

MEMORANDUM

TO: County Council

FROM: *M* Michael Faden, Senior Legislative Attorney

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

Expedited Bill 5-10, Economic Development - Biotechnology Credit - County Supplement, sponsored by Councilmember Knapp, Council Vice President Ervin, Councilmember Leventhal, and Council President Floreen, is scheduled to be introduced on February 2, 2010. A public hearing is tentatively scheduled for February 23 at 1:30 p.m.

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 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.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 5-10
Concerning: Economic Development -
Biotechnology Credit - County
Supplement
Revised: 1-28-10 Draft No. 1
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, and Council President Floreen

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 a Biotechnology Investment Incentive
4 Tax Credit Supplement to each applicant who meets certain eligibility
5 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 received a final tax credit certificate for the
9 Maryland biotechnology investment incentive tax credit for the
10 year in which the Supplement is claimed; and
- 11 (2) the tax credit received by the applicant was generated by an
12 investment in a qualified Maryland biotechnology company that
13 has its headquarters and base of operations in the County.
- 14 (c) The County Executive, by regulations issued under Method (1), may
15 impose other eligibility standards. However, those standards must not
16 make any person ineligible to receive the Supplement who would be
17 eligible under subsection (b).
- 18 (d) The Supplement paid to each recipient must equal 50% of any tax credit
19 the recipient receives from the State biotechnology investment incentive
20 tax credit program.
- 21 (e) The Director must require each eligible person to submit an application
22 for the Supplement and may take any other action necessary to
23 administer the Supplement. The Executive may issue regulations under
24 Method (1) to specify an application process and otherwise implement
25 this Section.
- 26 (f) If the Comptroller of the Treasury agrees, the Director may arrange for
27 the Comptroller to pay the Supplement. To the extent that the

28 Comptroller does not pay the supplement, the Director must pay it
29 directly to each eligible applicant.

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

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

44 **Sec. 2. Expedited Effective Date.**

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

47 *Approved:*

48

49

Nancy Floreen, President, County Council Date

50 *Approved:*

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52

Isiah Leggett, County Executive Date

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.