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HOUSE BILL NO. 56

Offered January 9, 2002
Prefiled December 13, 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 58.1-427, relating to the Virginia Technology and Biotechnology Investment Act.

Patron—Purkey

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 58.1-427, as follows:

Article 11.

Virginia Technology and Biotechnology Research and Development Act.

§ 58.1-422. 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 § 2.2-2219.

"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; 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

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59 *Food and Drug Administration.*

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

65 *"Qualified research expenses" means the same as that term is defined in § 41 of the Internal Revenue*
66 *Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, in the fields of advanced computing,*
67 *advanced materials, biotechnology, electronic device technology, environmental technology, or medical*
68 *device technology.*

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

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

78 *§ 58.1-423. Qualified research and development expenses tax credit.*

79 *A. For taxable years beginning on or after January 1, 2003, any technology or biotechnology*
80 *company shall be allowed a credit against the income taxes imposed pursuant to Article 10 (§ 58.1-400*
81 *et seq.) of Chapter 3 of this title in an amount equal to fifty percent of the excess of the qualified*
82 *research expenses for the taxable year over the base amount determined in accordance with § 41 of the*
83 *Internal Revenue Code of 1986, 26 U.S.C. § 41, and provided that subsection (h) of 26 U.S.C. § 41*
84 *relating to termination shall not apply. The terms "qualified research expenses," "base amount," or any*
85 *other terms determined by the Tax Commissioner to affect the calculation of the credit shall only*
86 *include expenditures for research conducted in the Commonwealth.*

87 *B. No credit shall be allowed under Article 13 (§ 58.1-430 et seq.) of Chapter 3 of this title or*
88 *§§ 63.1-323 and 63.1-324 for property or expenditures for which a credit is allowed, or which are*
89 *includable in the calculation of a credit allowed, under this section.*

90 *C. To the extent a technology company or a biotechnology company qualifies for a credit under this*
91 *section and § 58.1-424, the credit shall be taken under this section.*

92 *D. The tax imposed for a taxable year pursuant to Article 10 (§ 58.1-400 et seq.) of Chapter 3 of*
93 *this title shall first be reduced by the amount of any credit allowed pursuant to §§ 63.1-323 and*
94 *63.1-324, then by any credit allowed pursuant to § 58.1-435, then by any credit allowed pursuant to*
95 *§ 58.1-439, and then by any credit allowed pursuant to § 58.1-439.4, prior to applying any credits*
96 *allowable pursuant to this section.*

97 *E. The amount of the credits applied under this section against the tax imposed pursuant to Article*
98 *10 (§ 58.1-400 et seq.) of Chapter 3 of this title for a taxable year shall not exceed fifty percent of the*
99 *tax liability otherwise due. Notwithstanding any provisions of this article, no taxpayer shall be eligible*
100 *to claim a credit of more than \$500,000 per year under this section. Any credit not usable for the*
101 *taxable year may be carried over for credit against the taxpayer's income taxes until either (i) the full*
102 *amount of the credit is used or (ii) the expiration of the tenth taxable year after the taxable year in*
103 *which the qualified research expenses were paid, whichever occurs first.*

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

109 *§ 58.1-424. Basic research payment tax credit.*

110 *A. For taxable years beginning on or after January 1, 2003, a taxpayer shall be allowed a credit*
111 *against the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article*
112 *9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of Chapter 3 of this title in an amount equal*
113 *to fifty percent of the basic research payments determined in accordance with § 41 of the Internal*
114 *Revenue Code of 1986, 26 U.S.C. § 41, and provided that subsection (h) of 26 U.S.C. § 41 relating to*
115 *termination shall not apply. The terms "qualified organization base amount period," "basic research," or*
116 *any other terms determined by the Tax Commissioner to affect the calculation of the credit shall only*
117 *include expenditures for research conducted in the Commonwealth.*

118 *B. The tax imposed for a taxable year pursuant to Article 2 (§ 58.1-320 et seq.), Article 6*
119 *(§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10 (§ 58.1-400 et seq.) of Chapter 3 of*
120 *this title shall first be reduced by the amount of any credit allowed pursuant to Article 3 (§ 58.1-330 et*

121 *seq.) of Chapter 3 of this title, then by any credit allowed pursuant to Article 7 (§ 58.1-370 et seq.) of*
 122 *Chapter 3 of this title, then by any credit allowed pursuant to Article 13 (§ 58.1-430 et seq.) of Chapter*
 123 *3 of this title or §§ 63.1-323 and 63.1-324, and then by any credit allowed pursuant to § 58.1-423, prior*
 124 *to applying any credits allowable pursuant to this section.*

125 *C. The amount of the credits applied under this section against the tax imposed pursuant to Article 2*
 126 *(§ 58.1-320 et seq.), Article 6 (§ 58.1-360 et seq.), Article 9 (§ 58.1-390 et seq.), and Article 10*
 127 *(§ 58.1-400 et seq.) of Chapter 3 of this title for a taxable year shall not exceed fifty percent of the tax*
 128 *liability otherwise due. Notwithstanding any provisions of this article, no taxpayer shall be eligible to*
 129 *claim a credit of more than \$500,000 per year under this section. Any credit not usable for the taxable*
 130 *year may be carried over for credit against the taxpayer's income taxes until either (i) the full amount*
 131 *of the credit is used or (ii) the expiration of the tenth taxable year after the taxable year in which the*
 132 *qualified research expenses were paid, whichever occurs first.*

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

138 *§ 58.1-425. Corporation tax benefit certificate program.*

139 *A. The Department, in consultation with the Authority, shall establish a corporation tax benefit*
 140 *certificate program to allow technology and biotechnology companies to surrender unused but otherwise*
 141 *allowable carry-over of research and development tax credits pursuant to § 58.1-423 for use by other*
 142 *corporation taxpayers in Virginia on their corporation tax returns in exchange for private financial*
 143 *assistance, in an amount equal to at least seventy-five percent of the amount of the surrendered tax*
 144 *benefit, to be paid by the corporation taxpayer that is the recipient of the corporation tax benefit*
 145 *certificate to the technology or biotechnology company to assist in funding its costs.*

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

151 *C. The Department, in cooperation with the Authority, shall review and approve applications from*
 152 *corporation taxpayers under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of this title to acquire*
 153 *surrendered tax benefit certificates approved and issued pursuant to subsection B.*

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

161 *§ 58.1-426. Attachment of certificate to return.*

162 *A. A taxpayer that has acquired a corporation tax benefit certificate pursuant to § 58.1-424 that*
 163 *includes the right to a research and development tax credit carry-over shall attach that certificate to*
 164 *any return the taxpayer is required to file under Article 14 (§ 58.1-440 et seq.) of Chapter 3 of this title,*
 165 *and shall otherwise apply the credit carry-over as evidenced by the certificate according to the*
 166 *provisions of Article 14 of this chapter and any rules or regulations the Tax Commissioner may adopt*
 167 *to carry out the provisions of this section.*

168 *B. A technology or biotechnology company that has surrendered or transferred an unused research*
 169 *and development tax credit carry-over pursuant to § 58.1-424 shall not be allowed a research and*
 170 *development tax credit carry-over based upon the right to such a credit carry-over.*

171 *§ 58.1-427. Tax Commissioner to promulgate regulations.*

172 *The Tax Commissioner shall promulgate rules and regulations in accordance with the Administrative*
 173 *Process Act (§ 2.2-4000 et seq.) to carry out the provisions of this article.*