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By: **Senators Hogan, Astle, DeGrange, Dyson, Forehand, Garagiola, Hafer,  
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Ruben**

Introduced and read first time: February 3, 2006

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Research and Development Tax Credit - Expansion and**  
3 **Modification**

4 FOR the purpose of altering certain limits on the aggregate amount of income tax  
5 credits that the Department of Business and Economic Development may  
6 approve for the Maryland research and development tax credit in a calendar  
7 year; altering the method utilized by the Department to award Maryland  
8 research and development tax credits; requiring the Department to adopt  
9 certain regulations that include certain factors; providing for the application of  
10 this Act; and generally relating to the Maryland research and development tax  
11 credit.

12 BY repealing and reenacting, with amendments,  
13 Article - Tax - General  
14 Section 10-721  
15 Annotated Code of Maryland  
16 (2004 Replacement Volume and 2005 Supplement)

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

19 **Article - Tax - General**

20 10-721.

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

22 (2) "Department" means the Department of Business and Economic  
23 Development.

24 (3) "Maryland base amount" means the base amount as defined in § 41(c)  
25 of the Internal Revenue Code that is attributable to Maryland, determined by:

1 (i) substituting "Maryland qualified research and development  
2 expense" for "qualified research expense";

3 (ii) substituting "Maryland qualified research and development" for  
4 "qualified research"; and

5 (iii) using, instead of the "fixed base percentage":

6 1. the percentage that the Maryland qualified research and  
7 development expense for the 4 taxable years immediately preceding the taxable year  
8 in which the expense is incurred is of the gross receipts for those years; or

9 2. for a taxpayer who has fewer than 4 but at least 1 prior  
10 taxable year, the percentage as determined under item 1 of this item, determined  
11 using the number of immediately preceding taxable years that the taxpayer has.

12 (4) "Maryland gross receipts" means gross receipts that are reasonably  
13 attributable to the conduct of a trade or business in this State, determined under  
14 methods prescribed by the Comptroller based on standards similar to the standards  
15 under § 10-402 of this title.

16 (5) "Maryland qualified research and development" means qualified  
17 research as defined in § 41(d) of the Internal Revenue Code that is conducted in this  
18 State.

19 (6) "Maryland qualified research and development expenses" means  
20 qualified research expenses as defined in § 41(b) of the Internal Revenue Code  
21 incurred for Maryland qualified research and development.

22 (b) Subject to the limitations of this section, an individual or a corporation  
23 may claim credits against the State income tax in an amount equal to:

24 (1) 3% of the Maryland qualified research and development expenses,  
25 not exceeding the Maryland base amount for the individual or corporation, paid or  
26 incurred by the individual or corporation during the taxable year; and

27 (2) 10% of the amount by which the Maryland qualified research and  
28 development expenses paid or incurred by the individual or corporation during the  
29 taxable year exceed the Maryland base amount for the individual or corporation.

30 (c) (1) By September 15 of the calendar year following the end of the taxable  
31 year in which the Maryland qualified research and development expenses were  
32 incurred, an individual or corporation shall submit an application to the Department  
33 for the credits allowed under subsection (b)(1) and (2) of this section.

34 (2) [(i)] Except as provided under paragraph (4) of this subsection, the  
35 total amount of credits approved by the Department under subsection (b)(1) of this  
36 section may not exceed [\$3,000,000] \$4,000,000 for any calendar year.

1                   (ii)     Subject to paragraph (4) of this subsection, if the total amount  
2 of credits applied for by all individuals and corporations under subsection (b)(1) of this  
3 section exceeds the maximum specified under subparagraph (i) of this paragraph, the  
4 Department shall approve a credit under subsection (b)(1) of this section for each  
5 applicant in an amount equal to the product of multiplying the credit applied for by  
6 the applicant times a fraction:

7                                 1.     the numerator of which is the maximum specified under  
8 subparagraph (i) of this paragraph; and

9                                 2.     the denominator of which is the total of all credits applied  
10 for by all applicants under subsection (b)(1) of this section in the calendar year.]

11                   (3)     [(i)]     Except as provided in paragraph (4) of this subsection, the total  
12 amount of credits approved by the Department under subsection (b)(2) of this section  
13 may not exceed [\$3,000,000] \$10,000,000 for any calendar year.

14                   (ii)     Subject to paragraph (4) of this subsection, if the total amount  
15 of credits applied for by all individuals and corporations under subsection (b)(2) of this  
16 section exceeds the maximum specified under subparagraph (i) of this paragraph, the  
17 Department shall approve a credit under subsection (b)(2) of this section for each  
18 applicant in an amount equal to the product of multiplying the credit applied for by  
19 the applicant times a fraction:

20                                 1.     the numerator of which is the maximum specified under  
21 subparagraph (i) of this paragraph; and

22                                 2.     the denominator of which is the total of all credits applied  
23 for by all applicants under subsection (b)(2) of this section in the calendar year.]

24                   (4)     (i)     For any calendar year, if the maximum specified under  
25 paragraph [(2)(i)] (2) of this subsection exceeds the total amount of credits applied for  
26 by all individuals and corporations under subsection (b)(1) of this section, the  
27 maximum specified under paragraph [(3)(i)] (3) of this subsection shall be increased  
28 for that calendar year by an amount equal to the amount by which the maximum  
29 specified under paragraph [(2)(i)] (2) of this subsection exceeds the total amount of  
30 credits applied for by all individuals and corporations under subsection (b)(1) of this  
31 section.

32                                 (ii)     For any calendar year, if the maximum specified under  
33 paragraph [(3)(i)] (3) of this subsection exceeds the total amount of credits applied for  
34 by all individuals and corporations under subsection (b)(2) of this section, the  
35 maximum specified under paragraph [(2)(i)] (2) of this subsection shall be increased  
36 for that calendar year by an amount equal to the amount by which the maximum  
37 specified under paragraph [(3)(i)] (3) of this subsection exceeds the total amount of  
38 credits applied for by all individuals and corporations under subsection (b)(2) of this  
39 section.

1 (5) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT ESTABLISH A  
2 COMPETITIVE PROCESS FOR THE AWARD OF TAX CREDITS UNDER THIS SECTION  
3 THAT GIVES FAVORABLE WEIGHT TO EACH OF THE FOLLOWING FACTORS:

4 (I) WHETHER A COMPANY IS HEADQUARTERED IN THE STATE OR  
5 HAS ITS PRINCIPAL BUSINESS OPERATIONS LOCATED IN THE STATE;

6 (II) WHETHER A COMPANY IS A START-UP COMPANY THAT DOES  
7 NOT HAVE MORE THAN 100 EMPLOYEES AND:

8 1. EMPLOYS AT LEAST 80% OF ITS EMPLOYEES IN THE  
9 STATE; OR

10 2. PAYS AT LEAST 80% OF ITS PAYROLL TO EMPLOYEES IN  
11 THE STATE;

12 (III) WHETHER THE MARYLAND QUALIFIED RESEARCH AND  
13 DEVELOPMENT EXPENSES WERE INCURRED THROUGH RESEARCH AND  
14 DEVELOPMENT RELATED TO NANOTECHNOLOGY;

15 (IV) WHETHER IT WOULD BE UNLIKELY THAT A COMPANY WOULD  
16 ENGAGE IN ADDITIONAL MARYLAND QUALIFIED RESEARCH AND DEVELOPMENT  
17 WITHOUT THE AWARD OF THE TAX CREDITS; AND

18 (V) WHETHER A COMPANY DEMONSTRATES A HIGH LIKELIHOOD  
19 OF EXPANSION OF PROPERTY, PERSONNEL, AND PAYROLL IN MARYLAND IN THE  
20 NEXT CALENDAR YEAR.

21 (6) By December 15 of the calendar year following the end of the taxable  
22 year in which the Maryland qualified research and development expenses were  
23 incurred, the Department shall certify to the individual or corporation the amount of  
24 the research and development tax credits approved by the Department for the  
25 individual or corporation under subsection (b)(1) and (2) of this section.

26 [(6)] (7) To claim the approved credits allowed under this section, an  
27 individual or corporation shall:

28 (i) file an amended income tax return for the taxable year in which  
29 the Maryland qualified research and development expense was incurred; and

30 (ii) attach a copy of the Department's certification of the approved  
31 credit amount to the amended income tax return.

32 (d) If the credit allowed under this section in any taxable year exceeds the  
33 State income tax for that taxable year, an individual or corporation may apply the  
34 excess as a credit against the State income tax for succeeding taxable years until the  
35 earlier of:

36 (1) the full amount of the excess is used; or

1 (2) the expiration of the 7th taxable year after the taxable year in which  
2 the Maryland qualified research and development expense was incurred.

3 (e) (1) In determining the amount of the credit under this section:

4 (i) all members of the same controlled group of corporations, as  
5 defined under § 41(f) of the Internal Revenue Code, shall be treated as a single  
6 taxpayer; and

7 (ii) the credit allowable by this section to each member shall be its  
8 proportionate shares of the qualified research expenses giving rise to the credit.

9 (2) The Comptroller shall adopt regulations providing for:

10 (i) determination of the amount of the credit under this section in  
11 the case of trades or businesses, whether or not incorporated, that are under common  
12 control;

13 (ii) pass-through and allocation of the credit in the case of estates  
14 and trusts, partnerships, unincorporated trades or businesses, and S corporations;

15 (iii) adjustments in the case of acquisitions and dispositions  
16 described in § 41(f)(3) of the Internal Revenue Code; and

17 (iv) determination of the credit in the case of short taxable years.

18 (3) The regulations adopted under paragraph (2) of this subsection shall  
19 be based on principles similar to the principles applicable under § 41 of the Internal  
20 Revenue Code and regulations adopted thereunder.

21 (f) (1) The Department of Business and Economic Development and the  
22 Comptroller jointly shall adopt regulations to prescribe standards for determining  
23 when research or development is considered conducted in the State for purposes of  
24 determining the credit under this section.

25 (2) In adopting regulations under this subsection, the Department and  
26 the Comptroller may consider:

27 (i) the location where services are performed;

28 (ii) the residence or business location of the person or persons  
29 performing services;

30 (iii) the location where supplies used in research and development  
31 are consumed; and

32 (iv) any other factors that the Department determines are relevant  
33 for the determination.

1 (g) (1) On or before January 10 of each year, the Department shall report to  
2 the Governor and, subject to § 2-1246 of the State Government Article, to the General  
3 Assembly, on the credits approved under this section.

4 (2) The report required under paragraph (1) of this subsection shall  
5 include for each individual or corporation approved to receive a credit under  
6 subsection (b)(1) and (2) of this section in the prior calendar year:

7 (i) the individual's or corporation's name and address; and

8 (ii) the amount of the credit approved.

9 (3) The report required under paragraph (1) of this subsection shall  
10 include the name of the individual or corporation and the aggregate amount of credits  
11 approved in all calendar years for each individual or corporation under subsection  
12 (b)(1) and (2) of this section.

13 (4) The report required under paragraph (1) of this subsection shall  
14 summarize for the credits approved under subsection (b)(1) of this section and for the  
15 credits approved under subsection (b)(2) of this section:

16 (i) the total number of applicants for credits under this section in  
17 each calendar year;

18 (ii) the number of applications for which a tax credit was approved  
19 in each calendar year; and

20 (iii) the total credits authorized under this section for all calendar  
21 years under this section.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 July 1, 2006, and shall be applicable to all credits approved by the Department of  
24 Business and Economic Development under § 10-721 of the Tax - General Article  
25 after the effective date of this Act.