

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 1151

(Senator King)

Budget and Taxation

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**Income Tax - Biotechnology Investment Incentive Tax Credit - Alteration**

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This bill alters the biotechnology investment incentive tax credit by prohibiting the Department of Commerce (Commerce) from certifying investments in a single biotechnology company that exceed (1) 10% of the total appropriations to the reserve fund for that fiscal year or (2) \$7.0 million in aggregate funding for all fiscal years. In addition, the bill eliminates the time period limitation that prohibits a qualified Maryland biotechnology company (QMBC) from being eligible for the tax credit if the company has been in active business for a specified number of years.

The bill also specifies that it is the intent of the General Assembly that the tax credit program will encourage and incentivize private-sector investment in Maryland biotechnology companies and thereby (1) expedite the development and commercialization of novel therapies, tests, devices, and digital technologies that can improve health outcomes for the residents of this State and others; (2) facilitate large-scale clinical studies to demonstrate the safety, efficacy, or utility of those therapies, tests, devices, and digital technologies to the satisfaction of industry regulators and payers; and (3) stimulate economic development and high-quality job growth and retention in the State. **The bill takes effect July 1, 2018, and applies to all initial credit certificates issued after June 30, 2018.**

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**Fiscal Summary**

**State Effect:** The bill will not increase the fiscal impact of the program beyond that which is provided under current law.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** 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 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.

Generally, in order to be considered eligible as a qualified Maryland biotechnology company, the company may not have been in active business longer than 12 years. However, eligibility related to the length of time in active service has been expanded since the program's inception to include (1) a company that has been in active business for up to 15 years if Commerce determines that the company requires additional time to complete the process of regulatory approval; (2) a company that has been in active business no longer than 12 years from the date that the company first received a qualified investment under this section; and (3) a company that meets specified program requirements within two months of receiving a qualified investment. Accordingly, biotechnology companies that have been in active business for up to 24 years may be eligible for the program. **Exhibit 1** shows the change, from 10 years to a maximum of 24 years, in eligibility criteria since the program's inception.

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

**Legislation**

Chapter 99 of 2005

Chapter 518 of 2008

Chapter 349 of 2011

Chapters 75/76 of 2013

Chapters 475 and 476 of 2017

**Eligibility Standard**

In business up to 10 years

In business up to 12 years if Commerce determines necessary for regulatory reasons

In business up to 15 years (fiscal 2012 and 2013)

In business for up to 10 years from the date the company first received a qualified investment under the program

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

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**Background:** In response to concerns about the impacts of tax credits, Chapters 568 and 569 of 2012 established the Tax Credit Evaluation Act, a legislative process for evaluating certain tax credits. The evaluation process is conducted by a legislative evaluation committee. The committee is required to review and evaluate the biotechnology investment incentive tax credit by July 1, 2018. The draft [report](#) on the credit was completed in November 2017 and can be found on the Department of Legislative Services (DLS) website.

The information and analysis provided in the report found that since the program's inception the State has not closed the financing gap with industry leaders, California and Massachusetts, and has actually fallen further behind. DLS failed to find that the program led to a statistically significant increase in industry investment. Additionally, data collected by DLS failed to show that the State tax credit increased the total number of active biotechnology companies in Maryland. DLS recommended that the General Assembly should consider eliminating the program in its current form or allowing the tax credit to sunset in two years and replacing it with a more effective program based on 19 recommendations. Alternatively, the General Assembly could consider providing a

federal Small Business Innovative Research program matching grant to encourage the biotechnology industry in Maryland.

**State Fiscal Effect:** The awarding of tax credits is subject to the amount appropriated to the reserve fund, and the bill will not alter this amount. The Governor's proposed fiscal 2019 budget includes \$12.0 million in funding for the program. It is expected that Commerce will award the maximum amount of credits. Accordingly, the fiscal impact of the program will not increase beyond that which is provided under current law.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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