

MEMORANDUM

July 21, 2011

TO: Planning, Housing and Economic Development Committee

FROM:  Justina J. Ferber, Legislative Analyst

SUBJECT: Biotech Tax Credit

Budget Discussion: The PHED Committee discussed the County's supplement to the State's biotech tax credit during its deliberations on the FY12 operating budget. Councilmember Leventhal expressed concern about the lack of funding for the County's biotech tax credit program. Expedited Bill 5-10 at ©9, was enacted March 16, 2010 to commit the County to supplement the State biotechnology investment incentive tax credit allowed under Maryland Code. The County has not appropriated any funds for the tax credit and Councilmember Leventhal felt the biotech tax credit program should be funded. If the program is not funded, he suggested the Council repeal or delay the tax credit rather than have the appearance of false promises. Mr. Silverman stated that the County Executive supported the biotech tax credit, and the Department of Economic Development (DED) has informed companies that the credit is not funded at this time. Committee members unanimously agreed to place \$1,000,000 on the reconciliation list in two increments of \$500,000 to fund the biotech tax credit. Mr. Leventhal stated that if the \$1,000,000 is not successfully retained on the reconciliation list, he will consider introducing legislation to repeal the tax credit. While the Council did approve the inclusion of the \$1,000,000 on the reconciliation list, the Council did not include the funding in the adopted FY12 budget. It was agreed that this issue would be placed on the PHED Committee agenda for discussion after the budget.

Legislation: Expedited Bill 5-10 commits the County to supplement the State biotechnology investment incentive tax credit, allowed under Maryland Code, Tax-General Article §10-725. The County supplement, which is a direct subsidy rather than a tax credit, would be 50% of the state tax credit for an investment in a qualified Montgomery County biotechnology company. Attached is a portion of Senior Legislative Counsel's packet on Bill 5-10.

County Executive: Attached are recent news articles from the Gazette and Washington Business Journal quoting the Executive's pledge to supplement the State's biotechnology investment tax credit with a similar County credit totaling \$1 million during the next two years. Also, the Executive has recently appointed a Special Projects Manager for Bio-Health/Bio-Technology issues.

Discussion: Discuss with the DED Director the Executive's plans for funding the biotech tax credit. Some issues to be addressed:

- When will the Council receive a supplemental appropriation request for the biotech tax credit program?
- How will the supplemental appropriation be funded?
- When will Executive Regulations implementing the biotech tax credit program be submitted for Council approval?
- Does the biotech tax credit legislation need amending? The law currently says that “The Supplement paid to each recipient must equal 50 percent of any tax credit the recipient receives from the State biotechnology tax credit program or a lower percentage set in the annual operating resolution which reflects the relative proportions of the respective annual appropriations for the State tax credit and the County supplement.” Should County legislation be amended so the County is not committing to a 50 percent supplement? Also, should the law be clarified to allow funding for the program to be through a supplemental appropriation and not limited to the annual operating budget resolution?

DED Materials: *No materials have been received from DED as of the printing of this packet. DED materials will be distributed separately from this packet as soon as they are received.*

<u>This packet contains</u>	<u>Circle</u>
<u>Washington Business Journal</u> , June 29, “Salvo of public, private bio initiatives in MoCo”	1
<u>Gazette</u> , July 1, 2011, “Montgomery County to offer biotech tax credit”	3
<u>Gazette</u> , July 5, 2011, “Maryland biotech investment tax credit program draws a slew of applicants”	4
County Executive Memo, Appointment of Special Projects Manager for Bio-Health/Bio-Technology	6
March 16, 2010, Council Action packet on Expedited Bill 5-10	9

From the Washington Business Journal:

<http://www.bizjournals.com/washington/blog/2011/06/salvo-of-public-private-bio.html>

Salvo of public, private bio initiatives in MoCo

Washington Business Journal - by Bill Flook

Date: Wednesday, June 29, 2011, 6:37pm EDT



- Bill Flook
- Reporter
- Email: bflook@bizjournals.com

A big bundle of news out of Montgomery County government, private biotech and academia just came down at the BIO conference in D.C. Wednesday afternoon:

- MoCo's long-languishing biotech tax credit will get a modest infusion of \$1 million over the next two years. The credit, passed in March 2010 without any funding, will piggyback on the highly-sought-after state Biotechnology Investment Tax Credit, which provides a credit of up to 50-percent of qualifying investments in Maryland bio firms. Some council members were obviously ill at ease with passing a first-of-its-kind tax incentive and letting it fall by the wayside, as reported by the WBJ's Michael Neibauer:

"We haven't fulfilled a promise," County Councilman **George Leventhal**, D-At large, said during an April 25 council committee hearing. "It was a feel-good measure but we haven't followed through. If we aren't going to fund it, then the next step we ought to take is repeal it."

The local monies — \$500,000 a year — will supplement to the \$8 million state bio credit. In other words, if you get state money for investing in a Montgomery County bio startup, you will also get some local dollars on top of that.

We'll have a longer, more detailed story on this initiative in Friday's print edition.

- Johns Hopkins Tech Transfer will be making house calls in Montgomery County. The office within JHU that focuses on commercializing the university's research announced Wednesday it will be visiting tech and biotech firms in the county at least once a month. The point, said **Wesley Blakeslee**, executive director of JHU Technology Transfer, is for

Montgomery County companies to better "understand and feel the presence" of Hopkins.

"We will go down there, so they don't have to come up and see us," Blakeslee said in an interview. "We're not going to do all our business on the telephone."

The program, which the school has dubbed "deals on wheels," is a signal that Hopkins sees Montgomery County, and especially its bioscience community, as a rich and largely untapped source of licensing deals for university technology.

- Executives with Gaithersburg-based Noble Life Sciences said Wednesday they've formed an investment fund called BlackRock BioCapital, and they expect to make BlackRock's first investment by the end of the year. The fund, according to a news release, "will focus on creating and funding early stage technology-oriented biomedical companies developing novel therapeutic and diagnostic products."

Noble, helmed by former Avalon Pharmaceuticals CEO **Ken Carter**, itself is a startup, just began ramping up its own operations in recent months. Its business model is somewhat of a hybrid, offering contract research services while building its own product pipeline. The creation of BlackRock looks to be essential to the second part of that strategy.

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[Twitter.com/BillFlook](https://twitter.com/BillFlook)

Gazette.Net

Maryland Community News

Published: Friday, July 1, 2011

Leggett: Montgomery County to offer biotech tax credit by LINDSEY ROBBINS

Staff Writer

Montgomery County used this week's Biotechnology Industry Organization's annual international convention to make its own mark.

County Executive Isiah Leggett (D) pledged Wednesday at the Washington, D.C., gathering to supplement the state's biotechnology investment tax credit with a similar county credit totaling \$1 million during the next two years.

"[Biotech] is what distinguishes Montgomery County," Leggett said, referring to the county's 300 biotechs and 10,000 biotech jobs.

Montgomery's biotechs are helped by a county government that understands the industry's needs, said H. Thomas Watkins, CEO of Human Genome Sciences in Rockville and new chairman of BIO.

"People are increasingly putting the mid-Atlantic with places like Boston and California. The center of that is in Montgomery County," he said.

During his speech Wednesday, Watkins pressed the need for the federal government to work with the biotech community to nurture its growth.

Jonathan Cohen, president and CEO of 20/20 GeneSystems in Rockville, said the state tax credit program has helped 20/20 prepare to launch its tests for kidney and breast tumor responses to treatment within the next several months, rather than the next several years.

"When we were last at BIO in 2004, we had four employees. Now, we have 18. I believe we will grow exponentially once we start bringing products to market," he said.

Noble Life Sciences in Gaithersburg also announced the formation of its investment group, BlackRock BioCapital.

"Part of our hybrid business model is to provide opportunities for the formation and nurturing of young biotechs," said Kenneth C. Carter, president and CEO of Noble Life. Carter also co-founded the former Avalon Pharmaceuticals, which was sold for \$10 million in 2008.

BlackRock expects its first investment by the end of the year, Carter said.

Johns Hopkins University Technology Transfer also offered up its own initiative, Deals on Wheels. Through the program, Hopkins will send its tech transfer team to reach out to county biotechs once a month.

Wesley Blakeslee, executive director of program, said the goal is to make commercialization of university technology as easy as going to the store.

"Johns Hopkins is open for business," he said.

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Maryland Community News

Published: Tuesday, July 5, 2011

Maryland biotech investment tax credit program draws a slew of applicants by Kevin James

Shay
Staff Writer

Maryland's popular biotechnology investment tax credit program attracted more than 180 applicants in the first three minutes it opened on July 1 for fiscal 2012, more than the 115 applicants on the first day last year, state officials said Thursday.

The state allots \$8 million annually for the credits. Before the state started receiving applications online for the first time last year, biotech executives would camp out in line in Baltimore for up to five days to apply in person for the credit.

For Rockville biopharmaceutical company Sequella, it was a hectic few minutes, or seconds, last Friday morning, compounded by a computer glitch 20 seconds before the time to submit, said CFO Marty Zug.

"We had nine applicants, so we had nine employees on nine separate computers to submit the applications at the same time," said Zug, whose company focuses on infectious diseases such as tuberculosis. "We were able to get all of them confirmed in the first five seconds. But that may mean that we are 120th or something like that."

The state website had a clock that Sequella employees refreshed and synchronized to make sure they were not a few seconds off. Employees met an hour beforehand to go over the drill.

Still, the online process is better than standing in line for a few days, Zug said.

"I don't think there is a perfect process," he said. "There is just a lot of demand. The program seems to get more applicants every year."

Last year, Telcare of Bethesda, which is developing what executives say is the first wireless blood glucose meter, was able to raise more than \$1 million in early-stage equity capital through the credits, Chairman John Dwyer said.

The business attracted a Fortune 100 corporate investor and created about a dozen new jobs, he said.

InfraTrac of Silver Spring has used the tax credit program to market its technology to analyze counterfeit drugs, said CEO Sharon Flank.

The applications were taken on a first-come, first-served basis, and investors will learn within 30 days if they made the cut, according to the Department of Business and Economic Development. Last year, 19 biotechs received investments through the program.

This year, the legislature tweaked the program to temporarily increase the age ceiling for eligible biotechs from 12 to 15 years. Companies also must be based in Maryland, have fewer than 50 employees and possess a valid state certification.

Sales tax hike draws sour grapes

July 1 also marked the beginning of a slew of new state laws and regulations.

Since that day, when the state's alcohol sales tax increased to 9 percent from 6 percent, Susan Reed has heard some grumbles from customers at Sugarloaf Mountain Vineyard in Dickerson.

But the sales tax increase didn't seem to hurt sales over the important July Fourth weekend, said Reed, the winery's tasting room manager.

"In fact, sales were up this year's Fourth of July weekend from last year's," she said.

Another new law one that wineries lobbied for lets them ship wine directly to residents.

Sugarloaf has its \$200 shipping permit in hand but hasn't used it yet, Reed said this week.

"That program just started, so it's still early," she noted.

About half of the state's 42 wineries have applied for the permit, said Kevin Atticks, executive director of the Maryland Wineries Association. In addition, more than 30 out-of-state wineries have applied.

"I haven't heard that the permit fee has discouraged wineries from participating," Atticks said. Winery operators say the "ability to open a new market is worth the money for the permit."

Some wineries are developing club promotions for customers to receive shipments on a regular basis, he said.

Eight new wineries are in the works across the state, Atticks said.

While it's too early to gauge its impact, the tax hike has caused concern among winery operators that some budget-conscious customers could gravitate toward lower-priced wines rather than new premium ones, he said.

"But if a customer is enjoying his experience at a winery, I don't expect him to be as concerned [about the higher sales tax] as he would be at a storefront," Atticks said.

Another law gives restaurants the option of allowing patrons to have their dogs with them in outdoor dining areas.

The eateries must give written notice to the health department 30 days in advance and post notice at the site.

Patrons must stay with their canines and keep them on leashes.

There are more than 9,000 eating and drinking establishments in the state, but it's not known how many have

outdoor dining areas, according to a state legislative analysis of the law.

"The effect ... on business is unclear, as some patrons may be drawn to dog-friendly establishments while others may avoid them," says the report.

Another new law permanently caps at \$500 the credit allowance that businesses receive for filing timely state tax returns. That ceiling was set on a temporary basis during the 2007 special session. Vendors can claim this credit against the gross sales taxes they pay.

The program will cost the state about \$19 million in fiscal 2012 and \$21 million the following year, according to a state analysis.

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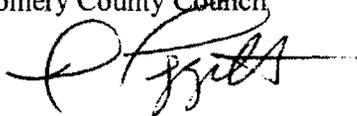
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 14, 2011

TO: Valerie Ervin, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Appointment of Special Projects Manager, Office of Chief Administrative Officer, Offices of the County Executive

The purpose of this memorandum is to provide additional information about the appointment of Ms. Lily Qi to the position of Special Projects Manager, Office of Chief Administrative Officer, Offices of the County Executive.

The Special Projects Manager position is a senior level technical and administrative position which involves planning, developing, coordinating, and implementing special projects within the Office of Chief Administrative Officer. Responsibilities include providing oversight and leadership for the County's efforts on key initiatives and special projects. The position reports to an Assistant Chief Administrative Officer.

With respect to Ms. Qi, the special initiative she will be assigned to relates to the County's bio-health/bio-technology growth strategy. She will also oversee other Countywide initiatives such as language access and international partnerships including sister cities relations with Asian countries and regions. She will report to Assistant Chief Administrative Officer, Thomas Street.

For the bio-health/bio-technology initiative, Ms. Qi will serve as the principal liaison with business groups and governmental agencies. She will work closely with the Department of Economic Development. Contacts include the highest levels of Montgomery County government, as well as high ranking officials of the Maryland State government, executives in the bio-health/bio-technology community--including the Tech Council of Maryland, officials of economic development organizations within the 24 jurisdictions of the State, and others in leadership roles in the region's and nation's bio-health/bio-technology community. Further, Ms. Qi will assist in establishing

partnerships, will evaluate and make recommendations on the bi-health/technology policy issues relevant to Montgomery County, and will advocate for and implement creative programs to foster and expand the County's technological presence in the global marketplace.

Specifically, Ms. Qi will be responsible for:

- a. Coordinating with the private and non-profit sectors, universities, and state and other local and regional government organizations to establish and implement a Bio-Health Intermediary organization;
- b. Planning, designing, implementing and reporting on new initiatives, partnerships and strategies aimed at strengthening Montgomery County's ability to retain, attract and foster the growth of bio-health/bio-technology businesses and institutions;
- c. Developing and recommending short- and long-range plans and initiatives for enhancing the bio-health/bio-technology climate of the County, with an emphasis on technology and entrepreneurship, through such priority areas as:
 1. Increased technology transfer between government, academia and business;
 2. The development of a uniform curriculum for tenants of all County incubators; and
 3. Advancing the accelerator incubator concept and overseeing its implementation.
- d. Maintaining and improving relationships with Federal and State governmental agencies, businesses and academic institutions by identifying bio-health/bio-technology opportunities/issues of mutual concern, ascertaining all viewpoints, identifying areas of potential conflict and building consensus on policy, programmatic and strategic planning activities;
- e. Developing strategies for influencing decision-makers, and devising written and oral materials needed for private and public officials to make critical decisions related to bio-health/bio-technology policies, programs and new initiatives;
- f. Representing the Offices of the County Executive and the Assistant Chief Administrative Officer at public hearings and forums, and at interdepartmental, business and community meetings; and
- g. Functioning as the County Executive's Liaison for international business and partnership interests related to the Asian markets.

For language access, Ms. Qi will oversee the County government's linguistic accessibility and cultural competency in communication and service delivery for residents and businesses for residents with limited English proficiency (LEP).

Responsibilities will include:

- a. Providing leadership, guidance and support for all executive branch departments to ensure compliance with federal law and Montgomery County's Executive Order 046-10, "*Access to County Government Services for Individuals with Limited English Proficiency*," throughout the County government;

Valerie Ervin, President, Montgomery County Council

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July 14, 2011

- b. Developing curriculum and overseeing mandatory training for all front-line employees on expectations and resources in serving LEP populations;
- c. Working with LEP Leadership and the LEP Department Liaisons to evaluate and improve policies and practices including cost-effectiveness of both internal and contracted language resources and tools;
- d. Developing a knowledge base on translated documents and exploring partnership opportunities to improve efficiency and quality of written communication in other languages;
- e. Collecting data and providing comprehensive annual reports on the executive branch's language access work; and
- f. Collaborating with other major institutions and public agencies within Montgomery County to exchange good practices and share resource. These agencies include: Montgomery County Public Schools, Montgomery College, Board of Elections, Maryland National Capital Park and Planning Commission, Housing Opportunities Commission, and Washington Suburban Sanitary Commission.

Ms. Qi is a communications and public affairs professional with broad experience in economic development, community engagement, marketing, government communication, strategic partnerships and cultural competency. She is a community leader with expertise in Asian American and immigrant issues and is a native Chinese speaker and certified trainer by American Society for Training & Development. For the last several years Ms. Qi has served as a County Executive's Community Liaison in the Office of Community Partnerships, Offices of the County Executive. In this role she has acted as an advisor, advocate, connector, and trainer on community relations, government cultural competency, immigrant engagement and social integration. Specifically, she has led the signing of the Executive Order on Language Access for people with limited English proficiency and made Montgomery County a regional and state model on language access.

In prior work experiences, Ms. Qi has been Vice President of Business Development and Marketing for the Washington, DC Economic Partnership where she oversaw business relationships and marketing to attract and retain businesses for the District of Columbia and served as a primary liaison between office businesses (non-retail) and the District of Columbia government. She also was the Public Information Officer/Director of Communication for the District of Columbia Department of Insurance, Securities, and Banking, where she served as a spokesperson for the financial regulator and was responsible for overall communication strategies and public relations with the media, industry groups, consumers, policymakers, and other partners.

Ms. Qi has an M.B.A. in Marketing and Management of Global Information Technology from the American University, Washington, D.C.; an M.A. in Organizational Communication from Ohio University in Athens, OH; and a B.S. in Communication Studies from Manchester College, North Manchester, IN.

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Expedited Bill 5-10, Economic Development – Biotechnology Credit - County Supplement

Planning, Housing and Economic Development Committee recommendation: enact with amendments (2-0-1, Councilmember Elrich abstaining).

Expedited Bill 5-10, Economic Development - Biotechnology Credit - County Supplement, sponsored by Councilmember Knapp, Council Vice President Ervin, Councilmember Leventhal, Council President Floreen, and Councilmember Trachtenberg, was introduced on February 2, 2010. A public hearing was held on February 23, at which Janis Pitts, Director of the County Life Sciences Strategy in the County Department of Economic Development, representing the County Executive, and 2 representatives of County biotechnology firms, supported the Bill. A Planning, Housing and Economic Development Committee worksession was held on March 1.

Bill 5-10 would commit the County to supplement the state biotechnology investment incentive tax credit, allowed under Maryland Code, Tax-General Article §10-725 (see ©5-9). The County supplement, which is a direct subsidy rather than a tax credit, would be 50% of the state tax credit for an investment in a qualified Montgomery County biotechnology company. For more details on the state credit, see the fact sheet prepared by County Department of Economic Development staff on ©10-11.

Fiscal impact: \$44,545 (operating costs), \$2 million/year (credit supplement).
Economic impact: not estimated, but substantial positive. See OMB fiscal impact statement on ©12-13.

Issues/Committee recommendations

1) Would this spending be effective? At the hearing Councilmember Andrews noted that, if this supplement were offered, investors would respond to this government incentive rather than focus on the prospects for success of the affected firms, thus negating the “pure

market response” that would otherwise govern the investors’ decisions. The 2 counterarguments to this position are, first, that the state will have already affected the investors’ market response by its larger credit and this supplement will further enhance the attractiveness of County firms among those selected to receive the state credit; and, second, that the County is not “picking winners” among biotechnology firms, but rather encouraging the individual investors to pick winners from among all County recipients of the state credit. Proponents of this Bill emphasize the positive message that County financial support will send to investors regarding local biotechnology firms, but have not submitted any empirical data to quantify the benefits of this type of spending. Council staff has not had time to research the effectiveness of government incentives offered elsewhere for start-up firms.

At the Committee’s March 1 worksession, Councilmember Elrich questioned whether this kind of assistance could be handled on a case-by-case basis, rather than through an across-the-board credit. Committee Chair Knapp noted that the Economic Development Fund is already set up to do that. **Committee recommendation: proceed with this Bill.**

2) What percentage of the state credit should the County pay? Bill 5-10 as introduced would set the County supplement at 50% of the state credit allowed for each qualifying biotechnology firm located in the County. In considering the extent to which the County supplement is an incentive to invest, rather than only a bonus for investing, the relative percentage should be evaluated. Would a lower percentage have a similar effect? We can’t really know, but one option is to start lower and see if any measurable gain in investment in County firms results, compared to pre-supplement investment patterns. **Council staff recommendation:** set the initial percentage at 25%, subject to annual review in the operating budget. **Committee recommendation:** keep the percentage at 50%, subject to appropriation (see below).

3) Can the County afford this program? How can the cost of this supplement be controlled? As Councilmember Andrews asked at the hearing, in a very stringent fiscal environment where will the funds for this credit come from? As the fiscal impact statement on ©12-13 notes, the County’s expenditure – initially projected at \$2 million/year -- will depend on how much the state appropriates for the underlying credit and how many County firms receive the state credit.

The County Executive’s testimony (see ©14-15), presented by Janis Pitts of DED, proposed an amendment to Bill 5-10 that would make the County supplement subject to appropriation. Executive staff argue that, since the total amount of the state credit is subject to appropriation and the state adopts its annual budget before the County does, the amount the state allows will be known. We assume that, if this amendment were adopted, the County supplement for each recipient of the state credit would be the same percentage of the state credit that the County appropriation is of the state appropriation.

The Committee concurred that, if authority to pay this supplement is enacted, its aggregate amount should be controlled each fiscal year through the annual operating budget. **Committee recommendation:** insert on ©2, line 3, after pay: subject to appropriation.

If the total County appropriation for this supplement is capped, then the amount of the individual County supplement would have to be less than 50%. To reflect this adjustment, the credit percentage should be amended. **Committee recommendation:** Insert on ©2, line 22-24: , or a lower percentage, set in the annual operating budget resolution, which reflects the relative proportions of the respective annual appropriations for the state tax credit and the County supplement

4) Should the County subsidize other start-up biotechnology firms? Eligibility for the County supplement under Bill 5-10 is restricted to firms that receive the state credit, which is something of a lottery. Other similar County firms could be just as deserving. However, funding them would add to the program's cost and would require added administrative steps. **Committee recommendation:** if this program is approved, for now offer the supplement only to firms that receive the state credit.

Technical amendments DED staff submitted minor technical amendments to better link the County supplement to the state credit. Council staff has incorporated those amendments into the Bill.

This packet contains:	Circle #
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Legislative Request Report	4
State tax credit law	5
Fact sheet re state tax credit	10
Fiscal impact statement	12
Executive testimony	14
Testimony and correspondence from local firms	16

Expedited Bill No. 5-10
Concerning: Economic Development -
Biotechnology Credit - County
Supplement
Revised: 3-10-10 Draft No. 2
Introduced: February 2, 2010
Expires: August 2, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Knapp, Council Vice President Ervin, Councilmember
Leventhal, Council President Floreen and Councilmember Trachtenberg

AN EXPEDITED ACT to:

- (1) authorize the County to supplement the state biotechnology investment incentive tax credit; and
- (2) generally amend the law governing County financial incentives for investment in certain businesses.

By adding

Montgomery County Code
Chapter 20, Finance
Section 20-76A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 20-76A is inserted as follows:**

2 **20-76A. Biotechnology investment incentive tax credit supplement.**

- 3 (a) The Director of Finance must pay, subject to appropriation, a
4 Biotechnology Investment Incentive Tax Credit Supplement to each
5 applicant who meets certain eligibility standards.
- 6 (b) An applicant, who need not be a County resident, is eligible to receive
7 the Supplement if:
- 8 (1) the applicant has been designated as a qualified investor under
9 state law and has received a final tax credit certificate for the
10 Maryland biotechnology investment incentive tax credit for the
11 year in which the Supplement is claimed; and
- 12 (2) the tax credit received by the applicant was generated by an
13 investment in a qualified Maryland biotechnology company, as
14 defined in state law, that has its headquarters and base of
15 operations in the County.
- 16 (c) The County Executive, by regulations issued under Method (1), may
17 impose other eligibility standards. However, those standards must not
18 make any person ineligible to receive the Supplement who would be
19 eligible under subsection (b).
- 20 (d) The Supplement paid to each recipient must equal 50% of any tax credit
21 the recipient receives from the State biotechnology investment incentive
22 tax credit program, or a lower percentage, set in the annual operating
23 budget resolution, which reflects the relative proportions of the
24 respective annual appropriations for the state tax credit and the County
25 supplement.
- 26 (e) The Director must require each eligible person to submit an application
27 for the Supplement and may take any other action necessary to

28 administer the Supplement. The Executive may issue regulations under
29 Method (1) to specify an application process and otherwise implement
30 this Section.

31 (f) If the Comptroller of the Treasury agrees, the Director may arrange for
32 the Comptroller to pay the Supplement on behalf of the County. To the
33 extent that the Comptroller does not pay the supplement, the Director
34 must pay it directly to each eligible applicant.

35 (g) A person who submits a false or fraudulent application, or withholds
36 material information, to obtain a payment under this Section has
37 committed a Class A violation. In addition, the person must repay the
38 County for all amounts improperly paid and all accrued interest and
39 penalties that would apply to those amounts as if they were overdue
40 taxes. A person who violates this Section is liable for all court costs and
41 expenses of the County in any civil action brought by the County to
42 recover any payment, interest, or penalty. The County may collect any
43 amount due, and otherwise enforce this Section, by any appropriate
44 legal action.

45 (h) If all or part of the allowed state tax credit is recaptured under the
46 applicable state law, the recipient must repay the County within 60 days
47 the portion of any Supplement paid by the County that was based on the
48 recaptured credit.

49 **Sec. 2. Expedited Effective Date.**

50 The Council declares that this Act is necessary for the immediate protection of
51 the public interest. This Act takes effect on the date when it becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 5-10

Economic Development - Biotechnology Credit - County Supplement

DESCRIPTION: Authorizes the County to supplement the state biotechnology investment incentive tax credit, allowed under Maryland Code, Tax-General Article §10-725. The County supplement would be 50% of the state tax credit for an investment in a qualified Montgomery County biotechnology company.

PROBLEM: Need for further incentives to invest in local startup biotechnology firms.

GOALS AND OBJECTIVES: To supplement the state tax credit program for investments in startup biotechnology companies.

COORDINATION: Finance Department, Department of Economic Development

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Applies to credits offered for companies anywhere in the County.

PENALTIES: Not applicable

§ 10-725. Biotechnology investment incentive tax credit.

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

(2) "Biotechnology company" means 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.

(3) (i) "Company" means any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit.

(ii) "Company" does not include a sole proprietorship.

(4) "Department" means the Department of Business and Economic Development.

(5) (i) "Investment" means the contribution of money in cash or cash equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland biotechnology company in exchange for stock, a partnership or membership interest, or other ownership interest in the equity of the qualified Maryland biotechnology company, title to which ownership interest shall vest in the qualified investor.

(ii) "Investment" does not include debt.

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

(6) (i) "Qualified investor" means any individual or entity that invests at least \$25,000 in a qualified Maryland biotechnology company and that is required to file an income tax return in any jurisdiction.

(ii) "Qualified investor" does not include a qualified pension plan, individual retirement account, or other qualified retirement plan under the Employee Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under such plans, or similar tax-favored plans or entities under the laws of other countries.

(7) (i) "Qualified Maryland biotechnology company" means a biotechnology company that:

1. has its headquarters and base of operations in this State;
2. has fewer than 50 full-time employees;
3. except as provided in subparagraph (ii) of this paragraph, has been in active business no longer than 10 years;
4. does not have its securities publicly traded on any exchange; and
5. has been certified as a biotechnology company by the Department.

(ii) "Qualified Maryland biotechnology company" includes a company that has been in active business for up to 12 years if the Department determines that the company requires additional time to complete the process of regulatory approval.

(b) *In general.* — (1) Subject to paragraphs (2) and (3) of this subsection and subsections (d) and (e) of this section, for the taxable year in which an investment in a qualified Maryland biotechnology company is made, a qualified investor may claim a credit against the State income tax in an amount equal to the amount of tax credit stated in the final credit certificate approved by the Secretary for the investment as provided under this section.

(2) To be eligible for the tax credit described in paragraph (1) of this subsection, the qualified investor shall be:

(i) for a company, duly organized and in good standing in the jurisdiction under the laws under which it is organized;

(ii) for a company, in good standing and authorized or registered to do business in the State;

(iii) current in the payment of all tax obligations to the State or any unit or subdivision of the State; and

(iv) not in default under the terms of any contract with, indebtedness to, or grant from the State or any unit or subdivision of the State.

(3) To be eligible for the tax credit described in paragraph (1) of this subsection, the qualified investor may not, after making the proposed investment, own or control more than 25% of the equity interests in the qualified Maryland biotechnology company in which the investment is to be made.

(c) *Certificate.* — (1) At least 30 days prior to making an investment in a qualified Maryland biotechnology company for which a qualified investor would be eligible for an initial tax credit certificate under subsection (b) of this section, the qualified investor shall submit an application to the Department.

(2) The application shall evidence that the qualified Maryland biotechnology company is:

(i) in good standing;

(ii) current in the payment of all tax obligations to the State or any unit or subdivision of the State; and

(iii) not in default under the terms of any contract with, indebtedness to, or grant from the State or any unit or subdivision of the State.

(3) The Department shall:

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

(ii) within 30 days of receipt of an application, certify the amount of any approved tax credits to a qualified investor.

(4) (i) After the date on which the Department issues an initial tax credit certificate under this section, a qualified investor shall have 30 calendar days to make an investment in a qualified Maryland biotechnology company under this section.

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

1. the date of the investment;

2. the amount invested;

3. proof of the receipt of the invested funds by the qualified Maryland biotechnology company;

4. a complete description of the nature of the ownership interest in the equity of the qualified Maryland biotechnology company acquired in consideration of the investment; and

5. any reasonable supporting documentation the Department may require.

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

1. the Department shall rescind the initial tax credit certificate; and
2. the credit amount allocated to the rescinded certificate shall revert to the Maryland Biotechnology Investment Tax Credit Reserve Fund and shall be available in the applicable fiscal year for allocation by the Department to other initial tax credit certificates in accordance with the provisions of this section.

(d) *Amount of credit.* — (1) The tax credit allowed in an initial tax credit certificate issued under this section is 50% of the investment in a qualified Maryland biotechnology company, not to exceed \$250,000.

(2) During any fiscal year, the Secretary may not certify eligibility for tax credits for investments in a single qualified Maryland biotechnology company that in the aggregate exceed 15% of the total appropriations to the Maryland Biotechnology Investment Tax Credit Reserve Fund for that fiscal year.

(3) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the qualified investor for that taxable year, the qualified investor may claim a refund in the amount of the excess.

(e) *Biotechnology Investment Tax Credit Reserve Fund.* — (1) In this subsection, "Reserve Fund" means the Maryland Biotechnology Investment Tax Credit Reserve Fund established under paragraph (2) of this subsection.

(2) (i) There is a Biotechnology Investment Tax Credit Reserve Fund which is a special continuing, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

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

(3) (i) Subject to the provisions of this subsection, the Secretary shall issue an initial tax credit certificate for each approved investment in a qualified Maryland biotechnology company eligible for a tax credit.

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

(iii) 1. Except as otherwise provided in this subparagraph, for any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts in the aggregate totaling more than the amount appropriated to the Reserve Fund for that fiscal year in the State budget as approved by the General Assembly.

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

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

(iv) For each fiscal year, the Governor shall include in the budget bill an appropriation to the Reserve Fund.

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

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

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

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

A. the maximum credit amount stated in the initial tax credit certificate for the investment; and

B. the final certified credit amount for the investment.

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

(f) *Recapture of credit.* — (1) The credit claimed under this section shall be recaptured as provided in paragraph (2) of this subsection if within 2 years from the close of the taxable year for which the credit is claimed:

(i) the qualified investor sells, transfers, or otherwise disposes of the ownership interest in the qualified Maryland biotechnology company that gave rise to the credit; or

(ii) the qualified Maryland biotechnology company that gave rise to the credit ceases operating as an active business with its headquarters and base of operations in the State.

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

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

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

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

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

(3) The qualified investor that claimed the credit shall pay the amount to be recaptured as determined under paragraph (2) of this subsection as taxes payable to the State for the taxable year in which the event requiring recapture of the credit occurs.

(g) *Revocation of certification.* — (1) The Department may revoke its initial or final certification of an approved credit under this section if any representation in connection with the application for the certification is determined by the Department to have been false when made.

(2) The revocation may be in full or in part as the Department may determine and, subject to paragraph (3) of this subsection, shall be communicated to the qualified investor and the Comptroller.

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

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

(h) *Reports.* — (1) On or before January 10 of each year, the Department shall report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly, on the initial tax credit certificates awarded under this section for the prior calendar year.

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

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

(ii) the name and address of the qualified Maryland biotechnology company that received the investment giving rise to the credit under this section and the county where the qualified Maryland biotechnology company is located; and

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

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

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

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

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

(i) *Regulations.* — The Department and the Comptroller jointly shall adopt regulations to carry out the provisions of this section and to specify criteria and procedures for application for, approval of, and monitoring continuing eligibility for the tax credit under this section. (2005, ch. 99; 2008, ch. 518; 2009, chs. 605, 606.)

Effect of amendments. — Chapter 518, Acts 2008, effective July 1, 2008, rewrote the section.

Chapters 605 and 606, Acts 2009, effective July 1, 2009, made identical changes. Each added "individual or" in (a)(6)(i); in (b)(1), added "for the taxable year in which an investment in a qualified Maryland biotechnology company is made" and deleted "in a qualified Maryland biotechnology company" following "investment"; deleted former (e)(3)(vii); in the introductory language of (f)(1) and in (f)(2)(ii) substituted "claimed" for "approved" each time it appears; and made stylistic changes.

Editor's note. — Section 2, ch. 99, Acts 2005, provides that the act shall take effect on July 1, 2005, and shall be applicable to all taxable years beginning after December 31, 2004.

Section 2, ch. 518, Acts 2008, as amended by chs. 605 and 606, Acts 2009, provides that "this Act shall take effect July 1, 2008. A tax credit for an investment in a qualified Maryland biotechnology company under the provisions of § 10-725 of the Tax - General Article as amended by Section 1 of this Act shall be claimed for the taxable year in which the investment is made."

FAQ on the Maryland Biotechnology Investor Tax Credit Program

State Program

1. How does the MD Biotech Investor Tax Credit Program work?

Maryland's Biotechnology Investment Tax Credit program provides income tax credits for investors in qualified Maryland biotechnology companies. This tax credit program was passed in 2005 to offer incentives for investment in seed and early stage, privately held biotech companies. It is funded through an annual appropriation. The FY10 appropriation was \$6 million.

(Note: one of the Tech Council's key legislative issues for the 2010 session is to double this to \$12 million)

The value of the credit is equal to 50% of an eligible investment (minimum \$25,000) made in a qualified Maryland biotechnology company during the taxable year. The maximum amount of the credit cannot exceed \$250,000 for any single investor.

The total amount of initial credit certificates issued in each fiscal year cannot exceed the amount appropriated to the reserve fund in the state budget. All applications are reviewed and approved on a first come, first served basis.

2. What is a 'qualified Maryland biotechnology company'?

According to the statute:

- 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
- An entity of any form (except sole proprietorships) duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit.
- Has its headquarters and base of operations in Maryland;
- Has fewer than 50 full-time employees;
- Has been in active business no longer than 10 years (this can be extended to 12 years under certain circumstances);
- Does not have its securities publicly traded on any exchange; and
- Has been certified as a biotechnology company by DBED.

3. What is a 'qualified investor'?

FAQ on the Maryland Biotechnology Investor Tax Credit Program

- Any individual or entity that invests at least \$25,000 in a qualified Maryland biotechnology company and that is required to file an income tax return in any jurisdiction (not just MD).
- Does not, after making the proposed investment, own or control more than 25% of the equity interests in the qualified Maryland biotechnology company in which the investment is to be made.
- Does not include pension plans, individual retirement account, or other qualified retirement plans.

4. What is the maximum tax credit any single investor can get?

An investor may claim a 50% credit against their (minimum \$25,000) investment in a qualified Maryland biotechnology company, up to a ceiling of \$250,000 per investor.

5. How do investors get the tax credit?

For the taxable year in which an investment in a qualified Maryland biotechnology company is made, a qualified investor may claim a credit against the State income tax in an amount equal to the amount of tax credit stated in the final credit certificate approved by the Secretary of DBED.

If the tax credit in any taxable year exceeds the total tax otherwise payable by the qualified investor for that taxable year, the qualified investor may claim a refund in the amount of the excess.

6. What about investors who don't pay taxes in Maryland?

Qualified out-of-state investors receive the tax credit in the form of a direct payment from the Comptroller of Maryland.

7. What is the maximum share of the annual program appropriation that any single qualified Maryland biotechnology company can obtain?

No single qualified Maryland biotechnology company can claim more than 15% of the annual program appropriation. For FY10 (total appropriation: \$6 million) this means \$900,000.

8. How many Montgomery County biotech companies have benefited from the program since its inception?

For the fiscal years FY07 - FY 09, **24 of the 39 companies** that benefited from the program were based in Montgomery County. According to state data, investors in these companies received **tax credits totaling \$10.5 million** and invested a total of \$22.4 million.

BILL 5-10



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

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MEMORANDUM

February 22, 2010

TO: Nancy Floreen, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Expedited Council Bill 5-10, Biotech Credit Supplement

2010 FEB 22 PM 2:38

MONTGOMERY COUNTY
COUNCIL

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Expedited Bill 5-10 (EB 5-10) enacts a County tax credit that supplements any State biotech investment tax credits given to those who have invested in Montgomery County based biotech companies. The tax credit would be administered by the Department of Finance or the Maryland Office of the Comptroller, if the Comptroller agrees to administer it on the County's behalf. This tax credit, like the County's other business tax credits, would be an entitlement for those eligible and it would not be subject to County appropriation, as the bill is currently constructed.

FISCAL SUMMARY

The legislation obligates the Department of Finance to either administer the credit, or to come to terms with the Maryland Office of the Comptroller to have the Comptroller administer the tax credit on the County's behalf. The bill does not provide the Department of Finance with the resources required to either administer the credit or to negotiate with the Comptroller to have the Comptroller administer the credit. The Department does not have the resources available to serve either of these functions. The bill requires that all requests for the tax credit be made by way of an application and the Department notes that the number of State tax credit recipients that received credits for investments in Montgomery County businesses in 2008 exceeded the number of recipients given Montgomery County business tax credits that year. The business tax credits already require one workyear and since 2008 the County has enacted additional tax credits, (such as the Renewable Energy Tax Credits) the administration of which had to be absorbed by existing personnel. If this bill is enacted, it would require that Finance be given additional resources to implement and administer it as the Comptroller is unlikely to take on the responsibility in these harsh economic times. Therefore, the Department of Finance would require the creation of a part-time, Grade 23 position to administer this program. The estimated cost for a part-time position with benefits (at mid-point) is \$44,545 and a half of a workyear.

Office of the Director

The Issue of Direct Cost:

The EB 5-10 tax credit is an entitlement for those who have been certified to receive the State's Biotechnology Investment Incentive Tax Credit for investments that they have made in Montgomery County based biotech companies. As an entitlement, the cost of the credit is determined solely by State action, and is dependent on how much the State appropriates for its tax credit and how much of that appropriation goes to investors in Montgomery County businesses. The County has no control over the cost of the tax credit under the legislation as it is currently constructed. If future State credits are similar to those of the recent past, then the County could expect the EB 5-10 tax credit to cost about \$2 million per year. However, if the State increases its appropriation, or if it keeps its appropriation at the same level but more of it is given to investors in Montgomery County based companies, then the County will see a consequent increase in its cost for the tax credit. It follows that a reduction in State appropriations for the State credit would lower the cost to the County (unless more of the State credit goes to those who invest in Montgomery County).

The issue of direct cost is somewhat mitigated by the fact that investors know that if they invest in Montgomery County companies and are certified by the State for the State credit, then they will get the County credit too. This should serve as an incentive to invest in Montgomery County biotech businesses, rather than in similar businesses in other parts of Maryland, at least for those who are investing in biotech companies. This could also serve to skew investments toward Montgomery County businesses, which could skew the State tax credits more toward Montgomery County businesses and consequently cause the County to incur additional costs for the credits. The upside risk is that the proceeds that investors receive as tax credits could be re-invested in Montgomery County biotech ventures, thereby multiplying the effect of the tax credits given. All of the risk associated with having no control over the cost of the credit could be mitigated merely by requiring that the County Council approve an amount for the credit prior to the State's certification of the State tax credits in a given year, and limiting the County's exposure to whatever that amount may be. The State's budget is approved before the County's and the Council would know how much to approve to ensure that the County's match is 50%, if it wants to spend that much on the credit.

The following contributed to and concurred with this analysis: Alison Dollar, Office of Management and Budget, Michael Coveyou, Department of Finance, and Peter Bang, Department of Economic Development.

JFB:ad

c: Kathleen Boucher, Assistant Chief Administrative Officer
Michael Coveyou, Department of Finance
Steve Silverman, Director, Department of Economic Development
John Cuff, Office of Management and Budget