



http://www.bioregionnews.com/issues/2_27/features/148024-1.html

7-7-08

Amid heavy life-sci lobbying, California Assembly OKs Net-Loss Carry-Forward Bill

By Alex Philippidis

BioRegion News

July 7, 2008

Lobbying by California life-sciences leaders and their supporters in Sacramento has helped a key panel of the state legislature's upper house pass a bill aimed at doubling the amount of time biotech companies can carry forward tax deductions on their net operating losses.

In addition, supporters of the measure, which would double to 20 years the length of time life-science and other tech startups will have to write off losses, are scrambling to expand its incentive before the current legislative session ends Aug. 31, at which point all bills that have not been passed by both houses of California's legislature die.

The bill must still be passed by the state Senate and signed by the governor, who has previously endorsed it.

The state Assembly's second-most powerful member, Assembly Speaker Pro Tempore Sally Lieber (D-Mountain View) told *BioRegion News* that lobbying by the state's top two regional life-sciences groups, a few industry executives, and lawmakers, including herself, succeeded in persuading the state Senate's most powerful member to advance the measure, known as Assembly Bill 1370.

"Working with the industry, with **BayBio**, with BIOCUM and with some of the CEOs, together we made the case for the legislation to the President Pro Tem[pore]" Don Perata (D-Oakland), Lieber said in an interview.

BayBio — the industry group representing life-sciences employers in the San Francisco Bay Area and northern California, and a key supporter of the bill — focused its lobbying on Perata and other Senate leaders, building on what the group's president and CEO Matthew Gardner said was support the industry had built in recent years from Democrats and Republicans.

In interviews with *BioRegion News*, Gardner and Lieber said one of their most important selling points was the bill's absence of any projected cost until fiscal 2019, when supporters say California would lose a projected \$300,000, based on the assumption that \$6 million in net operating losses set to expire that year would instead be carried forward.

The bill's low short-term cost is no small argument this year as lawmakers strive to plug a \$15.2 billion budget shortfall blamed largely on the sputtering economy.

"We still think the fact there's no cost to this bill until the year 2019 keeps [AB 1370] on the table, even in a bad budget year," Gardner told *BRN*. "Both sides of the aisle want to support the industry. We have a tremendous audience on both sides of the aisle. They have been receptive

and responsive. But even though there is a Democratic leader who sponsored the bill, because of the budget situation this year, the legislature still has this deficit to deal with first that wasn't there last year."

Gov. Arnold Schwarzenegger, a Republican, and the Democrats who currently lead California's Assembly and state Senate are already late with a budget for the fiscal year that started July 1 after sparring over what and how much to cut, and whether taxes should be raised. Schwarzenegger says no to tax hikes while legislative leaders have said yes.

The political tug-of-war continued into last week as state Democratic leaders heaped criticism on Schwarzenegger for a joke he made in response to a press question about how soon the state will run out of money: "Not at this point. As a matter of fact, I still have some left," the governor quipped, brandishing a wad of his own cash within a money clip.

Gardner spoke to *BRN* June 26, and Lieber June 27 — two days after the Senate Committee on Revenue and Taxation's June 25 vote to approve AB 1370, which had been pending before the committee for almost a year. [[BRN, July 9, 2007](#)].

The measure, seen [here](#), would double from the current 10 years to 20 years the length of time life sciences and other tech startups have to write off losses. The 20-year rule, which would bring California in line with 28 other states and the federal government, is designed to reflect the roughly 15 years it takes biotech and pharma companies to develop and obtain approval for a new drug.

Lieber first introduced the NOL carry-forward provision in 2006 as part of a broader biotech bill that died in committee. Last year, Lieber split that measure into separate bills: an unsuccessful bill that would allow biotech companies to sell unused net operating losses, and the current AB 1370, which Lieber introduced Feb. 23, 2007, with Assembly members Mary Hayashi (D-Hayward) and Gene Mullin (D-South San Francisco), who also chairs the Assembly's Select Committee on Biotechnology. That bill passed the Assembly in June 6, 2007, and advanced a day later to the state Senate, where it sat in the rev-tax committee until last month's vote.

Since then, AB 1370 has advanced to the Senate Appropriations Committee, chaired by Sen. Tom Torlakson (D-Antioch). The appropriations panel is typically a Senate bill's final stop before it reaches the full Senate for debate, and, ultimately a vote.

Lieber told *BRN* she and industry leaders are hoping for a quick vote and a quick passage by the Senate over the summer. They will have to wait at least another week because AB 1370 was not included in the appropriations committee's July 7 meeting [agenda](#).

As this issue went to press, AB 1370 had not been scheduled to be debated before any future appropriations committee meeting. Torlakson has not weighed in on the legislation; typically he does not do so until a bill is headed for a committee vote, a spokesman said.

Schwarzenegger publicly endorsed the bill late last month during the Biotechnology Industry Organization's 2008 International Convention, held in San Diego, by telling *BRN* that California would extend the NOL carry-forward, adding: "Trust me on that" [[BRN, June 23](#)].

For Lieber and life-sciences leaders, time is of the essence. Bills not passed by both houses of California's legislature die once the legislative session ends on Aug. 31.

As a result, biotech advocates have pressed the state to include the NOL carry-forward measure as part of whatever new state budget agreement Schwarzenegger and legislative leaders can

craft, said Gardner and Jimmy Jackson, vice president of public policy and communications for San Diego-based BIOCOM.

"If it is part of the budget talks — [and] it is in some ways, because it's part of a bigger, global [legislative] solution — it is much more likely to be able to pass than perhaps if it were to stand alone, which people have been trying to do for years, and not being successful," Jackson said. "We're trying to make this part of a responsible budget."

Gardner said the NOL carry-forward bill is "among several of the other initiatives that are in a discussion about what the final budget is going to look like."

Jackson also told *BRN* that lawmakers have given serious thought to temporarily reducing in-state NOL deductions — one of several budget-cutting recommendations made to lawmakers in February by the state's Legislative Analyst Office, headed by Elizabeth Hill [[BRN, March 3](#)].

Hill's office recommended limiting net operating loss deductions to 50 percent of a taxpayer's net income in a given year; there is no limit at present. The reduction is projected to generate \$330 million for the state in FY 2008-09 and \$410 million in the following fiscal year.

If the cutback has to take place, it should be the basis of a deal tied to extending the NOL carry-forward, Jackson said.

"We understand that the state needs the revenue now, and that a likely source may be the net-operating-loss carry-forward" legislation, Jackson said. "Our lobbyist has, at our instruction, been arguing that if, as is likely, the [bill] ends up being suspended for two years, what we would like to see out of the back end of that is that we get conformity to the federal 20-year carry-forward provision.

"This will be what we need going forward," Jackson added.

BIOCOM and BayBio have been joined in championing AB 1370 by the biomedical public policy research group California Healthcare Institute; by the regional business organization Silicon Valley Leadership Group; and three California companies: biotherapeutics developer AvidBiotics; cancer drug maker Kosan BioSciences; and Presido Pharmaceuticals.

Gardner said the effort to pass AB 1370 had created common ground among his group, BIOCOM, and the Southern California Biomedical Council, or SoCalBio — momentum the groups hope to continue by lobbying together on other state issues through their new California Life Science Alliance, announced at the California Pavilion during BIO 2008

BIO 2008 was where Schwarzenegger announced that he would support AB 1370 and oppose a proposal to partially roll back the state's research and development tax credit. Hill has also proposed limiting to two-thirds of a taxpayer's liability the amount that can be claimed in any one year. Hill's office projected the cutback would raise \$355 million in the fiscal year that started July 1, and \$290 million the fiscal year that starts July 1, 2009.

While Hill has cited the state's gaping budget hole in her support of limiting the R&D tax credit, the proposal has angered BayBio and other life-science advocates, which argue that it would cause companies to leave California or to expand their operations outside the state.

"When you have an economy that's slowing down, you don't want to put the brakes on an industry that's investing in California the way that we do," Gardner said at BIO 2008. "It still seems fairly cut and dry to us that [AB 1370] is a no-brainer."

