

SENATE BILL 160

C8

(11r0103)

ENROLLED BILL

— Budget and Taxation / Ways and Means —

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

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

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

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; *stating the purpose of the program*; expanding the
7 applicability of the tax credit to include investments in certain technology
8 companies; requiring the Maryland Economic Development Committee, after
9 consultation with certain State agencies, to evaluate and recommend certain
10 technology sectors to the Department; requiring the Department to consider the
11 recommendation of the Committee and establish a list of certain eligible technology
12 sectors; prohibiting the Department from certifying eligibility for tax credits for
13 investments in a single technology sector in excess of a certain amount during any
14 fiscal year; repealing provisions of law concerning a certain panel of cybersecurity

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



experts; extending the termination date of the program; *requiring the Department of Commerce to conduct, in consultation with certain parties, a certain study and to report to the General Assembly on or before a certain date*; repealing and altering certain definitions; defining a certain term; making conforming changes; providing for the application of this Act; and generally relating to the Cybersecurity Investment Incentive Tax Credit program and tax credits for innovative technology in the State.

BY repealing and reenacting, with amendments,
 Article – Economic Development
 Section 2.5–109(a)(4)(vii) *and 6–1007*
 Annotated Code of Maryland
 (2018 Replacement Volume and 2020 Supplement)

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

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

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

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

Article – Economic Development

2.5–109.

(a) In this section, “economic development program” means:

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

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

6–1007.

1 2. “Company” includes an entity that becomes duly
2 organized and existing under the laws of any jurisdiction for the purpose of conducting
3 business for profit within 4 months of receiving a qualified investment.

4 (ii) “Company” does not include a sole proprietorship.

5 [(3) “Cybersecurity company” means a company organized for profit that is
6 engaged primarily in the development of innovative and proprietary cybersecurity
7 technology.

8 (4) “Cybersecurity technology” means products or goods intended to detect
9 or prevent activity intended to result in unauthorized access to, exfiltration of,
10 manipulation of, or impairment to the integrity, confidentiality, or availability of an
11 information system or information stored on or transiting an information system.]

12 [(5)] (3) “Department” means the Department of Commerce.

13 [(6)] (4) (i) “Investment” means the contribution of money in cash or
14 cash equivalents expressed in United States dollars, at a risk of loss, to a qualified
15 Maryland [cybersecurity] **TECHNOLOGY** company in exchange for stock, a partnership or
16 membership interest, or any other ownership interest in the equity of the qualified
17 Maryland [cybersecurity] **TECHNOLOGY** company, title to which ownership interest shall
18 vest in the qualified investor.

19 (ii) “Investment” does not include debt unless it is convertible debt.

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

23 [(7) “Panel” means the panel that the Department may establish under
24 subsection (e) of this section composed of experts in the area of cybersecurity technology.

25 [(8)] (5) (i) “Qualified investor” means any individual or entity that
26 invests at least \$25,000 in a qualified Maryland [cybersecurity] **TECHNOLOGY** company
27 and that is required to file an income tax return in any jurisdiction.

28 (ii) “Qualified investor” does not include:

29 1. a qualified pension plan, an individual retirement
30 account, or any other qualified retirement plan under the Employee Retirement Income
31 Security Act of 1974, as amended, or fiduciaries or custodians under such plans, or similar
32 tax-favored plans or entities under the laws of other countries; **OR**

1 be eligible for an initial tax credit certificate under this subsection, shall submit an
2 application to the Department containing the following:

3 1. evidence that the investor is:

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

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

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

10 2. evidence that the qualified Maryland [cybersecurity]
11 **TECHNOLOGY** company has satisfied the following minimum requirements for
12 consideration as a qualified Maryland [cybersecurity] **TECHNOLOGY** company:

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

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

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

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

18 E. has fewer than 50 full-time employees;

19 F. does not have its securities publicly traded on any
20 exchange;

21 G. is in good standing;

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

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

26 J. meets any other reasonable requirements of the
27 Department evidencing that the company is a going concern [primarily] engaged in the
28 **RESEARCH, development, OR COMMERCIALIZATION** of innovative and proprietary
29 [cybersecurity] technology **IN AN ELIGIBLE TECHNOLOGY SECTOR IDENTIFIED IN**
30 **ACCORDANCE WITH PARAGRAPH ~~(3)~~ (4) OF THIS SUBSECTION**; and

1 3. any other information the Department may require.

2 ~~(3)~~ (4) (I) AFTER CONSULTING WITH THE DEPARTMENT AND
3 THE MARYLAND DEPARTMENT OF LABOR, EACH YEAR THE MARYLAND ECONOMIC
4 DEVELOPMENT COMMISSION SHALL:

5 1. EVALUATE THE POTENTIAL EMPLOYMENT AND
6 ECONOMIC GROWTH OF MARYLAND'S TECHNOLOGY SECTORS; AND

7 2. RECOMMEND ELIGIBLE TECHNOLOGY SECTORS TO
8 THE DEPARTMENT.

9 (II) EACH YEAR THE DEPARTMENT SHALL:

10 1. CONSIDER THE RECOMMENDATION OF THE
11 MARYLAND ECONOMIC DEVELOPMENT COMMISSION; AND

12 2. ESTABLISH A LIST OF TECHNOLOGY SECTORS THAT
13 WILL BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SECTION.

14 (III) IN DETERMINING WHETHER A COMPANY IS ENGAGED IN AN
15 ELIGIBLE TECHNOLOGY SECTOR, THE DEPARTMENT SHALL CONSIDER THE
16 DEFINITIONS SET FORTH IN THE NORTH AMERICAN INDUSTRY CLASSIFICATION
17 SYSTEM (NAICS).

18 (c) (1) The Department shall:

19 (i) approve all applications that qualify for credits under this section
20 on a first-come, first-served basis; and

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

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

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

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

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

4 1. the date of the investment;

5 2. the amount invested;

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

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

11 5. any reasonable supporting documentation the
12 Department may require.

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

17 1. the Department shall rescind the initial tax credit
18 certificate; and

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

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

25 (i) except as provided in item (ii) of this paragraph, 33% of the
26 investment in a qualified Maryland [cybersecurity] **TECHNOLOGY** company, not to exceed
27 \$250,000; or

28 (ii) if a qualified Maryland [cybersecurity] **TECHNOLOGY** company
29 is located in Allegany County, Dorchester County, Garrett County, or Somerset County,
30 50% of the investment in the qualified Maryland [cybersecurity] **TECHNOLOGY** company,
31 not to exceed \$500,000.

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

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

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

8 (3) If the credit allowed under this section in any taxable year exceeds the
9 State income tax for that taxable year, an individual or a corporation may claim a refund
10 in the amount of the excess.

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

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

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

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

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

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

24 **[(f)** **(E)** (1) In this subsection, “Reserve Fund” means the Maryland
25 [Cybersecurity] **INNOVATION** Investment Tax Credit Reserve Fund established under
26 paragraph (2) of this subsection.

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

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

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

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

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

6 (iii) 1. Except as otherwise provided in this subparagraph, for
7 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts
8 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that
9 fiscal year in the State budget as approved by the General Assembly, as reduced by the
10 amount needed to pay the costs of administering the tax credit program under this section.

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

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

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

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

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

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

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

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

34 A. the maximum credit amount stated in the initial tax credit
35 certificate for the investment in the qualified Maryland [cybersecurity] **TECHNOLOGY**
36 company; and

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

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

6 (iii) 1. Periodically, but not more frequently than quarterly, the
7 Department may submit invoices for costs that have been incurred or are anticipated to be
8 incurred in administering the tax credit program under this section.

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

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

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

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

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

22 2. pays out as dividends or otherwise distributes the equity
23 investment.

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

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

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

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

3 2. 67%, if the event requiring recapture of the credit occurs
4 during the first year after the close of the taxable year for which the tax credit is claimed;
5 or

6 3. 33%, if the event requiring recapture of the credit occurs
7 more than 1 year but not more than 2 years after the close of the taxable year for which the
8 tax credit is claimed.

9 (4) The qualified investor that claimed the credit shall pay the amount to
10 be recaptured as determined under paragraph (3) of this subsection as taxes payable to the
11 State for the taxable year in which the event requiring recapture of the credit occurs.

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

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

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

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

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

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

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

31 (ii) the name and address of the qualified Maryland **[cybersecurity]**
32 **TECHNOLOGY** company that received the investment giving rise to the credit under this
33 section and the county where the qualified Maryland **[cybersecurity] TECHNOLOGY**
34 company is located; and

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

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

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

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

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

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2013, and shall be applicable to all taxable years beginning after December 31, 2013, but
17 before January 1, [2023] **2025**. This Act shall remain effective for a period of [10] **12** years
18 and, at the end of June 30, [2023] **2025**, with no further action required by the General
19 Assembly, this Act shall be abrogated and of no further force and effect.

20 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,
21 2021, the Department of Commerce shall:

22 (1) in consultation with qualified experts in the technology industry, study
23 the methods and criteria by which the Department might award tax credits under the
24 Innovation Investment Incentive Tax Credit program on a competitive basis; and

25 (2) report to the General Assembly, in accordance with § 2-1257 of the State
26 Government Article, on its findings and recommendations.

27 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 June 1, 2021, and shall be applicable to all initial tax credit certificates issued after June
29 30, 2021.