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HOUSE BILL NO. 2184

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-422 through 58.1-428, relating to the Virginia Technology and Biotechnology Investment Act.

Patrons—Purkey, Christian, May, Plum and Welch; Senator: Ticer

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-422 through 58.1-428, as follows:

Article 11.

Virginia Technology and Biotechnology Research and Development Act.

§ 58.1-422. Short title.

This article shall be known and may be cited as the "Virginia Technology and Biotechnology Research and Development Act."

§ 58.1-423. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Advanced computing" means a technology used to design or develop computing hardware and software.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including, but not limited to, ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Authority" means the Innovative Technology Authority established pursuant to § 9-252.

"Basic research payments" means basic research payments as defined in § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41 that are (i) paid for research in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology; and (ii) paid to a biotechnology company, a technology company, or a "qualified organization," as defined in § 41 of the Internal Revenue Code, located in the Commonwealth.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels and the products, services, technologies, and sub-technologies developed as a result of insights gained from research advances that add to that body of fundamental knowledge.

"Biotechnology company" means a corporation taxpayer (i) that does business, leases or owns capital or property, or maintains an office, headquarters, or base of operations in Virginia; (ii) that (a) has qualified research expenses paid or incurred in Virginia for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes, (b) conducts pilot scale manufacturing in Virginia, or (c) provides services or products necessary for such research, development, production, or provision; and (iii) that has fewer than 100 employees, of whom seventy-five percent are Virginia-based employees filling positions or jobs in Virginia.

"Costs" means the expenses incurred in connection with operating a technology or biotechnology company and shall include, but need not be limited to, the expenses of fixed assets, such as the construction, acquisition, and development of real estate; equipment and materials; start-up expenses; tenant fit-out; working capital; benefits and compensation; research and development expenses; or any other expenses determined by the Authority to be necessary and proper to carry out the purposes of this article.

"Department" means the Department of Taxation.

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; or data and digital communications and imaging devices.

"Environmental technology" means a technology related to the assessment or prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

"Fixed assets" means any real property, interests in real property, physical plants, or facilities;

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59 equipment; or any other assets commonly accepted as fixed assets.

60 "Medical device technology" means a technology involving any medical equipment or product (other  
61 than a pharmaceutical product) that has therapeutic or diagnostic value and is regulated by the federal  
62 Food and Drug Administration.

63 "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and  
64 models in the fields of advanced computing, advanced materials, biotechnology, electronic device  
65 technology, environmental technology, or medical device technology, other than for commercial sale,  
66 excluding sales of prototypes or sales for market-testing if total gross receipts from such sales of the  
67 product, service, or process do not exceed one million dollars.

68 "Qualified research expenses" means qualified research expenses as defined in § 41 of the Internal  
69 Revenue Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, in the fields of advanced  
70 computing, advanced materials, biotechnology, electronic device technology, environmental technology,  
71 or medical device technology.

72 "Technology company" means a corporation taxpayer (i) that does business, leases or owns capital  
73 or property, or maintains an office, headquarters, or base of operations in Virginia; (ii) that (a) has  
74 qualified research expenses paid or incurred in Virginia for research, development, production, or  
75 provision of technology for the purpose of developing or providing products or processes for specific  
76 commercial or public purposes, (b) conducts pilot scale manufacturing in Virginia, or (c) provides  
77 services or products necessary for such research, development, production, or provision; and (iii) that  
78 has fewer than 100 employees, of whom seventy-five percent are Virginia-based employees filling  
79 positions or jobs in Virginia.

80 "Working capital" means liquid capital assets other than fixed assets.

81 § 58.1-424. Qualified research and development expenses tax credit.

82 A. For taxable years beginning on or after January 1, 2002, any technology or biotechnology  
83 company shall be allowed a credit against the income taxes imposed pursuant to Article 10 (§ 58.1-400  
84 et seq.) of this chapter in an amount equal to fifty percent of the excess of the qualified research  
85 expenses for the taxable year over the base amount determined in accordance with § 41 of the Internal  
86 Revenue Code of 1986, 26 U.S.C. § 41, and provided that subsection (h) of 26 U.S.C. § 41 relating to  
87 termination shall not apply. The terms "qualified research expenses," "base amount," or any other terms  
88 determined by the Tax Commissioner to affect the calculation of the credit shall only include  
89 expenditures for research conducted in the Commonwealth.

90 B. No credit shall be allowed under Article 13 (§ 58.1-430 et seq.) of this chapter for property or  
91 expenditures for which a credit is allowed, or which are includable in the calculation of a credit  
92 allowed, under this section.

93 C. To the extent a technology company or a biotechnology company qualifies for a credit under this  
94 section and § 58.1-425, the credit shall be taken under this section.

95 D. The tax imposed for a taxable year pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter  
96 shall first be reduced by the amount of any credit allowed pursuant to § 58.1-430, then by any credit  
97 allowed pursuant to § 58.1-435, then by any credit allowed pursuant to § 58.1-439, and then by any  
98 credit allowed pursuant to § 58.1-439.4, prior to applying any credits allowable pursuant to this section.

99 E. The amount of the credits applied under this section against the tax imposed pursuant to Article  
100 10 of this chapter for a taxable year shall not exceed fifty percent of the tax liability otherwise due.  
101 Notwithstanding any provisions of this article, no taxpayer shall be eligible to claim a credit of more  
102 than \$500,000 per year under this section. Any credit not usable for the taxable year may be carried  
103 over for credit against the taxpayer's income taxes until the either (i) the full amount of the credit is  
104 used or (ii) the expiration of the tenth taxable year after the taxable year in which the qualified  
105 research expenses were paid, whichever occurs first.

106 F. In no event shall more than five million dollars in credits be allowed for any taxable year;  
107 however, if credits exceed five million dollars for a taxable year, they shall be allocated by the  
108 Department of Taxation on a pro rata basis. If credits are less than five million dollars for a taxable  
109 year, the unused amount shall be utilized in the succeeding taxable year in addition to the five million  
110 dollars of credit allowed during that year.

111 § 58.1-425. Basic research payment tax credit.

112 A. For taxable years beginning on or after January 1, 2002, a taxpayer shall be allowed a credit  
113 against the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article  
114 9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of this chapter in an amount equal to fifty  
115 percent of the basic research payments determined in accordance with § 41 of the Internal Revenue  
116 Code of 1986, 26 U.S.C. § 41, and provided that subsection (h) of 26 U.S.C. § 41 relating to  
117 termination shall not apply. The term "qualified organization base amount period," "basic research," or  
118 any other terms determined by the Tax Commissioner to affect the calculation of the credit shall only  
119 include expenditures for research conducted in the Commonwealth.

120 B. The tax imposed for a taxable year pursuant to Article 2 (§ 58.1-320 et seq.), Article 6

121 (§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of this chapter  
 122 shall first be reduced by the amount of any credit allowed pursuant to Article 3 (§ 58.1-330 et seq.) of  
 123 this chapter, then by any credit allowed pursuant to Article 7 (§ 58.1-370 et seq.) of this chapter, then  
 124 by any credit allowed pursuant to Article 13 (§ 58.1-430 et seq.) of this chapter, and then by any credit  
 125 allowed pursuant to § 58.1-424, prior to applying any credits allowable pursuant to this section.

126 C. The amount of the credits applied under this section against the tax imposed pursuant to Article 2  
 127 (§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10  
 128 (§ 58.1-400 et seq.) of this chapter for a taxable year shall not exceed fifty percent of the tax liability  
 129 otherwise due. Notwithstanding any provisions of this article, no taxpayer shall be eligible to claim a  
 130 credit of more than \$500,000 per year under this section. Any credit not usable for the taxable year  
 131 may be carried over for credit against the taxpayer's income taxes until the either (i) the full amount of  
 132 the credit is used or (ii) the expiration of the tenth taxable year after the taxable year in which the  
 133 qualified research expenses were paid, whichever occurs first.

134 D. In no event shall more than five million dollars in credits be allowed for any taxable year;  
 135 however, if credits exceed five million dollars for a taxable year, they shall be allocated by the  
 136 Department of Taxation on a pro rata basis. If credits are less than five million dollars for a taxable  
 137 year, the unused amount shall be utilized in the succeeding taxable year in addition to the five million  
 138 dollars of credit allowed during that year.

139 § 58.1-426. Corporation tax benefit certificate program.

140 A. The Department, in consultation with the Authority, shall establish a corporation tax benefit  
 141 certificate program to allow technology and biotechnology companies to surrender unused but otherwise  
 142 allowable carry-over of research and development tax credits pursuant to § 58.1-424 for use by other  
 143 corporation taxpayers in Virginia on their corporation tax returns in exchange for private financial  
 144 assistance, in an amount equal to at least seventy-five percent of the amount of the surrendered tax  
 145 benefit, to be paid by the corporation taxpayer that is the recipient of the corporation tax benefit  
 146 certificate to the technology or biotechnology company to assist in funding its costs.

147 B. The Department, in cooperation with the Authority, shall review and approve applications from  
 148 technology or biotechnology companies with unused but otherwise allowable tax benefits to surrender  
 149 those tax benefits in exchange for private financial assistance paid pursuant to subsection A. Upon  
 150 approval, the Authority shall issue a corporate tax benefit certificate to the technology or biotechnology  
 151 company in the amount of the tax benefit surrendered.

152 C. The Department, in cooperation with the Authority, shall review and approve applications from  
 153 corporation taxpayers under Article 10 (§ 58.1-400 et seq.) of this chapter to acquire surrendered tax  
 154 benefit certificates approved and issued pursuant to subsection B.

155 D. The Department shall coordinate applications for surrender of unused but otherwise allowable tax  
 156 benefits and the acquisition of tax benefit certificates in a manner that best stimulates and encourages  
 157 the extension of private financial assistance to technology and biotechnology companies. Prior to the  
 158 transfer of any corporation tax benefit certificate, the Department shall require the technology or  
 159 biotechnology company and the corporation taxpayer to sign a written agreement that specifies the price  
 160 of the transfer and such other terms and conditions as the parties deem necessary, convenient, and  
 161 desirable.

162 § 58.1-427. Attachment of certificate to return.

163 A. A taxpayer that has acquired a corporation tax benefit certificate pursuant to § 58.1-425 that  
 164 includes the right to a research and development tax credit carry-over shall attach that certificate to  
 165 any return the taxpayer is required to file under Article 14 (§ 58.1-440 et seq.) of this chapter, and shall  
 166 otherwise apply the credit carry-over as evidenced by the certificate according to the provisions of  
 167 Article 14 of this chapter and any rules or regulations the Tax Commissioner may adopt to carry out  
 168 the provisions of this section.

169 B. A technology or biotechnology company that has surrendered or transferred an unused research  
 170 and development tax credit carry-over pursuant to § 58.1-425 shall not be allowed a research and  
 171 development tax credit carry-over based upon the right to such a credit carry-over.

172 § 58.1-428. Tax Commissioner to promulgate regulations.

173 The Tax Commissioner shall promulgate rules and regulations in accordance with the Administrative  
 174 Process Act (§ 9-6.14:1 et seq.) to carry out the provisions of this article.