

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1863

S.P. 641

In Senate, May 2, 1997

An Act to Encourage Major Investments in Shipbuilding Facilities and to Encourage the Preservation of Jobs.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SMALL of Sagadahoc.
Cosponsored by Representative SAXL of Portland and
Senators: CLEVELAND of Androscoggin, HARRIMAN of Cumberland, KIEFFER of
Aroostook, PINGREE of Knox, Representatives: KERR of Old Orchard Beach, MAYO of
Bath, PEAVEY of Woolwich, RINES of Wiscasset.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 36 MRSA c. 919 is enacted to read:

CHAPTER 919

SHIPBUILDING FACILITY CREDIT

§6851. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Certified applicant. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this chapter.

2. Commissioner. "Commissioner" means the Commissioner of Economic and Community Development.

3. Employment. "Employment" means, for each calendar year, the amount determined by adding the total number of qualified employees of a certified applicant on each of 6 consecutive measurement days of that calendar year as chosen by the certified applicant and then dividing that sum by 6.

4. Exception year. The "exception year" means the calendar year immediately following the first calendar year in which a certified applicant has employment of less than 3,500, provided that the total state income taxes deducted and withheld by the certified applicant from qualified employees for the year in which the employment was less than 3,500 totals at least \$6,000,000.

5. Facility. "Facility" includes real estate, tangible personal property, fixtures, machinery and equipment.

6. Measurement day. "Measurement day" means the last business day of every other month of any calendar year.

7. Qualified applicant. "Qualified applicant" means an applicant for benefits under this chapter that satisfies each of the following tests.

A. The applicant owns or operates or proposes to construct a shipbuilding facility within the State.

B. The applicant proposes to make a qualified investment.

2 C. The applicant employs at least 5,000 qualified employees
3 at the time the application is filed.

4 D. The applicant does not otherwise qualify for the Maine
5 Employment Tax Increment Financing Program set forth in
6 section 6751 at the time the application is filed.

8 8. Qualified employee. "Qualified employee" means any
9 person who is either a resident individual, as defined by section
10 5102, subsection 5, or who is not a resident individual but
11 performs the majority of the employee's services in the State and
12 is classified as a full-time employee.

14 9. Qualified investment. "Qualified investment" means
15 expenditures incurred after October 1, 1996 totaling at least
16 \$150,000,000 related to the construction, improvement,
17 modernization or expansion of a shipbuilding facility within the
18 State that results in or enables the utilization of an
19 approximate by 10-acre facility that will enable the applicant to
20 erect ships on a flat surface and launch them on an abutting dry
21 dock, including, without limitation, all expenditures for
22 investigation; planning; design; engineering; permitting;
23 acquisition; financing; construction; demolition; alteration;
24 relocation; remodeling; repair; reconstruction; clearing;
25 filling; grading; reclamation of land; activities undertaken to
26 upgrade a waterway serving the facility; capitalized interest;
27 professional services, including, but not limited to,
28 architectural, engineering, legal, accounting or financial
29 services; administration; environmental and utility costs,
30 including, without limitation, sewerage treatment plants, water
31 and air and solid waste equipment and treatment plants,
32 environmental protection devices, electrical facilities, storm or
33 sanitary sewer lines, water lines or amenities on streets, any
34 other utility services, preparation of environmental impact
35 studies informing the public about the facility and environmental
36 impact and environmental remediation mitigation costs and
37 clean-up cost or protection costs; and all expenditures that may
38 be capitalized for federal income tax purposes, including any of
39 the expenditures made or costs incurred under this subsection
40 prior to the effective date of this chapter or certification of
41 an applicant. Except for such employees as are engaged in the
42 design, engineering and construction of the facility, "qualified
43 investment" does not include the salaries or other compensation
44 paid to the employees of the qualified applicant or of any
45 affiliate of the qualified applicant.

46 10. Qualified ship. "Qualified ship" means any new ship
47 launched by a certified applicant during or after 1998:
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2 A. Involving the use of a facility constructed, expanded,
modified or modernized as part of a qualified investment; and

4 B. For which the certified applicant has a contract with an
original contract value of at least \$200,000,000.

6 **§6852. Procedures for application; certificate of approval**

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10 1. Application. A qualified applicant may apply to the
commissioner for a certificate of approval. Applicants shall
submit to the commissioner information demonstrating that the
applicant is a qualified applicant. A certified applicant may
hold only one certificate at any time.

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16 2. Determination by commissioner. The commissioner, within
30 days of receipt of the application, shall review the
information contained in the application and issue a written
determination as to whether the applicant is a qualified
applicant. If the commissioner determines that the applicant is
a qualified applicant, the commissioner shall issue a certificate
of approval to the qualified applicant at the time of the
determination. If the commissioner determines that the applicant
is not a qualified applicant, the commissioner shall issue a
denial of the application at the time of the determination.

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22 3. Contents of certificate. A certificate of approval
issued by the commissioner must state that it constitutes a
contract with the State to provide the credits, pursuant to this
chapter, in effect on the date the certificate of approval is
issued in exchange for the certified applicant making a qualified
investment.

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28 4. Transfer of certificate. If a certified applicant
proposes to transfer, including, without limitation, transfer by
operation of law, all or substantially all of the shipbuilding
facility that was the subject of the qualified investment to
another person, or a person proposes to acquire 50% or more of
the voting stock of the certified applicant, application may be
made to the commissioner to approve transfer of the certificate
to that person in connection with the transfer of the stock or
facility. The commissioner shall grant the transfer of the
certificate if one of the following conditions is satisfied.

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34 A. The transferee of the shipbuilding facility or of the
certified applicant's stock is a member of the certified
applicant's affiliated group as defined in section 5102,
subsection 1-B at the time of the transfer.

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38 B. The transferee of the shipbuilding facility or of the
certified applicant's stock is not a member of the certified
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2 applicant's affiliated group as defined in section 5102,
3 subsection 1-B at the time of the transfer and the
4 commissioner finds that the transferee intends to continue
5 the operations of the shipbuilding facility in substantially
6 the same manner as prior to the transfer and has the
7 financial capability to do so. In addition, prior to
8 approval of any transfer, the commissioner may request and
9 be provided with the report and audit of the transfer
10 pursuant to section 6854. The commissioner may condition
11 the approval of the transfer based upon the findings of the
12 report and audit.

13 If the commissioner grants a transfer of the certificate, the
14 transferee must be treated as the certified applicant for all
15 purposes of this chapter. For purposes of calculation of
16 employment, withholding taxes, qualified investment expenditures
17 and the number of qualified ships of the certified applicant, the
18 qualified employees of the transferor prior to transfer, the
19 state income taxes deducted and withheld by the transferor from
20 the wages of those qualified employees pursuant to chapter 827
21 prior to transfer, the qualified investment expenditures of the
22 transferor prior to transfer and the qualified ships of the
23 transferor prior to transfer must be considered the qualified
24 employees, withholding taxes, qualified investment expenditures
25 and qualified ships of the transferee, respectively.

26 **5. Revocation of certificate.** A certificate of approval
27 must be revoked by the commissioner if the certified applicant
28 has not made qualified investment expenditures of at least
29 \$150,000,000 within 5 years after issuance of the certificate of
30 approval. A certified applicant whose certificate of approval is
31 revoked shall pay to the State the amount of any credits claimed
32 by the certified applicant under this chapter prior to revocation
33 of the certificate.

34 **6. Appeal.** The applicant or certified applicant may appeal
35 in accordance with Title 5, chapter 375, subchapter VII any
36 determination, action or failure to act by the commissioner.

37 **§6853. Credit against withholding taxes allowed**

38 **1. Generally.** Subject to the provisions of subsection 2
39 and notwithstanding any contrary provisions of chapter 827, a
40 certified applicant is allowed a credit equal to \$3,000,000 for
41 each calendar year, beginning with the 1999 calendar year,
42 against the first \$3,000,000 that otherwise would be required to
43 be remitted to the State Tax Assessor by the certified applicant
44 pursuant to chapter 827 for state income taxes deducted and
45 withheld from wages of qualified employees by the certified
46 applicant. The credit taken with respect to withholding taxes
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2 not remitted must be reflected on the withholding returns
3 submitted by the certified applicant pursuant to chapter 827 and
4 constitutes a credit against the applicant's liability for and
5 obligation to remit the withholding tax against which the credit
6 is taken.

7 2. Limitations. The following are limitations on the
8 credit allowed on withholding taxes.

10 A. A credit is not allowed for any calendar year beginning
11 after the earlier of the following:

12 (1) December 31, 2018; or

14 (2) December 31st of the calendar year during which
16 the certified applicant has launched its 30th qualified
17 ship.

18 B. A credit is not allowed for a calendar year that
20 immediately follows a calendar year in which the qualified
21 applicant has employment of less than 3,500, except that the
22 credit is allowed for the exception year.

24 3. Effect on employee. Notwithstanding any contrary
25 provisions of chapter 827, the amount of income tax deducted and
26 withheld by a certified applicant from the wages of a person
27 pursuant to chapter 827 in any calendar year is considered paid
28 to the State Tax Assessor on behalf of the person from whom the
29 income tax was withheld without regard to any credit taken by a
30 certified applicant under this chapter, and that person is
31 credited with having paid that amount of tax for the taxable year
32 beginning in the calendar year without regard to any credit taken
33 by a certified applicant under this chapter. If more than one
34 taxable year begins in a calendar year, that person may claim
35 that amount as a credit for the most recent taxable year.

36 **§6854. Reporting required**

38 1. Annual reporting by certified applicant. On or before
40 March 1st of each year a certified applicant shall file a report
41 with the State Tax Assessor for the immediately preceding
42 calendar year, referred to in this section as the "report year,"
43 containing the following information:

44 A. The employment of the certified applicant for the
46 calendar year immediately preceding the report year; and

48 B. The number of qualified ships launched by the certified
49 applicant from January 1, 1998 to December 31st of the
50 report year.

2 The State Tax Assessor may prescribe forms for the annual reports
3 described in this section.

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5 2. Audit of report. The State Tax Assessor has the
6 authority to audit any report or return filed under this chapter
7 or chapter 827 to ensure the certified applicant was eligible for
8 the credit claimed by the certified applicant. If the certified
9 applicant has claimed a credit in an amount that the State Tax
10 Assessor concludes exceeded the amount that the certified
11 applicant was entitled to claim for that calendar year, the State
12 Tax Assessor shall issue an assessment for that amount within 3
13 years after the date of the certified applicant's last
14 withholding return on which the credit for that calendar year was
15 claimed. A certified applicant may seek reconsideration of any
16 determination or assessment pursuant to section 151.

17 **§6855. Land**

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19 1. Public benefit. The Legislature, recognizing that the
20 submerged and intertidal lands as those terms are defined in
21 Title 12, chapters 202 and 202-A, respectively, are owned by the
22 State for the benefit of the public and are impressed with a
23 public trust and having considered all factors relevant to that
24 public trust and the impact that granting, conveying or leasing
25 the submerged and intertidal land described in this subsection to
26 a certified applicant would have on the public trust and the
27 benefits to the State and its people from the grant, conveyance
28 or lease, finds that a grant, conveyance or lease to a certified
29 applicant of all or any part of the State's right, title and
30 interest in and to no more than 15 acres of submerged and
31 intertidal lands owned by the State, and located on the westerly
32 side of the Kennebec River between the southerly side of the
33 Carlton Bridge and a point 2 miles southerly of the Carlton
34 Bridge, in order to construct, improve, modernize or expand a
35 shipbuilding facility, is necessary to ensure the long-term
36 survival of the shipbuilding industry in this State, to preserve
37 numerous opportunities for jobs for the people of this State, to
38 make the State more competitive in the shipbuilding industry and
39 thus to ensure the preservation and betterment of the economy of
40 the State for the benefit of its people and the Legislature
41 further finds that the conveyance, grant or lease will benefit a
42 class of persons much greater than the certified applicant and
43 that the impact, if any, on the public trust in what remains
44 would be minimal and that the foregoing benefits to the State and
45 its people resulting from the grant, conveyance or lease far
46 exceed any impact on the public trust in submerged and intertidal
47 lands.

2 tax credit of \$3,000,000 per year against remission of state
income taxes withheld, for up to 20 years, provided that the
4 certified applicant meets various eligibility requirements such
as making a \$150,000,000 investment in a shipbuilding facility
and preserving a minimum number of jobs.