


M E M O R A N D U M

TO: Planning, Housing and Economic Development Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** 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, 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.

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

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. **Council staff recommendation:** no recommendation.

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.

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.

Council staff concurs that, if authority to pay this supplement is enacted, its aggregate amount should be controlled each fiscal year through the annual operating budget. **Council staff 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 supplements could have to be less than 50%. To reflect this adjustment, the credit percentage should be amended. **Council staff recommendation:** Insert on ©2, line 20, after program: , 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. **Council staff recommendation:** if this program is approved, for now offer the supplement only to firms that receive the state credit.

Technical amendments DED staff submitted technical amendments to better link the County supplement to the state credit. If the Committee recommends enactment, Council staff will incorporate those amendments into the Bill.

This packet contains:	<u>Circle #</u>
Expedited Bill 5-10	1
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

F:\LAW\BILLS\1005 Biotech Credit Suppleent\PHED Memo.Doc

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

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

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

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

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

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

F:\LAW\BILLS\1005 Biotech Credit Supplement\Legislative Request Report1.Doc

§ 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

054514

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.

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

1

**Expedited Bill 5-10
Economic Development - Biotech Credit – County Supplement**

February 23, 2010 Public Hearing

Testimony of Janis Pitts, Director of the Montgomery County Life Sciences Strategy

For the record, my name is Janis Pitts. I am director of the Montgomery County Life Sciences Strategy for the Department of Economic Development, and I am here today to speak on behalf of the County Executive in support of Expedited Bill 5-10 - Biotech Credit – County Supplement.

This bill will supplement the State of Maryland's highly successful Biotechnology Investment Tax Credit Program by providing investors in Montgomery County biotechnology companies with an additional 50 percent local tax credit on top of state tax credits.

Biotech is a high risk investment, with uncertain outcomes and long development timelines. The Bioscience Task Force report notes that while investment finance is a challenge at all stages of the Research and Development (R&D) continuum, there is a particular shortage of seed and venture capital for early stage companies.

These early-stage research-oriented companies represent a sizeable portion of the biotech companies in the County. Maryland's Biotech Investment Tax Credit program has enabled a significant number of them to attract critically needed angel investment to help sustain them through the so-called 'valley of death' until they reach proof-of-concept and can attract venture financing.

During the first three years of the State program (FY07-09), 24 of the 39 companies that benefited were in Montgomery County. State tax credits helped them leverage \$22.4 million dollars of investment. Preliminary figures for FY10 indicate that investments in eight County biotech companies have been certified for state tax credits.

A 50 percent local supplement to State tax credits would give a significant boost to early stage biotech companies in their efforts to attract investors and expand their operations in Montgomery County.

It would position Montgomery County as the first local jurisdiction in the country to adopt a local tax credit for biotech, and make a clear and strong statement to investors, entrepreneurs and companies looking to relocate or expand that the County pro-actively supports its biosciences sector, and offers unparalleled local incentives.

Over the past 25 plus years, Montgomery County has made important strategic investments in developing a vibrant biosciences sector. We have reaped significant returns on

this investment in the form of new, well-paying jobs, private capital investment and additional tax revenues.

But as Biosciences Task Force report emphasizes, we are now in a global competition for new bioscience investment and jobs. Our competitors around the country and across the world are plowing hundreds of millions of dollars into the development of their own bioscience clusters. If Montgomery County wants to stay in the game and gain, not lose ground, we need to use every tool possible to help sustain and grow our local biotech industry.

For this reason, the Bioscience Task Force selected the creation of local biotech tax incentives as one of its priority recommendations.

On behalf of the County Executive, I urge you to pass Expedited Bill 5-10 with an amendment which provides that the tax credit supplement is subject to appropriation in the County budget. This amendment would align Expedited Bill 5-10 with the State law governing the State biotech tax credit, which is subject to an annual appropriation in the State budget. Since the State budget is approved before the County budget is approved each year, the Council will have a clear understanding each year of the potential fiscal impact of the County tax credit supplement before adopting the annual budget and can limit the County's exposure if necessary.

If a funding source can be identified, the County Executive believes that the local tax credit supplement should be made available at the beginning of calendar year 2011. If the aggregate amount of future State tax credits is similar to those of the recent past, the maximum cost of the local tax credit created by Expedited Bill 5-10 would be about \$2 million per year. However, if the State increases its aggregate appropriation, or keeps it at the same level but gives more of the total appropriation to investors in Montgomery County based companies, the maximum cost of the credit would be higher.

The Executive Branch also suggests a couple of additional minor changes to clarify the bill's language. We will relay these recommended changes to the Council's legislative staff, and will also note them during the PHED committee work session on March 1st.

Passage of Expedited Bill 5-10 is an important first step in achieving the vision articulated in the Bioscience Task Force report for Montgomery County to:

"....enhance its position as a globally recognized leader in advancing bioscience research and development, and in translating scientific discoveries into commercially available products that benefit human health."

On behalf of County Executive Leggett, I recommend that you pass this bill with the requested amendments. .

2-23-10 Public Hearing
Montgomery County Expedited Bill 5-10 – Biotech Credit Supplement

- My name is Douglas Doerfler and I am here today to speak in support of Expedited Bill 5-10 - Biotech Credit Supplement. This bill would supplement the State of Maryland's highly successful Biotechnology Investment Tax Credit Program by providing investors in qualified Montgomery County biotechnology companies with an additional 50 percent tax credit.
- A powerful example of an R&D Tax Credit success story is my company MaxCyte, a Gaithersburg company that is developing innovative cell-based therapies for the treatment of cancer and cardiopulmonary diseases. We employ approximately 20 scientists and engineers and have global development partnerships with local companies such as United Therapeutics as well as companies such as MedINet in Tokyo, Japan.
- In 2008, MaxCyte received \$500,000 worth of Maryland R&D Tax Credits and \$125,000 more in 2009, for a total of \$675,000. Total capital (debt and equity) raised as a direct result of the R&D Tax Credits was over \$5 million, which means that for every dollar of R&D Tax Credit, MaxCyte was able to leverage \$7.40 of investment in the company.
- These credits directly helped MaxCyte hire four additional employees in 2009 and allowed the company to double its revenues and achieve massive reductions in losses, making MaxCyte a healthier and more valuable Montgomery County company.
- As you may know, biotechnology companies have a notoriously difficult time obtaining investment capital, and it is especially hard for early stage companies to attract seed and venture capital. Given the risk involved in these businesses as well as the capital required, MaxCyte had to take advantage of every program available to survive and grow. In 2002, we received an 80,000 loan from Montgomery

2-23-10 Public Hearing
Montgomery County Expedited Bill 5-10 – Biotech Credit Supplement

County Economic Development Fund. We were awarded two SBIR grants from the US SBA, received investments from the Maryland Venture Fund and have raised over \$30 M in over 20 rounds of financing from over 40 investors from around the world, recently in Asia. The County, State and Federal programs provided the catalyst for most of these investments.

- The 50 percent supplement to State tax credits that Expedited Bill 5-10 would offer qualified investors in Montgomery County biotech companies would greatly enhance the ability of early-stage companies like MaxCyte to attract investors, as it would effectively give them a 75 credit on their total investment.
- Equally importantly, the program would send a strong signal to investors and entrepreneurs – locally, nationally and globally - that Montgomery County pro-actively supports the growth of its biosciences industry – this is the place you want to be.
- Offering tax credits to investors in qualified companies will help stimulate the capitalization of local biotechnology firms, attract new biotech start-ups, create new, well-paying jobs, and generate new tax revenues for the County.
- Montgomery County has done an excellent job of fostering the development of its biosciences industry, and biotech is now a cornerstone of its economy. But as regions and states around the U.S. and countries across the globe invest hundreds of millions of dollars in developing their own bioscience clusters, the County needs to avail itself of every tool possible to help sustain and enhance its position as a leader in biotech research and product development.

2-23-10 Public Hearing
Montgomery County Expedited Bill 5-10 – Biotech Credit Supplement

- The tax credit supplement proposed in Expedited Bill 5-10 is one such tool. I urge you to support its passage, and to appropriate funds to jump start the program.

February 23, 2010

Good afternoon. My name is Marty Zug and I am the Chief Financial Officer of Sequella, Inc. in Rockville. Sequella is a clinical stage biopharmaceutical developing drugs and diagnostics for infectious diseases.

I am here today to speak in support of Expedited Bill 5-10 - Biotech Credit Supplement. This bill would be a welcome addition to the very successful State Biotechnology Investment Tax Credit Program. The magic of the State's program and the one being proposed by Montgomery County is that they are market driven - where investors choose where capital should flow. The benefits are enormous as biotechnology is a very capital intensive business where the participants have tremendous difficulty raising capital to move their products forward.

Over the past four years, the State Biotech Investment Tax Credit has been a lifeline for Sequella and over 40 other Maryland Biotechs, most of them located in Montgomery County. At Sequella, we have raised \$5.3 million directly through the program over the past four years. Additionally, the amounts raised through the program allowed us to secure an additional \$10 million in investment and over \$20 million in grant funding. Without this program in place, it is highly doubtful we would have survived as a company.

Demand for the state tax credit greatly exceeds the budget allowance each and every year – so it is a very welcome idea to supplement the state's program in Montgomery County. In July 2008, the Department received applications totaling \$8.5 million for \$6 million of funding – on the first day of availability and applicants slept out on the streets of Baltimore to ensure their investments would qualify.

In 2009, Companies lined up a full five days ahead of the State tax credit application date. Five Days! That fact alone shows how valuable this particular tax credit is to small biotechnology companies. Supplementing the state program will provide more incentive for investment which will in turn create new jobs, attract new biotech start-ups, and generate additional tax revenue for the County.

I thank you for your time today and urge you to pass Expedited Bill 5-10 for the Biotech Credit Supplement. You will make a significant and positive impact on biotechnology growth in Montgomery County with this legislation.



THE VOICE OF MONTGOMERY COUNTY BUSINESS

MONTGOMERY COUNTY COUNCIL

**BILL 5-10
FEBRUARY 23, 2010**

SUPPORT

The Montgomery County Chamber of Commerce ("MCCC"), as the voice of Montgomery County business, **supports Bill 5-10, which would authorize Montgomery County to provide a local biotechnology tax credit.**

The Maryland biotechnology tax credit has been a huge success in helping early stage biotechnology companies thrive. In three years, nearly 40 companies have taken advantage of the 50% tax credit provided by the State of Maryland. In 2009, the \$6 million in credits were given to investors on the first day they were available, with many biotechnology executives lining up days in advance to have access to the program. Through 2009, close to 80 percent of the companies that used the credit were in Montgomery County, demonstrating the critical mass of start up biotech companies located in our community. Most importantly, the tax credit addresses a critical gap in our biotech community: the lack of investment dollars for early stage companies that is demonstrated in communities like Palo Alto and Boston.

Our one small concern is that because so many worthy companies are unable to access the State credit given the high demand and limited dollars, we are a little worried that the reliance on piggy backing the County credit for those who receive the State credit will shut out many of the same worthy companies. We support the Council getting this program up and running as structured in the legislation, but also think it's worth examining this particular set of issues once the program has been launched and running for some reasonable amount of time.

We applaud the efforts to grow jobs here in the County and look forward to working with you on other efforts consistent with this mission so that we can grow the tax base for our community.

Gigi Godwin, President and CEO
Montgomery County Chamber of Commerce
51 Monroe Street, Suite 1800 Rockville, MD 20850
301-738-0015
www.montgomerycountychamber.com

POSITION STATEMENT



MC 5-10 -- Economic Development – Biotechnology Credit – County Supplement

Montgomery County Council

February 23, 2010

Support

The Tech Council of Maryland (TCM), a non-profit membership organization with over 500 technology and biotechnology member companies who employ more than 250,000 people in our region, strongly supports MC 5-10 -- *Economic Development – Biotechnology Credit – County Supplement*.

The unique Maryland state Biotech Tax Credit is model legislation that the Biotechnology Industry Organization, which represents biotech companies on the national level, has put forth for other states to consider. This tax credit provides incentives for early stage biotech companies to locate and grow in Maryland, and especially in Montgomery County where there is already a strong cluster of such companies. However, competition for the biotech industry and its high-paying jobs among other states remains fierce. Just across the river in Virginia, economic development leaders are also looking at biotech as a way to grow their economy. Virginia and virtually every other surrounding state wants to create biotech jobs because they see the average salary for someone employed at a Maryland biotech company is \$76,785.

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 the Biotech Tax Credit help nurture companies that create high-paying, family-supporting jobs that are vital to Maryland's long-term economic development efforts.

Again, the Tech Council of Maryland urges the Montgomery County Council to support MC 5-10.



Blue Torch Medical Technologies Testimony in Support of Bill 5-10

February 23, 2010

My name is Jerry Stringham. I am President of Blue Torch Medical Technologies in Rockville, Maryland. Blue Torch is a young biotechnology company with a commercial product that helps surgeons preserve nerves that are easily damaged in surgery.

Blue Torch is an example of how powerful the Maryland Biotechnology tax credit has been. In 2007, Blue Torch was based in Ashland, Massachusetts and at a financial crossroads. Running low on capital, the incentive for equity investment afforded by the Maryland program was sufficient to warrant moving our operations to Rockville. While we raised just \$100,000 through the program in the first year, that capital was critical to continuing our operations, which has drawn more than \$1 million in sales, grants and additional capital since then and is now on a growth path. Without a doubt, Blue Torch would not have moved to Maryland without the program.

The biotechnology tax credit program continues to open doors for us for other potential investors and business partners, who view the award of credits as strong support from the state. The program continues to provide an important tool for us to access the capital necessary to advance our technology, which is now in use in the United States and Canada. The existence of the program itself adds to our credibility as a biotechnology company, as Maryland's reputation has increased as a pro biotechnology state.

The addition of a companion tax credit for Montgomery County would be a powerful addition to secure development and expansion capital not available to earlier stage biotechnology concerns like ours. This credit would make Montgomery County the dominant area for young biotechnology concerns in the State, just as the state program has drawn companies like ours from other states. The added incentive would be powerful to expand growth and opportunity.

I thank you for your time today and urge you to pass Expedited Bill 5-10 for the Biotech Credit Supplement.

**Written Testimony of Jonathan Cohen
President & CEO of 20/20 GeneSystems, Inc.
Rockville, MD**

In Support of

***Biotech Tax Credit Supplement*
Montgomery County Expedited Bill 5-10**

February, 23 2010

I am Jonathan Cohen, President & CEO of 20/20 GeneSystems, Inc. and a lifetime resident of Montgomery County.

At the outset, I would like to express my strong appreciation to Councilmember Knapp, Council President Floreen, Council Vice President Ervin, Council Member Leventhal, and Councilmember Trachtenberg for co-sponsoring this extremely important legislation. Out-of-town business travel prevented me from presenting oral testimony at the hearing but I would be most appreciative if my written testimony would be considered by the Council.

20/20 is a Rockville based biotech company focused on developing innovative diagnostics and detection technologies. Our BioDefense division invented a novel technique for screening suspicious powders based on meetings we had with the Montgomery County Fire and Rescue Service at the peak of the 2001 anthrax mailing. The product we developed--*BioCheck*® has yielded annual revenue growth of 30% per year for each of the last three years and supports employment of about one-third of our company's 16 employees. Last week we signed a worldwide distribution agreement with Smith Detection, a division of a multi-national company with over 20,000 employees and more than \$1.7 billion in annual revenues. We anticipate that this new marketing relationship should further boost our sales growth and result in new hires for 20/20.

Our cancer testing division has developed a technology to analyze tumors to better predict whether a particular drug will be effective in treating the cancer. Over the past 3 years we have won over \$2.5 million in government funds in support of this technology and are now preparing to compete for a new NIH funding initiative called the "Bridge Award" which provides up to \$3 million in government grants (over a three year period) if the applicant can obtain at least 1:1 matching funds from private investors. **The state tax credit program, hopefully supplemented by the new County initiative, will be a critical tool in our effort to raise these matching funds.**

The economic downturn has made it particularly hard for biotech companies such as 20/20 that are engaged in higher risk R&D to obtain investment capital. Fortunately, the Maryland Biotechnology Investment Tax Credit has defied economic gravity. **To date we have raised**

about \$2.5 million as a direct result of this program. Simply put, our company would not be in business without this unique and important investor incentive.

The proposed Montgomery County supplement would be a huge accelerator permitting more rapid investments and job growth by the life sciences sector which is uniquely capable of creating high paying, sustainable jobs.

When considering the merits of this bill, particularly when so many important county services need to be cut due to budget constraints, please keep the following in mind:

- **Each dollar allocated by the County would immediately yield at least four dollars in outside investments.** Thus, for example, if Expedited Bill 5-10 were implemented as written, \$25,000 in county credits would be allocated only if a Montgomery County biotech company earned at least a \$100,000 investment.
- **Beneficiary companies will further attract outside federal funding and additional private sector investments.** For example, over the past 3 years 20/20 has been awarded over \$3 million in federal funding and several hundred thousand dollars from R&D partnerships with large corporations. However, unlike investment income, federal and corporate funding must be spent in very specific ways. Thus, investment income earned from the Maryland biotech tax credit was absolutely essential to help 20/20 attract and deploy this outside funding.
- **When governments help companies create and bring to market innovative technologies, jobs grow long after the government funding ends.** Whereas most of the jobs created by the federal stimulus program end when the government funding ceases, products like the 20/20 *BioCheck*® kit (developed with a mere \$100,000 in state funding) support jobs in diverse fields such as manufacturing, sales and marketing, accounting, etc. decades after the government assistance ends. In other words, innovative technology products are a jobs “gift that keeps on giving.”

We would welcome the opportunity to meet with any member of the Council having questions or concerns about the merits of Expedited Bill 5-10. Thanks.

Respectfully submitted,

Jonathan Cohen
President & CEO, 20/20 GeneSystems, Inc.
Tel. 240-453-6339 x102 Email: jcohen@2020gene.com

Written Testimony in Support of Expedited bill 5-10
Ozge Alper, CEO and President, Alper Biotech

For the record, my name is Ozge Alper and I am writing to express my company's support for Expedited Bill 5-10 - Biotech Credit Supplement. This bill would supplement the State of Maryland's highly successful Biotechnology Investment Tax Credit Program by providing investors in qualified Montgomery County biotechnology companies with an additional 50 percent tax credit.

Biotech companies have a notoriously difficult time obtaining investment capital, and it is especially hard for early stage companies to attract seed and venture capital. Maryland's biotech investment tax credit program has enabled promising but high-risk start-up companies like mine to leverage critically needed angel funds to support our research and development and operational costs.

Thanks to Maryland's program, we have secured \$1,816,000 in angel money to date. These funds have enabled us to discover more than ten Biomarkers which we will use as tools for early diagnosis of various cancers; to prepare our first diagnostic kit for marketing and to create one full time and four part-time new positions. Without this critical infusion of cash, we would not be able to make significant progress and complete our first kit and start marketing.

The 50 percent supplement to State tax credits that Expedited Bill 5-10 would offer qualified investors in Montgomery County biotech companies would greatly enhance the ability of early-stage companies like Alper Biotech, LLC to attract investors, as it would effectively give them a 75 credit on their total investment.

The program would send a strong signal to investors and entrepreneurs – locally, nationally and globally - that Montgomery County pro-actively supports the growth of its biosciences industry.

Montgomery County has done an excellent job of fostering the development of its biosciences industry, and biotech is now a

Written Testimony in Support of Expedited bill 5-10
Ozge Alper, CEO and President, Alper Biotech

cornerstone of its economy. But as regions and states around the U.S. and countries across the globe invest hundreds of millions of dollars in developing their own bioscience clusters, the County needs to avail itself of every tool possible to help sustain and enhance its position as a leader in biotech research and product development.

The tax credit supplement proposed in Expedited Bill 5-10 is one such tool. I urge you to support its passage, and to appropriate funds to jump start the program.

**Statement
of
Peter J. Levine
President and CEO
Correlogic Systems, Inc.
on
Expedited Bill 5-10
February 23, 2010**

I am Peter Levine, President and CEO of Correlogic Systems, Inc. I appreciate the opportunity to submit comments on Expedited Bill 5-10 before the Montgomery County Council. I applaud the Council's vision in cultivating Montgomery County biotech companies – recognizing the value of the jobs they generate and their contribution to technological advancement more broadly. I would urge passage of the bill with some modifications I will detail later in my testimony.

Correlogic Background

Correlogic is a biomarker discovery company engaged in the development of tools and processes for proteomic and genomic-based clinical diagnostic systems, and new drug discovery. The company has developed patented and patent-pending, scientifically validated methodologies and tools for the early detection of various cancers and other diseases through the use of high throughput bioassays and pattern discovery software. The technologies have a wide range of applications for the creation of disease diagnostic models, biomarker and new drug discovery processes, bio-defense, and complex data analysis problems. Our lead product, a proteomic pattern blood test for ovarian cancer, is now working its way through the FDA regulatory process. Other potentially life-saving tests, including blood tests for colon and breast cancer are in our pipeline. The company was founded in 2000, and is based in Germantown, MD.

Correlogic's Experience with the Maryland Biotech Investment Tax Credit

It is intrinsic to the biotech industry that a great deal of time and financing is required to get a product to market. In our case, after nine years of development and clinical trials, and with virtually all our funding from the private sector, we are almost to market with a life-saving product. This is a critical phase for biotech companies. Indeed, many valuable products fail to reach market for lack of the last pieces of financing – so many in fact, that the National Institutes of Health has dubbed this gap “the valley of death”.

In the summer of 2008, securing the close-to-the-finish-line funding was the very challenge Correlogic faced. That challenge was exacerbated as the credit

crunch began, ultimately shutting down private funding, including most venture capital, for the biotech industry.

While the economic meltdown kept us from obtaining the full sum we will need to get to market, the Maryland biotech investment tax credit enabled us to close on sufficient funding to carry on. Without it, we might have been forced to lay off our employees: scientists, software programmers, and support staff; and years of productive research within reach of fruition might have been lost.

It is important to emphasize that Federal bailout and stimulus efforts largely ignored the reality faced by small companies. While there have been billions for the too-big-to-fail companies that were largely if not entirely responsible for their predicaments -- and that of the country -- the rest of us were left to fend for ourselves in the financial aftermath. On the federal level, only belatedly has there begun to be focus on this fundamental sector.

The Maryland biotech investment tax credit has stood in stark contrast. It is a smart, efficient, market-based incentive that recognizes the funding challenges the biotech industry faces -- even in a stable economy. In the context of economic crisis, it has been a lifeline that preserves not only jobs, but also the years of research and development investment *already made* and the technological and medical advancement potential they hold for society more broadly.

Expedited Bill No. 5-10

The County Council faces myriad competing budget demands; now especially, the demands are heightened while the ability to meet them is constrained. And so, the introduction of a new expenditure program at this time is particularly deserving of praise for its courage and vision. By enacting a program similar to that of the State, the County can promote new jobs and technology and preserve those investments still working their way through the pipeline.

However, as the Council considers this legislation, I would urge one fundamental modification: that the tax credit *not* be limited only to companies that already received the state tax credit. Indeed, companies that have already received state assistance in the same year should logically be excluded from the additional benefits offered by the county. The demand for the state tax credits far exceeds funds available, as the annual newspapers stories of weary applicants waiting days in line graphically depict. The state program is first-come-first-served; once a year the window opens, and within moments all funds are allocated to the first handful of companies in line. Then, there is *nothing* for the rest of the biotech hopefuls, however otherwise deserving.

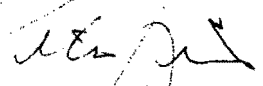
By limiting the county incentive to the same handful of companies fortunate enough to secure the state incentive, the county ensures that no additional companies are helped; the county incentive would simply deepen the benefits already obtained by the successful state recipients -- a win-win for some, but a lose-lose for the majority.

Surely my own investors in 2008 would have been delighted to know that their state tax incentive would be compounded by the county. But the limitation of the state incentive is far more its breadth than its depth. Given the relatively small number of deserving companies the state program can reach each year, I strongly believe that the county should focus its resources on companies that are *not* already receiving state tax incentives. If there were to be a linkage to the state program, I believe it should be that receipt of the state biotech tax credit *disqualifies* the applicant from county tax credits in the same year or for some appropriate period. At a minimum, receipt of state credits should not be condition precedent for obtaining the Montgomery County incentives.

I would offer one additional eligibility modification for the Council's consideration. The state program generally limits eligibility to companies that have been in business for less than ten years. That sounds like a long time, but as I can tell you -- from my own near decade of experience with Correlogic -- it takes a very long time to take a technology from concept to validation and especially through FDA approval and ultimately to market. The financial crisis of the past few years has contributed to delay; funding shortages meant staff cutbacks for many companies and held back the pace of research progress. Particularly in view of the funding challenges of the past few years, I would urge the Council to consider extending eligibility to companies that have been in business somewhat longer than ten years.

I would be pleased to discuss any of these comments further. Thank you for support of the biotech industry and for the opportunity to present our views.

Respectfully submitted,



Peter J. Levine
President and CEO
Correlogic Systems, Inc.