SENATE BILL 160

C8

1lr0103

(PRE–FILED)

CF 1lr0114

By: **Chair, Budget and Taxation Committee (By Request – Departmental – Commerce)**

Requested: October 22, 2020
Introduced and read first time: January 13, 2021
Assigned to: Budget and Taxation

Committee Report: Favorable
Senate action: Adopted
Read second time: February 10, 2021

CHAPTER _____

1   AN ACT concerning

2   **Economic Development – Cybersecurity Investment Incentive Tax Credit**
3   **Program – Expansion and Extension**

4   FOR the purpose of altering the Cybersecurity Investment Incentive Tax Credit program
5   administered by the Department of Commerce to be the Innovation Investment
6   Incentive Tax Credit program; expanding the applicability of the tax credit to include
7   investments in certain technology companies; requiring the Maryland Economic
8   Development Committee, after consultation with certain State agencies, to evaluate
9   and recommend certain technology sectors to the Department; requiring the
10   Department to consider the recommendation of the Committee and establish a list
11   of certain eligible technology sectors; prohibiting the Department from certifying
12   eligibility for tax credits for investments in a single technology sector in excess of a
13   certain amount during any fiscal year; repealing provisions of law concerning a
14   certain panel of cybersecurity experts; extending the termination date of the
15   program; repealing and altering certain definitions; defining a certain term; making
16   conforming changes; providing for the application of this Act; and generally relating
17   to the Cybersecurity Investment Incentive Tax Credit program and tax credits for
18   innovative technology in the State.

19 BY repealing and reenacting, with amendments,
20   Article – Economic Development
21   Section 2.5–109(a)(4)(vii)
22   Annotated Code of Maryland

1   (2018 Replacement Volume and 2020 Supplement)

2   BY repealing and reenacting, with amendments,
3   Article – State Finance and Procurement
4   Section 6–226(a)(2)(ii)80.
5   Annotated Code of Maryland
6   (2015 Replacement Volume and 2020 Supplement)

7   BY repealing and reenacting, with amendments,
8   Article – Tax – General
9   Section 1–303(i) and 10–733
10   Annotated Code of Maryland
11   (2016 Replacement Volume and 2020 Supplement)

12   BY repealing and reenacting, with amendments,
13   Chapter 390 of the Acts of the General Assembly of 2013, as amended by Chapter
14   578 of the Acts of the General Assembly of 2018
15   Section 2

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

18   **Article – Economic Development**

19   2.5–109.

20   (a)   In this section, "economic development program" means:

21   (4)   each of the tax credit programs administered by the Department,
22   including:

23   (vii)   the **[**Cybersecurity**] INNOVATION** Investment Incentive Tax
24   Credit;

25   **Article – State Finance and Procurement**

26   6–226.

27   (a)   (2)   (ii)   The provisions of subparagraph (i) of this paragraph do not apply
28   to the following funds:

29   80.   the **[**Cybersecurity**] INNOVATION** Investment Fund;

30   **Article – Tax – General**

31   1–303.

1   (i)   On or before July 1, 2023, an evaluation shall be made of the tax credits under
2 § 10–733 of this article (**[**cybersecurity**] INNOVATION** investment incentive) and § 10–733.1
3 of this article (purchase of cybersecurity technology or service).

4 10–733.

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

6   (2)   (i)   1. "Company" means any entity of any form duly organized and
7 existing under the laws of any jurisdiction for the purpose of conducting business for profit.

8   2.   "Company" includes an entity that becomes duly
9 organized and existing under the laws of any jurisdiction for the purpose of conducting
10 business for profit within 4 months of receiving a qualified investment.

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

12   **[**(3)   "Cybersecurity company" means a company organized for profit that is
13 engaged primarily in the development of innovative and proprietary cybersecurity
14 technology.

15   (4)   "Cybersecurity technology" means products or goods intended to detect
16 or prevent activity intended to result in unauthorized access to, exfiltration of,
17 manipulation of, or impairment to the integrity, confidentiality, or availability of an
18 information system or information stored on or transiting an information system.**]**

19   **[**(5)**] (3)**   "Department" means the Department of Commerce.

20   **[**(6)**] (4)**   (i)   "Investment" means the contribution of money in cash or
21 cash equivalents expressed in United States dollars, at a risk of loss, to a qualified
22 Maryland **[**cybersecurity**] TECHNOLOGY** company in exchange for stock, a partnership or
23 membership interest, or any other ownership interest in the equity of the qualified
24 Maryland **[**cybersecurity**] TECHNOLOGY** company, title to which ownership interest shall
25 vest in the qualified investor.

26   (ii)   "Investment" does not include debt unless it is convertible debt.

27   (iii) For purposes of this section, an investment is at risk of loss when
28 repayment entirely depends on the success of the business operations of the qualified
29 company.

30   **[**(7)   "Panel" means the panel that the Department may establish under
31 subsection (e) of this section composed of experts in the area of cybersecurity technology.

32   (8)**] (5)**   (i)   "Qualified investor" means any individual or entity that
33 invests at least $25,000 in a qualified Maryland **[**cybersecurity**] TECHNOLOGY** company

1   and that is required to file an income tax return in any jurisdiction.

2   (ii)   "Qualified investor" does not include a qualified pension plan, an
3   individual retirement account, or any other qualified retirement plan under the Employee
4   Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under
5   such plans, or similar tax–favored plans or entities under the laws of other countries.

6   **[**(9)**] (6)   (I)**   "Qualified Maryland **[**cybersecurity**] TECHNOLOGY**
7   company" means a **[**cybersecurity**] TECHNOLOGY** company that has met the criteria set
8   forth in subsection (b)(2) of this section.

9   **(II)   "QUALIFIED MARYLAND TECHNOLOGY COMPANY"**
10 **DOES NOT INCLUDE A TECHNOLOGY COMPANY THAT IS OR HAS BEEN CERTIFIED AS**
11 **A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY UNDER § 10–725 OF THIS**
12 **SUBTITLE.**

13   **[**(10)**] (7)**   "Secretary" means the Secretary of Commerce.

14   **(8)   "TECHNOLOGY COMPANY" MEANS A COMPANY ORGANIZED FOR**
15 **PROFIT   THAT   IS   ENGAGED   IN   THE   RESEARCH, DEVELOPMENT,   OR**
16 **COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY.**

17   (b)   (1)   Subject to paragraph (2) of this subsection and subsections (d) and **[**(f)**]**
18 **(E)** of this section, for the taxable year in which an investment in a qualified Maryland
19 **[**cybersecurity**] TECHNOLOGY** company is made, a qualified investor may claim a credit
20 against the State income tax in an amount equal to the amount of tax credit stated in the
21 final credit certificate approved by the Secretary for the investment as provided under this
22 section.

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

25   (i)   may not, after making the proposed investment, own or control
26 more than 25% of the equity interests in the qualified Maryland **[**cybersecurity**]**
27 **TECHNOLOGY** company in which the investment is made; and

28   (ii)   at least 30 days prior to making an investment in a qualified
29 Maryland **[**cybersecurity**] TECHNOLOGY** company for which the qualified investor would
30 be eligible for an initial tax credit certificate under this subsection, shall submit an
31 application to the Department containing the following:

32   1.   evidence that the investor is:

33   A.   if a company, duly organized and in good standing in the
34 jurisdiction under the laws under which it is organized;

1   B.   current in the payment of all tax obligations to a state or
2 any unit or subdivision of a state; and

3   C.   not in default under the terms of any contract with,
4 indebtedness to, or grant from a state or any unit or subdivision of a state;

5   2.   evidence that the qualified Maryland [cybersecurity]
6 **TECHNOLOGY** company has satisfied the following minimum requirements for
7 consideration as a qualified Maryland [cybersecurity] **TECHNOLOGY** company:

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

9   B.   has not participated in the tax credit program under this
10 section for more than [1] **3** prior fiscal [year] **YEARS**;

11   C.   has an aggregate capitalization of at least $100,000;

12   D.   owns or has properly licensed any proprietary technology;

13   E.   has fewer than 50 full–time employees;

14   F.   does not have its securities publicly traded on any
15 exchange;

16   G.   is in good standing;

17   H.   is current in the payment of all tax obligations to the State
18 or any unit or subdivision of the State;

19   I.   is not in default under the terms of any contract with,
20 indebtedness to, or grant from the State or any unit or subdivision of the State; and

21   J.   meets any other reasonable requirements of the
22 Department evidencing that the company is a going concern [primarily] engaged in the
23 **RESEARCH,** development**, OR COMMERCIALIZATION** of innovative and proprietary
24 [cybersecurity] technology **IN AN ELIGIBLE TECHNOLOGY SECTOR IDENTIFIED IN**
25 **ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION**; and

26   3.   any other information the Department may require.

27   **(3) (I) AFTER CONSULTING WITH THE DEPARTMENT AND THE**
28 **MARYLAND DEPARTMENT OF LABOR, EACH YEAR THE MARYLAND ECONOMIC**
29 **DEVELOPMENT COMMISSION SHALL:**

30   **1. EVALUATE THE POTENTIAL EMPLOYMENT AND**
31 **ECONOMIC GROWTH OF MARYLAND'S TECHNOLOGY SECTORS; AND**

1   **2.**   **RECOMMEND ELIGIBLE TECHNOLOGY SECTORS TO**
2   **THE DEPARTMENT.**

3   **(II)**   **EACH YEAR THE DEPARTMENT SHALL:**

4   **1.**   **CONSIDER   THE   RECOMMENDATION   OF   THE**
5   **MARYLAND ECONOMIC DEVELOPMENT COMMISSION; AND**

6   **2.**   **ESTABLISH A LIST OF TECHNOLOGY SECTORS THAT**
7   **WILL BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SECTION.**

8   **(III)**   **IN DETERMINING WHETHER A COMPANY IS ENGAGED IN AN**
9   **ELIGIBLE TECHNOLOGY SECTOR, THE DEPARTMENT SHALL CONSIDER THE**
10   **DEFINITIONS SET FORTH IN THE NORTH AMERICAN INDUSTRY CLASSIFICATION**
11   **SYSTEM (NAICS).**

12   (c)   (1)   The Department shall:

13   (i)   approve all applications that qualify for credits under this section
14   on a first–come, first–served basis; and

15   (ii)   within 30 calendar days of receipt of an application:

16   1.   certify the amount of any approved tax credits to a
17   qualified investor; and

18   2.   determine whether a **[**cybersecurity**]** **TECHNOLOGY**
19   company qualifies for investments that are eligible for the tax credit under this section.

20   (2)   (i)   After the date on which the Department issues an initial tax
21   credit certificate under this section, a qualified investor shall have 30 calendar days to
22   make an investment in a qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company
23   under this section.

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

27   1.   the date of the investment;

28   2.   the amount invested;

29   3.   proof of the receipt of the invested funds by the qualified
30   Maryland **[**cybersecurity**]** **TECHNOLOGY** company;

1   4.   a complete description of the nature of the ownership
2 interest in the equity of the qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company
3 acquired in consideration of the investment; and

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

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

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

12   2.   the credit amount allocated to the rescinded certificate
13 shall revert to the Maryland **[**Cybersecurity**]** **INNOVATION** Investment Tax Credit Reserve
14 Fund and shall be available in the applicable fiscal year for allocation by the Department
15 to other initial tax credit certificates in accordance with the provisions of this section.

16   (d)   (1)   The tax credit allowed in an initial tax credit certificate issued under
17 this section is:

18   (i)   except as provided in item (ii) of this paragraph, 33% of the
19 investment in a qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company, not to exceed
20 $250,000; or

21   (ii)   if a qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company
22 is located in Allegany County, Dorchester County, Garrett County, or Somerset County,
23 50% of the investment in the qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company,
24 not to exceed $500,000.

25   (2)   During any fiscal year, the Secretary may not certify eligibility for tax
26 credits for investments in**:**

27   **(I)**   a single qualified Maryland **[**cybersecurity**]** **TECHNOLOGY**
28 company that in the aggregate exceed 15% of the total appropriations to the Maryland
29 **[**Cybersecurity**]** **INNOVATION** Investment Tax Credit Reserve Fund for that fiscal year**;**
30 **OR**

31   **(II)**   **A SINGLE TECHNOLOGY SECTOR THAT IN THE AGGREGATE**
32 **EXCEED 25% OF THE TOTAL APPROPRIATIONS TO THE MARYLAND INNOVATION**
33 **INVESTMENT TAX CREDIT RESERVE FUND FOR THAT FISCAL YEAR**.

34   (3)   If the credit allowed under this section in any taxable year exceeds the

1 State income tax for that taxable year, an individual or a corporation may claim a refund
2 in the amount of the excess.

3   **[**(e)   (1)   The Department may establish a panel composed of experts in the area
4 of cybersecurity technology.

5   (2)   The Department may establish the panel under service contracts with
6 independent reviewers.

7   (3)   The panel shall assist the Department in its determination as to
8 whether a company is a qualified Maryland cybersecurity company.

9   (4)   A member of the panel is not eligible to receive any benefit, direct or
10 indirect, from the tax credit under this section.

11   (5)   (i)   Except as provided in subparagraph (ii) of this paragraph,
12 Division II of the State Finance and Procurement Article does not apply to a service that
13 the Department obtains under this section.

14   (ii)   The Department is subject to Title 12, Subtitle 4 of the State
15 Finance and Procurement Article for services the Department obtains under this section.**]**

16   **[**(f)**]** **(E)**   (1)   In this subsection, "Reserve Fund" means the Maryland
17 **[**Cybersecurity**]** **INNOVATION** Investment Tax Credit Reserve Fund established under
18 paragraph (2) of this subsection.

19   (2)   (i)   There is a Maryland **[**Cybersecurity**]** **INNOVATION** Investment
20 Tax Credit Reserve Fund which is a special continuing, nonlapsing fund that is not subject
21 to § 7–302 of the State Finance and Procurement Article.

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

24   (iii)   The money in the Reserve Fund may be used by the Department
25 to pay the costs of administering the tax credit program under this section.

26   (3)   (i)   Subject to the provisions of this subsection, the Secretary shall
27 issue an initial tax credit certificate to a qualified investor for each approved investment in
28 a qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company eligible for a tax credit.

29   (ii)   An initial tax credit certificate issued under this subsection shall
30 state the maximum amount of tax credit for which the qualified investor is eligible.

31   (iii)   1.   Except as otherwise provided in this subparagraph, for
32 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts
33 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that

1 fiscal year in the State budget as approved by the General Assembly, as reduced by the
2 amount needed to pay the costs of administering the tax credit program under this section.

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

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

11   (iv)   1.   Except as provided in subsubparagraph 2 of this
12 subparagraph, for each fiscal year, the Governor shall include in the budget bill an
13 appropriation of at least $2,000,000 to the Reserve Fund.

14   2.   In fiscal year 2016, the Governor shall include in the
15 budget bill an appropriation of at least $1,500,000 to the Reserve Fund.

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

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

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

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

26   A.   the maximum credit amount stated in the initial tax credit
27 certificate for the investment in the qualified Maryland **[**cybersecurity**]** **TECHNOLOGY**
28 company; and

29   B.   the final certified credit amount for the investment in the
30 qualified Maryland **[**cybersecurity**]** **TECHNOLOGY** company.

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

34   (iii)   1.   Periodically, but not more frequently than quarterly, the
35 Department may submit invoices for costs that have been incurred or are anticipated to be

1   incurred in administering the tax credit program under this section.

2   2.   The Comptroller shall transfer money from the Reserve
3   Fund to the Department to pay for costs that have been incurred or are anticipated to be
4   incurred in administering the tax credit program under this section.

5   **[**(g)**] (F)**   (1)   The credit claimed under this section shall be recaptured as
6   provided in paragraph (3) of this subsection if within 2 years from the close of the taxable
7   year for which the credit is claimed:

8   (i)   the qualified investor sells, transfers, or otherwise disposes of the
9   ownership interest in the qualified Maryland **[**cybersecurity**] TECHNOLOGY** company that
10   gave rise to the credit; or

11   (ii)   the qualified Maryland **[**cybersecurity**] TECHNOLOGY** company
12   that gave rise to the credit:

13   1.   ceases   operating   as   an   active   business   with   its
14   headquarters and base of operations in the State; or

15   2.   pays out as dividends or otherwise distributes the equity
16   investment.

17   (2)   The credit claimed under this section shall be recaptured as provided
18   in paragraph (3) of this subsection if, within 4 months of receiving a qualified investment,
19   a qualified Maryland **[**cybersecurity**] TECHNOLOGY** company is not duly organized and
20   existing under the laws of any jurisdiction for the purposes of conducting business for profit.

21   (3)   The amount required to be recaptured under this subsection is the
22   product of multiplying:

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

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

28   2.   67%, if the event requiring recapture of the credit occurs
29   during the first year after the close of the taxable year for which the tax credit is claimed;
30   or

31   3.   33%, if the event requiring recapture of the credit occurs
32   more than 1 year but not more than 2 years after the close of the taxable year for which the
33   tax credit is claimed.

34   (4)   The qualified investor that claimed the credit shall pay the amount to

1 be recaptured as determined under paragraph (3) of this subsection as taxes payable to the
2 State for the taxable year in which the event requiring recapture of the credit occurs.

3 **[**(h)**] (G)** (1) The Department may revoke its initial or final certification of an
4 approved credit under this section if any representation made in connection with the
5 application for the certification is determined by the Department to have been false.

6 (2) The revocation may be in full or in part as the Department may
7 determine and, subject to paragraph (3) of this subsection, shall be communicated to the
8 qualified investor, the qualified Maryland **[**cybersecurity**] TECHNOLOGY** company, and the
9 Comptroller.

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

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

15 **[**(i)**] (H)** (1) In accordance with § 2.5–109 of the Economic Development
16 Article, the Department shall submit a report on the initial tax credit certificates awarded
17 under this section for the calendar year.

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

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

22 (ii) the name and address of the qualified Maryland **[**cybersecurity**]**
23 **TECHNOLOGY** company that received the investment giving rise to the credit under this
24 section and the county where the qualified Maryland **[**cybersecurity**] TECHNOLOGY**
25 company is located; and

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

28 (3) The report required under paragraph (1) of this subsection shall
29 summarize for the categories of qualified investors:

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

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

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

3   **[**(j)**] (I)**   The Department and the Comptroller jointly shall adopt regulations to
4   carry out the provisions of this section and to specify criteria and procedures for application
5   for, approval of, and monitoring continuing eligibility for the tax credit under this section.

6   **Chapter 390 of the Acts of 2013, as amended by Chapter 578 of the Acts of 2018**

7   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8   1, 2013, and shall be applicable to all taxable years beginning after December 31, 2013, but
9   before January 1, **[**2023**] 2025**. This Act shall remain effective for a period of **[**10**] 12** years
10   and, at the end of June 30, **[**2023**] 2025**, with no further action required by the General
11   Assembly, this Act shall be abrogated and of no further force and effect.

12   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
13   1, 2021, and shall be applicable to all initial tax credit certificates issued after June 30,
14   2021.

Approved:

_____
                                                              Governor.

_____
                                                President of the Senate.

_____
                                        Speaker of the House of Delegates.