

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

M
1008

L.D. 1570

DATE: 3-27-02

(Filing No. H-1029)

TAXATION

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1170, L.D. 1570, Bill, "An Act to Update the Property Tax Exemption for Pollution Control Facilities to Promote Clean Production through Pollution Prevention and Toxics Use Reduction"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 36 MRSA §656, sub-§1, ¶E, as amended by PL 1989, c. 890, Pt. A, §9 and affected by §40, is further amended by amending subparagraph (3) to read:

(3) The Commissioner of Environmental Protection shall issue a determination regarding certification by April 1st for any air or water pollution control facility for which it has received a complete application by December 15th of the preceding year. For certifications issued after April 1, 2002, the commissioner shall also certify whether the air or water pollution control facility has a quantifiable function other than pollution control.

Sec. 2. 36 MRSA §662 is enacted to read:

§662. Reimbursement for certain pollution control exemptions

The Treasurer of State shall reimburse each municipality 50% of the property tax revenue loss suffered by the municipality during the previous calendar year as a result of property tax

2 exemptions first granted after April 1, 2002 for air and water
3 pollution control facilities under section 655, subsection 1,
4 paragraph N and section 656, subsection 1, paragraph E if those
5 pollution control facilities are certified by the Commissioner of
6 Environmental Protection to have a quantifiable function other
7 than pollution control. The procedure for claiming and making
8 reimbursement is the same as for claims for reimbursement under
9 section 661. Reimbursement is limited to 12 years following the
10 year in which the pollution control facility first becomes exempt.

11 **Sec. 3. 36 MRSA §5219-U is enacted to read:**

12 **§5219-U. Clean production credit**

13 **1. Credit allowed.** Subject to the limitations contained in
14 this section, a taxpayer is allowed a clean production credit,
15 for the year in which a certificate is issued, against the tax
16 imposed by this Part, equal to the amount of the tax credit
17 certificate issued by the Department of Environmental Protection
18 pursuant to Title 38, section 343-I.

19 **2. Carryover.** The clean production credit allowed pursuant
20 to this section may not be used to reduce the taxpayer's tax
21 liability under this Part to less than zero. Any unused portion
22 of the credit may be carried forward to the next succeeding 5
23 taxable years.

24 **3. Recapture.** If the Department of Environmental Protection
25 revokes a tax credit certificate issued pursuant to Title 38,
26 section 343-I, an amount equal to the excess of the amount of
27 credit revoked over the amount of credit not yet taken must be
28 added to the tax imposed on the taxpayer under this Part for the
29 taxable year in which the revocation occurs.

30 **4. Affiliated groups.** In the case of corporations that are
31 members of an affiliated group engaged in a unitary business, the
32 credit allowed pursuant to this section is equal to the aggregate
33 tax credit certificates issued pursuant to Title 38, section
34 343-I for all taxable corporations that are members of the
35 affiliated group and applied to the total tax liability of the
36 members under this Part.

37 **Sec. 4. 38 MRSA §343-I is enacted to read:**

38 **§343-I. Clean production credit**

39 **1. Certification of credit.** The department shall issue tax
40 credit certificates as provided in this section for the clean
41 production credit allowed under Title 36, section 5219-U.

2 2. Definitions. As used in this section, unless the
3 context otherwise indicates, the following terms have the
4 following meanings.

5 A. "Activity production index" or "API" means the ratio of
6 a facility's current annual production to the amount of that
7 facility's base year production.

8 B. "Base year emissions" means the average amount of
9 pollutants actually emitted by a facility located in this
10 State during the 3 calendar years prior to the effective
11 date of this section or during the first 3 calendar years of
12 existence for a new business applying for a credit under
13 this section.

14 C. "Base year production" means the average amount of units
15 of product produced by a facility located in this State
16 during the 3 calendar years prior to the effective date of
17 this section or during the first 3 calendar years of
18 existence for a new business applying for a credit under
19 this section.

20 D. "Clean production" means any equipment, production
21 process, raw material, product formulation or procedure that
22 significantly reduces, avoids or eliminates the generation
23 of waste, air pollution or water pollution through the use
24 of pollution prevention or toxics use reduction.

25 E. "New business" means any entity that was established and
26 subject to regulatory requirements for the first time in a
27 calendar year. "New business" does not mean the change in
28 ownership of an existing entity.

29 F. "Permanent reduction" means the amount of pollutants
30 permanently eliminated or avoided through clean production.
31 A reduction made to comply with regulatory standards does
32 not constitute a permanent reduction, except for that
33 portion of the reduction in excess of that necessary to
34 comply with the standard, which must be considered the base
35 year emissions.

36 G. "Pollutants" means nitrogen oxides, sulfur dioxide,
37 biological oxygen-demanding materials, total suspended
38 solids and toxic substances.

39 H. "Pollution prevention" has the same meaning as "source
40 reduction" as defined by the federal Pollution Prevention
41 Act of 1990, 42 United States Code, Section 13102(5).

2 I. "Substantial compliance" means that a taxpayer has no
3 enforcement action pending against it, including an
4 unresolved letter of warning, notice of violation or
5 condition of previous resolution in effect.

6 J. "Toxic substance" has the same meaning as in section
7 2301, subsection 16.

8 K. "Toxics use reduction" has the same meaning as in
9 section 2301, subsection 18.

10 L. "Traded market price" means the market price at which
11 pollutant credits are traded on a United States commodity
12 exchange.

13 M. "Unit of product" means a measure of a facility's
14 productivity that most closely reflects all activities
15 involving the pollutant and is as free from nonproduction
16 influences as possible. A unit of product measure is chosen
17 by and unique to the operations at a facility.

18 3. API calculated. The API indicates whether production in
19 subsequent years has increased or decreased in relation to base
20 year production. All facilities start with an API of "one" in
21 the base year. The API is calculated using a unit of product
22 that is chosen by and unique to the operations at a facility.

23 4. Determination of credit. The department may issue tax
24 credit certificates for the following permanent reductions.

25 A. A tax credit certificate may be issued in an amount
26 equal to the tons of a taxpayer's permanent reduction of
27 nitric oxides and sulfur dioxide, multiplied by the average
28 traded market price of one ton of nitric oxides or sulfur
29 dioxide during the preceding calendar year. A tax credit
30 certificate may not be issued until the taxpayer's permanent
31 reductions of nitric oxides and sulfur dioxide exceed 25% of
32 base year emissions for these pollutants. For any
33 additional increment of permanent reduction claimed in a tax
34 year thereafter, the credit is based on the tons of
35 permanent reductions achieved during a subsequent calendar
36 year that exceed the tons of permanent reductions previously
37 claimed from the base year through the end of the calendar
38 year used to calculate the previously claimed credit.

39 B. A credit certificate may be issued in an amount equal to
40 the pounds of a taxpayer's permanent reduction of biological
41 oxygen-demanding materials or total suspended solids,
42 multiplied by the fee charged for discharging one pound of
43 biological oxygen-demanding materials or total suspended
44 solids.

2 solids, as published in the department's licensing fee
3 schedule in effect on the last day of the calendar year used
4 to calculate the claimed credit, multiplied by 10. Poundage
5 under this paragraph is based on a facility's monthly
6 average discharge parameter. A credit certificate may not
7 be issued until the taxpayer's permanent reductions of
8 biological oxygen-demanding materials and total suspended
9 solids exceed 25% of base year emissions for these
10 pollutants. For any additional increment of permanent
11 reduction claimed in a tax year thereafter, the credit is
12 based on the pounds of permanent reduction achieved during a
13 subsequent calendar year that exceed the pounds of permanent
14 reduction previously claimed for the time period from the
15 base year through the end of the calendar year used to
16 calculate the previously claimed credit.

17 C. A credit certificate may be issued in an amount equal to
18 the pounds of a taxpayer's permanent reduction of toxic
19 substances, multiplied by the fee charged by the department
20 for emissions of hazardous air pollutants, as published in
21 the licensing fee schedule in effect on the last day of the
22 calendar year used to calculate the claimed credit,
23 multiplied by 10. Poundage under this paragraph is based on
24 the hazardous air pollutants emission inventory maintained
25 by the department pursuant to section 585-C, in the case of
26 reductions in air emissions of toxic substances, or on
27 biennial progress reports required by section 2304-A,
28 subsection 1, in the case of other environmental releases of
29 toxic substances. A credit certificate may not be issued
30 until the taxpayer's permanent reductions of toxic
31 substances exceed 75% of base year emissions for these
32 pollutants. For any additional increment of permanent
33 reduction claimed in a tax year thereafter, the credit is
34 based on the pounds of permanent reduction achieved during a
35 subsequent calendar year that exceed the pounds of permanent
36 reduction previously claimed for the time period from the
37 base year through the end of the calendar year used to
38 calculate the previously claimed credit.

39 A facility's permanent reductions must be identified by the
40 applicant for a clean production credit and determined by the
41 department in a manner consistent with the provisions of this
42 section and any applicable rules adopted by the department. For
43 purposes of meeting the requirements of this section, the percent
44 reduction may be determined for an entire source or for one or
45 more individual pieces of equipment, units or production lines
46 with a calculable API. Each increment of permanent reduction
47 claimed is eligible once for the credit certificate established
48 in this section.

50

2 Maintenance of a permanent reduction in light of changes in
3 production must be determined by using the activity production
4 index.

5 5. Limitations on credit. In order to be eligible for the
6 tax credit certificate established in this section, a taxpayer:

8 A. Must be in substantial compliance with all applicable
9 state and federal environmental requirements during the tax
10 year in which a certificate is issued or to which the credit
11 is carried pursuant to Title 36, section 5219-U;

12 B. Must continue in operation throughout the tax year in
13 which the certificate is issued or to which the credit is
14 carried pursuant to Title 36, section 5219-U. The cessation
15 of operations does not create permanent source reductions;
16 and

17 C. Must not sell any marketable emissions reductions during
18 the tax year in which the credit is claimed.

19 If a taxpayer, subsequent to original issue of a tax credit
20 certificate, falls out of substantial compliance pursuant to
21 paragraph A or ceases operations pursuant to paragraph B, the
22 department shall notify the State Tax Assessor so that any credit
23 carry-forward for the taxable year may be denied.

24 6. Recapture. Credit amounts previously claimed must be
25 recaptured when the department notifies the State Tax Assessor
26 that there is a subsequent net decrease in a taxpayer's permanent
27 reduction compared to the amount of pollutants emitted by the
28 taxpayer during the previously used calendar year. The recapture
29 amount is equal to each increment of decrease in permanent
30 reduction, multiplied by the amount used to calculate the credit
31 previously certified. If the decrease in permanent reduction
32 exceeds the permanent reduction used as a basis for calculating
33 the credit, the department shall, for purposes of calculating the
34 recapture amount, use the next available previous tax year for
35 which a credit was claimed under this section. Any amounts
36 recaptured pursuant to this subsection must be added back to the
37 total credit amount available under subsection 7. Department
38 notification to the State Tax Assessor must identify each
39 taxpayer and the amount subject to recapture.

40 7. Credit amount available. In any given state fiscal
41 year, no more than \$1,500,000 in tax credit certificates may be
42 issued pursuant to this section. A single taxpayer may be issued
43 no more than \$500,000 of the total \$1,500,000 tax credit
44 available in any given fiscal year. In any state fiscal year
45 when more than \$1,500,000 in tax credits is eligible for

2 certification, the department shall prorate the amount of credit
3 available to each claimant in that year based on a taxpayer's
4 proportional share of the total credits determined to be eligible
5 for certification in that year. Any amount eligible but excluded
6 from certification because of proration may be applied for in a
7 subsequent year.

8 8. Certification. A taxpayer calculating permanent
9 reductions shall do so on an application form established by the
10 department. A decision must be made by the commissioner on any
11 application accepted as complete for processing on or before May
12 1st by November 1st of that same year. A taxpayer claiming this
13 credit shall annually certify to the department that its
14 permanent reductions continue to exist.

15 **Sec. 5. Appropriations and allocations.** The following
16 appropriations and allocations are made.

17 **ADMINISTRATIVE AND FINANCIAL**
18 **SERVICES, DEPARTMENT OF**

19 **Bureau of Revenue Services**

20 Initiative: Provides funding for the computer programming
21 changes associated with establishment of an income tax credit
22 for certain taxpayers.

23	General Fund	2001-02	2002-03
24	All Other	\$0	\$12,000'

25 Further amend the bill by inserting at the end before the
26 summary the following:

27 **FISCAL NOTE**

28 **2002-03**

29 **APPROPRIATIONS/ALLOCATIONS**

30	General Fund	\$12,000
----	--------------	----------

31 Authorizing the Department of Environmental Protection to
32 issue pollution credit certificates will result in increased
33 revenues and expenditures to the Maine Environmental Protection
34 Fund within the Department of Environmental Protection. The
35 amount of additional revenue will depend on both the
36 certification fees that will be established by the department
37 through existing rule-making authority and by the number of
38 certificates that are awarded. In addition, the department may

incur additional costs to administer the certificate process. The amounts of increased revenues and expenditures can not be determined at this time.

The establishment of an income tax credit to certain taxpayers will not have an impact on corporate income tax collections in the current biennium because the Department of Environmental Protection will not be administratively prepared to issue certain certificates prior to July 2003. Therefore, establishing this income tax credit will decrease corporate income tax collections by \$240,000 in fiscal year 2003-04 and \$1,219,800 in fiscal year 2004-05. The reduction of these tax collections will decrease the amounts transferred to the Local Government Fund for state-municipal revenue sharing in those years by \$12,480 and \$63,430, respectively. The resulting net reductions of General Fund revenue will be \$227,520 in fiscal year 2003-04 and \$1,156,370 in fiscal year 2004-05.

The Bureau of Revenue Services within the Department of Administrative and Financial Services will require additional General Fund appropriations of \$12,000 in fiscal year 2002-03 for changes in computer programs associated with establishment of an income tax credit for certain taxpayers.

The Department of Administrative and Financial Services will require an increased appropriation beginning in fiscal year 2004-05 in order to reimburse each municipality 50% of the property tax revenue loss suffered by the municipality as a result of certain tax exemptions. The amount of such appropriations are dependent upon the projects certified by the Department of Environmental Protection and therefore can not be determined at this time. However, using a 5-year average of recently approved multipurpose project costs provides an estimated annual project cost of \$24,000,000. The half-year cost to the General Fund to reimburse municipalities for 50% of their property tax revenue loss beginning in fiscal year 2004-05 is estimated to be \$215,000. The full-year cost in fiscal year 2005-06 is estimated to be \$430,000.'

SUMMARY

This amendment provides an income tax credit to taxpayers that invest in clean technologies or make changes in processes that substantially reduce or eliminate pollution otherwise allowed to be released to the environment. The income tax credit is intended to provide an incentive for taxpayers to voluntarily commit to permanent pollutant reductions and eliminations beyond those required to comply with regulatory requirements. The bill also requires the State to reimburse municipalities for 50% of

COMMITTEE AMENDMENT "A" to H.P. 1170, L.D. 1570

2 the property tax loss attributable to property that first
3 qualifies for a property tax exemption as a pollution control
4 facility after April 1, 2002 if the facility also has a
5 quantifiable function other than pollution control.
6 Reimbursement is limited to the 12 years following the year in
which the facility first becomes exempt.