

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 34-11, Biotechnology Investment Incentive Tax Credit Supplement - Amendment

Planning, Housing and Economic Development Committee recommendation: enact with amendments.

Bill 34-11, Biotechnology Investment Incentive Tax Credit Supplement - Amendment, sponsored by the Council President at the request of the County Executive, was introduced on October 25, 2011. A public hearing was held on November 15 (see testimony, ©12-17) and a Planning, Housing and Economic Development Committee worksession was held on November 21.

Summary Bill 34-11 would revise the formula to determine the annual Biotechnology Investment Incentive Tax Credit Supplement an investor may receive. Under the current law, County Code §20-76A, enacted in Bill 5-10 in March 2010, a “qualified investor” in a “qualified Maryland biotechnology company ... that has its headquarters and base of operations in the County” who receives a tax credit certificate from the State is also entitled to an added 50% of the State tax credit. The Council can set a lower percentage in the annual operating budget resolution to reflect the relative proportions of the State and County appropriations for this purpose.

As the Executive’s memo on ©6 noted, the limited County appropriation for this supplement in FY12 (the supplemental appropriation which the Committee also recommended would set this amount) makes it impossible to pay the supplement as the law originally intended. Under this Bill, the County supplement paid to a qualified investor would instead be calculated as the proportionate share that company receives of the total credits received by all County biotechnology companies, multiplied by the total appropriation for the County supplement. However, the law would specify that an eligible investor cannot receive more than either 50% of the state tax credit or 15% of the total County appropriation.

Committee recommendation: approve this formula revision.

Amendments Former Councilmember Mike Knapp, speaking for several biotechnology companies (see testimony, ©13-16), suggested several further amendments to this Bill. Those amendments would better integrate the state tax credit and County supplement and set an annual

January 31 deadline to pay the supplement. To have the data to pay the supplement on that schedule, the County would receive from the State the list of qualified investors that the State law requires them to compile by January 10 of each year for the preceding calendar year. These amendments would replace the current application process because recipients of the state credit would automatically qualify for the County Supplement. DED staff supported the Knapp amendments.

Committee recommendation: approve the Knapp amendments.

Fiscal and economic impact statements The Executive's fiscal impact statement (see ©8-9) asserted in several places that "Bill 34-11 does not have a fiscal impact." OMB's reasoning apparently was that "The program is subject to annual appropriation." Council staff disagreed with this conclusion and the reasoning behind it.

It seems more accurate to conclude that a fiscal impact will occur every time the County supplement is granted; the impact is equal to the amount of the supplement. We agree that the actual annual impact cannot be determined now because the aggregate amount of the supplement offered is subject to annual appropriation. But to conclude "no fiscal impact" gives an erroneous impression; the supplement only has a zero fiscal impact if it is never granted. If the proposed supplemental appropriation is approved, the fiscal impact in FY12 will be \$500,000. Interestingly, the fiscal impact statement for Bill 5-10, the predecessor bill which established this supplement, estimated added annual personnel costs of about \$45,000 in addition to the supplement, which it did not calculate but assumed would have a cost to the County.

At the Committee worksession DED Director Silverman agreed that the projected fiscal impact should include the amount of the Supplement.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 34-11
Concerning: Biotechnology Investment
Incentive Tax Credit Supplement -
Amendment
Revised: 11-22-11 Draft No. 6
Introduced: October 25, 2011
Expires: April 25, 2013
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:

- (1) clarify the proportion of the annual Biotechnology Investment Incentive Tax Credit Supplement an applicant may receive; and
- (2) generally amend the law relating to the Biotechnology Investment Incentive Tax Credit Supplement.

By amending

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:

28 by all Montgomery County biotechnology companies
29 under the State Biotechnology Investment Tax Credit
30 Program during the preceding calendar year; and

31 ~~[(2)]~~ (B) the total amount of funds appropriated to the
32 Supplement Program for that fiscal year.

33 (2) The Supplement paid to any recipient must not exceed:

34 (A) 50% of [any] the State tax credit [the recipient] [[an
35 eligible applicant]] that recipient receives from the [State
36 biotechnology investment incentive tax credit program, or
37 a lower percentage, set in the annual operating budget
38 resolution, which reflects the relative proportions of the
39 respective annual appropriations for the state tax credit and
40 the County supplement] Maryland Biotechnology
41 Investment Tax Credit Program in [[any given]] the
42 preceding calendar year]]. An eligible applicant must not
43 receive more than]]; or

44 (B) 15% of the total annual appropriation for the Supplement
45 program.

46 (e) The Director must [[require each eligible person to submit an
47 application for the Supplement]] request from the Comptroller of the
48 Treasury and Department of Business and Economic Development, by
49 January 15 of each year, a list of each qualified investor for a qualified
50 Maryland biotechnology company that was issued a final credit
51 certificate during the preceding calendar year in order to calculate the
52 Supplement paid under subsection (d), and may take any other action
53 necessary to administer the Supplement. The Executive may issue

54 regulations under Method (1) to [[specify an application process and
55 otherwise]] implement this Section.

56 (f) If the Comptroller of the Treasury agrees, the Director may arrange for
57 the Comptroller to pay the Supplement on behalf of the County. To the
58 extent that the Comptroller does not pay the supplement, the Director
59 must pay it directly to each [[eligible applicant]] recipient.

60 * * *

61 **Sec. 2. Expedited Effective Date.**

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

65 *Approved:*

66

67

Valerie Ervin, President, County Council Date

68 *Approved:*

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70

Isiah Leggett, County Executive Date

71 *This is a correct copy of Council action.*

72

73

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 34-11

Biotechnology Investment Incentive Tax Credit Supplement - Amendment

DESCRIPTION:	Clarify the proportion of the annual Biotechnology Investment Incentive Tax Credit Supplement (Supplement) an applicant may receive and generally amend the law relating to the Biotechnology Investment Incentive Tax Credit Supplement.
PROBLEM:	Current law contains language mandating that the County provide an eligible applicant with 50% of the amount the State Biotech Tax Credit issued to eligible investors (applicants), unless a lower percentage is set in the annual operating budget resolution.
GOALS AND OBJECTIVES:	The attached bill deletes language that requires the amount of the supplement to equal 50% of the SBITCP and substitutes language that provides that an eligible company will receive a supplement amount that is proportionate to the amount of the credit received by that company under the SBITCP as a percentage of the total amount of credits allocated under the SBITCP to Montgomery County biotechnology companies.
COORDINATION:	County Attorney, Department of Economic Development
FISCAL IMPACT:	Same as the original bill as this amendment will provide the County with flexibility of providing matches.
ECONOMIC IMPACT:	The amendment will continue to support the same mission as the original bill, i.e., stimulate investment activities in the biotechnology industry in the County and provide the incentives to support the growth of biotech companies in the County.
EVALUATION:	Department of Economic Development will monitor the business growth of the tax credit supplement recipients and report annually.
EXPERIENCE ELSEWHERE:	State of Maryland is operating the program very successfully since 2008.
SOURCE OF INFORMATION:	Department of Economic Development.
APPLICATION WITHIN MUNICIPALITIES:	None. All applicants in the County will be eligible.
PENALTIES:	None.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 17, 2011

TO: Valerie Ervin, County Council President

FROM: Ike Leggett, County Executive 

SUBJECT: Proposed Legislation re: Montgomery County Biotechnology Investment Incentive Tax Credit Supplement

I am submitting for Council introduction a bill that would modify the Biotechnology Investment Incentive Tax Credit Supplement (Biotech Credit Supplement Program) that was established when Bill 5-10, Biotechnology Credit – Local Supplement was enacted on March 16, 2010. I am also enclosing a Legislative Request Report for this bill.

Under current law, the County is required to pay each eligible biotechnology company an amount that is equal to 50% of the tax credit that the recipient receives from the State Biotechnology Investment Tax Credit Program (SBITCP). However, due to County's limited initial budget of \$500,000 in FY12 and the uncertainty of future appropriations to the program, the current mandatory supplement amount will make it impossible to implement the Biotech Credit Supplement Program. The attached bill deletes language that requires the amount of the supplement to equal 50% of the SBITCP and substitutes language that provides that an eligible company will receive a supplement amount that is proportionate to the amount of the credit received by that company under the SBITCP as a percentage of the total amount of credits allocated under the SBITCP to Montgomery County biotechnology companies.

Please contact Steve Silverman, Director, Department of Economic Development, at 240-777-2005 if you have questions about the Biotech Credit Supplement Program or any aspect of this bill. Thank you for your consideration of this item.

Attachments (2)

cc: Steve Silverman, DED Director



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

November 14, 2011

TO: Valerie Ervin, President, County Council

FROM: Jennifer A. Hughes, Director

SUBJECT: Bill 34-11, Biotechnology Investment Incentive Tax Credit Supplement - Amendment

Attached please find the fiscal and economic impact statements for the above referenced legislation.

JAH:mob

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Steve Silverman, Director, Department of Economic Development
Peter Bang, Department of Economic Development
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
David Platt, Department of Finance
Mary Oneda-Brown, Office of Management and Budget
Amy Wilson, Office of Management and Budget
Alex Espinosa, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov

montgomerycountymd.gov/311



240-773-3556 TTY

Fiscal Impact Statement
Council Bill 34-11, Biotechnology Investment Incentive Tax Credit
Supplement - Amendment

1. Legislative Summary

Bill 34-11 would clarify the proportion of the annual Biotechnology Investment Incentive Tax Credit Supplement an applicant may receive and generally amends the law relating to the Biotechnology Investment Incentive Tax Credit Supplement. It will allow the County to provide a local supplement to the State Biotechnology Investment Tax Credit Program (SBITCP). The SBITCP provides income tax credits of up to 50 percent of an eligible investment for investors in qualified Maryland biotechnology companies. Current law requires the County to pay each eligible applicant an amount equal to 50 percent of the tax credit that the recipient receives from the SBITCP. The proposed bill deletes the language that requires the amount of the supplement to equal 50 percent of the SBITCP and substitutes language that provides an eligible company to receive a supplement amount that is proportionate to the amount of the credit received by that company under the SBITCP as a percentage of the total amount of credits allocated under the SBITCP to Montgomery County biotechnology companies.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The total cost of the Supplement program is subject to annual appropriation. The County Executive has recommended an FY12 supplemental appropriation request of \$500,000 to the Economic Development Fund to provide funding for the program in FY12.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The program is subject to annual appropriation. Bill 34-11 does not have a fiscal impact.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The bill doesn't require future spending. Changes during the annual appropriations process would affect future expenditures.

6. An estimate of the staff time needed to implement the bill.

Bill 34-11 does not have a fiscal impact since it clarifies the proportion of the annual Biotechnology Investment Incentive Tax Credit Supplement an applicant may receive and generally amends the law relating to the supplement.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not Applicable

8. An estimate of costs when an additional appropriation is needed.

An appropriation is required to fund the supplement program. The County Executive has requested an FY12 supplemental appropriation request of \$500,000 for the program. However, Bill 34-11 does not have a fiscal impact.

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Bill 34-11 does not have a fiscal impact.

11. If a bill is likely to have no fiscal impact, why that is the case.

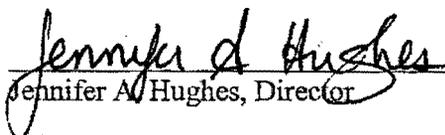
Bill 34-11 does not have a fiscal impact since it clarifies the proportion of the annual Biotechnology Investment Incentive Tax Credit Supplement an applicant may receive and generally amends the law relating to the supplement.

12. Other fiscal impacts or comments.

None.

13. The following contributed to and concurred with this analysis:

- Peter Bang, Department of Economic Development
- Mike Coveyou, Department of Finance
- David Platt, Department of Finance
- Mary Oneda-Brown, Office of Management and Budget
- Alex Espinosa, Office of Management and Budget


Jennifer A. Hughes, Director

11/15/11
Date

ECONOMIC IMPACT STATEMENT

BILL 34-11

Biotechnology Investment Incentive Tax Credit Supplement – Amendment

Background:

Bill 34-11 would clarify the proportion of the annual Biotechnology Investment Incentive Tax Credit Supplement enacted on March 26, 2010 (Bill 05-10) available to each recipient. The County's tax credit supplements the State credit, and for FY12 Maryland appropriated \$8 million to fund the State tax credit.

Economic Impact Statement:

The goal of Bill 34-11 and its predecessor is to stimulate investment in the biotechnology companies located in Montgomery County. Such investment would provide incentives to support start-up biotechnology (biotech) companies during the introduction stage of the product life cycle. At this stage biotech companies face a number of obstacles including access to financing, and, research has shown that large corporations or commercial banks show little interest in financing such high-risk yet long-term investments, causing biotech companies to rely mainly on private investors to finance their operations. The tax credit provides support for start-up companies by encouraging investment in them during the early stage of the product life cycle and, if successful, those companies will grow and mature creating jobs and income for County residents.

The economic impact of this tax credit is prospective in that it attempts to provide access to capital to eventually grow biotech companies to maturity. The specific economic value of the biotech investment incentive credit cannot be quantified at this time since it is dependent on the number of future successful applications received and the timing of and return on investment from the credit.

-
1. Sources of Information, Assumptions and Methodologies
 - Maryland Department of Business and Economic Development: Program page on the Maryland Biotechnology Investment Tax Credit (showing 194 applicants for the FY12 State credit, unofficially).
 - Maryland FY12 Budget (HB70)
 2. Variables that Can Affect the Estimates
 - Amount appropriated for the program
 - Number of Biotech investors seeking the incentive
 - Timing of and return on investment for Biotech investors receiving the credit
 3. Effect on Employment, Spending, Saving, Investment, Incomes, and Property Values

- Unknown at this time. Funds have yet to be appropriated for the program. It is assumed that all funds appropriated in any given year will be spent in that year, but the economic impact for this appropriation in any given year may not be realized until several years in the future.
4. If a bill is likely to have no economic impact, why that is the case.

Not Applicable

5. The following contributed to and concurred with this analysis: David Platt, Finance; Mike Coveyou, Finance



Joseph F. Beach, Director
Department of Finance

21/10/11
Date

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Bill 34-11
Montgomery County Biotechnology Investment Incentive
Tax Credit Supplement
Amendment

November 15, 2011

Testimony of Steven A. Silverman, Director
Montgomery County Department of Economic Development

For the record, my name is Steven Silverman and I am the Director of the Montgomery County Department of Economic Development. I am here this afternoon testifying on behalf of County Executive Leggett in support of Bill 34-11, which seeks to clarify the amount of the tax credit that an eligible applicant can receive under the County's Biotechnology Investment Incentive Tax Credit Supplement Program.

The County Executive would again like to thank the County Council for enacting last year's legislation, which created what we understand is the first local biotechnology tax credit in our country. This program is sending a strong statement to investors, entrepreneurs and companies looking to relocate or expand that Montgomery County pro-actively supports its biosciences sector.

The original language approved for this initiative required the County to pay each eligible biotechnology investor an amount equal to 50% of the tax credit that the investor receives from the State's Biotechnology Investment Tax Credit Program (SBITCP). However, recognizing today's uncertain economic times and our inability to project how much money will be appropriated for this program in the years to come, we felt the need to amend the language from "must pay 50%" to "pay up to 50%" to ensure that the amount of the County supplement will be a function of the County appropriation as opposed to the State's total tax credit given to investors..

As was with the original Bill, under this amendment, an eligible applicant will receive a supplemental amount from the County that is proportionate to the amount of the credit that is received by that applicant under the SBITCP as a percentage of the total amount of credits allocated under the SBITCP to those investing in Montgomery County biotechnology companies.

I would also like to encourage the County Council to approve Supplemental Appropriation #12-327 to the FY12 Operating Budget, which will provide \$500,000 for this very important economic development program.

Thank you for your ongoing support of the County's economic development initiatives, and for your support of our local biosciences community.

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SEQUELLA

Incorporated

**Testimony to the Montgomery County Council
On Bill 34 -11 Biotechnology Investment Incentive Tax Credit Supplement Program
And Associated Supplemental Appropriation**

November 15, 2011

Good afternoon Madam Chair and members of the County Council.

My name is Marty Zug and I am the Chief Financial Officer of Sequella, a clinical stage biotechnology company with drugs in Phase 2 efficacy trials for H. Pylori related ulcers and multi-drug resistant Tuberculosis. I am here to testify in support of the Supplemental Appropriation for the biotech tax credit. I am also asking your consideration for an amendment to changes in the tax credit program.

County Executive Leggett's announcement of funding for the Montgomery County Supplement came at exactly the right time on June 29, 2011 at the BIO Conference. The State of Maryland started accepting applications for its tax credit program just two days later and the announcement of Montgomery County funding influenced the decisions of many of my investors. Not only did the County Executive's announcement help me get fourteen investors to submit applications to the state, but it was also critical in getting each and every one of those investors to close their investments in the statutorily required period between August 1 and August 30. As a result, Sequella raised \$2.4 million this summer.

As an example, one of my larger investors was BNP Paribas, the largest bank in the world. BNP submitted an application to the state in June, but had not yet completed all of their due diligence. They presented the investment to their investment committee for approval in August and they have told me that the expected return of capital from Montgomery County was an important factor in their overall decision to invest.

In August, I communicated to my investors that the County program would likely be allocated on a pro-rata basis, which is what Bill 34 – 11, the Biotechnology Investment Incentive Tax Credit Supplement – Amendment will do, and that they would likely receive 6-12% of their investment back from the county once they received their Final Tax Credit Certificates from the state. All of my investors now have their Final Tax Credit

Certificates and I would estimate that over 95% of the Final tax Credit Certificates for FY2012 have already been issued by the state.

Accordingly, we would suggest the bill be amended as follows:

Identify a specific time for local biotechnology companies that have received their Final Tax Credit Certificates from the state to apply to the County program. Since the tax credit is used in conjunction with a company's filing of its tax returns, and eligible investments occur on a calendar year basis, I would suggest having a December 31st cut-off date each year. I believe that this simple addition will make this program simple for the County to administer, more consistent with the State program and will assist companies like ours working with investors to lay out a specific timeline.

As it relates to the \$500,000 supplemental appropriation for this program, we would simply ask that given the examples of increased investment you have heard today, that you may want to consider increasing the amount of the appropriation. This investment has already yielded significant, tangible returns for the County and any additional resources will see similar results.

Thank you for the opportunity to present to you today and for your consideration of our proposal.

**TESTIMONY FOR MICHAEL KNAPP
ON BILL 34-11, THE BIOTECHNOLOGY INVESTMENT
INCENTIVE TAX CREDIT SUPPLEMENT PROGRAM**

Madame Chair, members of the County Council and former colleagues,

My name is Michael Knapp and I work for Orion BioStrategies a local life sciences service provider. Thank you for the opportunity to testify today on Bill 34-11, Biotechnology Investment Incentive Tax Credit Supplement Program and the associated Supplemental Appropriation of \$500,000.

I am very pleased to see this bill which many of you and I cosponsored and passed into law nearly two years ago move forward to implementation with funding. I know that many of you have been trying to find ways that a local government can have an impact on the economy, especially during these continued difficult times. This legislation is one of those rare opportunities where you can actually see a tangible return on your local investment. Every dollar that a company or investor applies for under this program by definition must already have brought at least three more dollars into our local community that is being spent on jobs and purchase goods and services that our biotechnology firms require for continued growth. In fact, with just the companies testifying this afternoon you can account for increased investment of more than \$6 million in the local economy on just the promise that this program would be funded at only 20% of the level that was anticipated under the original legislation.

I was driving my daughter to school this morning and was listening to two economists on NPR discuss the value of government investment in specific industries, and each of them was somewhat skeptical because it is very difficult for governments to predict future markets. One of the key attributes to this program is that it doesn't try to create a market where one may not exist, instead it encourages the market to fund companies that are located in Montgomery County. As some of the companies testifying today have indicated, there were investors interested in the products they were developing and this helped those investors make their final decision. Which is what you want to see – validation from the marketplace through investment in local firms. If local biotechnology firms can't attract investment on the promise of their products and services then no one will be eligible to apply for the tax credit and you can re-direct the resources.

I know that these are challenging fiscal times, and I encourage you now just as I did when I was on your side of the dais, to look closely at any supplemental appropriation request that comes before you. When this original legislation was introduced it was indexed to the Maryland tax

credit program and authorized for \$4 million because that was 60% of the state funding level of \$6 million and Montgomery County firms generally receive about 60% of the state allocation. This proposed \$500,000 is good because it makes the program operational, yet I would ask you to consider increasing this amount by another \$500,000 given the amount of direct local investment that you will see in companies on the ground in our community and your goal to spur on local economic activity. There few other activities that you can fund that will provide this type of additional outside investment.

Finally, Bill 34-11 is drafted to allow local companies to apply for the Montgomery County tax credit once the state has allocated all of the resources in its program. I have spoken with some people at the State and spoken with some of our companies and believe that this should be modified to establish a date certain each year when firms can apply. Since a firm can only receive a tax credit on a qualified investment received during a current tax year, which is a calendar year, I believe that it would make sense to allow firms to apply by December 31st each year and this will make it clear to companies, their potential investors and ease the administrative burden on the County.

Thank you for your support of the life science in the community.

POSITION STATEMENT



Montgomery Biotechnology Investment Incentive Tax Credit - Funding Montgomery County Council November 15, 2011 Support

The Tech Council of Maryland (TCM), a non-profit membership organization with over 400 technology and biotechnology member companies who employ more than 200,000 people in our region, strongly supports Montgomery County's Biotechnology Investment Incentive Tax Credit and urges the Montgomery County Council to support funding the program.

During these difficult economic times, it is important that the public sector and private sector partner to create high quality jobs. The Montgomery County Biotechnology Investment Incentive Act is one such example. Appropriating money for this program will help create and retain good jobs in Montgomery County. The average salary for people employed in biotechnology is as much as \$90,000 a year and requires highly skilled, educated workers. Keeping and creating these jobs in Montgomery County is important, especially during a time where the economy is struggling.

The existing Maryland tax credit has been a great success in helping early stage biotech companies secure needed capital to grow their businesses. Starting a biotech company is very risky and capital intensive, so such incentives often are the difference between success and failure. It takes a number of years for a biotech company to go through its development stages before bringing a product to market. During this process, a biotech company typically requires significant investment to survive before products are brought to market and a profit can be realized. The business model is one of high risk and high reward. Incentives like these help nurture companies that create family-supporting jobs that are vital to Montgomery County's long-term economic development efforts.

Again, the Tech Council of Maryland urges the Montgomery County Council to support funding the Montgomery County Biotechnology Investment Incentive Act.