SENATE BILL 485

Q3 1lr2439
CF HB 587

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

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 credit state the amount of the proposed investment; modifying the application approval process under the credit to treat all first–day applicants as if applications were delivered simultaneously for purposes of distributing the tax credit; repealing a certain limitation on the credit allowed to a qualified investor; altering a certain recapture provision under the credit; defining a certain term and modifying a certain definition under the credit;~~ altering the definition of qualified Maryland biotechnology company for purposes of the biotechnology investment tax credit for certain fiscal years to allow investments in certain companies that have been in active business for up to a certain number of years to qualify for the credit; defining a certain term; providing for the application of this Act; and generally relating to the Maryland Biotechnology Investment Tax Credit.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–725(a)(7)
Annotated Code of Maryland
(2010 Replacement Volume)

BY adding to
Article – Tax – General

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Section 10–725(a)(8)
Annotated Code of Maryland
(2010 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

10–725.

~~(a) (1) In this section the following words have the meanings indicated.~~

~~(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.~~

~~(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.~~

~~(ii) "Company" does not include a sole proprietorship.~~

~~(4) "Department" means the Department of Business and Economic Development.~~

~~(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.~~

~~(ii) "Investment" does not include debt.~~

~~(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.~~

~~(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.~~

~~(ii) "Qualified investor" does not include a qualified pension plan, individual retirement account, or other qualified retirement plan under the~~

~~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.~~

(a) (7) (i) "Qualified Maryland biotechnology company" means a biotechnology company that:

1. has its headquarters and base of operations in this State;

2. has fewer than 50 full–time employees;

3. except as provided in subparagraph (ii) of this paragraph, has been in active business no longer than 10 years;

4. does not have its securities publicly traded on any exchange; and

5. has been certified as a biotechnology company by the Department.

(ii) "Qualified Maryland biotechnology company" includes**:**

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**

2. FOR FISCAL YEARS 2012~~,~~ AND 2013~~, AND 2014~~ ONLY, A COMPANY THAT HAS BEEN IN ACTIVE BUSINESS FOR UP TO 15 YEARS.

(8) "SECRETARY" MEANS THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT.

~~(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.~~

~~(2) To be eligible for the tax credit described in paragraph (1) of this subsection, the qualified investor shall be:~~

~~(i) for a company, duly organized and in good standing in the jurisdiction under the laws under which it is organized;~~

~~(ii) for a company, in good standing and authorized or registered to do business in the State;~~

~~(iii) current in the payment of all tax obligations to the State or any unit or subdivision of the State; and~~

~~(iv) not in default under the terms of any contract with, indebtedness to, or grant from the State or any unit or subdivision of the State.~~

~~(3) To be eligible for the tax credit described in paragraph (1) of this subsection, the qualified investor may not, after making the proposed investment, own or control more than 25% of the equity interests in the qualified Maryland biotechnology company in which the investment is to be made.~~

~~(c) (1) **(I)** At least 30 days prior to making an investment in a qualified Maryland biotechnology company for which a qualified investor would be eligible for an initial tax credit certificate under subsection (b) of this section, the qualified investor shall submit an application to the Department.~~

~~**(II) THE APPLICATION SHALL STATE THE AMOUNT OF THE PROPOSED INVESTMENT.**~~

~~(2) The application shall evidence that the qualified Maryland biotechnology company is:~~

~~(i) in good standing;~~

~~(ii) current in the payment of all tax obligations to the State or any unit or subdivision of the State; and~~

~~(iii) not in default under the terms of any contract with, indebtedness to, or grant from the State or any unit or subdivision of the State.~~

~~(3) **(I)** **[**The**]** **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** Department shall:~~

~~**[**(i)**]** **1.** approve all applications that qualify for credits under this section on a first come first served basis; and~~

~~**[**(ii)**]** **2.** within 30 **CALENDAR** days of receipt of an application, **[**certify the amount of any approved tax credits**]** **ISSUE AN INITIAL TAX CREDIT CERTIFICATE** to a qualified investor.~~

~~**(II) 1. FOR EACH FISCAL YEAR, THE DEPARTMENT SHALL DESIGNATE THE FIRST DAY ON WHICH APPLICATIONS WILL BE ACCEPTED.**~~

~~**2. THE DEPARTMENT SHALL TREAT ALL APPLICATIONS RECEIVED ON THE DESIGNATED FIRST DAY AS BEING RECEIVED SIMULTANEOUSLY FOR PURPOSES OF APPROVAL.**~~

~~(4) (i) After the date on which the Department issues an initial tax credit certificate under this section, a qualified investor shall have 30 calendar days to make an investment in a qualified Maryland biotechnology company under this section.~~

~~(ii) Within 10 calendar days after the date on which a qualified investor makes the investment, the qualified investor shall provide to the Department notice and proof of the making of the investment, including:~~

~~1. the date of the investment;~~

~~2. the amount invested;~~

~~3. proof of the receipt of the invested funds by the qualified Maryland biotechnology company;~~

~~4. a complete description of the nature of the ownership interest in the equity of the qualified Maryland biotechnology company acquired in consideration of the investment; and~~

~~5. any reasonable supporting documentation the Department may require.~~

~~(iii) If a qualified investor does not provide the notice and proof of the making of the investment required in subparagraph (ii) of this paragraph within 40 calendar days after the date on which the Department issues an initial tax credit certificate under this section:~~

~~1. the Department shall rescind the initial tax credit certificate; and~~

~~2. the credit amount allocated to the rescinded certificate shall revert to the Maryland Biotechnology Investment Tax Credit Reserve Fund and shall be available in the applicable fiscal year for allocation by the Department to other initial tax credit certificates in accordance with the provisions of this section.~~

~~(d) (1) **[**The**] SUBJECT TO SUBSECTION (D-1) OF THIS SECTION, THE** tax credit allowed in an initial tax credit certificate issued under this section is 50% of the **PROPOSED** investment in a qualified Maryland biotechnology company**[**,not to exceed $250,000**]**.~~

~~(2) During any fiscal year, the Secretary may not certify eligibility for tax credits for investments in a single qualified Maryland biotechnology company that in the aggregate exceed 15% of the total appropriations to the Maryland Biotechnology Investment Tax Credit Reserve Fund for that fiscal year.~~

~~(3) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the qualified investor for that taxable year, the qualified investor may claim a refund in the amount of the excess.~~

~~(D–1) (1) IF THE AMOUNT OF TAX CREDITS APPLIED FOR BY ALL QUALIFIED INVESTORS SUBMITTING APPLICATIONS ON THE FIRST DAY ON WHICH APPLICATIONS ARE ACCEPTED FOR A FISCAL YEAR EXCEEDS THE MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION:~~

~~(I) WITHIN 30 CALENDAR DAYS OF RECEIPT OF AN APPLICATION THE DEPARTMENT SHALL ISSUE A PRELIMINARY INITIAL TAX CREDIT CERTIFICATE TO EACH FIRST–DAY APPLICANT THAT STATES A MINIMUM TAX CREDIT AVAILABLE, EQUAL TO THE PRODUCT OF MULTIPLYING 50% OF THE APPLICANT'S PROPOSED INVESTMENT TIMES A FRACTION:~~

~~1. THE NUMERATOR OF WHICH IS THE MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION; AND~~

~~2. THE DENOMINATOR OF WHICH IS 50% OF THE TOTAL OF THE PROPOSED INVESTMENTS BY ALL FIRST–DAY APPLICANTS; AND~~

~~(II) THE DEPARTMENT SHALL ISSUE A REVISED INITIAL TAX CREDIT CERTIFICATE TO EACH FIRST–DAY APPLICANT BASED ON THE ACTUAL AMOUNTS INVESTED BY FIRST–DAY APPLICANTS, AS REFLECTED IN THE NOTICE AND PROOF OF MAKING THE INVESTMENT REQUIRED UNDER SUBSECTION (C)(4)(II) OF THIS SECTION, THAT STATES THE APPLICANT'S FINAL TAX CREDIT EQUAL TO THE PRODUCT OF MULTIPLYING 50% OF THE APPLICANT'S ACTUAL INVESTMENT TIMES A FRACTION:~~

~~1. THE NUMERATOR OF WHICH IS THE MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION; AND~~

~~2. THE DENOMINATOR OF WHICH IS THE LESSER OF THE MAXIMUM AMOUNT SPECIFIED UNDER SUBSECTION (E) OF THIS SECTION AND 50% OF THE TOTAL OF THE ACTUAL INVESTMENTS MADE BY ALL FIRST–DAY APPLICANTS.~~

~~(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~~

~~AVAILABLE FOR ALLOCATION TO OTHER INITIAL TAX CREDIT CERTIFICATES IN ACCORDANCE WITH SUBSECTION (C)(4)(III)2 OF THIS SECTION.~~

~~(e) (1) In this subsection, "Reserve Fund" means the Maryland Biotechnology Investment Tax Credit Reserve Fund established under paragraph (2) of this subsection.~~

~~(2) (i) There is a Biotechnology Investment Tax Credit Reserve Fund which is a special continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.~~

~~(ii) The money in the Fund shall be invested and reinvested by the Treasurer, and interest and earnings shall be credited to the General Fund.~~

~~(3) (i) Subject to the provisions of this subsection, the Secretary shall issue an initial tax credit certificate for each approved investment in a qualified Maryland biotechnology company eligible for a tax credit.~~

~~(ii) [An] SUBJECT TO SUBSECTION (D–1) OF THIS SECTION, AN initial tax credit certificate issued under this subsection shall state the maximum amount of tax credit for which the qualified investor is eligible.~~

~~(iii) 1. Except as otherwise provided in this subparagraph, for any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts in the aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal year in the State budget as approved by the General Assembly.~~

~~2. If the aggregate credit amounts under initial tax credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial tax credit certificates for the next fiscal year.~~

~~3. For any fiscal year, if funds are transferred from the Reserve Fund under the authority of any provision of law other than under paragraph (4) of this subsection, the maximum credit amounts in the aggregate for which the Secretary may issue initial tax credit certificates shall be reduced by the amount transferred.~~

~~(iv) For each fiscal year, the Governor shall include in the budget bill an appropriation to the Reserve Fund.~~

~~(v) Notwithstanding the provisions of § 7–213 of the State Finance and Procurement Article, the Governor may not reduce an appropriation to the Reserve Fund in the State budget as approved by the General Assembly.~~

~~(vi) Based on the actual amount of an investment made by a qualified investor, the Secretary shall issue a final tax credit certificate to the qualified investor.~~

~~(4) (i) Except as provided in this paragraph, money appropriated to the Reserve Fund shall remain in the Fund.~~

~~(ii) 1. Within 15 days after the end of each calendar quarter, the Department shall notify the Comptroller as to each final credit certificate issued during the quarter:~~

~~A. the maximum credit amount stated in the initial tax credit certificate for the investment; and~~

~~B. the final certified credit amount for the investment.~~

~~2. On notification that an investment has been certified, the Comptroller shall transfer an amount equal to the credit amount stated in the initial tax credit certificate for the investment from the Reserve Fund to the General Fund.~~

~~(f) (1) The credit claimed under this section shall be recaptured as provided in paragraph (2) of this subsection if within 2 years from the close of the taxable year for which the credit is claimed:~~

~~(i) the qualified investor sells, transfers, or otherwise disposes of the ownership interest in the qualified Maryland biotechnology company that gave rise to the credit~~ **AND THE SECRETARY DETERMINES THAT THE SALE, TRANSFER, OR DISPOSAL WILL RESULT IN A DECREASE IN FUTURE ECONOMIC ACTIVITY IN MARYLAND**~~; or~~

~~(ii) the qualified Maryland biotechnology company that gave rise to the credit~~ **[**~~ceases operating as an active business with~~**]** **RELOCATES** ~~its headquarters and base of operations~~ **[**~~in~~**]** **OUT OF** ~~the State.~~

~~(2) The amount required to be recaptured under this subsection is the product of multiplying:~~

~~(i) the total amount of the credit claimed or, in the case of an event described in paragraph (1)(i) of this subsection, the portion of the credit attributable to the ownership interest disposed of; and~~

~~(ii) 1. 100%, if the event requiring recapture of the credit occurs during the taxable year for which the tax credit is claimed;~~

~~2. 67%, if the event requiring recapture of the credit occurs during the first year after the close of the taxable year for which the tax credit is claimed; or~~

~~3. 33%, if the event requiring recapture of the credit 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.~~

~~(3) The qualified investor that claimed the credit shall pay the amount to be recaptured as determined under paragraph (2) of this subsection as taxes payable to the State for the taxable year in which the event requiring recapture of the credit occurs.~~

~~(g) (1) The Department may revoke its initial or final certification of an approved credit under this section if any representation in connection with the application for the certification is determined by the Department to have been false when made.~~

~~(2) The revocation may be in full or in part as the Department may determine and, subject to paragraph (3) of this subsection, shall be communicated to the qualified investor and the Comptroller.~~

~~(3) The qualified investor shall have an opportunity to appeal any revocation to the Department prior to notification of the Comptroller.~~

~~(4) The Comptroller may make an assessment against the qualified investor to recapture any amount of tax credit that the qualified investor has already claimed.~~

~~(h) (1) On or before January 10 of each year, the Department shall report to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly, on the initial tax credit certificates awarded under this section for the prior calendar year.~~

~~(2) The report required under paragraph (1) of this subsection shall include for each initial tax credit certificate awarded:~~

~~(i) the name of the qualified investor and the amount of credit awarded or allocated to each investor;~~

~~(ii) the name and address of the qualified Maryland biotechnology company that received the investment giving rise to the credit under this section and the county where the qualified Maryland biotechnology company is located; and~~

~~(iii) the dates of receipt and approval by the Department of all applications for initial tax credit certificates.~~

~~(3) The report required under paragraph (1) of this subsection shall summarize for the category of qualified investors:~~

~~(i) the total number of applicants for initial tax credit certificates under this section in each calendar year;~~

~~(ii) the number of applications for which initial tax credit certificates were issued in each calendar year; and~~

~~(iii) the total initial tax credit certificates authorized under this section for all calendar years under this section.~~

~~(i) The Department and the Comptroller jointly shall adopt regulations to 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 under this section.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011, and shall be applicable to initial tax credit certificates issued under the Maryland Biotechnology Investment Tax Credit for fiscal years beginning on or after July 1, 2011.

Approved:

_____

Governor.

_____

President of the Senate.

_____

Speaker of the House of Delegates.