

Department of Legislative Services  
2017 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 373  
Ways and Means

(Delegate D. Barnes, *et al.*)

Budget and Taxation

---

**Biotechnology Investment Tax Credit - Qualified Maryland Biotechnology Company - Definition**

---

This bill expands eligibility for the biotechnology investment tax credit by specifying that a biotechnology company is a company that has been in active business for a maximum of (1) 12 years; (2) 12 years from the date the company first received a qualified investment under the program; or (3) 15 years if the Department of Commerce (Commerce) determines that the company needs additional time to complete the process of regulatory approval.

The bill also specifies that a biotechnology company includes a company that meets specified program requirements within two months of receiving a qualified investment and provides for recapture of the credit if the entity does not satisfy this requirement.

The bill takes effect June 1, 2017, and applies to all initial tax credit certificates issued after June 30, 2017.

---

**Fiscal Summary**

**State Effect:** Allowing additional biotechnology companies to qualify for tax credits will not alter the fiscal impact of the program beyond that provided under current law.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

---

**Analysis**

**Current Law:** Chapter 99 of 2005 established the biotechnology investment tax credit, which offers a refundable tax credit for investments in qualified biotechnology companies.

A biotechnology company is 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. A company is any entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit. A company does not include a sole proprietorship. A company also must (1) have its headquarters and base of operations in the State; (2) have fewer than 50 full-time employees; (3) not have its securities publicly traded on any exchange; and (4) have been certified as a biotechnology company by Commerce.

Commerce administers the tax credit application, approval, and certification process and is required to submit an annual report to the Governor and the General Assembly detailing specified information about the tax credit. An investor who invests at least \$25,000 in a qualified Maryland biotechnology company (QMBC) can claim a credit equal to 50% of the investment, not to exceed \$250,000.

If the qualified biotechnology company is located in Allegany, Dorchester, Garrett, or Somerset counties, the value of the credit for investments made in these companies is equal to 75% of the investment, not to exceed \$500,000.

Commerce may not certify investments in a single biotechnology company that total more than 15% of the total appropriations to the reserve fund for that fiscal year. The fiscal 2018 operating budget includes \$12 million in funding for the program.

Under Chapter 99, in order to qualify, a biotechnology company was required to (1) have its headquarters and base of operations in the State; (2) have fewer than 50 full-time employees; (3) have been in active business for no longer than 10 years; and (4) be certified as a biotechnology company by the Department of Commerce.

Chapter 518 of 2008 made several changes to the program, including allowing a company that has been in active business for up to 12 years to qualify if the Department of Commerce determines that the company required additional time to complete the regulatory approval process.

Chapter 349 of 2011 further expanded eligibility by specifying that, for credits in fiscal 2012 and 2013, a biotechnology company could be in active business for up to 15 years.

Chapters 75 and 76 of 2013 added an additional exception to the 10-year limitation on operations by generally allowing a company to qualify for tax credits for up to 10 years after the first investment by an investor eligible to receive the tax credit.

**Exhibit 1** shows the evolution of QMBC eligibility criteria since the program's inception and the additional eligibility standards proposed by the bill.

---

**Exhibit 1**  
**Qualified Maryland Biotechnology**  
**Company Operations Criteria**

**Legislation**

**Eligibility Standard**

|                        |  |
|------------------------|--|
| Chapter 99 of 2005     | In business up to 10 years   |
| Chapter 518 of 2008    | In business up to 12 years if Commerce determines necessary for regulatory reasons                               |
| Chapter 349 of 2011    | In business up to 15 years (fiscal 2012 and 2013)  |
| Chapters 75/76 of 2013 | In business for up to 10 years from the date the company first received a qualified investment under the program |
| SB 226/HB 373 of 2017  | In business up to 12 years   |
|                        | In business up to 15 years if Commerce determines necessary for regulatory reasons                               |
|                        | In business for up to 12 years from the date the company first received a qualified investment under the program |
|                        | Meets specified program requirements within 2 months of receiving a qualified investment                         |

---

**State Fiscal Effect:** While the bill allows additional biotechnology companies to qualify for the credit, it will not alter the overall fiscal impact of the tax credit program. It is expected that Commerce will award the maximum amount of credits available in fiscal 2018.

**Small Business Impact:** Small businesses that would not have qualified for the program under current law will benefit. Given that program funding is limited in each fiscal year and Commerce is expected to award the maximum amount of available credits, other small businesses that would have been selected for investments under current law would be negatively impacted.

---

## **Additional Information**

**Prior Introductions:** SB 1107 of 2016, a similar bill, received a favorable report from the Senate Budget and Taxation Committee, passed the Senate, and received a favorable report from the House Ways and Means Committee, but no further action was taken. Its cross file, HB 1554, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

**Cross File:** SB 226 (Senator Manno, *et al.*) - Budget and Taxation.

**Information Source(s):** Department of Commerce; Comptroller's Office; Department of Legislative Services

**Fiscal Note History:**   First Reader - February 2, 2017  
kb/jrb                       Third Reader - March 16, 2017  
                                  Enrolled - May 8, 2017  
                                  Revised - Amendment(s) - May 8, 2017

---

Analysis by: Robert J. Rehrmann

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510