## **SENATE BILL 485**

 $\begin{array}{c} 1 lr 2439 \\ CF HB 587 \end{array}$ 

By: Senators King, DeGrange, Madaleno, Manno, and Young

Introduced and read first time: February 4, 2011

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2011

CHAPTER \_\_\_\_\_

## AN ACT concerning

1

2

3

18

## Biotechnology Investment Tax Credit – Application and Approval Procedures Qualified Maryland Biotechnology Company

FOR the purpose of requiring that an application for the biotechnology investment tax 4 5 credit state the amount of the proposed investment; modifying the application 6 approval process under the credit to treat all first-day applicants as if 7 applications were delivered simultaneously for purposes of distributing the tax credit; repealing a certain limitation on the credit allowed to a qualified 8 9 investor; altering a certain recapture provision under the credit; defining a 10 certain term and modifying a certain definition under the credit; altering the 11 definition of qualified Maryland biotechnology company for purposes of the biotechnology investment tax credit for certain fiscal years to allow investments 12 in certain companies that have been in active business for up to a certain 13 number of years to qualify for the credit; defining a certain term; providing for 14 the application of this Act; and generally relating to the Maryland 15 16 Biotechnology Investment Tax Credit.

17 BY repealing and reenacting, with amendments,

Article – Tax – General

19 Section 10–725(a)(7)

20 Annotated Code of Maryland

21 (2010 Replacement Volume)

22 BY adding to

23 Article – Tax – General

## EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 2 3	Section 10–725(a)(8) Annotated Code of Maryland (2010 Replacement Volume)
4 5	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
6	Article - Tax - General
7	10–725.
8	(a) (1) In this section the following words have the meanings indicated.
9 10 11 12 13	(2) "Biotechnology company" means a company organized for profit that is primarily engaged in the research, development, or commercialization of innovative and proprietary technology that comprises, interacts with, or analyzes biological material including biomolecules (DNA, RNA, or protein), cells, tissues, or organs.
14 15 16	(3) (i) "Company" means any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit.
17	(ii) "Company" does not include a sole proprietorship.
18 19	(4) "Department" means the Department of Business and Economic Development.
20 21 22 23 24 25	(5) (i) "Investment" means the contribution of money in cash or cash equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland biotechnology company in exchange for stock, a partnership or membership interest, or other ownership interest in the equity of the qualified Maryland biotechnology company, title to which ownership interest shall vest in the qualified investor.
26	(ii) "Investment" does not include debt.
27 28 29	(iii) For purposes of this section, an investment is at risk of loss when its repayment entirely depends upon the success of the business operations of the qualified company.
30 31 32	(6) (i) "Qualified investor" means any individual or entity that invests at least \$25,000 in a qualified Maryland biotechnology company and that is required to file an income tax return in any jurisdiction.
33 34	(ii) "Qualified investor" does not include a qualified pension plan, individual retirement account, or other qualified retirement plan under the

1 2 3	Employee Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under such plans, or similar tax-favored plans or entities under the laws of other countries.
4 5	(a) (7) (i) "Qualified Maryland biotechnology company" means a biotechnology company that:
6 7	1. has its headquarters and base of operations in this State;
8	2. has fewer than 50 full–time employees;
9 10	3. except as provided in subparagraph (ii) of this paragraph, has been in active business no longer than 10 years;
11 12	4. does not have its securities publicly traded on any exchange; and
13 14	5. has been certified as a biotechnology company by the Department.
15	(ii) "Qualified Maryland biotechnology company" includes:
16 17 18	1. a company that has been in active business for up to 12 years if the Department determines that the company requires additional time to complete the process of regulatory approval; AND
19 20	2. FOR FISCAL YEARS $2012_{\bar{7}}$ AND $2013_{\bar{7}}$ AND $2014$ ONLY, A COMPANY THAT HAS BEEN IN ACTIVE BUSINESS FOR UP TO 15 YEARS.
21 22	(8) "SECRETARY" MEANS THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT.
23 24 25 26 27 28	(b) (1) Subject to paragraphs (2) and (3) of this subsection and subsections (d) and (e) of this section, for the taxable year in which an investment in a qualified Maryland biotechnology company is made, a qualified investor may claim a credit against the State income tax in an amount equal to the amount of tax credit stated in the final credit certificate approved by the Secretary for the investment as provided under this section.
29 30	(2) To be eligible for the tax credit described in paragraph (1) of this subsection, the qualified investor shall be:
31 32	(i) for a company, duly organized and in good standing in the jurisdiction under the laws under which it is organized;

-	
1	(ii) for a company, in good standing and authorized or registered
2	to do business in the State;
0	(:::)
3	(iii) current in the payment of all tax obligations to the State or
4	any unit or subdivision of the State; and
~	(i-)
5	(iv) not in default under the terms of any contract with,
6	indebtedness to, or grant from the State or any unit or subdivision of the State.
7	(3) To be eligible for the tax credit described in paragraph (1) of this
8	subsection, the qualified investor may not, after making the proposed investment, own
9	or control more than 25% of the equity interests in the qualified Maryland
10	biotechnology company in which the investment is to be made.
10	biologimology company in which the investment is to be made.
11	(c) (1) (I) At least 30 days prior to making an investment in a
12	qualified Maryland biotechnology company for which a qualified investor would be
13	eligible for an initial tax credit certificate under subsection (b) of this section, the
14	qualified investor shall submit an application to the Department.
1 F	(II) THE ADDITION OF THE CHARLES AND THE
15	(H) THE APPLICATION SHALL STATE THE AMOUNT OF THE
16	PROPOSED INVESTMENT.
1 🗖	(a) (D) 1: (: 1 11 :1 (1 (1 1:0:1 1)) 1 1
17	(2) The application shall evidence that the qualified Maryland
18	<del>biotechnology company is:</del>
19	(i) in good standing;
19	<del>(i)</del> i <del>n good standing;</del>
20	(ii) current in the payment of all tax obligations to the State or
21	any unit or subdivision of the State; and
<b>4</b> 1	any and of bubarrision of the blade, and
22	(iii) not in default under the terms of any contract with,
23	indebtedness to, or grant from the State or any unit or subdivision of the State.
	indestediness to, of grant from the state of any anni of sustriction of the state.
24	(3) (I) [The] SUBJECT TO SUBPARAGRAPH (II) OF THIS
25	PARAGRAPH, THE Department shall:
20	Trivitation in Title Department Shan.
26	(i) 1. approve all applications that qualify for credits under
27	this section on a first come first served basis; and
	tino socion on a mot como mot servoa sasis, ana
28	(ii) 2. within 30 CALENDAR days of receipt of an
29	application, [certify the amount of any approved tax credits] ISSUE AN INITIAL TAX
30	CREDIT CERTIFICATE to a qualified investor.
31	(H) 1. FOR EACH FISCAL YEAR, THE DEPARTMENT
32	SHALL DESIGNATE THE FIRST DAY ON WHICH APPLICATIONS WILL BE
33	ACCEPTED.

1	2. THE DEPARTMENT SHALL TREAT ALL
2	APPLICATIONS RECEIVED ON THE DESIGNATED FIRST DAY AS BEING RECEIVED
3	SIMULTANEOUSLY FOR PURPOSES OF APPROVAL.
4	(4) (i) After the date on which the Department issues an initial tax
5	credit certificate under this section, a qualified investor shall have 30 calendar days to
$\frac{3}{6}$	make an investment in a qualified Maryland biotechnology company under this
7	section.
•	
8	(ii) Within 10 calendar days after the date on which a qualified
9	investor makes the investment, the qualified investor shall provide to the Department
10	notice and proof of the making of the investment, including:
11	1. the date of the investment;
12	2. the amount invested;
13	3. proof of the receipt of the invested funds by the
14	qualified Maryland biotechnology company;
15	4. a complete description of the nature of the ownership
16	interest in the equity of the qualified Maryland biotechnology company acquired in
17	consideration of the investment; and
1.0	
18	5. any reasonable supporting documentation the
19	Department may require.
20	(iii) If a qualified investor does not provide the notice and proof
21	of the making of the investment required in subparagraph (ii) of this paragraph within
$\frac{21}{22}$	40 calendar days after the date on which the Department issues an initial tax credit
23	certificate under this section:
_0	continuate under time section.
24	1. the Department shall rescind the initial tax credit
25	certificate; and
26	2. the credit amount allocated to the rescinded
27	certificate shall revert to the Maryland Biotechnology Investment Tax Credit Reserve
28	Fund and shall be available in the applicable fiscal year for allocation by the
29	Department to other initial tax credit certificates in accordance with the provisions of
30	this section.
31	(d) (1) [The] SUBJECT TO SUBSECTION (D-1) OF THIS SECTION, THE
32	tax credit allowed in an initial tax credit certificate issued under this section is 50% of
33	the PROPOSED investment in a qualified Maryland biotechnology company [, not to
34	exceed \$250,000].

35 36

1	(2) During any fiscal year, the Secretary may not certify eligibility for
2	tax credits for investments in a single qualified Maryland biotechnology company that
3	in the aggregate exceed 15% of the total appropriations to the Maryland Biotechnology
4	Investment Tax Credit Reserve Fund for that fiscal year.
5	(3) If the tax credit allowed under this section in any taxable year
6	exceeds the total tax otherwise payable by the qualified investor for that taxable year,
7	the qualified investor may claim a refund in the amount of the excess.
8	(D-1) (1) IF THE AMOUNT OF TAX CREDITS APPLIED FOR BY ALL
9	QUALIFIED INVESTORS SUBMITTING APPLICATIONS ON THE FIRST DAY ON
10	WHICH APPLICATIONS ARE ACCEPTED FOR A FISCAL YEAR EXCEEDS THE
11	MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION:
12	(I) WITHIN 30 CALENDAR DAYS OF RECEIPT OF AN
13	APPLICATION THE DEPARTMENT SHALL ISSUE A PRELIMINARY INITIAL TAX
14	CREDIT CERTIFICATE TO EACH FIRST-DAY APPLICANT THAT STATES A MINIMUM
15	TAX CREDIT AVAILABLE, EQUAL TO THE PRODUCT OF MULTIPLYING 50% OF THE
16	APPLICANT'S PROPOSED INVESTMENT TIMES A FRACTION:
17	1. THE NUMERATOR OF WHICH IS THE MAXIMUM
18	AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION; AND
19	2. THE DENOMINATOR OF WHICH IS 50% OF THE
20	TOTAL OF THE PROPOSED INVESTMENTS BY ALL FIRST-DAY APPLICANTS; AND
21	(H) THE DEPARTMENT SHALL ISSUE A REVISED INITIAL TAX
22	CREDIT CERTIFICATE TO EACH FIRST-DAY APPLICANT BASED ON THE ACTUAL
23	AMOUNTS INVESTED BY FIRST-DAY APPLICANTS, AS REFLECTED IN THE NOTICE
24	AND PROOF OF MAKING THE INVESTMENT REQUIRED UNDER SUBSECTION
25	(C)(4)(H) OF THIS SECTION, THAT STATES THE APPLICANT'S FINAL TAX CREDIT
26	EQUAL TO THE PRODUCT OF MULTIPLYING 50% OF THE APPLICANT'S ACTUAL
27	INVESTMENT TIMES A FRACTION:
28	1. THE NUMERATOR OF WHICH IS THE MAXIMUM
29	AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION; AND
30	2. THE DENOMINATOR OF WHICH IS THE LESSER OF
31	THE MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION
32	AND 50% OF THE TOTAL OF THE ACTUAL INVESTMENTS MADE BY ALL
33	FIRST-DAY APPLICANTS.
34	(2) IF THE MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E)

OF THIS SECTION IS GREATER THAN 50% OF THE TOTAL OF THE ACTUAL

INVESTMENTS MADE BY FIRST-DAY APPLICANTS, THE EXCESS SHALL BE

1	AVAILABLE FOR ALLOCATION TO OTHER INITIAL TAX CREDIT CERTIFICATES IN
2	ACCORDANCE WITH SUBSECTION (C)(4)(III)2 OF THIS SECTION.
3	(e) (1) In this subsection, "Reserve Fund" means the Maryland
4	Biotechnology Investment Tax Credit Reserve Fund established under paragraph (2)
5	of this subsection.
0	of this subsection.
6	(2) (i) There is a Biotechnology Investment Tax Credit Reserve
7	Fund which is a special continuing, nonlapsing fund that is not subject to § 7-302 of
8	the State Finance and Procurement Article.
9	(ii) The money in the Fund shall be invested and reinvested by
10	the Treasurer, and interest and earnings shall be credited to the General Fund.
10	the freasurer, and interest and earnings shall be tredited to the General Fund.
11	(3) (i) Subject to the provisions of this subsection, the Secretary
12	shall issue an initial tax credit certificate for each approved investment in a qualified
13	Maryland biotechnology company eligible for a tax credit.
14	(ii) [An] Subject to subsection (D-1) of this section,
15	AN initial tax credit certificate issued under this subsection shall state the maximum
16	
10	amount of tax credit for which the qualified investor is eligible.
17	(iii) 1. Except as otherwise provided in this subparagraph,
18	for any fiscal year, the Secretary may not issue initial tax credit certificates for credit
19	amounts in the aggregate totaling more than the amount appropriated to the Reserve
20	Fund for that fiscal year in the State budget as approved by the General Assembly.
21	2. If the aggregate credit amounts under initial tax
22	credit certificates issued in a fiscal year total less than the amount appropriated to the
23	Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve
24	Fund and may be issued under initial tax credit certificates for the next fiscal year.
0.5	
25 26	3. For any fiscal year, if funds are transferred from the
26	Reserve Fund under the authority of any provision of law other than under paragraph
27	(4) of this subsection, the maximum credit amounts in the aggregate for which the
28	Secretary may issue initial tax credit certificates shall be reduced by the amount
29	<del>transferred.</del>
30	(iv) For each fiscal year, the Governor shall include in the
31	budget bill an appropriation to the Reserve Fund.
32	(v) Notwithstanding the provisions of § 7-213 of the State
33	Finance and Procurement Article, the Governor may not reduce an appropriation to
34	the Reserve Fund in the State budget as approved by the General Assembly.

1	(vi) Based on the actual amount of an investment made by a
2	qualified investor, the Secretary shall issue a final tax credit certificate to the
3	qualified investor.
4	(4) (i) Except as provided in this paragraph, money appropriated to
5	the Reserve Fund shall remain in the Fund.
6	(ii) 1. Within 15 days after the end of each calendar quarter.
7	the Department shall notify the Comptroller as to each final credit certificate issued
8	during the quarter:
9	A. the maximum credit amount stated in the initial tax
10	credit certificate for the investment; and
11	B. the final certified credit amount for the investment.
12	2. On notification that an investment has been certified,
13	the Comptroller shall transfer an amount equal to the credit amount stated in the
14	initial tax credit certificate for the investment from the Reserve Fund to the General
15	<del>Fund.</del>
16	(f) (1) The credit claimed under this section shall be recaptured as
17	provided in paragraph (2) of this subsection if within 2 years from the close of the
18	taxable year for which the credit is claimed:
19	(i) the qualified investor sells, transfers, or otherwise disposes
20	of the ownership interest in the qualified Maryland biotechnology company that gave
21	rise to the credit-AND THE SECRETARY DETERMINES THAT THE SALE, TRANSFER,
22	OR DISPOSAL WILL RESULT IN A DECREASE IN FUTURE ECONOMIC ACTIVITY IN
23	MARYLAND; or
24	(ii) the qualified Maryland biotechnology company that gave
25	rise to the credit [ceases operating as an active business with] RELOCATES its
26	headquarters and base of operations [in] OUT OF the State.
27	(2) The amount required to be recaptured under this subsection is the
28	product of multiplying:
29	(i) the total amount of the credit claimed or, in the case of an
30	event described in paragraph (1)(i) of this subsection, the portion of the credit
31	attributable to the ownership interest disposed of; and
32	(ii) 1. 100%, if the event requiring recapture of the credit
33	occurs during the taxable year for which the tax credit is claimed;

1	2. 67%, if the event requiring recapture of the credit
2	occurs during the first year after the close of the taxable year for which the tax credit
3	<del>is claimed; or</del>
4	3. 33%, if the event requiring recapture of the credit
4 5	occurs more than 1 year but not more than 2 years after the close of the taxable year
	for which the tax credit is claimed.
6	tor which the tax credit is claimed.
7	(3) The qualified investor that claimed the credit shall pay the amount
8	to be recaptured as determined under paragraph (2) of this subsection as taxes
9	payable to the State for the taxable year in which the event requiring recapture of the
10	eredit occurs.
11	
11	(g) (1) The Department may revoke its initial or final certification of an
12	approved credit under this section if any representation in connection with the
13	application for the certification is determined by the Department to have been false
14	when made.
15	(2) The revocation may be in full or in part as the Department may
16	determine and, subject to paragraph (3) of this subsection, shall be communicated to
17	the qualified investor and the Comptroller.
	the qualities investor and the computation.
18	(3) The qualified investor shall have an opportunity to appeal any
19	revocation to the Department prior to notification of the Comptroller.
20	(4) The Comptroller may make an assessment against the qualified
21	investor to recapture any amount of tax credit that the qualified investor has already
22	<del>claimed.</del>
23	(h) (1) On or before January 10 of each year, the Department shall report
24	to the Governor and, subject to § 2-1246 of the State Government Article, to the
25	General Assembly, on the initial tax credit certificates awarded under this section for
26	the prior calendar year.
27	(2) The report required under paragraph (1) of this subsection shall
28	include for each initial tax credit certificate awarded:
20	include for each finitial tax credit certificate awarded.
29	(i) the name of the qualified investor and the amount of credit
30	awarded or allocated to each investor;
00	awaraca of anocated to each investor,
31	(ii) the name and address of the qualified Maryland
32	biotechnology company that received the investment giving rise to the credit under
33	this section and the county where the qualified Maryland biotechnology company is
34	located; and
35	(iii) the dates of receipt and approval by the Department of all
36	applications for initial tax credit certificates.

1	(3) The report required under paragraph (1) of this subsection shall
2	summarize for the category of qualified investors:
3	(i) the total number of applicants for initial tax credit
4	certificates under this section in each calendar year;
5	(ii) the number of applications for which initial tax credit
6	certificates were issued in each calendar year; and
7	(iii) the total initial tax credit certificates authorized under this
8	section for all calendar years under this section.
9	(i) The Department and the Comptroller jointly shall adopt regulations to
10 11	carry out the provisions of this section and to specify criteria and procedures for application for, approval of, and monitoring continuing eligibility for the tax credit
12	under this section.
13	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14	June 1, 2011, and shall be applicable to initial tax credit certificates issued under the
15	Maryland Biotechnology Investment Tax Credit for fiscal years beginning on or after
16	July 1, 2011.
	Approved:
	Governor.
	President of the Senate.
	Speaker of the House of Delegates.