

# HOUSE BILL 521

Q3

8lr1473

---

By: **Delegates Tarlau, Barron, J. Lewis, Angel, Barkley, Chang, Fennell, Frush, Gutierrez, Hayes, Hill, Korman, Lierman, McCray, A. Miller, Moon, Mosby, Patterson, Pena–Melnyk, Rosenberg, Sanchez, Stein, M. Washington, and K. Young**

Introduced and read first time: January 26, 2018

Assigned to: Ways and Means

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Research and Development Credit – Small Business Set–Aside**

3 FOR the purpose of requiring the Department of Commerce to make available a certain  
4 percent of the total amount of research and development tax credits that the  
5 Department may approve in a calendar year to small businesses; providing for the  
6 use of certain unused credits; providing for the calculation of the credit under certain  
7 circumstances; providing for the application of this Act; and generally relating to  
8 certain credits against the State income tax based on certain expenses paid or  
9 incurred for certain research and development conducted in the State.

10 BY repealing and reenacting, without amendments,

11 Article – Tax – General

12 Section 10–721(a)(1) and (7), (b), and (c)(1), (4), and (5)

13 Annotated Code of Maryland

14 (2016 Replacement Volume and 2017 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article – Tax – General

17 Section 10–721(c)(2) and (3)

18 Annotated Code of Maryland

19 (2016 Replacement Volume and 2017 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

21 That the Laws of Maryland read as follows:

22 **Article – Tax – General**

23 10–721.

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (7) "Small business" means a for-profit corporation, limited liability  
3 company, partnership, or sole proprietorship with net book value assets totaling, at the  
4 beginning or the end of the taxable year for which Maryland qualified research and  
5 development expenses are incurred, as reported on the balance sheet, less than \$5,000,000.

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

8 (1) 3% of the Maryland qualified research and development expenses, not  
9 exceeding the Maryland base amount for the individual or corporation, paid or incurred by  
10 the individual or corporation during the taxable year; and

11 (2) 10% of the amount by which the Maryland qualified research and  
12 development expenses paid or incurred by the individual or corporation during the taxable  
13 year exceed the Maryland base amount for the individual or corporation.

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

18 (2) (i) **[Except] SUBJECT TO SUBPARAGRAPH (II) OF THIS**  
19 **PARAGRAPH AND EXCEPT** as provided under paragraph (4) of this subsection, the total  
20 amount of credits approved by the Department under subsection (b)(1) of this section may  
21 not exceed:

22 1. \$4,500,000 in calendar year 2016; and

23 2. \$5,500,000 in calendar year 2017 and each calendar year  
24 thereafter.

25 **(II) THE DEPARTMENT SHALL MAKE AVAILABLE 20% OF THE**  
26 **MAXIMUM AMOUNT OF CREDITS AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**  
27 **PARAGRAPH FOR APPLICANTS THAT ARE SMALL BUSINESSES.**

28 **(III) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL**  
29 **BUSINESSES UNDER SUBSECTION (B)(1) OF THIS SECTION IS LESS THAN THE**  
30 **AMOUNT MADE AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**  
31 **DEPARTMENT SHALL MAKE AVAILABLE THE UNUSED AMOUNT OF CREDITS FOR USE**  
32 **BY INDIVIDUALS AND CORPORATIONS THAT ARE NOT SMALL BUSINESSES.**

33 **[(i)] (IV)** Subject to paragraph (4) of this subsection, if the total  
34 amount of credits applied for by all individuals and corporations **EXCLUDING SMALL**

1 **BUSINESSES** under subsection (b)(1) of this section exceeds the maximum specified under  
2 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**  
3 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**, the Department shall approve a credit under  
4 subsection (b)(1) of this section for each applicant in an amount equal to the product of  
5 multiplying the credit applied for by the applicant times a fraction:

6 1. the numerator of which is the maximum specified under  
7 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**  
8 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**; and

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

12 **(V) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF THE**  
13 **TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL BUSINESSES UNDER**  
14 **SUBSECTION (B)(1) OF THIS SECTION EXCEEDS THE AMOUNT MADE AVAILABLE**  
15 **UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT SHALL**  
16 **APPROVE A CREDIT UNDER SUBSECTION (B)(1) OF THIS SECTION FOR EACH**  
17 **APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT**  
18 **APPLIED FOR BY THE APPLICANT TIMES A FRACTION:**

19 1. **THE NUMERATOR OF WHICH IS THE AMOUNT MADE**  
20 **AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH; AND**

21 2. **THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL**  
22 **CREDITS APPLIED FOR BY ALL SMALL BUSINESS APPLICANTS UNDER SUBSECTION**  
23 **(B)(1) OF THIS SECTION IN THE CALENDAR YEAR.**

24 (3) (i) **[Except] SUBJECT TO SUBPARAGRAPH (II) OF THIS**  
25 **PARAGRAPH AND EXCEPT** as provided in paragraph (4) of this subsection, the total  
26 amount of credits approved by the Department under subsection (b)(2) of this section may  
27 not exceed:

28 1. \$4,500,000 in calendar year 2016; and

29 2. \$6,500,000 in calendar year 2017 and each calendar year  
30 thereafter.

31 **(II) THE DEPARTMENT SHALL MAKE AVAILABLE 20% OF THE**  
32 **MAXIMUM AMOUNT OF CREDITS AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS**  
33 **PARAGRAPH FOR APPLICANTS THAT ARE SMALL BUSINESSES.**

34 **(III) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL**  
35 **BUSINESSES UNDER SUBSECTION (B)(2) OF THIS SECTION IS LESS THAN THE**

1 **AMOUNT MADE AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**  
2 **DEPARTMENT SHALL MAKE AVAILABLE THE UNUSED AMOUNT OF CREDITS FOR USE**  
3 **BY INDIVIDUALS AND CORPORATIONS THAT ARE NOT SMALL BUSINESSES.**

4 **[(ii)] (IV)** Subject to paragraph (4) of this subsection, if the total  
5 amount of credits applied for by all individuals and corporations **EXCLUDING SMALL**  
6 **BUSINESSES** under subsection (b)(2) of this section exceeds the maximum specified under  
7 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**  
8 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**, the Department shall approve a credit under  
9 subsection (b)(2) of this section for each applicant in an amount equal to the product of  
10 multiplying the credit applied for by the applicant times a fraction:

11 1. the numerator of which is the maximum specified under  
12 subparagraph (i) of this paragraph **LESS THE AMOUNT MADE AVAILABLE UNDER**  
13 **SUBPARAGRAPH (II) OF THIS PARAGRAPH**; and

14 2. the denominator of which is the total of all credits applied  
15 for by all applicants **EXCLUDING SMALL BUSINESSES** under subsection (b)(2) of this  
16 section in the calendar year.

17 **(V) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF THE**  
18 **TOTAL AMOUNT OF CREDITS APPLIED FOR BY SMALL BUSINESSES UNDER**  
19 **SUBSECTION (B)(2) OF THIS SECTION EXCEEDS THE AMOUNT MADE AVAILABLE**  
20 **UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT SHALL**  
21 **APPROVE A CREDIT UNDER SUBSECTION (B)(2) OF THIS SECTION FOR EACH**  
22 **APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT**  
23 **APPLIED FOR BY THE APPLICANT TIMES A FRACTION:**

24 1. **THE NUMERATOR OF WHICH IS THE AMOUNT MADE**  
25 **AVAILABLE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH; AND**

26 2. **THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL**  
27 **CREDITS APPLIED FOR BY ALL SMALL BUSINESS APPLICANTS UNDER SUBSECTION**  
28 **(B)(2) OF THIS SECTION IN THE CALENDAR YEAR.**

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

36 (ii) For any calendar year, if the maximum specified under  
37 paragraph (3)(i) of this subsection exceeds the total amount of credits applied for by all

1 individuals and corporations under subsection (b)(2) of this section, the maximum specified  
2 under paragraph (2)(i) of this subsection shall be increased for that calendar year by an  
3 amount equal to the amount by which the maximum specified under paragraph (3)(i) of this  
4 subsection exceeds the total amount of credits applied for by all individuals and  
5 corporations under subsection (b)(2) of this section.

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
12 1, 2018, and shall be applicable to all Maryland research and development credits certified  
13 after December 15, 2017.