

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1586

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S.P. 505

In Senate, April 16, 2019

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**An Act To Promote Major Food Processing and Manufacturing  
Facility Expansion and To Create Jobs in Maine**

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by President JACKSON of Aroostook.  
Cosponsored by Representative MARTIN of Eagle Lake and  
Senators: CARPENTER of Aroostook, CHIPMAN of Cumberland, DOW of Lincoln,  
HERBIG of Waldo, POULIOT of Kennebec, Representatives: McCREA of Fort Fairfield,  
STEWART of Presque Isle, WHITE of Washburn.

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

2 **Sec. 1. 36 MRSA §191, sub-§2, ¶HHH** is enacted to read:

3 HHH. The disclosure to the joint standing committee of the Legislature having  
4 jurisdiction over taxation matters pursuant to section 5219-VV, subsection 4,  
5 paragraph B of the revenue loss, including the loss due to refundable credits,  
6 attributable to each taxpayer claiming the tax credit for major food processing and  
7 manufacturing facility expansion provided under that section, regardless of the  
8 number of persons eligible for the credit.

9 **Sec. 2. 36 MRSA §5219-VV** is enacted to read:

10 **§5219-VV. Credit for major food processing and manufacturing facility expansions**

11 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
12 following terms have the following meanings.

13 A. "Certified applicant" means a qualified applicant that has received a certificate of  
14 approval from the commissioner pursuant to this section.

15 B. "Commissioner" means the Commissioner of Economic and Community  
16 Development.

17 C. "Employees based in the State" means employees that perform 100% of  
18 employee-related activities for the employer at the facility in the State.

19 D. "Facility" means a food processing and manufacturing facility, plant or mill,  
20 including one or more structures and including the equipment, machinery, fixtures  
21 and personal property located in, on, over, under and adjacent to those structures, by  
22 which the applicant, as determined by the commissioner at the time of application,  
23 processes, produces and manufactures food from agricultural products primarily  
24 grown and harvested in the State.

25 E. "Full-time" means an average of at least 36 hours weekly during the period of  
26 measurement.

27 F. "Headquarters" means the principal office from which a qualified applicant  
28 directs, and has directed for each of the past 5 years prior to application for a  
29 certificate of approval, its national or global business activities, as determined by the  
30 commissioner at the time of application.

31 G. "Primarily grown and harvested in the State" means that not less than 95% of the  
32 agricultural products processed in the facility are grown and harvested in the State,  
33 except when such products are not reasonably available by reason of an act of God,  
34 pestilence, weather or other factors beyond the reasonable control of the applicant or  
35 applicant's suppliers.

36 H. "Qualified applicant" means an applicant that, at the time an application for a  
37 certificate of approval is submitted, is itself, or is the parent or subsidiary of, an entity  
38 that satisfies all of the following criteria:

1           (1) The applicant is, and has been for each of the last 5 years prior to application  
2           for a certificate of approval, a corporation or limited liability company organized  
3           under the laws of this State;

4           (2) The applicant's headquarters are, and have been for each of the last 5 years  
5           prior to application for a certificate of approval, located in the State;

6           (3) The applicant intends to make a qualified investment in the State within 5  
7           years following the date of the application;

8           (4) Construction of the applicant's facility begins no sooner than April 1, 2019 as  
9           evidenced by the date of issuance of an appropriate municipal building permit;

10          (5) The applicant employs or will employ upon start-up of the facility at least 40  
11          full-time employees, of whom 100% are or will be employees based in the State;  
12          and

13          (6) The annual per capita personal income of at least 75% of the applicant's  
14          employees exceeds the income derived from employment threshold as published  
15          by the Department of Economic and Community Development for the county in  
16          which the facility is located.

17          I. "Qualified investment" means an investment of at least \$35,000,000 to design,  
18          permit, construct, modify, equip or expand the applicant's facility in the State. The  
19          investments and activities of a qualified applicant and other entities that are members  
20          of the qualified applicant's unitary business may be aggregated to determine whether  
21          a qualified investment has been made. A qualified investment does not include an  
22          investment made prior to April 1, 2019 or after December 31, 2024.

23          **2. Procedures for application; certificate of approval.** The provisions of this  
24          subsection govern the procedures for providing for and obtaining a certificate of  
25          approval.

26          A. A qualified applicant may apply to the commissioner for a certificate of approval.  
27          An applicant shall submit to the commissioner information demonstrating that the  
28          applicant is a qualified applicant. If a certified applicant undertakes to make an  
29          additional qualified investment, the certified applicant may apply to the  
30          commissioner for an additional certificate of approval.

31          B. The commissioner, within 30 days of receipt of an application submitted pursuant  
32          to paragraph A, shall determine whether the applicant is a qualified applicant and  
33          shall issue either a certificate of approval or a written denial indicating why the  
34          applicant is not qualified. The certificate issued by the commissioner must describe  
35          the qualified investment and specify the total amount of qualified investment  
36          approved under the certificate.

37          C. Upon issuance of a certificate of completion in accordance with paragraph F, the  
38          commissioner shall issue, on behalf of the State, a memorandum to the qualified  
39          applicant describing the benefits provided by this section at the time the certificate of  
40          completion is issued. The memorandum must provide that the certificate of  
41          completion does not prohibit the commissioner from revoking a certificate in

1 accordance with paragraph E and does not prohibit the assessor from assessing and  
2 collecting an overpaid benefit in accordance with the provisions of this Title.

3 D. A certified applicant shall obtain approval from the commissioner to transfer the  
4 certificate of approval or, if the certified applicant has obtained a certificate of  
5 completion, that certificate of completion to another person. A certificate of approval  
6 or certificate of completion may be transferred only if all or substantially all of the  
7 assets of the certified applicant are, or will be, transferred to that person or if 50% or  
8 more of the certified applicant's voting stock is, or will be, acquired by that person.  
9 The commissioner shall approve the transfer of the certificate of approval or the  
10 certificate of completion only if at least one of the following conditions is satisfied:

11 (1) The transferee is a member of the applicant's unitary affiliated group at the  
12 time of the transfer; or

13 (2) The commissioner finds that the transferee will, and has the capacity to,  
14 maintain operations of the facility in the State in a manner that meets the  
15 minimum qualifications for continued eligibility of benefits under this section  
16 after the transfer occurs.

17 If the commissioner approves the transfer of the certificate, the transferee, from the  
18 date of the transfer, must be treated as the certified applicant and as eligible to claim  
19 any remaining benefit under the certificate of approval or the certificate of  
20 completion that has not been previously claimed by the transferor as long as the  
21 transferee meets the same eligibility requirements and conditions for the credit as  
22 applied to the original certified applicant.

23 E. The commissioner shall revoke a certificate of approval if the certified applicant  
24 or a person to whom a certificate of approval has been transferred pursuant to  
25 paragraph D fails to make a qualified investment within 5 years of the date of the  
26 certificate of approval. The commissioner shall revoke a certificate of approval or a  
27 certificate of completion if the applicant or transferee ceases operations of the facility  
28 in the State or the certificate of approval or certificate of completion is transferred to  
29 another person without approval from the commissioner pursuant to paragraph D. A  
30 certified applicant whose certificate of completion is revoked within 5 years after the  
31 date issued shall return within 60 days following revocation of the certificate to the  
32 State an amount equal to the total credits claimed for all tax years under this section.  
33 A certified applicant whose certificate of completion is revoked during the period  
34 from 6 years after through 10 years after the date the certificate was issued shall  
35 return within 60 days following revocation of the certificate to the State an amount  
36 equal to the total credits claimed under this section for the period from 6 years after  
37 through 10 years after the date the certificate was issued. The amount to be returned  
38 to the State under this paragraph is, for purposes of this Title, a tax subject to the  
39 collection and enforcement provisions contained in Part 1, including the application  
40 of applicable interest and penalties. The amount to be returned to the State must be  
41 added to the tax imposed on the taxpayer under this Part for the taxable year during  
42 which the certificate is revoked.

43 F. Upon making the qualified investment and completing the facility and  
44 employment criteria in subsection 1, paragraph H, a certified applicant shall submit  
45 an application to the commissioner for a certificate of completion. If the

1 commissioner determines that a qualified investment has been made, the applicant's  
2 facility is located in the State and 100% of the applicant's full-time employees, as  
3 measured at the time of application for the certificate of approval, are employees  
4 based in the State, the commissioner shall issue a certificate of completion to the  
5 certified applicant as soon as is practical. The certificate of completion must state the  
6 amount of qualified investment made by the certified applicant.

7 The commissioner may not issue certificates of approval under this subsection that total,  
8 in the aggregate, more than \$100,000,000 of qualified investment or any individual  
9 certificate of approval for more than \$85,000,000 of qualified investment.

10 **3. Refundable credit allowed.** A certified applicant is allowed a credit as provided  
11 in this subsection.

12 A. Subject to the limitations under paragraph B, beginning with the tax year during  
13 which the certificate of completion is issued or the tax year beginning in 2022,  
14 whichever is later, and for each of the following 19 tax years, a certified applicant is  
15 allowed a credit against the tax due under this Part for the taxable year in an amount  
16 equal to 2% of the certified applicant's qualified investment. If the certified applicant  
17 is a pass-through entity, the owner or owners of the certified applicant are allowed the  
18 credit. The credit allowed under this paragraph is refundable.

19 B. The credit under this subsection is limited as follows.

20 (1) A credit is not allowed for any tax year during which the taxpayer does not  
21 meet or exceed the following employment targets as measured on the last day of  
22 the tax year.

23 (a) For each of the first 3 tax years for which the credit is claimed, there  
24 must be a total of at least 40 full-time employees based in the State whose  
25 jobs were added since the first day of the first tax year for which the credit  
26 was claimed.

27 (b) For each tax year after the 3rd tax year for which the credit is claimed,  
28 the taxpayer must employ a total of at least 60 full-time employees based in  
29 the State whose jobs were added since the first day of the first tax year for  
30 which the credit was claimed.

31 Jobs for additional full-time employees that are counted for determining  
32 eligibility for the credit under one certificate of completion may not be counted  
33 for determining eligibility for the credit under a separate certificate of  
34 completion. For purposes of this subparagraph, "additional full-time employees"  
35 does not include employees who are shifted to a certified applicant's facility in  
36 the State from an affiliated business in the State. The commissioner shall  
37 determine whether a shifting of employees has occurred. For purposes of this  
38 subparagraph, "affiliated business" has the same meaning as in section 6753,  
39 subsection 1-A.

40 (2) Cumulative credits under this subsection may not exceed \$34,000,000 under  
41 any one certificate.

1           **4. Reporting required.** A certified applicant, the commissioner and the assessor are  
2 required to make reports pursuant to this subsection.

3           A. On or before March 1st of each year, a certified applicant shall file a report with  
4 the commissioner for the tax year ending during the immediately preceding calendar  
5 year, referred to in this paragraph as "the report year," containing the following  
6 information:

7                   (1) The number of full-time employees based in the State of the certified  
8 applicant on the last day of the tax year ending during the calendar year  
9 immediately preceding the report year; and

10                   (2) The incremental amount of qualified investment made in the report year.

11           The commissioner may prescribe forms for the annual report described in this  
12 paragraph. The commissioner shall provide copies of the report to the assessor and to  
13 the joint standing committee of the Legislature having jurisdiction over taxation  
14 matters at the time the report is received.

15           B. By April 1st of each year, the commissioner shall report to the joint standing  
16 committee of the Legislature having jurisdiction over taxation matters aggregate data  
17 on employment levels and qualified investment amounts of certified applicants for  
18 each year that the certified applicant claimed a credit under this section, and the  
19 assessor shall report to the committee the revenue loss during the previous calendar  
20 year, including the loss due to refundable credits, as a result of this section for each  
21 taxpayer claiming the credit.

22 Notwithstanding any other provision of law to the contrary, the reports provided under  
23 this subsection are public records as defined in Title 1, section 402, subsection 3.

24           **Sec. 3. Credit design evaluation.** By February 28, 2024, the Office of Program  
25 Evaluation and Government Accountability, referred to in this section as "the office,"  
26 shall complete and submit to the joint standing committee of the Legislature having  
27 jurisdiction over taxation matters and the Government Oversight Committee a tax  
28 expenditure design evaluation review of the credit for major food processing and  
29 manufacturing facility expansions established under the Maine Revised Statutes, Title 36,  
30 section 5219-VV, referred to in this section as "the tax expenditure." The review must  
31 include an assessment of:

32                   1. The extent to which the design of the tax expenditure supports accomplishment of  
33 the tax expenditure's purposes, intent and goals;

34                   2. The extent to which the design of the tax expenditure directs benefits to the  
35 intended beneficiaries; and

36                   3. The extent to which the State's current or planned administration of the tax  
37 expenditure, including enforcement efforts, is efficient and effective.

38           The office shall include with the review recommended performance measures  
39 appropriate for analyzing the evaluation objectives established for full evaluations under  
40 the Maine Revised Statutes, Title 3, section 999, subsection 1, paragraph A and make  
41 recommendations regarding data that would be necessary to perform the analyses. The

1 joint standing committee of the Legislature having jurisdiction over taxation matters may  
2 submit a bill to the Second Regular Session of the 131st Legislature regarding the credit  
3 for major food processing and manufacturing facility expansions.

4 **Sec. 4. Legislative findings; purpose.** The Legislature finds that it is in the best  
5 interest of the people of the State to encourage the location and expansion of major food  
6 processing and manufacturing facilities in the State and to encourage the recruitment and  
7 training of employees for these facilities. The Legislature further finds that the location  
8 and expansion of major food processing and manufacturing facilities in the State will  
9 create jobs, benefit small businesses that supply goods and services to the major food  
10 processing and manufacturing facilities and their employees, increase the tax base and  
11 provide many other direct and indirect economic benefits to the State.

12 The purpose of this credit is to create high-quality jobs in the State by encouraging  
13 major businesses to locate or expand their food processing and manufacturing facilities in  
14 this State.

#### 15 SUMMARY

16 This bill, modeled on the tax credit for major business headquarters expansions,  
17 provides a tax credit to a food processing and manufacturing business that:

18 1. Is, and has been for the 5 years prior to application, a corporation or limited  
19 liability company organized under the laws of the State;

20 2. Has been headquartered in this State for the 5 years prior to application;

21 3. Pays at least 75% of its employees a salary that exceeds the income threshold for  
22 the county in which the facility that is the subject of the application is located;

23 4. Agrees to make an investment of at least \$35,000,000 in the construction or  
24 expansion in this State of a facility for that business; and

25 5. Adds a total of 40 new full-time employees by the end of the first year of  
26 qualifying for the tax credit, maintains that number for the next 2 years and then adds 20  
27 more full-time employees, maintaining a total of 60 full-time employees for each year  
28 after the 3rd year of qualifying for the tax credit. The employees added must be based in  
29 the State.

30 A business that qualifies is allowed a refundable tax credit equal to 2% of the amount  
31 of the qualified investment each tax year for 20 years. The total investment that may be  
32 approved for any one business may not exceed \$85,000,000 and the total aggregate  
33 investment that may be approved is limited to \$100,000,000. The maximum amount of  
34 tax credits that may be received by a business under one construction or expansion  
35 project is \$34,000,000.