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By: **Delegate Feldman**

Introduced and read first time: February 8, 2006

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Maryland Biotechnology Tax Benefit Certificate Program**

3 FOR the purpose of creating the Maryland Biotechnology Tax Benefit Certificate  
4 Program to be administered by the Department of Business and Economic  
5 Development; establishing an application process for the transfer of certain tax  
6 benefits by certain biotechnology companies under the Program; requiring the  
7 Department to evaluate certain applications under the Program based on  
8 certain criteria; providing that certain companies may surrender certain tax  
9 benefits in exchange for certain private financial assistance and that certain  
10 companies are not eligible to surrender or receive tax benefits under the  
11 Program; requiring the Department to issue a certain tax benefit certificate  
12 under certain circumstances; prohibiting the Department from approving the  
13 transfer of more than a certain amount of tax benefit in any fiscal year; limiting  
14 the maximum amount of tax benefits that may be surrendered by a corporation  
15 under the Program; requiring the financial assistance provided in exchange for  
16 the surrender of certain tax benefits to be equal to a certain percentage of the  
17 amount of the surrendered benefit; providing a method for calculating the  
18 amount of tax benefits that may be transferred under the Program; authorizing  
19 certain private financial assistance to be used to fund certain items or activities;  
20 allowing corporations that receive certain tax benefits under the Program to  
21 claim a credit under the State income tax in a certain taxable year; requiring a  
22 certain addition modification to the Maryland modified income of a corporation;  
23 providing that a certain tax credit for research and development expenses may  
24 not be carried forward under certain circumstances; requiring the Department  
25 and the Comptroller to adopt certain regulations; defining certain terms;  
26 providing for the application and termination of this Act; and generally relating  
27 to the creation of a Maryland Biotechnology Tax Benefit Certificate Program.

28 BY adding to

29 Article 83A - Department of Business and Economic Development  
30 Section 5-1901 through 5-1907, inclusive, to be under the new subtitle "Subtitle  
31 19. Maryland Biotechnology Tax Benefit Certificate Program"  
32 Annotated Code of Maryland  
33 (2003 Replacement Volume and 2005 Supplement)

1 BY adding to  
2 Article - Tax - General  
3 Section 10-305(e) and 10-726  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume and 2005 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article - Tax - General  
8 Section 10-721(d)  
9 Annotated Code of Maryland  
10 (2004 Replacement Volume and 2005 Supplement)

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

13 **Article 83A - Department of Business and Economic Development**

14 **SUBTITLE 19. MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE PROGRAM.**

15 5-1901.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
17 INDICATED.

18 (B) "BIOTECHNOLOGY" MEANS THE BODY OF KNOWLEDGE ABOUT THE  
19 FUNCTIONING OF BIOLOGICAL SYSTEMS FROM THE MACRO LEVEL TO THE  
20 MOLECULAR AND SUBATOMIC LEVELS, AND THE NOVEL PRODUCTS, SERVICES,  
21 TECHNOLOGIES, AND SUBTECHNOLOGIES DEVELOPED AS A RESULT OF INSIGHTS  
22 GAINED FROM RESEARCH ADVANCES THAT ADD TO THAT BODY OF KNOWLEDGE.

23 (C) "NEW OR EXPANDING BIOTECHNOLOGY COMPANY" MEANS A  
24 CORPORATION THAT:

25 (1) HAS SIGNIFICANT OPERATIONS IN THE STATE;

26 (2) HAS FEWER THAN 225 EMPLOYEES;

27 (3) HAS AT LEAST 75% OF ITS EMPLOYEES BASED IN MARYLAND FILLING  
28 A POSITION OR JOB IN THE STATE; AND

29 (4) IS ENGAGED IN THE RESEARCH, DEVELOPMENT, PRODUCTION, OR  
30 PROVISION OF BIOTECHNOLOGY FOR THE PURPOSE OF DEVELOPING OR PROVIDING  
31 PRODUCTS OR PROCESSES FOR SPECIFIC COMMERCIAL OR PUBLIC PURPOSES,  
32 INCLUDING:

33 (I) MEDICAL, PHARMACEUTICAL, GENOMICS, BIOINFORMATICS,  
34 PROTEOMICS, NUTRITIONAL, AND OTHER HEALTH-RELATED PURPOSES;

1 (II) AGRICULTURE PURPOSES; OR

2 (III) ENVIRONMENTAL PURPOSES.

3 (D) "PROGRAM" MEANS THE MARYLAND BIOTECHNOLOGY TAX BENEFIT  
4 CERTIFICATE PROGRAM.

5 (E) "TAX BENEFIT" MEANS:

6 (1) IN THE CASE OF AN UNUSED RESEARCH AND DEVELOPMENT  
7 CREDIT, THE AMOUNT OF THE CREDIT THAT HAS NOT BEEN USED TO OFFSET STATE  
8 INCOME TAX; OR

9 (2) IN THE CASE OF AN UNUSED NET OPERATING LOSS, THE STATE  
10 INCOME TAX RATE FOR A CORPORATION UNDER § 10-105(B) OF THE TAX - GENERAL  
11 ARTICLE MULTIPLIED TIMES THE PRODUCT OF MULTIPLYING THE AMOUNT OF THE  
12 NET OPERATING LOSS THAT HAS NOT BEEN CARRIED BACK OR CARRIED OVER TO  
13 OFFSET TAXABLE INCOME FOR ANOTHER TAXABLE YEAR TIMES THE  
14 APPORTIONMENT FRACTION UNDER § 10-402(C) OF THE TAX - GENERAL ARTICLE  
15 THAT IS APPLICABLE TO THE CORPORATION TRANSFERRING THE UNUSED NET  
16 OPERATING LOSS FOR THE TAX YEAR IN WHICH THE NET OPERATING LOSS  
17 OCCURRED.

18 5-1902.

19 (A) THERE IS A MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE  
20 PROGRAM.

21 (B) THE PURPOSES OF THE PROGRAM ARE TO:

22 (1) ENCOURAGE THE EXTENSION OF PRIVATE FINANCIAL ASSISTANCE  
23 TO THE BIOTECHNOLOGY INDUSTRY; AND

24 (2) ALLOW NEW OR EXPANDING BIOTECHNOLOGY COMPANIES IN THE  
25 STATE WITH UNUSED AMOUNTS OF RESEARCH AND DEVELOPMENT TAX CREDITS  
26 AND UNUSED NET OPERATING LOSSES TO SURRENDER THOSE BENEFITS FOR USE BY  
27 OTHER CORPORATE TAXPAYERS IN THE STATE.

28 5-1903.

29 (A) (1) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY MAY APPLY TO  
30 THE DEPARTMENT TO TRANSFER TAX BENEFITS UNDER THE PROGRAM ON A FORM  
31 PROVIDED BY THE DEPARTMENT.

32 (2) A CORPORATION MAY APPLY TO THE DEPARTMENT TO RECEIVE  
33 TRANSFERABLE TAX BENEFITS ON A FORM PROVIDED BY THE DEPARTMENT.

34 (3) ALL APPLICATIONS FOR THE NEXT SUCCEEDING FISCAL YEAR MUST  
35 BE RECEIVED ON OR BEFORE JUNE 30 OF EACH YEAR.

1 (B) THE DEPARTMENT SHALL EVALUATE APPLICATIONS FOR THE TRANSFER  
2 OF TAX BENEFITS UNDER THE PROGRAM IN A MANNER THAT WILL BEST STIMULATE  
3 AND ENCOURAGE THE EXTENSION OF PRIVATE FINANCIAL ASSISTANCE TO NEW OR  
4 EXPANDING BIOTECHNOLOGY COMPANIES IN THE STATE.

5 (C) (1) THE DEPARTMENT SHALL DEVELOP CRITERIA FOR THE APPROVAL  
6 OR DISAPPROVAL OF APPLICATIONS.

7 (2) CRITERIA FOR APPROVAL OF AN APPLICATION SHALL INCLUDE:

8 (I) AN EVALUATION OF THE NEW OR EXPANDING  
9 BIOTECHNOLOGY COMPANY'S ACTUAL OR POTENTIAL SCIENTIFIC AND  
10 TECHNOLOGICAL VIABILITY;

11 (II) A DETERMINATION THAT THE NEW OR EXPANDING  
12 BIOTECHNOLOGY COMPANY'S PRINCIPAL PRODUCTS OR SERVICES ARE  
13 SUFFICIENTLY INNOVATIVE TO PROVIDE A COMPETITIVE ADVANTAGE;

14 (III) A DETERMINATION THAT THE NEW OR EXPANDING  
15 BIOTECHNOLOGY COMPANY DOES NOT HAVE SUFFICIENT RESOURCES TO OPERATE  
16 IN THE SHORT TERM OR CANNOT SECURE FINANCIAL ASSISTANCE FROM VENTURE  
17 CAPITAL, STOCK ISSUANCE, PRODUCT SALES REVENUE, A PARENT CORPORATION OR  
18 OTHER AFFILIATES, A BANK, OR ANY OTHER METHOD OF OBTAINING CAPITAL; AND

19 (IV) A DETERMINATION THAT THE FINANCIAL ASSISTANCE  
20 PROVIDED UNDER THIS SUBTITLE DEMONSTRATES THE PROSPECT OF A  
21 SIGNIFICANT POSITIVE CHANGE IN THE NEW OR EXPANDING BIOTECHNOLOGY  
22 COMPANY'S NET INCOME.

23 (D) THE DEPARTMENT SHALL ESTABLISH THE WEIGHT OF IMPORTANCE TO  
24 BE GIVEN EACH CRITERION USED IN ITS APPLICATION APPROVAL PROCESS.

25 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A NEW OR  
26 EXPANDING BIOTECHNOLOGY COMPANY APPROVED TO SURRENDER TAX BENEFITS  
27 UNDER THIS SUBTITLE MAY SURRENDER THE TAX BENEFITS THAT ARE APPROVED  
28 BY THE DEPARTMENT REGARDLESS OF WHETHER THE APPLICANT CONTINUES TO  
29 MEET THE ELIGIBILITY CRITERIA ESTABLISHED UNDER THIS SUBTITLE IN  
30 SUBSEQUENT YEARS.

31 (2) AN APPLICANT'S TRANSFERABLE TAX BENEFITS:

32 (I) SHALL BE LIMITED TO TAX BENEFITS THAT THE APPLICANT  
33 REQUESTS TO SURRENDER IN ITS APPLICATION TO THE DEPARTMENT; AND

34 (II) MAY NOT, IN TOTAL, EXCEED THE MAXIMUM AMOUNT OF TAX  
35 BENEFITS THAT THE APPLICANT IS ELIGIBLE TO SURRENDER.

36 (F) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY IS NOT ELIGIBLE TO  
37 PARTICIPATE IN THE PROGRAM IF THE NEW OR EXPANDING BIOTECHNOLOGY  
38 COMPANY:

1 (1) HAS DEMONSTRATED POSITIVE NET INCOME IN ANY OF THE 2  
2 PREVIOUS FULL TAXABLE YEARS OF ONGOING OPERATIONS AS DETERMINED ON ITS  
3 FINANCIAL STATEMENTS;

4 (2) HAS DEMONSTRATED A RATIO IN EXCESS OF 110% OF OPERATING  
5 REVENUES DIVIDED BY OPERATING EXPENSES IN ANY OF THE 2 PREVIOUS FULL  
6 TAXABLE YEARS OF OPERATIONS AS DETERMINED ON ITS FINANCIAL STATEMENTS;

7 (3) IS DIRECTLY OR INDIRECTLY AT LEAST 50% OWNED OR CONTROLLED  
8 BY ANOTHER CORPORATION THAT HAS DEMONSTRATED POSITIVE NET TAXABLE  
9 INCOME IN ANY OF THE 2 PREVIOUS FULL TAXABLE YEARS OF ONGOING  
10 OPERATIONS AS DETERMINED ON ITS FINANCIAL STATEMENTS; OR

11 (4) IS PART OF A CONSOLIDATED GROUP OF AFFILIATED  
12 CORPORATIONS, AS FILED FOR FEDERAL INCOME TAX PURPOSES, THAT IN THE  
13 AGGREGATE HAS DEMONSTRATED POSITIVE NET TAXABLE INCOME IN ANY OF THE 2  
14 PREVIOUS FULL TAXABLE YEARS OF ONGOING OPERATIONS AS DETERMINED ON ITS  
15 COMBINED FINANCIAL STATEMENTS.

16 (G) THE DEPARTMENT SHALL ISSUE A CORPORATION BUSINESS TAX BENEFIT  
17 CERTIFICATE TO AN APPLICANT THAT IS APPROVED TO PARTICIPATE IN THE  
18 PROGRAM.

19 5-1904.

20 (A) (1) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY THAT HAS HAD  
21 ITS APPLICATION APPROVED MAY SURRENDER TAX BENEFITS IN EXCHANGE FOR  
22 PRIVATE FINANCIAL ASSISTANCE TO BE MADE BY A CORPORATION THAT IS THE  
23 RECIPIENT OF THE CORPORATION BUSINESS TAX BENEFIT CERTIFICATE IN AN  
24 AMOUNT EQUAL TO AT LEAST 75% OF THE AMOUNT OF THE SURRENDERED TAX  
25 BENEFIT.

26 (2) (I) THE AMOUNT OF THE SURRENDERED TAX BENEFIT FOR A  
27 SURRENDERED UNUSED RESEARCH AND DEVELOPMENT TAX CREDIT SHALL BE THE  
28 AMOUNT OF THE CREDIT.

29 (II) THE AMOUNT OF THE SURRENDERED TAX BENEFIT FOR A  
30 SURRENDERED NET OPERATING LOSS SHALL BE THE AMOUNT OF THE NET  
31 OPERATING LOSS THAT HAS NOT BEEN CARRIED BACK OR CARRIED OVER TO OFFSET  
32 TAXABLE INCOME FOR ANOTHER TAXABLE YEAR MULTIPLIED BY THE NEW OR  
33 EXPANDING BIOTECHNOLOGY COMPANY'S APPORTIONMENT FRACTION, AS  
34 DETERMINED UNDER § 10-402 OF THE TAX - GENERAL ARTICLE, FOR THE TAXABLE  
35 YEAR IN WHICH THE NET OPERATING LOSS OCCURRED AND SUBSEQUENTLY  
36 MULTIPLIED BY THE CORPORATE TAX RATE UNDER § 10-105(B) OF THE TAX -  
37 GENERAL ARTICLE.

38 (B) THE DEPARTMENT MAY NOT APPROVE THE TRANSFER OF MORE THAN  
39 \$20,000,000 OF TAX BENEFITS FOR ANY FISCAL YEAR.

1 (C) THE MAXIMUM LIFETIME VALUE OF TAX BENEFITS THAT A CORPORATION  
2 MAY SURRENDER UNDER THE PROGRAM IS \$4,000,000.

3 5-1905.

4 (A) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY THAT TRANSFERS TAX  
5 BENEFITS UNDER THE PROGRAM MAY USE THE PRIVATE FINANCIAL ASSISTANCE  
6 RECEIVED FROM THE CORPORATION THAT RECEIVES THE TRANSFERRED TAX  
7 BENEFITS, AS EVIDENCED BY THE CORPORATION BUSINESS TAX BENEFIT  
8 CERTIFICATE, IN THE FUNDING OF OPERATION AND DEVELOPMENT COSTS,  
9 INCLUDING:

10 (1) CONSTRUCTION, ACQUISITION, AND DEVELOPMENT OF REAL  
11 ESTATE;

12 (2) ACQUISITION OF MATERIALS;

13 (3) START-UP COSTS;

14 (4) TENANT FIT-OUT;

15 (5) WORKING CAPITAL;

16 (6) SALARIES;

17 (7) RESEARCH AND DEVELOPMENT EXPENDITURES; AND

18 (8) ANY OTHER EXPENSES DETERMINED BY THE DEPARTMENT BY  
19 REGULATION.

20 (B) THE DEPARTMENT AND THE COMPTROLLER MAY REQUIRE  
21 CERTIFICATIONS OR AUDITS TO DETERMINE COMPLIANCE WITH SUBSECTION (A) OF  
22 THIS SECTION.

23 (C) A CORPORATION THAT ACQUIRES A CORPORATION BUSINESS TAX  
24 BENEFIT CERTIFICATE SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE NEW  
25 OR EXPANDING BIOTECHNOLOGY COMPANY CONCERNING THE TERMS AND  
26 CONDITIONS OF THE PRIVATE FINANCIAL ASSISTANCE MADE IN EXCHANGE FOR THE  
27 CERTIFICATE AUTHORIZED UNDER THIS SUBTITLE.

28 (D) A CORPORATION THAT RECEIVES SURRENDERED TAX BENEFITS UNDER  
29 THIS SUBTITLE MAY NOT, DIRECTLY OR INDIRECTLY, OWN OR CONTROL 5% OR MORE  
30 OF THE VOTING RIGHTS OR 5% OR MORE OF THE VALUE OF CLASSES OF STOCK OF  
31 THE CORPORATION THAT IS SURRENDERING THE SAME TAX BENEFITS UNDER THIS  
32 SUBTITLE.

33 5-1906.

34 (A) (1) A CORPORATION THAT RECEIVES SURRENDERED TAX BENEFITS  
35 UNDER THE PROGRAM MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN  
36 THE AMOUNT OF THE SURRENDERED TAX BENEFITS.

1 (2) A CORPORATION THAT CLAIMS A CREDIT UNDER THIS SUBSECTION  
2 MAY APPLY THE CREDIT ONLY IN THE TAXABLE YEAR IN WHICH THE CREDIT IS  
3 ACQUIRED.

4 (3) A TAX BENEFIT SURRENDERED UNDER THE PROGRAM MAY BE  
5 ACQUIRED BY ONLY ONE CORPORATION.

6 (B) A CORPORATION THAT RECEIVES SURRENDERED TAX BENEFITS UNDER  
7 THE PROGRAM SHALL ATTACH A COPY OF THE CORPORATION BUSINESS TAX  
8 BENEFIT CERTIFICATE TO ANY RETURN THE CORPORATION IS REQUIRED TO FILE  
9 UNDER TITLE 10, SUBTITLE 8 OF THE TAX - GENERAL ARTICLE.

10 (C) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY THAT TRANSFERS TAX  
11 BENEFITS UNDER THE PROGRAM SHALL ATTACH A COPY OF THE CORPORATION  
12 BUSINESS TAX BENEFIT CERTIFICATE TO ANY RETURN THE NEW OR EXPANDING  
13 BIOTECHNOLOGY COMPANY IS REQUIRED TO FILE UNDER TITLE 10, SUBTITLE 8 OF  
14 THE TAX - GENERAL ARTICLE.

15 5-1907.

16 (A) THE DEPARTMENT AND THE COMPTROLLER SHALL ADOPT REGULATIONS  
17 TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

18 (B) REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION MAY  
19 INCLUDE:

20 (1) PAYMENT OF PROCESSING FEES;

21 (2) ALLOCATION ON APPORTIONMENT OF TRANSFERABLE TAX  
22 BENEFITS IF THE TOTAL AMOUNT OF TRANSFERABLE TAX BENEFITS REQUESTED TO  
23 BE SURRENDERED BY APPLICANTS EXCEEDS \$20,000,000 IN A FISCAL YEAR, AS  
24 PROVIDED IN § 5-1904(B) OF THIS SUBTITLE; AND

25 (3) THE TRANSFER OF BUNDLED TAX BENEFITS.

26 **Article - Tax - General**

27 10-305.

28 (E) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
29 AMOUNT OF ANY NET OPERATING LOSS DEDUCTION, TO THE EXTENT THAT THE TAX  
30 BENEFIT FOR ANY NET OPERATING LOSS ON WHICH THE DEDUCTION IS BASED HAS  
31 BEEN SURRENDERED UNDER THE MARYLAND BIOTECHNOLOGY TAX BENEFIT  
32 CERTIFICATE PROGRAM UNDER ARTICLE 83A, TITLE 5, SUBTITLE 19 OF THE CODE.

33 10-721.

34 (d) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
35 IF the credit allowed under this section in any taxable year exceeds the State income

1 tax for that taxable year, an individual or corporation may apply the excess as a credit  
2 against the State income tax for succeeding taxable years until the earlier of:

3            [(1)]    (I)        the full amount of the excess is used; or

4            [(2)]    (II)       the expiration of the 7th taxable year after the taxable year in  
5 which the Maryland qualified research and development expense was incurred.

6            (2)        ANY UNUSED CREDIT THAT HAS BEEN SURRENDERED UNDER THE  
7 MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE PROGRAM UNDER ARTICLE  
8 83A, TITLE 5, SUBTITLE 19 OF THE CODE MAY NOT BE CARRIED FORWARD UNDER  
9 PARAGRAPH (1) OF THIS SUBSECTION.

10 10-726.

11        A CORPORATION THAT HAS ACQUIRED A CORPORATION BUSINESS TAX BENEFIT  
12 CERTIFICATE UNDER THE MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE  
13 PROGRAM UNDER ARTICLE 83A, TITLE 5, SUBTITLE 19 OF THE CODE MAY CLAIM A  
14 CREDIT AGAINST THE STATE INCOME TAX AS PROVIDED UNDER ARTICLE 83A, §  
15 5-1906(A) OF THE CODE.

16        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,  
18 2006. It shall remain effective for a period of 4 years and 6 months and, at the end of  
19 December 31, 2010, with no further action required by the General Assembly, this Act  
20 shall be abrogated and of no further force and effect.