PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2011

(Reference to printed bill)

1 Strike everything after the enacting clause, insert:

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

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

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

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

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

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

       3.  The date the qualified investment was made.

       4.  Any additional information that the authority requires.

   C.  As part of the application, the applicant and the qualified small business that receives the investment shall each provide written authorization pursuant to section 42-2003 designating the authority as eligible to receive tax information from the department of revenue for the purpose of determining if any misrepresentations exist on the application.  The authorization shall limit disclosure to income tax information for the latest two years for which returns were filed with the department of revenue preceding the date the application is filed and for all tax years through the year in which the investment was made for which a return was not filed as of the date of the application.  The applicant shall also provide in the written authorization income tax information for all tax years in which the applicant could claim or carry forward the credit pursuant to this section, but limited to the tax years in which the applicant actually claims a credit or carries forward a credit on a return filed with the department of revenue.  An
applicant who has an individual ownership interest as a co-owner of a business who may be entitled to a pro rata share of the credit pursuant to section 43-1074.02, subsection E shall provide a written authorization with content similar to the authorization, and in the same manner as, any other applicant is required to provide.

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

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

1. If the qualified investment is made in a qualified small business that maintains its principal place of business in a rural county of this state or is a bioscience enterprise, twelve percent of the amount of the investment per year for the first and second taxable years after the investment is made and eleven percent of the amount of the investment for the third taxable year after the year in which the investment is made.

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

F. The authority shall not authorize tax credits under this section after June 30, 2021. The authority shall not certify tax credits under this section exceeding twenty million dollars. Tax credits that expire after certification or that are otherwise not timely used by the qualified investor for whom they were originally authorized shall be included in the twenty million dollar limitation. If qualifying applications exceed twenty million dollars, the authority shall authorize credits in the order of the date and time that the applications are received by the authority, as evidenced by the time and date stamped on the application when received by the authority. All applications shall be filed on a form and in the manner prescribed by the Arizona commerce authority. If an application is received that, if authorized, would require the authority to exceed the twenty million dollar limit, the authority shall only grant the applicant the remaining amount of tax credits that would not exceed the twenty million dollar limit. After the authority authorizes twenty million dollars in tax credits, the authority
shall deny any subsequent applications that are received. The authority shall certify to the qualified investor and to the department of revenue the amount of the tax credit that is authorized for purposes of section 43-1074.02 for each taxable year described in subsection E of this section.

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

H. The qualified investor shall file a return claiming the tax credit with the department of revenue for application against income tax pursuant to section 43-1074.02 by the due date of the return, including extensions, for the tax year in which the credit is available. If the qualified investor fails to timely file a return claiming the credit for a taxable year, the credit expires for that taxable year and there shall be no carryforward of the expired credit. If a qualified investor includes co-owners of a business who qualify for individual pro rata shares of the credit pursuant to section 43-1074.02, subsection E, each individual owner shall file a return claiming the tax credit with the department of revenue by the due date of the return, including extensions, for the tax year in which the credit is available. If an individual co-owner fails to timely file a return claiming the credit for a taxable year, the credit expires for that taxable year and there shall be no carryforward of the expired credit. Credits that expire or that otherwise are not timely used by the qualified investor or by the individual co-owner of a business for whom the credits were originally authorized shall not be reissued.
I. On receiving an application for a tax credit from a qualified investor, or a written request for certification as a qualified small business from a corporation, limited liability company, partnership or other business entity, the authority shall determine whether the corporation, limited liability company, partnership or other business entity that is named in the application or written request is a qualified small business. The authority shall determine if the business is a bioscience enterprise and if the business maintains its principal place of business in a rural county in this state. After determining the qualifications, the authority shall certify the qualified small business as being eligible to receive qualified investments for purposes of this section. The certification is valid for one year, but the authority may revoke the certification at any time or refuse to renew the certification if the business fails to maintain the required qualifications. If a qualified small business fails to maintain the qualifications, the business shall notify the authority within five business days of failing to meet the qualifications. The authority shall revoke the certification of the business and may assess a penalty against the business entity equal to the amount of the tax credits authorized after the business failed to meet the qualifications. The penalty shall be deposited into the state general fund. If the certification is revoked or expires, subsequent investments in the business do not qualify for a tax credit pursuant to this section and section 43-1074.02. All tax credits that are issued before any expiration or revocation of the certification shall remain valid. Any application for a tax credit shall not be denied on the basis of the expiration or revocation of the certification if the investment was made before the date of the expiration or revocation.

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

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

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

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

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

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

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

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

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

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

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

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

6. “Qualified small business” means a corporation, limited liability company, partnership or other business entity that:
   (a) Maintains at least a portion of its operations at an office or manufacturing or research facility located in this state.
   (b) Has at least two principal full-time equivalent employees who are residents in this state. For the purposes of this subdivision, “principal” means a person whose sole responsibility is not administrative.
   (c) Does not engage in any activities that involve human cloning or embryonic stem cell research.
   (d) Has total assets not exceeding two million dollars through December 31, 2011 or ten million dollars beginning from and after December 31, 2011, excluding any investment made under this section.
   (e) Has not exceeded the limitation on qualified investments prescribed by subsection G of this section.
   (f) Does not have a principal business involving activities excluded by the authority. The authority shall provide a list of excluded businesses to any person on request.

7. “Rural county” means a county that has a population of seven hundred fifty thousand or fewer persons.”

Amend title to conform

THOMAS R. SHOPE, JR.