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SENATE BILL NO. 1260

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—Quayle and Rerras

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 Investment Act.

§ 58.1-422. Short title.

This article shall be known and may be cited as the "Virginia Technology and Biotechnology Investment 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.

"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.

"Control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing eighty percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of eighty percent or more of the beneficial interest in the principal or income of the trust. The ownership of (i) stock in a corporation, (ii) a capital or profits interest in a partnership or association, or (iii) a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of § 267 of the Internal Revenue Code of 1986, 26 U.S.C. § 267, other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least eighty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent directly owns stock possessing at least eighty percent of the voting power of all classes of stock of at least one of the other corporations.

"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.

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

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

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust, estate, corporation, or sole proprietorship.

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

"Qualified investment" means the nonrefundable investment, at risk in a technology or biotechnology company, of cash that is transferred to such company by a taxpayer that is not a related person of such company, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein.

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

"Related person" means a corporation, partnership, association, or trust controlled by the taxpayer; an individual, corporation, partnership, association, or trust that is in the control of the taxpayer; a corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in the control of the taxpayer; or a member of the same controlled group as the taxpayer.

"Technology 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 technology for the purpose of developing or providing products or processes for specific commercial or public 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.

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

§ 58.1-424. Corporation tax credit for research and development investment.

A. For taxable years beginning on and after January 1, 2001, any technology or biotechnology company shall be allowed a credit against the income taxes imposed pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter in an amount equal to: (i) fifteen percent of the excess of the qualified research expenses for the taxable year over the base amount and (ii) fifteen percent of the basic research payments determined in accordance with § 41 of the Internal Revenue Code of 1986, 26 U.S.C. § 41, and provided that subsection (h) of 26 U.S.C. § 41 relating to termination shall not apply. The terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research," or any other terms determined by the Tax Commissioner to affect the calculation of the credit shall only include expenditures for research conducted in Virginia.

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

C. The tax imposed for a taxable year pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter shall first be reduced by the amount of any credit allowed pursuant to § 58.1-430, then by any credit allowed pursuant to § 58.1-435, then by any credit allowed pursuant to § 58.1-439, and then by any credit allowed pursuant to § 58.1-439.4, prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' taxable years. The amount of the credits applied under this section against the tax imposed pursuant to Article 10 of this

chapter for a taxable year shall not exceed fifty percent of the tax liability otherwise due. Notwithstanding any provisions of this article, no taxpayer shall be eligible to claim a credit of more than $500,000 per year under this section. In no event shall more than five million dollars in credits be allowed for any taxable year; however, if credits exceed five million dollars for a taxable year, they shall be allocated by the Department of Taxation on a pro rata basis. The amount of taxable year credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this subsection may be carried over, if necessary, to the ten taxable years following a credit's taxable year.

§ 58.1-425. Individual, estate, trust, partnership, and corporation tax credit for technology or biotechnology investment.

A. A taxpayer shall be allowed a credit against the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of this chapter in an amount equal to fifteen percent of each qualified investment made by the taxpayer during each of the five taxable years beginning on or after January 1, 2001, in a technology or biotechnology company, up to a maximum allowed credit of $500,000 for the taxable year for each qualified investment made by the taxpayer. Any unused credit may be carried over for use in future years pursuant to subsection D of this section, subject to the $500,000 per year limitation. In no event shall more than five million dollars in credits be allowed for any taxable year; however, if credits exceed five million dollars for a taxable year, they shall be allocated by the Department of Taxation on a pro rata basis.

B. A credit shall not be allowed pursuant to § 58.1-424 for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

C. The tax imposed for a taxable year pursuant to Article 2 (§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of this chapter shall first be reduced by the amount of any credit allowed pursuant to Article 3 (§ 58.1-330 et seq.), then by any credit allowed pursuant to Article 7 (§ 58.1-370 et seq.), then by any credit allowed pursuant to Article 13 (§ 58.1-430 et seq.), and then by any credit allowed pursuant to § 58.1-424, prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' taxable years. The amount of the credits applied under this section against the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of this chapter for a taxable year shall not exceed fifty percent of the tax liability otherwise due.

D. Except as provided in subsection E of this section, the amount of taxable year credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of subsection B of this section may be carried over, if necessary, to the ten taxable years following a credit's taxable year.

E. A taxpayer shall not carry over any amount of credit allowed under subsection A of this section to a taxable year during which a corporate acquisition occurred with respect to which the taxpayer was (i) a target corporation in a corporate acquisition or (ii) a party to a merger or a consolidation, or to any subsequent taxable year if the credit was allowed for a taxable year prior to the year of acquisition, merger, or consolidation. However, the taxpayer may carry over a credit allowed to the acquiring person if the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as the Tax Commissioner may require, the identity of the constituent corporation that was the acquiring person. As used in this subsection, "acquiring person" means the constituent corporation, the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

§ 58.1-426. Corporation tax benefit certificate program.

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

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

C. The Authority, in cooperation with the Department of Taxation, shall review and approve applications from corporation taxpayers under Article 10 (§ 58.1-400 et seq.) of this chapter to acquire

surrendered tax benefit certificates approved and issued pursuant to subsection B.

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

§ 58.1-427. Certificate requirement.

A. Attachment of certificate to return for net operating loss carry-over.

1. A taxpayer that has acquired a corporation tax benefit certificate pursuant to § 58.1-426 that includes the right to a net operating loss carry-over deduction shall attach that certificate to any return the taxpayer is required to file under Article 14 (§ 58.1-440 et seq.) of this chapter, and shall otherwise apply the net operating loss carry-over deduction as evidenced by the certificate according to the provisions of Article 14 of this chapter and any rules or regulations the Tax Commissioner may adopt to carry out the provisions of this article.

2. A technology or biotechnology company that has surrendered or transferred an unused net operating loss carryover pursuant to § 58.1-426 shall not be allowed a net operating loss carry-over deduction based upon the right to such a deduction.

B. Attachment of certificate to return for research and development tax credit carry-over.

1. A taxpayer that has acquired a corporation tax benefit certificate pursuant to § 58.1-426 that includes the right to a research and development tax credit carry-over shall attach that certificate to any return the taxpayer is required to file under Article 14 of this chapter, and shall otherwise apply the credit carry-over as evidenced by the certificate according to the provisions of Article 14 of this chapter and any rules or regulations the Tax Commissioner may adopt to carry out the provisions of this section.

2. A technology or biotechnology company that has surrendered or transferred an unused research and development tax credit carry-over pursuant to § 58.1-426 shall not be allowed a research and development tax credit carry-over based upon the right to such a credit carry-over.

§ 58.1-428. Tax Commissioner to promulgate regulations.

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