


MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession 2:** Expedited Bill 41-09, Taxation - Property Tax Credit – Business Incubator

Expedited Bill 41-09, Taxation - Property Tax Credit – Business Incubator, sponsored by the Council President at the request of the County Executive, was introduced on November 17, 2009. A public hearing was held on January 12, at which Department of Economic Development Director Steve Silverman was the only speaker.

Bill 41-09 would allow a property tax credit against County property taxes imposed on property used as a business incubator. For background and cost estimates, see the Legislative Request Report (LRR) on ©4-5.

After Bill 41-09 was introduced, the County Attorney's Office informed Council staff (see memo, ©8) that the introduced bill was an incorrect draft that the Executive's office had sent to us. For the corrected draft, see ©9-10.

Fiscal impact: \$318,000 (property tax revenue loss). **Economic impact:** not quantified. See fiscal impact statement on ©11-12.

Issues

1) Tax expenditure or direct appropriation? The purpose and effect of this Bill is to substitute a property tax credit (in effect, a "tax expenditure") for the property tax which each incubator would otherwise be required to pay because, although the incubator is funded by the County, it is located in a privately-owned, fully taxable building or, if located in a government-owned building, is occupied by a private business. (The state enabling law which authorizes this tax credit is shown on ©13.)

As the Legislative Request Report on ©4-5 explains, adopting this tax credit would avoid the County having to either appropriate funds to the Department of Economic Development to

pay the tax or reduce the level of services that each affected incubator offers. This poses a classic "tax expenditure v. direct expenditure" choice. The County would pay either way, but a direct expenditure would be noticeable in the annual operating budget and could be evaluated against other claims against available resources. By contrast, a tax expenditure (credit) would be built into the County Code, effectively invisible to the public, and not reviewed annually.

Council staff believes that the principle of budgetary transparency outweighs the need to encourage these incubators. **Council staff recommendation:** reject this Bill.

2) County control The state enabling law which authorizes this credit (see ©13) is broader than the Bill introduced by the Executive, particularly in its corrected version (see ©9-10). One significant difference is that under this Bill the credit could only go to an incubator that is owned or funded by the state or County, rather than also one owned or funded by a municipality, a public higher education institution, or a non-profit organization (see ©9, deleted lines 8-10). However, the Executive's Bill allows the credit if either the state or County "is represented on the governance board that approves the annual budget of the business incubator" (see ©9, lines 17-18).

If this Bill goes forward, allowing the credit solely because the state or County "is represented" (meaning, we assume, has selected one member) on the incubator's governing board is, in our view, too attenuated a relationship to justify this tax expenditure. **Council staff recommendation:** limit the credit to incubators either funded substantially by the state or County or located in state or County buildings (delete ©9, lines 17-18).

Previous worksession: At the first Committee worksession on this Bill, held on January 25, the Committee voted unanimously to reject this bill as staff recommended in Issue 1. DED Director Silverman requested reconsideration in order to advocate that the Committee recommend enactment of the Bill with the amendment described in Issue 2. Council staff **continues to recommend** that the Bill be rejected and funding of the incubators' property tax costs be decided in the operating budget process.

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Expedited Bill No. 41-09
Concerning: Taxation - Property Tax
Credit - Business Incubator
Revised: 6-19-09 Draft No. 2
Introduced: November 17, 2009
Expires: May 17, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to create a property tax credit for property used as a publicly sponsored business incubator.

By adding:

Montgomery County Code
Chapter 52, Taxation
Section 52-18S

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:

Sec 1. Section 52-18S is added as follows:

52-18S. Property Tax Credit –publicly sponsored business incubator.

- (a) In this section “business incubator” has the meaning in the State law which authorizes this property tax credit.
- (b) The Director of Finance must allow a tax credit, as authorized by State law, to a taxpayer against all County property tax and special area tax imposed on property that is used as a business incubator if the State, the County, a municipality, an organization that is exempt from taxation under §501(c)(3) of the Internal Revenue Code, a public institution of higher education, or an agency or instrumentality of the State:
 - (1) owns, controls, or leases the space that is used as a business incubator;
 - (2) provides at least 50% of the total funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or
 - (3) is represented on the governance board that approves the annual budget of the business incubator.
- (c) The tax credit under this Section must continue as long as the property meets one or more criteria listed in subsection (b).
- (d) The Department of Finance must administer this credit.
- (e) The taxpayer must apply for the tax credit by the first day of March before the tax year when the tax credit would be allowed. An application must be filed on forms that the Department prescribes. The applicant must submit any supporting document, information, or certification required by the Department.
- (f) Any taxpayer aggrieved by a decision of the Director to grant or deny a credit under this Section may appeal that decision to the Maryland Tax

Court. Each appeal must be filed within 30 days after the taxpayer receives written notice of the decision from the Director.

(g) The County Executive may adopt regulations under method (2) to administer this Section.

(h) The County Executive must report annually to the County Council on the use of this tax credit.

(i) (1) A person must not knowingly file a false or fraudulent application to obtain a tax credit under this Section. A violation of this subsection is a class A violation.

(2) In addition to the penalties provided under paragraph (1), a person who violates this subsection must pay the County any taxes, together with interest and penalties, offset by the credit, any other penalty due, and the County's fees and costs in any action to enforce this subsection.

Sec. 2. Expedited Effective Date.

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

Approved:

Philip M. Andrews, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 41-09

Property Tax Credit –business incubator

Description: To provide a property tax credit as authorized by State law, to a taxpayer against all County property tax and special area tax imposed on property that is used as a business incubator if the County:

- (1) Owns, controls, or leases the space that is used as a business incubator;
- (2) Provides at least 50 percent of the total funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or
- (3) Is represented on the governance board that authorizes the annual budget of the business incubator.

Problem: In 2005, the State Attorney General's Office determined that, based on its interpretation of the tax code, government property leased to an incubator business is taxable to the business owner, because the tenants of these publicly-operated business incubators are for-profit businesses.

Based on the State Attorney General's reading of the Maryland tax code, the State Department of Assessments and Taxation (SDAT) can therefore levy property taxes on all five of Montgomery County's existing business incubators. To date, two of the County's incubators have been assessed by SDAT: the Rockville Innovation Center (on which the Maryland Economic Development Corporation holds the mortgage); and the Wheaton Incubation Center, which is located in commercially leased space. In the latter case, property taxes are incorporated into the County's triple-net lease with the landlord, Westfields. The combined total of these two property tax bills for 2008 was approximately \$87,000. Should SDAT exercise its right to assess the County's three other incubators (the Maryland Technology Development Center, the Silver Spring Innovation Center and the Germantown Innovation Center) the estimated County tax bill would be \$231,000.

If the County's business incubators are obliged to pay property taxes, the funds will have to come either from a reduction programs and services or an increase in tenant fees. Either option undermines the incubators' public purpose, which is to foster the growth of small businesses and create new, high-paying jobs in the County.

Goals & Objectives: In the 2007 General Assembly legislative session, the Department of Economic Development worked with the Maryland Business Incubation Association to secure passage of enabling legislation to exempt publicly-sponsored incubators from State and local property taxes. Maryland Code,

Tax-Property Article, §9-247 authorizes local jurisdictions to grant a property tax *credit* against county or municipal property taxes for publicly-supported business incubators.

The purpose of this bill is to enact this legislation at the County level. This will enable the County's business incubators to dedicate all of their limited resources to supporting their core mission: fostering the development of small, innovative businesses that create new, well-paying jobs in the County.

Coordination: Department of Economic Development, Department of Finance

Fiscal Impact: Reduction in local property tax revenues of \$87,000 (based on the local share of the 2008 property tax bills for the Rockville and Wheaton Incubation Centers). The return on investment of using this money instead to enhance programming and services for the County's incubators (through new job creation and related tax revenues) is substantially greater than the reduction in County property tax revenue.

Economic Impact: This legislation will allow the County's business incubators to devote more resources to their core mission of fostering the growth of promising start-up businesses. These businesses create new, well-paying jobs and increase the County's tax base. To date, the County's incubator program has created over 1,500 jobs with an average annual salary of \$60,000. Incubator graduates occupy over 600,000 sf of commercial space in the County, and contribute approximately \$4 million per year in tax revenues.

Experience Elsewhere: A number of other Maryland jurisdictions that have indicated their intent to enact legislation that mirrors the state enabling legislation. However, to DED's knowledge, none have done so to date.

Source of Information: Corinne Rothblum, Business Development Specialist, Department of Economic Development, 240-777-2011; corinne.rothblum@montgomerycountymd.gov

Bill



051419

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

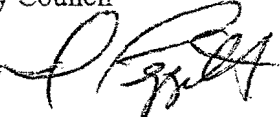
MEMORANDUM

September 24, 2009

2009 SEP 24 AM 10:46

ME
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RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Phil Andrews, President, County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Creation of a Property Tax Credit for Property Used as a Publicly Sponsored Business Incubator (County Code Section 52-18S)

I am transmitting to the Council a proposed bill to allow a tax credit against all County property and special area taxes imposed on property used as a County supported business incubator.

In 2005, the State Attorney General's Office determined that based on its interpretation of the tax code, government property leased to an incubator business is taxable to the business owner, because the tenants of these publicly-operated business incubators are for-profit businesses. Based on the State Attorney General's reading of the tax code, the State Department of Assessments and Taxation (SDAT) can, therefore, levy property taxes on all of the business incubators in the County's Business Incubator Network - including those that are owned by the County or a State entity.

To date, two of the County's incubators have been assessed by SDAT: the Rockville Innovation Center (on which the Maryland Economic Development Corporation (MEDCO) holds the mortgage); and the Wheaton Innovation Center, which is located in commercially leased space. In the latter case, property taxes are incorporated into the County's triple-net lease with the landlord, Westfields. The combined total of these two property tax bills for 2008 was approximately \$87,000. Should SDAT exercise its right to assess the County's three other incubators (the Maryland Technology Development Center in Rockville, the Silver Spring Innovation Center and the Germantown Innovation Center), the total County tax bill would be an additional estimated \$231,000, for a total annual County tax bill of \$318,000 for all five incubators.

These tax payments will have to come out of the Business Innovation Network's (BIN) operating budget, which presently does not include funds for this purpose. BIN revenues are insufficient to fully fund program and facility costs, and require annual operating grants from the County. If the County is obligated to pay local property taxes it will need to reduce BIN programs and services, increase tenant fees and/or seek additional funding support from the County. All of these options undermine the incubators' essential public purpose, which is to foster the growth of small businesses and create new, high-paying jobs in Montgomery County¹.

¹ Since the Business Incubator Network was established within the Department of Economic Development (DED) in 1999, incubator companies have created over 1,500 jobs with an average annual salary of \$60,000, and incubator graduates have leased over 600,000 square feet of commercial real estate in the County.

Phil Andrews
September 24, 2009
Page 2

To address this problem, the Department of Economic Development coordinated the Maryland Business Incubation Association's effort during the 2007 legislative session to secure passage of enabling legislation to exempt publicly-sponsored incubators from State and local property taxes. An amended version of the bill passed (Maryland Code, Tax-Property Article, §9-247) giving local jurisdictions the right to grant a property tax *credit* against county or municipal property taxes for publicly-supported business incubators (as defined in the State tax code).

The purpose of the attached bill is to enact this legislation at the County level. This will enable the County's business incubators to dedicate all of their limited resources to supporting their core mission: supporting the development of small, innovative businesses that create new, well-paying jobs in Montgomery County.

For more information on this proposed legislation, please contact John Korpela, Manager of the Business Incubator Network in the Department of Economic Development at 240-453-6348.

Attachments: Proposed legislation
Legislative Request Report
Fiscal and Economic Impact Statement
Maryland Code, Tax-Property Article, §9-247

cc: Jennifer Barrett, Director, Department of Finance
Justina Ferber, Legislative Analyst, County Council
Steve Silverman, Director, Department of Economic Development



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

MEMORANDUM

To: Kathleen Boucher
Assistant Chief Administrative Officer

FROM: John J. Fisher
Associate County Attorney

DATE: December 3, 2009

RE: Bill 41-09 – Business Incubator Tax Credit – Requested Amendments

2009 DEC 3 PM 12:51

Per our discussions, and my discussions with Peter Bang of DED, it appears that the wrong form/version of Bill 41-09 (the “Bill”) was forwarded to Mike Faden at the County Council. The Bill has already been introduced by Council. It is therefore necessary to request amendments to the pending Bill to conform it with the version of the Bill which was intended to have been conveyed by the Executive’s office to Council. Mike Faden has asked that we provide those amendments in the form of a redline to the Bill. That redline is attached.

For your and Mike Faden’s understanding, the purpose of those changes are as follows:

1. Section 52-18S(b) – this change deletes the reference to any business incubators other than those involving the State or County. After discussions with DED, and in light of the current economic climate, it was their position with which our office concurs, that the Bill should be limited in the tax credits given, particularly with respect to 501(c)(3) entities which may include a host of unintended activities as to which a tax credit would potentially be inappropriate.
2. Sections 52-18S(c) and (e) – were amended to provide that the tax credit be reapplied for annually rather than granting the tax credit in perpetuity.
3. Section 52-18S(f) – was amended to limit the right of appeal to the party applying for the tax credit to avoid granting a right to third-parties to challenge the Director of Finance’s decision to grant a tax credit.
4. Section 52-18S(h)(2) – is simply an editorial change.

Sec 1. Section 52-18S is added as follows:

52-18S. Property Tax Credit –publicly sponsored business incubator.

(a) In this section “business incubator” has the meaning in the State law which authorizes this property tax credit.

(b) The Director of Finance must allow a tax credit, as authorized by State law, to a taxpayer against all County property tax and special area tax imposed on property that is used as a business incubator if the State, the County, [[a municipality, an organization that is exempt from taxation under §501(c)(3) of the Internal Revenue Code, a public institution of higher education,]] or an agency or instrumentality of the State or County:

(1) owns, controls, or leases the space that is used as a business incubator;

(2) provides at least 50% of the total funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or

(3) is represented on the governance board that approves the annual budget of the business incubator.

[[c) The tax credit under this Section must continue as long as the property meets one or more criteria listed in subsection (b).]]

[[d)] (c) The Department of Finance must administer this credit.

[[e)] (d) The taxpayer must apply annually for the tax credit by the first day of March before the tax year when the tax credit would be allowed. An application must be filed on forms that the Department prescribes. The applicant must submit any supporting document, information, or certification required by the Department.

[[f)] (e) Any taxpayer aggrieved by a decision of the Director to [[grant or]]

deny a credit under this Section may appeal that decision to the Maryland Tax Court. Each appeal must be filed within 30 days after the taxpayer receives written notice of the decision from the Director.

[(g)] (f) The County Executive may adopt regulations under method (2) to administer this Section.

[(h)] (g) The County Executive must report annually to the County Council on the use of this tax credit.

[(i)] (h)(1) A person must not knowingly file a false or fraudulent application to obtain a tax credit under this Section. A violation of this subsection is a class A violation.

(2) In addition to the penalties provided under paragraph (1), a person who violates this subsection must pay the County any taxes, together with interest and penalties, offset by the credit, any other penalty due, and the County's fees and costs in any action to enforce this subsection.

Sec. 2. Expedited Effective Date.

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

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

July 23, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Creation of a Property Tax Credit for Property Used as a Publicly Sponsored Business Incubator

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

LEGISLATION SUMMARY

The proposed legislation provides a property tax credit, as authorized by State law, to a taxpayer against all County property tax and special area tax imposed on property that is used as a business incubator if the County:

- (a) Owns, controls, or leases the space that is used as a business incubator;
- (b) Provides at least 50 percent of the total funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or
- (c) Is represented on the governance board that authorizes the annual budget of the business incubator.

The County currently has five existing business incubators; Rockville Innovation Center, Wheaton Incubation Center, Maryland Technology Development Center, Silver Spring Innovation Center, and Germantown Innovation Center.

FISCAL SUMMARY

The estimated fiscal impact of this legislation would be a reduction of County tax revenues of \$318,000. The legislation directs the Department of Finance to administer the property tax credit for taxpayers, who must apply for the credit by the first day of March preceding the tax year in which the credit would be allowed. To date, two of the County's incubators have been assessed by State Department of Assessments and Taxation (SDAT): the Rockville Innovation Center and the Wheaton Incubation Center. The combined total of these two property tax bills for 2008 was approximately \$87,000. Should SDAT exercise its right to assess the County's three other incubators (the Maryland Technology Development Center in Rockville, the Silver Spring Innovation Center and the Germantown Innovation Center), the County tax bill would be an additional estimated \$231,000, for a total annual County tax bill of \$318,000 for all five incubators.

Office of the Director

ECONOMIC SUMMARY

This legislation will allow the County's business incubators to devote more resources to their core mission of fostering the growth of promising start-up businesses. These businesses create new, well-paying jobs and increase the County's tax base. To date, the County's incubator program has created over 1,500 jobs with an average annual salary of \$60,000. Incubator graduates occupy over 600,000 square feet of commercial space in the County, and contribute approximately \$4 million per-year in tax revenues.

The following contributed to this analysis: Corinne Rothblum of the Department of Economic Development, David Platt of the Department of Finance, and John Cuff of the Office of Management and Budget.

JFB:jc

Attachment

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Jennifer Barrett, Director, Department of Finance
- Steve Silverman, Director, Department of Economic Development
- Corrine Rothblum, Department of Economic Development
- David Platt, Department of Finance
- Ed Piesen, Office of Management and Budget
- John Cuff, Office of Management and Budget

§ 9-247. Credit for property used as a publicly sponsored business incubator.

(a) *"Business incubator" defined.*- In this section, "business incubator" means a program in which units of space are leased by multiple early-stage businesses that share physical common space, administrative services and equipment, business management training, mentoring, and technical support.

(b) *In general.*- The Mayor and City Council of Baltimore City or the governing body of a county or of a municipal corporation may grant, by law, a property tax credit against the county or municipal property tax imposed on property that is used as a business incubator if the State, a county, a municipal corporation, an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code, a public institution of higher education, or an agency or instrumentality of the State, a county, a municipal corporation, or a public institution of higher education:

- (1) owns, controls, or leases the space that is used as a business incubator;
- (2) provides at least 50% of the total funding received by the business incubator from all sources, not including rents received from incubator tenant firms; or
- (3) is represented on the governance board that authorizes the annual budget of the business incubator.

(c) *Amount, duration, eligibility, regulation.*- The Mayor and City Council of Baltimore City or the governing body of a county or municipal corporation may provide, by law, for:

- (1) the amount and duration of the property tax credit under this section;
- (2) additional eligibility criteria for the tax credit under this section;
- (3) regulations and procedures for the application and uniform processing of requests for the tax credit; and
- (4) any other provision necessary to carry out this section.

[2007, chs. 572, 573.]