

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 246 (Senator Hester, *et al.*)
 Budget and Taxation

Income Tax - Angel Investor Tax Credit Program

This bill creates a nonrefundable tax credit against the State income tax for investors who make qualified investments in certain Maryland innovation businesses. The amount of credits that the Department of Commerce (Commerce) can award each year cannot exceed the amount of money appropriated to a reserve fund established by the bill. **The bill takes effect July 1, 2021, and applies to tax years 2021 through 2023. The bill terminates June 30, 2024.**

Fiscal Summary

State Effect: General fund expenditures may increase by \$5.0 million annually in FY 2022 through 2024 due to appropriations to the reserve fund established by the bill. Administrative costs at Commerce and the Comptroller’s Office may increase by \$147,900 in FY 2022. Future administrative costs reflect ongoing expenditures and termination of the program. Revenues are not materially affected.

| (\$ in millions) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|------------------|---------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 5.1 | 5.1 | 5.1 | 0 | 0 |
| Net Effect | (\$5.1) | (\$5.1) | (\$5.1) | \$0.0 | \$0.0 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

The bill establishes a Maryland Angel Investor Tax Credit Reserve Fund. The total amount of tax credit certificates issued by Commerce in each fiscal year cannot exceed the amount appropriated to the reserve fund in the State budget. It is the General Assembly's intent that the Governor appropriate at least \$5.0 million to the reserve fund in each year. Any amount of money in the fund that is not expended in the fiscal year is rolled over into the next fiscal year.

The credit is equal to 50% of the qualified investment, not to exceed \$50,000 for an individual or \$100,000 for married couples that file a joint return or a pass-through entity. The taxpayer can carry forward any unused credit for up to four succeeding tax years.

The credit is claimed by an accredited investor, as defined by the federal Securities and Exchange Commission, who (1) meets the qualifications of the bill; (2) follows the application and certification process established by the bill; and (3) invests in a qualified innovation business that is certified by Commerce.

Commerce may not certify investments in a single qualified innovation business that total more than 15% of the total appropriations to the reserve fund for that fiscal year. An eligible investment is defined as an at-risk investment of at least \$10,000 (\$20,000 for a pass-through entity or joint filer) in exchange for stock, convertible debt, or ownership interest. An investor may not acquire an ownership interest in a company that exceeds 20% and must submit an application to Commerce.

A qualified innovation business is defined as a for-profit entity in a specified industry that has or is in the process of developing a technology, product, or service that is unique and legally owned or licensed by the business. A qualified innovation business does not include a qualified Maryland biotechnology company as defined under the Maryland Biotechnology Investment Incentive Tax Credit Program or a qualified Maryland cybersecurity company under the Cybersecurity Investment Incentive Tax Credit Program.

The business must be in good standing as determined by the State Department of Assessments and Taxation and meet specified criteria, including requirements that the company (1) does not have annual revenue of more than \$5 million; (2) has been in business for no more than five years; (3) has not received more than \$2.5 million in investments; (4) has less than 25 full-time employees; (5) has its headquarters and base of operations in Maryland; (6) is not publicly traded on any exchange; and (7) has at least 75% of its full-time equivalent employees employed in the State and at least 75% of its payroll paid to the employees in the State.

Tax credit applications are approved on a first-come, first-served basis. The bill provides for the circumstances under which the credit may be rescinded, revoked, or recaptured.

Commerce is required to (1) approve tax credit applications; (2) determine the eligibility of qualified innovation businesses and investors; (3) adopt regulations, in consultation with the Comptroller, to implement the credit; and (4) report annually specified information about the program.

The tax credit program terminates June 30, 2024.

Current Law: Although the proposed tax credit program provides similar investment incentives as the biotechnology and cybersecurity investment incentive tax credits, investments made in companies that qualify under the other two programs may not receive tax credits proposed by the bill.

State Fiscal Effect: The bill establishes the Angel Investor Tax Credit Program within Commerce and expresses the intent of the General Assembly that the Governor include an annual appropriation of at least \$5.0 million to the reserve fund established by the bill. As a result, the net effect may be a general fund expenditure increase of \$5.1 million in fiscal 2022.

Appropriations to the Reserve Fund

Assuming the program is funded by the Governor at the level expressed in the bill, general fund expenditures will increase by \$5.0 million annually in fiscal 2022 through 2024. To the extent that the Governor provides less or no money to the reserve fund in any year, the increase in general fund expenditures will be less.

Commerce has awarded in recent years an average of \$12.0 million in biotechnology investment incentive tax credits. Accordingly, general fund expenditures may increase by a greater amount to the extent that the Governor provides more than \$5.0 million to the reserve fund in any year.

Administrative Expenditures

General fund expenditures increase by \$147,900 in fiscal 2022 due to implementation costs at Commerce and the Comptroller's Office, as described below.

Commerce

Commerce indicates it would need one tax credit specialist to administer the program. However, the Department of Legislative Services advises that the added responsibilities

resulting from this legislation are not permanent and could be performed by a contractual employee. General fund expenditures will increase by an estimated \$87,900 in fiscal 2022, which reflects the bill’s July 1, 2021 effective date. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|-----------------------------------|------------------|
| Contractual Position | 1 |
| Salary and Fringe Benefits | \$82,200 |
| Other Operating Expenses | 5,745 |
| Commerce Expenditures | \$87,945 |
| Comptroller Expenditures | \$60,000 |
| Total FY 2022 Expenditures | \$147,945 |

Future year expenditures reflect a full salary with annual increases, employee turnover, annual increases in ongoing operating expenses, and termination of the program.

Comptroller’s Office

The Comptroller’s Office reports that it will incur a one-time general fund expenditure increase of \$60,000 in fiscal 2022 to add the tax credit to the income tax forms. This includes data processing changes to the income tax return processing and imaging systems and systems testing. The Comptroller’s Office may also incur additional expenses in fiscal 2025 in order to remove the tax credit.

Small Business Effect: Small businesses that are pass-through entities and make qualified investments in a qualified innovation business may benefit by claiming a tax credit. Qualified innovation businesses may benefit by increased investments from qualified investors.

Additional Information

Prior Introductions: HB 526 of 2018, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken. Similar bills were also introduced in the 2015 and 2016 sessions.

Cross File: HB 360 (Delegate Lierman) - Ways and Means.

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

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