

COMMITTEE ON FINANCE
SENATE AMENDMENTS TO H.B. 2191
(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 41-1518, Arizona Revised Statutes, is amended to
3 read:

4 41-1518. Capital investment incentives; evaluation; certification;
5 definitions

6 A. The Arizona commerce authority shall receive and evaluate
7 applications that are submitted by qualified investors to receive a tax
8 credit pursuant to section 43-1074.02 for qualified investments made in a
9 qualified small business and SHALL certify to the department of revenue the
10 names, amounts and other relevant information relating to the applicants.

11 B. To be eligible for a tax credit pursuant to this section and
12 section 43-1074.02, a qualified investor shall file an application with the
13 authority within ninety days after making a qualified investment. The
14 application, on a form prescribed by the authority, shall include:

15 1. The name, address and federal income tax identification number of
16 the applicant.

17 2. The name and federal employer identification number of the
18 qualified small business that received a qualified investment made by the
19 applicant.

20 3. The date the qualified investment was made.

21 4. Any additional information that the authority requires.

22 C. As part of the application, the applicant and the qualified small
23 business that receives the investment shall each provide written
24 authorization pursuant to section 42-2003 designating the authority as
25 eligible to receive tax information from the department of revenue for the

1 purpose of determining if any misrepresentations exist on the application.
2 The authorization shall limit disclosure to income tax information for the
3 latest two years for which returns were filed with the department of
4 revenue preceding the date the application is filed and for all tax years
5 through the year in which the investment was made for which a return was
6 not filed as of the date of the application. The applicant shall also
7 provide in the written authorization income tax information for all tax
8 years in which the applicant could claim or carry forward the credit
9 pursuant to this section, but limited to the tax years in which the
10 applicant actually claims a credit or carries forward a credit on a return
11 filed with the department of revenue. An applicant who has an individual
12 ownership interest as a co-owner of a business who may be entitled to a pro
13 rata share of the credit pursuant to section 43-1074.02, subsection E shall
14 provide a written authorization with content similar to the authorization,
15 and in the same manner as, any other applicant is required to provide.

16 D. The authority shall review and make a determination with respect
17 to each application within ninety days after receiving the application.
18 The authority may request additional information from the applicant in
19 order to make an informed decision regarding the eligibility of the
20 qualified investor or qualified small business.

21 E. Subject to subsection F of this section, the authority shall
22 authorize tax credits for each qualified investor who makes a qualified
23 investment in a qualified small business. The amount of the credit shall
24 be:

25 1. If the qualified investment is made in a qualified small business
26 that maintains its principal place of business in a rural county of this
27 state or is a bioscience enterprise, twelve ~~per cent~~ PERCENT of the amount
28 of the investment per year for the first and second taxable years after the
29 investment is made and eleven ~~per cent~~ PERCENT of the amount of the
30 investment for the third taxable year after the year in which the
31 investment is made.

1 2. If the qualified investment is made in a qualified small business
2 other than a business described in paragraph 1 of this subsection, ten ~~per~~
3 ~~cent~~ PERCENT of the amount of the investment for each of the three taxable
4 years after the year in which the investment is made.

5 F. The authority shall not authorize tax credits under this section
6 after June 30, 2021. ~~THROUGH JUNE 30, 2017,~~ the authority shall not certify
7 tax credits under this section exceeding twenty million dollars. ~~FROM AND~~
8 ~~AFTER JUNE 30, 2017 THROUGH JUNE 30, 2021, THE AUTHORITY MAY CERTIFY~~
9 ~~ADDITIONAL TAX CREDITS UNDER THIS SECTION NOT EXCEEDING TWO MILLION FIVE~~
10 ~~HUNDRED THOUSAND DOLLARS EACH FISCAL YEAR, PLUS ANY UNUSED CREDIT CAPACITY,~~
11 ~~WHICH CARRIES OVER FROM THE PRECEDING FISCAL YEAR OR YEARS.~~ Tax credits
12 that expire after certification or that are otherwise not timely used by
13 the qualified investor for whom they were originally authorized shall ~~ALSO~~
14 be included in the ~~twenty million~~ APPLICABLE dollar ~~limitation~~ LIMIT. If
15 qualifying applications exceed ~~twenty million dollars~~ THE DOLLAR LIMIT, the
16 authority shall authorize credits in the order of the date and time that
17 the applications are received by the authority, as evidenced by the time
18 and date stamped on the application when received by the authority. All
19 applications shall be filed on a form and in the manner prescribed by the
20 Arizona commerce authority. If an application is received that, if
21 authorized, would require the authority to exceed the ~~twenty million~~
22 APPLICABLE dollar limit, the authority shall only grant the applicant the
23 remaining amount of tax credits that would not exceed the ~~twenty million~~
24 dollar limit. After the authority authorizes ~~twenty million dollars in~~ THE
25 ALLOWABLE AMOUNT OF tax credits, the authority shall deny any subsequent
26 applications that are received. The authority shall certify to the
27 qualified investor and to the department of revenue the amount of the tax
28 credit that is authorized for purposes of section 43-1074.02 for each
29 taxable year described in subsection E of this section.

30 G. The total of all qualified investments in any calendar year by a
31 qualified investor and its affiliates in qualified small businesses that

1 are eligible for a tax credit pursuant to this section and section 43-
2 1074.02 shall not exceed five hundred thousand dollars. The maximum amount
3 of qualified investments in a single qualified small business for which the
4 authority may authorize tax credits under this section shall not exceed an
5 aggregate of two million dollars in investments for all taxable years. If
6 applications for tax credits are received for investments that exceed the
7 limits prescribed by this subsection for any qualified small business, the
8 authority shall authorize credits in the order of the date and time that
9 the applications are received by the authority. If an application is
10 received that, if authorized, would require the authority to authorize tax
11 credits for any investment in a qualified small business that would cause
12 the total qualified investments in the business to exceed the limits
13 prescribed by this subsection, the authority shall only grant the applicant
14 the remaining amount of tax credits that would not exceed the limits
15 prescribed by this subsection.

16 H. The qualified investor shall file a return claiming the tax
17 credit with the department of revenue for application against income tax
18 pursuant to section 43-1074.02 by the due date of the return, including
19 extensions, for the tax year in which the credit is available. If the
20 qualified investor fails to timely file a return claiming the credit for a
21 taxable year, the credit expires for that taxable year and there shall be
22 no carryforward of the expired credit. If a qualified investor includes
23 co-owners of a business who qualify for individual pro rata shares of the
24 credit pursuant to section 43-1074.02, subsection E, each individual owner
25 shall file a return claiming the tax credit with the department of revenue
26 by the due date of the return, including extensions, for the tax year in
27 which the credit is available. If an individual co-owner fails to timely
28 file a return claiming the credit for a taxable year, the credit expires
29 for that taxable year and there shall be no carryforward of the expired
30 credit. Credits that expire or that otherwise are not timely used by the

1 qualified investor or by the individual co-owner of a business for whom the
2 credits were originally authorized shall not be reissued.

3 I. On receiving an application for a tax credit from a qualified
4 investor, or a written request for certification as a qualified small
5 business from a corporation, limited liability company, partnership or
6 other business entity, the authority shall determine whether the
7 corporation, limited liability company, partnership or other business
8 entity that is named in the application or written request is a qualified
9 small business. The authority shall determine if the business is a
10 bioscience enterprise and if the business maintains its principal place of
11 business in a rural county in this state. After determining the
12 qualifications, the authority shall certify the qualified small business as
13 being eligible to receive qualified investments for purposes of this
14 section. The certification is valid for one year, but the authority may
15 revoke the certification at any time or refuse to renew the certification
16 if the business fails to maintain the required qualifications. If a
17 qualified small business fails to maintain the qualifications, the business
18 shall notify the authority within five business days ~~of~~ AFTER failing to
19 meet the qualifications. The authority shall revoke the certification of
20 the business and may assess a penalty against the business entity equal to
21 the amount of the tax credits authorized after the business failed to meet
22 the qualifications. The penalty shall be deposited into the state general
23 fund. If the certification is revoked or expires, subsequent investments
24 in the business do not qualify for a tax credit pursuant to this section
25 and section 43-1074.02. All tax credits that are issued before any
26 expiration or revocation of the certification shall remain valid. Any
27 application for a tax credit shall not be denied on the basis of the
28 expiration or revocation of the certification if the investment was made
29 before the date of the expiration or revocation.

30 J. The authority shall provide to the department of revenue
31 necessary information required to administer this section and section 43-

1 1074.02. If the authority subsequently discovers that an applicant who
2 received a tax credit misrepresented information on the application, the
3 authority shall immediately notify the department of revenue and provide
4 the department of revenue all information that relates to that applicant.
5 If the department of revenue determines that there has been a
6 misrepresentation on the application, the department of revenue shall deny
7 the credit if the misrepresentation relates to whether the applicant was a
8 qualified investor or made a qualified investment. If the
9 misrepresentation relates to whether the investment was made to:

10 1. A qualified small business, the department of revenue shall deny
11 the credit only if the applicant knew or should have known at any time
12 before the certification that the representation was false.

13 2. A bioscience enterprise or a business that maintains its
14 principal place of business in a rural county in this state, the department
15 of revenue shall decrease the amount of the credit that would have been
16 allowed under subsection E, paragraph 1 of this section to the amount
17 allowed under subsection E, paragraph 2 of this section only if the
18 applicant knew or should have known at any time before the certification
19 that the representation was false.

20 K. For the purposes of this section:

21 1. "Affiliate" means any person or entity that controls, that is
22 controlled by or that is under common control with another person or
23 entity. For the purposes of this paragraph, "control" means the power to
24 determine the policies of an entity whether through ownership of voting
25 securities, by contract or otherwise.

26 2. "Asset" means any owned property that has value, including
27 financial assets and physical assets. Intellectual property shall not be
28 included when determining total assets.

29 3. "Bioscience enterprise" means a business whose activity is
30 related to bioscience as determined by the authority or any corporation,
31 partnership, limited liability company or other business entity that is

1 primarily engaged in a business that conducts research, development,
2 ~~manufacture~~ MANUFACTURING, marketing, ~~sale~~ SALES and licensing of products,
3 services and solutions relating to either of the following:

4 (a) Medical, pharmaceutical, nutraceutical, bioengineering,
5 biomechanical, bioinformatics or other life-science based applications.

6 (b) Applications of modern biological, bioengineering, biomechanical
7 or bioinformatics technologies in the fields of human, plant or animal
8 health, agriculture, defense, homeland security or the environment.

9 4. "Qualified investment" means an investment in an equity security
10 that meets all of the following requirements:

11 (a) The equity security shall be common stock, preferred stock, an
12 interest in a partnership or limited liability company, a security that is
13 convertible into an equity security or any other equity security as
14 determined by the authority.

15 (b) The investment shall be at least twenty-five thousand dollars.

16 (c) The qualified investor and its affiliates do not hold, of record
17 or beneficially, immediately before making an investment, equity securities
18 possessing more than thirty ~~per cent~~ PERCENT of the total voting power of
19 all equity securities of the qualified small business.

20 5. "Qualified investor" means an individual, limited liability
21 company, partnership, S corporation as defined in section 1361 of the
22 internal revenue code or other business entity that makes a qualified
23 investment in a qualified small business. Qualified investor does not mean
24 a corporation that is subject to tax under title 43, chapter 11.

25 6. "Qualified small business" means a corporation, limited liability
26 company, partnership or other business entity that:

27 (a) Maintains at least a portion of its operations at an office or
28 manufacturing or research facility located in this state.

29 (b) Has at least two principal full-time equivalent employees who
30 are residents in this state. For the purposes of this subdivision,
31 "principal" means a person whose sole responsibility is not administrative.

1 (c) Does not engage in any activities that involve human cloning or
2 embryonic stem cell research.

3 (d) Has total assets not exceeding two million dollars through
4 December 31, 2011 or ten million dollars beginning from and after December
5 31, 2011, excluding any investment made under this section.

6 (e) Has not exceeded the ~~limitation~~ LIMIT on qualified investments
7 prescribed by subsection G of this section.

8 (f) Does not have a principal business involving activities excluded
9 by the authority. The authority shall provide a list of excluded
10 businesses to any person on request.

11 7. "Rural county" means a county that has a population of seven
12 hundred fifty thousand or fewer persons."

13 Amend title to conform

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