

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2011

(Reference to printed bill)

1 Strike everything after the enacting clause, insert:

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

4 41-1518. Capital investment incentives; evaluation;
5 certification; 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 certify to the department of revenue the names,
10 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
26 purpose of determining if any misrepresentations exist on the application.
27 The authorization shall limit disclosure to income tax information for the
28 latest two years for which returns were filed with the department of revenue
29 preceding the date the application is filed and for all tax years through the
30 year in which the investment was made for which a return was not filed as of
31 the date of the application. The applicant shall also provide in the written
32 authorization income tax information for all tax years in which the applicant
33 could claim or carry forward the credit pursuant to this section, but limited
34 to the tax years in which the applicant actually claims a credit or carries
35 forward a credit on a return filed with the department of revenue. An

1 applicant who has an individual ownership interest as a co-owner of a
2 business who may be entitled to a pro rata share of the credit pursuant to
3 section 43-1074.02, subsection E shall provide a written authorization with
4 content similar to the authorization, and in the same manner as, any other
5 applicant is required to provide.

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

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

14 1. If the qualified investment is made in a qualified small business
15 that maintains its principal place of business in a rural county of this
16 state or is a bioscience enterprise, twelve ~~per cent~~ PERCENT of the amount of
17 the investment per year for the first and second taxable years after the
18 investment is made and eleven ~~per cent~~ PERCENT of the amount of the
19 investment for the third taxable year after the year in which the investment
20 is made.

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

25 F. The authority shall not authorize tax credits under this section
26 after June 30, 2021. The authority shall not certify tax credits under this
27 section exceeding ~~twenty~~ TWENTY-FIVE million dollars. Tax credits that
28 expire after certification or that are otherwise not timely used by the
29 qualified investor for whom they were originally authorized shall be included
30 in the ~~twenty~~ TWENTY-FIVE million dollar limitation. If qualifying
31 applications exceed ~~twenty~~ TWENTY-FIVE million dollars, the authority shall
32 authorize credits in the order of the date and time that the applications are
33 received by the authority, as evidenced by the time and date stamped on the
34 application when received by the authority. All applications shall be filed
35 on a form and in the manner prescribed by the Arizona commerce authority. If
36 an application is received that, if authorized, would require the authority
37 to exceed the ~~twenty~~ TWENTY-FIVE million dollar limit, the authority shall
38 only grant the applicant the remaining amount of tax credits that would not
39 exceed the ~~twenty~~ TWENTY-FIVE million dollar limit. After the authority
40 authorizes ~~twenty~~ TWENTY-FIVE million dollars in tax credits, the authority

1 shall deny any subsequent applications that are received. The authority
2 shall certify to the qualified investor and to the department of revenue the
3 amount of the tax credit that is authorized for purposes of section
4 43-1074.02 for each taxable year described in subsection E of this section.

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

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

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

27 J. The authority shall provide to the department of revenue necessary
28 information required to administer this section and section 43-1074.02. If
29 the authority subsequently discovers that an applicant who received a tax
30 credit misrepresented information on the application, the authority shall
31 immediately notify the department of revenue and provide the department of
32 revenue all information that relates to that applicant. If the department of
33 revenue determines that there has been a misrepresentation on the
34 application, the department of revenue shall deny the credit if the
35 misrepresentation relates to whether the applicant was a qualified investor
36 or made a qualified investment. If the misrepresentation relates to whether
37 the investment was made to:

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

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

8 K. For the purposes of this section:

9 1. "Affiliate" means any person or entity that controls, that is
10 controlled by or that is under common control with another person or entity.
11 For the purposes of this paragraph, "control" means the power to determine
12 the policies of an entity whether through ownership of voting securities, by
13 contract or otherwise.

14 2. "Asset" means any owned property that has value including financial
15 assets and physical assets. Intellectual property shall not be included when
16 determining total assets.

17 3. "Bioscience enterprise" means a business whose activity is related
18 to bioscience as determined by the authority or any corporation, partnership,
19 limited liability company or other business entity that is primarily engaged
20 in a business that conducts research, development, manufacture, marketing,
21 sale and licensing of products, services and solutions relating to either of
22 the following:

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

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

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

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

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

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

39 5. "Qualified investor" means an individual, limited liability
40 company, partnership, S corporation as defined in section 1361 of the

1 internal revenue code or other business entity that makes a qualified
2 investment in a qualified small business. Qualified investor does not mean a
3 corporation that is subject to tax under title 43, chapter 11.

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

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

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

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

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

16 (e) Has not exceeded the limitation on qualified investments
17 prescribed by subsection G of this section.

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

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

23 Amend title to conform

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