

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 19

(Chair, Budget and Taxation Committee)(By Request -
Departmental - Commerce)

Budget and Taxation

Ways and Means

Economic Development - Biotechnology Investment Incentive Tax Credit
Program - Alterations and Study

This departmental bill alters the biotechnology investment incentive tax credit by (1) reducing the percentage value of the tax credit; (2) terminating the program effective June 30, 2028; (3) establishing the objective and goals of the program; (4) altering certain eligibility requirements; and (5) requiring the Department of Commerce to report specified information.

The bill also prohibits Commerce from certifying investments in a single biotechnology company (1) that exceed 10% of the total appropriations to the reserve fund for that fiscal year or (2) whose investors have received \$7.0 million in aggregate funding for all fiscal years. **The bill takes effect July 1, 2021, and applies to all tax credit certificates issued after June 30, 2021.**

Fiscal Summary

State Effect: The bill will not alter the fiscal impact of the program in the near term beyond that provided under current law.

Local Effect: None.

Small Business Effect: Commerce has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Under current law, an investor who invests at least \$25,000 in a qualified Maryland biotechnology company (QMBC) can claim a credit equal to 50% of the investment, not to exceed \$250,000. If the qualified biotechnology company is located in Allegany, Dorchester, Garrett, or Somerset counties, the value of the credit for investments made in these companies is equal to 75% of the investment, not to exceed \$500,000. The bill reduces the percentage value of the tax credit from 50% to 33% of the investment and from 75% to 50% for investments in companies located in the counties described above. The bill specifies that a qualified investor does not include a founder or current employee of the QMBC if the company has been in active business for more than five years.

The bill specifies that the biotechnology investment incentive tax credit is intended to foster the growth of Maryland's biotechnology industry by increasing investment in early stage companies with the goal of increasing the number of companies developing biotechnologies in Maryland, increasing overall investments in the biotechnology sector, and increasing the number of individual investors actively investing in Maryland's life sciences companies.

Generally, in order to be considered eligible as a QMBC under current law, the company may not have been in active business longer than 12 years. However, eligibility related to the length of time in active service has been expanded since the program's inception to include (1) a company that has been in active business for up to 15 years if Commerce determines that the company requires additional time to complete the process of regulatory approval; (2) a company that has been in active business no longer than 12 years from the date that the company first received a qualified investment under this section; and (3) a company that meets specified program requirements within two months of receiving a qualified investment. Accordingly, biotechnology companies that have been in active business for up to 24 years may be eligible for the program. **Exhibit 1** shows the changes in eligibility criteria since the program's inception.

Exhibit 1
Qualified Maryland Biotechnology Company
Operations Criteria

Legislation

Eligibility Standard

Chapter 99 of 2005	In business up to 10 years
Chapter 518 of 2008	In business up to 12 years if the Department of Commerce (Commerce) determines necessary for regulatory reasons
Chapter 349 of 2011	In business up to 15 years (fiscal 2012 and 2013)
Chapters 75 and 76 of 2013	In business for up to 10 years from the date the company first received a qualified investment under the program
Chapters 475 and 476 of 2017	In business up to 12 years
	In business up to 15 years if Commerce determines necessary for regulatory reasons
	In business for up to 12 years from the date the company first received a qualified investment under the program
	Meets specified program requirements within two months of receiving a qualified investment

The bill specifies that a QMBC is a company that (1) has been in active business no longer than 12 years or (2) meets specified program requirements within two months of receiving a qualified investment.

Commerce must report annually on (1) the initial tax credit certificates awarded for investments in QMBCs that were not certified by the department in the previous year and (2) for each QMBC that receives an investment, the number of years the company has been in active business and the number of years qualified investors in the company have received tax credits. In addition, Commerce must in consultation with qualified experts in the biotechnology industry (1) study the methods and criteria by which the department might competitively award tax credits; (2) develop strategies to increase tax credits awarded to early-stage biotechnology companies; and (3) report its findings to the General Assembly by December 1, 2021.

Current Law: A biotechnology company is 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. A company is any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit. A company does not include a sole proprietorship. A company also must (1) have its headquarters and base of operations in the State; (2) have fewer than 50 full-time employees; (3) not have its securities publicly traded on any exchange; and (4) have been certified as a biotechnology company by Commerce.

Commerce may not certify investments in a single biotechnology company that total more than 15% of the total appropriations to the reserve fund for that fiscal year.

Background: In response to concerns about the impacts of tax credits, Chapters 568 and 569 of 2012 established the Tax Credit Evaluation Act, a legislative process for evaluating certain tax credits. The evaluation process is conducted by a legislative evaluation committee. The committee was required to review and evaluate the biotechnology investment incentive tax credit by July 1, 2018. The [report](#) can be found on the DLS website.

The information and analysis provided in the report found that since the program's inception the State has not closed the financing gap with industry leaders, California and Massachusetts, and has actually fallen further behind. DLS failed to find that the program led to a statistically significant increase in industry investment. Additionally, data collected by DLS failed to show that the State tax credit increased the total number of active biotechnology companies in Maryland. DLS recommended that the General Assembly should consider eliminating the program in its current form or allowing the tax credit to sunset in two years and replacing it with a more effective program based on 19 recommendations. Alternatively, the General Assembly could consider providing a federal Small Business Innovative Research program matching grant to encourage the biotechnology industry in Maryland.

State Fiscal Effect: The bill alters the tax credit program and terminates the program effective June 30, 2028. As a result, general fund expenditures will decrease beginning in fiscal 2029.

The awarding of tax credits is subject to the amount appropriated to the reserve fund, and the bill does not alter this amount. The fiscal 2022 State budget includes \$12.0 million in funding for the program. It is expected that Commerce will award the maximum amount of credits. Accordingly, the fiscal impact of the program through fiscal 2028 will not be altered beyond that provided under current law.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2021
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Economic Development – Biotechnology Investment Incentive Tax Credit Program – Alterations

BILL NUMBER: SB 19

PREPARED BY: Michael Siers

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Maryland has one of the top biotechnology clusters in the country. Maryland has a number of key assets supporting the sector, including:

- the State's highly ranked colleges and universities which produce thousands of highly qualified workers each year;
- the location of several key federal agencies, including the Centers for Medicare and Medicaid Services, the US Food and Drug Administration, and the National Institutes of Health; and
- The presence of Fort Detrick and other military installations, which house such important research as the US Army Medical Research and Development Command.

In addition to Maryland's existing assets, the State encourages the growth of a dynamic ecosystem of biotechnology firms through a number of different policies. One of these is the Biotechnology Incentive Investment Tax Credit (BIITC). The BIITC, established in 2005 and funded in 2007, has quickly become one of the State's most popular tax credits

and has become oversubscribed. In addition to being oversubscribed, some businesses have received greater tax credits than others. Between 2007 and 2019, 9% of companies that benefitted from the BIITC received 50% of the total available funding.

The proposed legislation aims to rework some of the caps and credit allocation measures to ensure that more firms are able to benefit from the program. Although job creation is not one of explicit policy goals of the program under the proposed legislation, more broadly and equitably distributing funding should lead to an increase in the number of jobs supported in the State. The current ecosystem in Maryland consists of a number of small companies. In 2019, the 500+ biotechnology companies in the State employed an average of 20 workers. On average, these workers earned over \$131,000, more than double Maryland's average wage. By reworking the BIITC to support more businesses, Maryland can continue to support a growing sector with high wages and innovative technologies.