

SENATE BILL 160

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(PRE-FILED)

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CF 1lr0114

By: **Chair, Budget and Taxation Committee (By Request – Departmental – Commerce)**

Requested: October 22, 2020

Introduced and read first time: January 13, 2021

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Economic Development – Cybersecurity Investment Incentive Tax Credit**
3 **Program – Expansion and Extension**

4 FOR the purpose of altering the Cybersecurity Investment Incentive Tax Credit program
5 administered by the Department of Commerce to be the Innovation Investment
6 Incentive Tax Credit program; expanding the applicability of the tax credit to include
7 investments in certain technology companies; requiring the Maryland Economic
8 Development Committee, after consultation with certain State agencies, to evaluate
9 and recommend certain technology sectors to the Department; requiring the
10 Department to consider the recommendation of the Committee and establish a list
11 of certain eligible technology sectors; prohibiting the Department from certifying
12 eligibility for tax credits for investments in a single technology sector in excess of a
13 certain amount during any fiscal year; repealing provisions of law concerning a
14 certain panel of cybersecurity experts; extending the termination date of the
15 program; repealing and altering certain definitions; defining a certain term; making
16 conforming changes; providing for the application of this Act; and generally relating
17 to the Cybersecurity Investment Incentive Tax Credit program and tax credits for
18 innovative technology in the State.

19 BY repealing and reenacting, with amendments,
20 Article – Economic Development
21 Section 2.5–109(a)(4)(vii)
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – State Finance and Procurement
26 Section 6–226(a)(2)(ii)80.
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2015 Replacement Volume and 2020 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Tax – General
4 Section 1–303(i) and 10–733
5 Annotated Code of Maryland
6 (2016 Replacement Volume and 2020 Supplement)

7 BY repealing and reenacting, with amendments,
8 Chapter 390 of the Acts of the General Assembly of 2013, as amended by Chapter
9 578 of the Acts of the General Assembly of 2018
10 Section 2

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Economic Development**

14 2.5–109.

15 (a) In this section, “economic development program” means:

16 (4) each of the tax credit programs administered by the Department,
17 including:

18 (vii) the [Cybersecurity] INNOVATION Investment Incentive Tax
19 Credit;

20 **Article – State Finance and Procurement**

21 6–226.

22 (a) (2) (ii) The provisions of subparagraph (i) of this paragraph do not apply
23 to the following funds:

24 80. the [Cybersecurity] INNOVATION Investment Fund;

25 **Article – Tax – General**

26 1–303.

27 (i) On or before July 1, 2023, an evaluation shall be made of the tax credits under
28 § 10–733 of this article ([cybersecurity] INNOVATION investment incentive) and § 10–733.1
29 of this article (purchase of cybersecurity technology or service).

30 10–733.

1 (a) (1) In this section the following words have the meanings indicated.

2 (2) (i) 1. “Company” means any entity of any form duly organized and
3 existing under the laws of any jurisdiction for the purpose of conducting business for profit.

4 2. “Company” includes an entity that becomes duly
5 organized and existing under the laws of any jurisdiction for the purpose of conducting
6 business for profit within 4 months of receiving a qualified investment.

7 (ii) “Company” does not include a sole proprietorship.

8 [(3) “Cybersecurity company” means a company organized for profit that is
9 engaged primarily in the development of innovative and proprietary cybersecurity
10 technology.

11 (4) “Cybersecurity technology” means products or goods intended to detect
12 or prevent activity intended to result in unauthorized access to, exfiltration of,
13 manipulation of, or impairment to the integrity, confidentiality, or availability of an
14 information system or information stored on or transiting an information system.]

15 [(5) (3) “Department” means the Department of Commerce.

16 [(6) (4) (i) “Investment” means the contribution of money in cash or
17 cash equivalents expressed in United States dollars, at a risk of loss, to a qualified
18 Maryland [cybersecurity] TECHNOLOGY company in exchange for stock, a partnership or
19 membership interest, or any other ownership interest in the equity of the qualified
20 Maryland [cybersecurity] TECHNOLOGY company, title to which ownership interest shall
21 vest in the qualified investor.

22 (ii) “Investment” does not include debt unless it is convertible debt.

23 (iii) For purposes of this section, an investment is at risk of loss when
24 repayment entirely depends on the success of the business operations of the qualified
25 company.

26 [(7) “Panel” means the panel that the Department may establish under
27 subsection (e) of this section composed of experts in the area of cybersecurity technology.

28 [(8) (5) (i) “Qualified investor” means any individual or entity that
29 invests at least \$25,000 in a qualified Maryland [cybersecurity] TECHNOLOGY company
30 and that is required to file an income tax return in any jurisdiction.

31 (ii) “Qualified investor” does not include a qualified pension plan, an
32 individual retirement account, or any other qualified retirement plan under the Employee
33 Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under
34 such plans, or similar tax-favored plans or entities under the laws of other countries.

1 **[(9)] (6) (I)** “Qualified Maryland [cybersecurity] **TECHNOLOGY**
2 company” means a [cybersecurity] **TECHNOLOGY** company that has met the criteria set
3 forth in subsection (b)(2) of this section.

4 **(II) “QUALIFIED MARYLAND TECHNOLOGY COMPANY”**
5 **DOES NOT INCLUDE A TECHNOLOGY COMPANY THAT IS OR HAS BEEN CERTIFIED AS**
6 **A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY UNDER § 10-725 OF THIS**
7 **SUBTITLE.**

8 **[(10)] (7)** “Secretary” means the Secretary of Commerce.

9 **(8) “TECHNOLOGY COMPANY” MEANS A COMPANY ORGANIZED FOR**
10 **PROFIT THAT IS ENGAGED IN THE RESEARCH, DEVELOPMENT, OR**
11 **COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY.**

12 (b) (1) Subject to paragraph (2) of this subsection and subsections (d) and **[(f)]**
13 **(E)** of this section, for the taxable year in which an investment in a qualified Maryland
14 [cybersecurity] **TECHNOLOGY** company is made, a qualified investor may claim a credit
15 against the State income tax in an amount equal to the amount of tax credit stated in the
16 final credit certificate approved by the Secretary for the investment as provided under this
17 section.

18 (2) To be eligible for the tax credit described in paragraph (1) of this
19 subsection, the qualified investor:

20 (i) may not, after making the proposed investment, own or control
21 more than 25% of the equity interests in the qualified Maryland [cybersecurity]
22 **TECHNOLOGY** company in which the investment is made; and

23 (ii) at least 30 days prior to making an investment in a qualified
24 Maryland [cybersecurity] **TECHNOLOGY** company for which the qualified investor would
25 be eligible for an initial tax credit certificate under this subsection, shall submit an
26 application to the Department containing the following:

27 1. evidence that the investor is:

28 A. if a company, duly organized and in good standing in the
29 jurisdiction under the laws under which it is organized;

30 B. current in the payment of all tax obligations to a state or
31 any unit or subdivision of a state; and

32 C. not in default under the terms of any contract with,
33 indebtedness to, or grant from a state or any unit or subdivision of a state;

1 2. evidence that the qualified Maryland [cybersecurity]
2 **TECHNOLOGY** company has satisfied the following minimum requirements for
3 consideration as a qualified Maryland [cybersecurity] **TECHNOLOGY** company:

4 A. has its headquarters and base of operations in this State;

5 B. has not participated in the tax credit program under this
6 section for more than [1] **3** prior fiscal [year] **YEARS**;

7 C. has an aggregate capitalization of at least \$100,000;

8 D. owns or has properly licensed any proprietary technology;

9 E. has fewer than 50 full-time employees;

10 F. does not have its securities publicly traded on any
11 exchange;

12 G. is in good standing;

13 H. is current in the payment of all tax obligations to the State
14 or any unit or subdivision of the State;

15 I. is not in default under the terms of any contract with,
16 indebtedness to, or grant from the State or any unit or subdivision of the State; and

17 J. meets any other reasonable requirements of the
18 Department evidencing that the company is a going concern [primarily] engaged in the
19 **RESEARCH, development, OR COMMERCIALIZATION** of innovative and proprietary
20 [cybersecurity] technology **IN AN ELIGIBLE TECHNOLOGY SECTOR IDENTIFIED IN**
21 **ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION**; and

22 3. any other information the Department may require.

23 **(3) (I) AFTER CONSULTING WITH THE DEPARTMENT AND THE**
24 **MARYLAND DEPARTMENT OF LABOR, EACH YEAR THE MARYLAND ECONOMIC**
25 **DEVELOPMENT COMMISSION SHALL:**

26 **1. EVALUATE THE POTENTIAL EMPLOYMENT AND**
27 **ECONOMIC GROWTH OF MARYLAND'S TECHNOLOGY SECTORS; AND**

28 **2. RECOMMEND ELIGIBLE TECHNOLOGY SECTORS TO**
29 **THE DEPARTMENT.**

30 **(II) EACH YEAR THE DEPARTMENT SHALL:**

1 1. CONSIDER THE RECOMMENDATION OF THE
2 MARYLAND ECONOMIC DEVELOPMENT COMMISSION; AND

3 2. ESTABLISH A LIST OF TECHNOLOGY SECTORS THAT
4 WILL BE ELIGIBLE FOR THE TAX CREDIT UNDER THIS SECTION.

5 (III) IN DETERMINING WHETHER A COMPANY IS ENGAGED IN AN
6 ELIGIBLE TECHNOLOGY SECTOR, THE DEPARTMENT SHALL CONSIDER THE
7 DEFINITIONS SET FORTH IN THE NORTH AMERICAN INDUSTRY CLASSIFICATION
8 SYSTEM (NAICS).

9 (c) (1) The Department shall:

10 (i) approve all applications that qualify for credits under this section
11 on a first-come, first-served basis; and

12 (ii) within 30 calendar days of receipt of an application:

13 1. certify the amount of any approved tax credits to a
14 qualified investor; and

15 2. determine whether a [cybersecurity] TECHNOLOGY
16 company qualifies for investments that are eligible for the tax credit under this section.

17 (2) (i) After the date on which the Department issues an initial tax
18 credit certificate under this section, a qualified investor shall have 30 calendar days to
19 make an investment in a qualified Maryland [cybersecurity] TECHNOLOGY company
20 under this section.

21 (ii) Within 10 calendar days after the date on which a qualified
22 investor makes the investment, the qualified investor shall provide to the Department
23 notice and proof of the making of the investment, including:

24 1. the date of the investment;

25 2. the amount invested;

26 3. proof of the receipt of the invested funds by the qualified
27 Maryland [cybersecurity] TECHNOLOGY company;

28 4. a complete description of the nature of the ownership
29 interest in the equity of the qualified Maryland [cybersecurity] TECHNOLOGY company
30 acquired in consideration of the investment; and

31 5. any reasonable supporting documentation the

1 Department may require.

2 (iii) If a qualified investor does not provide the notice and proof of the
3 making of the investment required in subparagraph (ii) of this paragraph within 40
4 calendar days after the date on which the Department issues an initial tax credit certificate
5 under this section:

6 1. the Department shall rescind the initial tax credit
7 certificate; and

8 2. the credit amount allocated to the rescinded certificate
9 shall revert to the Maryland [Cybersecurity] INNOVATION Investment Tax Credit Reserve
10 Fund and shall be available in the applicable fiscal year for allocation by the Department
11 to other initial tax credit certificates in accordance with the provisions of this section.

12 (d) (1) The tax credit allowed in an initial tax credit certificate issued under
13 this section is:

14 (i) except as provided in item (ii) of this paragraph, 33% of the
15 investment in a qualified Maryland [cybersecurity] TECHNOLOGY company, not to exceed
16 \$250,000; or

17 (ii) if a qualified Maryland [cybersecurity] TECHNOLOGY company
18 is located in Allegany County, Dorchester County, Garrett County, or Somerset County,
19 50% of the investment in the qualified Maryland [cybersecurity] TECHNOLOGY company,
20 not to exceed \$500,000.

21 (2) During any fiscal year, the Secretary may not certify eligibility for tax
22 credits for investments in:

23 (I) a single qualified Maryland [cybersecurity] TECHNOLOGY
24 company that in the aggregate exceed 15% of the total appropriations to the Maryland
25 [Cybersecurity] INNOVATION Investment Tax Credit Reserve Fund for that fiscal year;
26 **OR**

27 (II) **A SINGLE TECHNOLOGY SECTOR THAT IN THE AGGREGATE**
28 **EXCEED 25% OF THE TOTAL APPROPRIATIONS TO THE MARYLAND INNOVATION**
29 **INVESTMENT TAX CREDIT RESERVE FUND FOR THAT FISCAL YEAR.**

30 (3) If the credit allowed under this section in any taxable year exceeds the
31 State income tax for that taxable year, an individual or a corporation may claim a refund
32 in the amount of the excess.

33 [(e) (1) The Department may establish a panel composed of experts in the area
34 of cybersecurity technology.

1 (2) The Department may establish the panel under service contracts with
2 independent reviewers.

3 (3) The panel shall assist the Department in its determination as to
4 whether a company is a qualified Maryland cybersecurity company.

5 (4) A member of the panel is not eligible to receive any benefit, direct or
6 indirect, from the tax credit under this section.

7 (5) (i) Except as provided in subparagraph (ii) of this paragraph,
8 Division II of the State Finance and Procurement Article does not apply to a service that
9 the Department obtains under this section.

10 (ii) The Department is subject to Title 12, Subtitle 4 of the State
11 Finance and Procurement Article for services the Department obtains under this section.]

12 **[(f)] (E)** (1) In this subsection, “Reserve Fund” means the Maryland
13 **[Cybersecurity] INNOVATION** Investment Tax Credit Reserve Fund established under
14 paragraph (2) of this subsection.

15 (2) (i) There is a Maryland **[Cybersecurity] INNOVATION** Investment
16 Tax Credit Reserve Fund which is a special continuing, nonlapsing fund that is not subject
17 to § 7–302 of the State Finance and Procurement Article.

18 (ii) The money in the Reserve Fund shall be invested and reinvested
19 by the Treasurer, and interest and earnings shall be credited to the General Fund.

20 (iii) The money in the Reserve Fund may be used by the Department
21 to pay the costs of administering the tax credit program under this section.

22 (3) (i) Subject to the provisions of this subsection, the Secretary shall
23 issue an initial tax credit certificate to a qualified investor for each approved investment in
24 a qualified Maryland **[cybersecurity] TECHNOLOGY** company eligible for a tax credit.

25 (ii) An initial tax credit certificate issued under this subsection shall
26 state the maximum amount of tax credit for which the qualified investor is eligible.

27 (iii) 1. Except as otherwise provided in this subparagraph, for
28 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts
29 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that
30 fiscal year in the State budget as approved by the General Assembly, as reduced by the
31 amount needed to pay the costs of administering the tax credit program under this section.

32 2. If the aggregate credit amounts under initial tax credit
33 certificates issued in a fiscal year total less than the amount appropriated to the Reserve
34 Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be
35 issued under initial tax credit certificates for the next fiscal year.

1 3. For any fiscal year, if funds are transferred from the
2 Reserve Fund under the authority of any provision of law other than under paragraph (4)
3 of this subsection, the maximum credit amounts in the aggregate for which the Secretary
4 may issue initial tax credit certificates shall be reduced by the amount transferred.

5 (iv) 1. Except as provided in subparagraph 2 of this
6 subparagraph, for each fiscal year, the Governor shall include in the budget bill an
7 appropriation of at least \$2,000,000 to the Reserve Fund.

8 2. In fiscal year 2016, the Governor shall include in the
9 budget bill an appropriation of at least \$1,500,000 to the Reserve Fund.

10 (v) Notwithstanding the provisions of § 7-213 of the State Finance
11 and Procurement Article, the Governor may not reduce an appropriation to the Reserve
12 Fund in the State budget as approved by the General Assembly.

13 (vi) Based on the actual amount of an investment made by a qualified
14 investor, the Secretary shall issue a final tax credit certificate to the qualified investor.

15 (4) (i) Except as otherwise provided in this paragraph, money
16 appropriated to the Reserve Fund shall remain in the Reserve Fund.

17 (ii) 1. Within 15 days after the end of each calendar quarter, the
18 Department shall notify the Comptroller as to each final credit certificate issued during the
19 quarter:

20 A. the maximum credit amount stated in the initial tax credit
21 certificate for the investment in the qualified Maryland [cybersecurity] **TECHNOLOGY**
22 company; and

23 B. the final certified credit amount for the investment in the
24 qualified Maryland [cybersecurity] **TECHNOLOGY** company.

25 2. On notification that an investment has been certified, the
26 Comptroller shall transfer an amount equal to the credit amount stated in the initial tax
27 credit certificate for the investment from the Reserve Fund to the General Fund.

28 (iii) 1. Periodically, but not more frequently than quarterly, the
29 Department may submit invoices for costs that have been incurred or are anticipated to be
30 incurred in administering the tax credit program under this section.

31 2. The Comptroller shall transfer money from the Reserve
32 Fund to the Department to pay for costs that have been incurred or are anticipated to be
33 incurred in administering the tax credit program under this section.

34 [(g)] (F) (1) The credit claimed under this section shall be recaptured as

1 provided in paragraph (3) of this subsection if within 2 years from the close of the taxable
2 year for which the credit is claimed:

3 (i) the qualified investor sells, transfers, or otherwise disposes of the
4 ownership interest in the qualified Maryland [cybersecurity] **TECHNOLOGY** company that
5 gave rise to the credit; or

6 (ii) the qualified Maryland [cybersecurity] **TECHNOLOGY** company
7 that gave rise to the credit:

8 1. ceases operating as an active business with its
9 headquarters and base of operations in the State; or

10 2. pays out as dividends or otherwise distributes the equity
11 investment.

12 (2) The credit claimed under this section shall be recaptured as provided
13 in paragraph (3) of this subsection if, within 4 months of receiving a qualified investment,
14 a qualified Maryland [cybersecurity] **TECHNOLOGY** company is not duly organized and
15 existing under the laws of any jurisdiction for the purposes of conducting business for profit.

16 (3) The amount required to be recaptured under this subsection is the
17 product of multiplying:

18 (i) the total amount of the credit claimed or, in the case of an event
19 described in paragraph (1)(i) of this subsection, the portion of the credit attributable to the
20 ownership interest disposed of; and

21 (ii) 1. 100%, if the event requiring recapture of the credit occurs
22 during the taxable year for which the tax credit is claimed;

23 2. 67%, if the event requiring recapture of the credit occurs
24 during the first year after the close of the taxable year for which the tax credit is claimed;
25 or

26 3. 33%, if the event requiring recapture of the credit occurs
27 more than 1 year but not more than 2 years after the close of the taxable year for which the
28 tax credit is claimed.

29 (4) The qualified investor that claimed the credit shall pay the amount to
30 be recaptured as determined under paragraph (3) of this subsection as taxes payable to the
31 State for the taxable year in which the event requiring recapture of the credit occurs.

32 **[(h)] (G)** (1) The Department may revoke its initial or final certification of an
33 approved credit under this section if any representation made in connection with the
34 application for the certification is determined by the Department to have been false.

1 (2) The revocation may be in full or in part as the Department may
2 determine and, subject to paragraph (3) of this subsection, shall be communicated to the
3 qualified investor, the qualified Maryland [cybersecurity] **TECHNOLOGY** company, and the
4 Comptroller.

5 (3) The qualified investor shall have an opportunity to appeal any
6 revocation to the Department prior to notification of the Comptroller.

7 (4) The Comptroller may make an assessment against the qualified
8 investor to recapture any amount of tax credit that the qualified investor has already
9 claimed.

10 **[(i)] (H)** (1) In accordance with § 2.5–109 of the Economic Development
11 Article, the Department shall submit a report on the initial tax credit certificates awarded
12 under this section for the calendar year.

13 (2) The report required under paragraph (1) of this subsection shall include
14 for each initial tax credit certificate awarded:

15 (i) the name of the qualified investor and the amount of credit
16 awarded or allocated to each qualified investor;

17 (ii) the name and address of the qualified Maryland [cybersecurity]
18 **TECHNOLOGY** company that received the investment giving rise to the credit under this
19 section and the county where the qualified Maryland [cybersecurity] **TECHNOLOGY**
20 company is located; and

21 (iii) the dates of receipt and approval by the Department of all
22 applications for initial tax credit certificates.

23 (3) The report required under paragraph (1) of this subsection shall
24 summarize for the categories of qualified investors:

25 (i) the total number of applicants for initial tax credit certificates
26 under this section in each calendar year;

27 (ii) the number of applications for which initial tax credit certificates
28 were issued in each calendar year; and

29 (iii) the total initial tax credit certificates authorized under this
30 section for all calendar years under this section.

31 **[(j)] (I)** The Department and the Comptroller jointly shall adopt regulations to
32 carry out the provisions of this section and to specify criteria and procedures for application
33 for, approval of, and monitoring continuing eligibility for the tax credit under this section.

1 **Chapter 390 of the Acts of 2013, as amended by Chapter 578 of the Acts of 2018**

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
3 1, 2013, and shall be applicable to all taxable years beginning after December 31, 2013, but
4 before January 1, **[2023] 2025**. This Act shall remain effective for a period of **[10] 12** years
5 and, at the end of June 30, **[2023] 2025**, with no further action required by the General
6 Assembly, this Act shall be abrogated and of no further force and effect.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
8 1, 2021, and shall be applicable to all initial tax credit certificates issued after June 30,
9 2021.