
11           Chapter 57C of the General Statutes whose sole purpose is to foster  
12           economic development in this State by making loans to life science  
13           companies to finance any of the following:  
14            a.     The acquisition or expansion of capital facilities in this State.  
15            b.     The acquisition of capital equipment to be located at facilities in this  
16            State.  
17            c.     Regulatory, documentation, and other costs required to make the  
18            facilities and equipment to be located in North Carolina operational.  
19           (2)    The entity does not make loans for any property located outside of this State.  
20           (3)    The entity has as its sole managing member a nonprofit 501(c)(3)  
21           corporation organized pursuant to Chapter 55A of the General Statutes that  
22           satisfies all of the following conditions:  
23            a.     The primary purpose of the corporation is to foster the development  
24            of the life science industry in this State.  
25            b.     The board of directors of the nonprofit corporation includes the  
26            Secretary of Commerce serving as vice-chair and the President of the  
27            North Carolina Biotechnology Center serving as chair.  
28            c.     The bylaws of the corporation provide that upon dissolution all assets  
29            of the corporation revert to the State.  
30           (4)    The entity raises funds for making loans to life science companies by issuing  
31           equity certificates for investments made by designated investors and by  
32           specifying a rate of return on those investments.  
33           (5)    Equity certificates issued by the entity reflect all of the following:  
34            a.     That the holder of the equity certificate is a nonmanaging member of  
35            the entity.  
36            b.     The amount of the investment.  
37            c.     The date and amount of each return on the investment.  
38            d.     The dates and amounts to redeem the equity certificate.  
39            e.     That the entity is not obligated to provide the return on investment  
40            nor the equity redemption except as funds are available as provided  
41            in G.S. 105-129.108.  
42            f.     That the holder of the equity certificate may be entitled to a tax credit  
43            as provided in this Article.  
44            g.     That the Secretary receives a copy of the equity certificate.  
45           (6)    The entity provides a copy of each equity certificate to the Secretary.  
46           (7)    The total amount payable under equity certificates, including tax certificates  
47           that have already been issued and for which the State has not been  
48           reimbursed by the entity, does not exceed one hundred million dollars  
49           (\$100,000,000) at any time. To the extent to which the entity has reimbursed  
50           the State for tax certificates that it has issued, the total amount due may be  
51           increased, but not to exceed one hundred million dollars (\$100,000,000).

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

1 from the entity upon request any information as reasonable to determine whether the  
2 certification is accurate.

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

10 **"§ 105-129.108. Tax credit.**

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

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

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

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

23 (4) The due date of the payment.

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

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

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

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

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

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

49 **"§ 105-129.109. Substantiation.**

50 To claim a credit allowed by this Article, the taxpayer must provide any information  
51 required by the Secretary. Each taxpayer claiming a credit under this Article must maintain and

1 make available for inspection by the Secretary any records the Secretary considers necessary to  
2 determine and verify the amount of the credit to which the taxpayer is entitled. The burden of  
3 proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no  
4 credit may be allowed to a taxpayer that fails to maintain adequate records or to make them  
5 available for inspection.

6 **"§ 105-129.110. Reports.**

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

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

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

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

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

14 2010.