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HOUSE BILL NO. 1667

Offered January 13, 1999

A BILL to amend the Code of Virginia by adding in Title 58.1 an article numbered 11, consisting of sections numbered 58.1-422 through 58.1-430, relating to the Virginia Technology and Biotechnology Investment Act.

Patrons—Purkey, Albo, Almand, Bennett, Brink, Byron, Cantor, Clement, Davis, Diamonstein, Hall, Hamilton, Harris, Howell, Johnson, Jones, S.C., Katzen, Landes, May, McClure, Melvin, Moran, Nixon, Parrish, Plum, Rhodes, Robinson, Rollison, Scott, Shuler, Wagner and Watts; Senators: Howell and Schrock

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 58.1 an article numbered 11, consisting of sections numbered 58.1-422 through 58.1-430 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 Virginia Economic Development Partnership established pursuant to § 2.1-548.28.

"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 which add to that body of fundamental knowledge.

"Biotechnology company" means a corporation taxpayer (i) doing business, leasing or owning capital or property, or maintaining 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) 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 section 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 owns directly 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,

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60 tenant fit-out; working capital; benefits and compensation; research and development expenses; or any
61 other expenses determined by the Authority to be necessary and proper to carry out the purposes of this
62 article.

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

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

69 "Fixed assets" means any real property, interests in real property, physical plants or facilities;
70 equipment; or any other assets commonly accepted as fixed assets.

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

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

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

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

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

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

97 "Tax year" means the fiscal or calendar accounting year of a taxpayer.

98 "Technology company" means a corporation taxpayer (i) doing business, leasing or owning capital
99 or property, or maintaining an office, headquarters, or base of operations in Virginia; (ii) that (a) has
100 qualified research expenses paid or incurred in Virginia for research, development, production, or
101 provision of technology for the purpose of developing or providing products or processes for specific
102 commercial or public purposes, (b) conducts pilot scale manufacturing in Virginia, or (c) provides
103 services or products necessary for such research, development, production, or provision; and (iii) has
104 fewer than 100 employees, of whom seventy-five percent are Virginia-based employees filling positions
105 or jobs in Virginia.

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

107 § 58.1-424. Corporation tax credit for research and development investment.

108 A. Any technology or biotechnology company shall be allowed a credit against the income taxes
109 imposed pursuant to Article 10 (§ 58.1-400 et seq.) of Chapter 3 of this title in an amount equal to: (i)
110 ten percent of the excess of the qualified research expenses for the tax year over the base amount and
111 (ii) ten percent of the basic research payments determined in accordance with § 41 of the Internal
112 Revenue Code of 1986, 26 U.S.C. § 41, as in effect on June 30, 1992, and provided that subsection (h)
113 of 26 U.S.C. § 41 relating to termination shall not apply. The terms "qualified research expenses," "base
114 amount," "qualified organization base amount period," "basic research," or any other terms determined
115 by the Tax Commissioner to affect the calculation of the credit shall only include expenditures for
116 research conducted in Virginia.

117 B. No credit shall be allowed under Article 13 (§ 58.1-430 et seq.) of Chapter 3 of this title for
118 property or expenditures for which a credit is allowed, or which are includable in the calculation of a
119 credit allowed, under this section.

120 C. The tax imposed for a tax year pursuant to Article 10 (§ 58.1-400 et seq.) of Chapter 3 of this
121 title 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 under § 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' tax years. The amount of the credits applied under this section against the tax imposed pursuant to Article 10 (§ 58.1-400 et seq.) of Chapter 3 of this title for a tax year shall not exceed fifty percent of the tax liability otherwise due. The amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of this subsection may be carried over, if necessary, to the fifteen tax years following a credit's tax 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 Chapter 3 of this title in an amount equal to ten percent of the qualified investment made by the taxpayer during each of the three tax years beginning on or after January 1, 2000, in a technology or biotechnology company, up to a maximum allowed credit of \$500,000 for the tax 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.

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 tax 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 Chapter 3 of this title 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 under § 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' tax 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 Chapter 3 of this title for a tax 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 tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection B of this section may be carried over, if necessary, to the fifteen tax years following a credit's tax year.

E. A taxpayer shall not carry over any amount of credit allowed under subsection A of this section to a tax year during which a corporate acquisition 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 tax year if the credit was allowed for a tax 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 which 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. Carryover of net operating loss for certain taxpayers.

A technology or biotechnology company that has paid or incurred qualified research expenses shall be allowed to carry over a net operating loss for that tax year to up to a maximum of fifteen tax years following the year of the loss.

§ 58.1-427. Corporation tax benefit certificate program.

A. The Authority, pursuant to the general powers granted to it by § 2.1-548.35, 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 of this section. 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.

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

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

194 § 58.1-428. Attachment of certificate to return for net operating loss carry-over.

195 A. A taxpayer that has acquired a corporation tax benefit certificate pursuant to § 58.1-427 that
196 includes the right to a net operating loss carry-over deduction, shall attach that certificate to any return
197 the taxpayer is required to file under Article 14 (§ 58.1-440 et seq.) of Chapter 3 of this title, and shall
198 otherwise apply the net operating loss carry-over deduction as evidenced by the certificate according to
199 the provisions of Article 14 (§ 58.1-440 et seq.) of Chapter 3 of this title and any rules or regulations
200 the Tax Commissioner may adopt to carry out the provisions of this section.

201 B. A technology or biotechnology company that has surrendered or transferred an unused net
202 operating loss carryover pursuant to § 58.1-427 shall not be allowed a net operating loss carry-over
203 deduction based upon the right to such a deduction.

204 § 58.1-429. Attachment of certificate to return for research and development tax credit carry-over.

205 A. A taxpayer that has acquired a corporation tax benefit certificate pursuant to § 58.1-427 that
206 includes the right to a research and development tax credit carry-over, shall attach that certificate to
207 any return the taxpayer is required to file under Article 14 (58.1-440 et seq.) of Chapter 3 of this title,
208 and shall otherwise apply the credit carry-over as evidenced by the certificate according to the
209 provisions of Article 14 (§ 58.1-440 et seq.) of Chapter 3 of this title and any rules or regulations the
210 Tax Commissioner may adopt to carry out the provisions of this section.

211 B. A technology or biotechnology company that has surrendered or transferred an unused research
212 and development tax credit carryover pursuant to § 58.1-427 shall not be allowed a research and
213 development tax credit carry-over based upon the right to such a credit carry-over.

214 § 58.1-430. Reporting requirement.

215 On or before January 1, 2001, and on or before every January 1 thereafter, the Tax Commissioner
216 shall provide a report to the chairmen of the House Appropriations, House Finance, and Senate Finance
217 Committees which summarizes information on the implementation, use, and amount of tax credits and
218 corporation tax benefit certificate surrenders and transfers authorized in this article.