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HOUSE BILL NO. 2455

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 58.1-339.4 of the Code of Virginia, relating to the development of the biosciences and other technology industries in the Commonwealth; qualified equity and subordinated debt investments tax credit.

Patrons—O'Bannon, Sickles, Albo, Athey, Byron, Cosgrove, Hugo, Hull, Landes, Lohr, May, Miller, J.H., Nixon, Peace and Rust

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-339.4 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.

"Qualified business" means a business which (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and (v) is ~~not~~ primarily engaged, or is ~~not~~ primarily organized to engage, in any of the following types of businesses:

1. Banks;
2. Savings and loan institutions;
3. Credit or finance;
4. Financial, broker or investment;
5. Businesses organized for the primary purpose of rendering professional services as defined in Chapter 7 (§ 13.1-542 et seq.) of Title 13.1;
6. Accounting;
7. Government, charitable, religious or trade institutions or organizations;
8. Conventional coal, oil and gas, and mineral exploration;
9. Insurance;
10. Real estate design or engineering;
11. Construction or construction contracting;
12. Business consulting or business brokering;
13. Residential housing, real estate brokerage, sale or leasing businesses, or real estate development;

or

14. Any other business which the Department of Taxation determines by regulation to be against the public interest, the purposes of this section or in violation of the law.

the fields of advanced computing, advanced materials, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited

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58 liability company that (i) by its terms required no repayment of principal for the first three years after
59 issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other
60 person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or
61 state-chartered banking or savings and loan institutions.

62 B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit
63 against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such
64 taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer
65 that has committed capital under management in excess of \$10 million and engages in the business of
66 making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a
67 partner, shareholder, member or owner of an entity that engages in such business.

68 C. The amount of any credit attributable to a qualified investment by a partnership, electing small
69 business corporation (S corporation), or limited liability company shall be allocated to the individual
70 partners, shareholders, or members, as the case may be, as they may determine.

71 D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax
72 imposed for such taxable year or (ii) \$50,000. Any credit not usable for the taxable year in which the
73 credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or
74 until the total amount of the tax credit has been taken, whichever occurs first.

75 E. The amount of tax credits available under this section for a calendar year shall be \$5 million. *Of*
76 *the amount of available credits, one-half of the amount shall be allocated exclusively for credits for*
77 *commercialization investments. Such allocation of tax credits shall constitute the minimum amount of tax*
78 *credits to be allocated for commercialization investments. However, if the amount of tax credits*
79 *requested for commercialization investments is less than one-half of the total amount of credits available*
80 *under this section, the balance of such credits shall be allocated for qualified investments in any*
81 *qualified business under this section.*

82 F. Unless the taxpayer transfers the equity received in connection with a qualified investment as a
83 result of (i) the liquidation of the qualified business issuing such equity, (ii) the merger, consolidation or
84 other acquisition of such business with or by a party not affiliated with such business, or (iii) the death
85 of the taxpayer, any taxpayer that fails to hold such equity for at least three full calendar years
86 following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this
87 section shall forfeit both used and unused tax credits and in addition shall pay the Department of
88 Taxation interest on the total allowed credits at the rate of one percent per month, compounded monthly,
89 from the date the tax credits were allocated to the taxpayer. The Department of Taxation shall deposit
90 any amounts received under this subsection into the general fund of the Commonwealth.

91 G. Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in
92 accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for
93 claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among
94 taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the
95 available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of
96 Taxation shall permit an application for certification as a qualified business to be filed at any time
97 during the calendar year regardless of when the investment was made during the calendar year.

98 **2. That the provisions of this act shall apply to applications for credits made for taxable years**
99 **beginning on or after January 1, 2009. Nothing in this act shall be construed or interpreted to**
100 **affect any credits awarded to a taxpayer for taxable years prior to January 1, 2009.**