

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1780

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H.P. 1318

House of Representatives, April 26, 2001

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**An Act to Support Businesses that Reduce Pollution.**

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Reference to the Committee on Taxation suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative MURPHY of Berwick. (GOVERNOR'S BILL)  
Cosponsored by Representative KOFFMAN of Bar Harbor, Senators: MARTIN of Aroostook,  
SHOREY of Washington.

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

2  
4       **Sec. 1. 36 MRSA §191, sub-§2, ¶X**, as amended by PL 1999, c.  
708, §15, is further amended to read:

6           X. The disclosure to the Department of Human Services,  
8           Bureau of Medical Services of information relating to the  
administration of the elderly low cost drug program; and

10       **Sec. 2. 36 MRSA §191, sub-§2, ¶Y**, as enacted by PL 1999, c.  
12       708, §16, is amended to read:

14           Y. The disclosure by the State Tax Assessor, upon request  
16           in writing of any individual against whom an assessment has  
been made pursuant to section 177, subsection 1, of the  
following information:

18                   (1) Information regarding the underlying tax liability  
20                   to the extent necessary to apprise the individual of  
the basis of the assessment;

22                   (2) The name of any other individual against whom an  
24                   assessment has been made for the same underlying tax  
debt; and

26                   (3) The general nature of any steps taken by the  
28                   assessor to collect the underlying tax debt from any  
other individuals and the amount collected; and

30       **Sec. 3. 36 MRSA §191, sub-§2, ¶Z** is enacted to read:

32       Z. The disclosure by employees of the Bureau of Revenue  
34       Services, to designated representatives of the Department of  
36       Environmental Protection, of income tax return information  
relating to the credit provided by section 5219-U.

38       **Sec. 4. 36 MRSA §1752, sub-§7-B**, as repealed and replaced by  
PL 1985, c. 276, §1, is amended to read:

40           **7-B. Machinery and equipment.** "Machinery and equipment"  
42           means machinery, equipment and parts and attachments for  
44           machinery and equipment, but excludes foundations for machinery  
46           and equipment and, special purpose buildings used to house or  
48           support machinery and equipment, water pollution control  
facilities and air pollution control facilities. For the  
purposes of this subsection, the following terms have the  
following meanings.

50           A. "Air pollution control facility" means any appliance,  
equipment, machinery, installation or structures installed,

2 acquired or placed in operation primarily for the purpose of  
3 reducing, controlling, eliminating or disposing of  
4 industrial or other air pollutants. Facilities such as air  
5 conditioners, dust collectors, fans and similar facilities  
6 designed, constructed or installed solely for the benefit of  
7 the person for whom installed or the personnel of such  
8 person and facilities designed or installed for the  
9 reduction or control of automobile exhaust emissions are not  
10 air pollution control facilities for purposes of this  
11 subsection.

12 B. "Disposal system" means any system used primarily for  
13 disposing of or isolating industrial or other waste and  
14 includes thickeners, incinerators, pipelines or conduits,  
15 pumping stations, force mains and all other constructions,  
16 devices, appurtenances and facilities used for collecting or  
17 conducting waterborne industrial or other waste to a point  
18 of disposal, treatment or isolation, except what is  
19 necessary to the manufacture of products.

20 C. "Industrial waste" means any liquid, gaseous or solid  
21 waste substance capable of polluting the waters of the State  
22 and resulting from any process, or the development of any  
23 process, of industry or manufacture.

24 D. "Treatment works" means any plant, pumping station,  
25 reservoir or other works used primarily for the purpose of  
26 treating, stabilizing, isolating or holding industrial or  
27 other waste.

28 E. "Water pollution control facility" means any disposal  
29 system or any treatment works, appliance, equipment,  
30 machinery, installation or structures installed, acquired or  
31 placed in operation primarily for the purpose of reducing,  
32 controlling or eliminating water pollution caused by  
33 industrial or other waste, except septic tanks and the  
34 pipelines and leach fields connected or appurtenant to the  
35 septic tanks.

36 **Sec. 5. 36 MRSA §1760, sub-§29**, as amended by PL 1989, c. 890,  
37 Pt. A, §10 and affected by §40, is repealed.

38 **Sec. 6. 36 MRSA §1760, sub-§30**, as amended by PL 1989, c. 890,  
39 Pt. A, §11 and affected by §40, is repealed.

40 **Sec. 7. 36 MRSA §5219-U** is enacted to read:

41 **§5219-U. Environmental performance credit**

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

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

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

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

D. "Department" means the Department of Environmental Protection.

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

F. "Permanent reduction" means the amount of pollutants permanently eliminated from emission or discharge to the environment or, in the case of a pretreatment agreement, discharged under contract. A reduction made to comply with regulatory standards does not constitute a permanent reduction.

G. "Pollutants" means nitric oxides, sulfur dioxide, biological oxygen demanding materials and total suspended solids.

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

I. "Traded market price" means the market price at which pollutant credits are traded on the United States commodity exchange.

2           J. "Unit of product" means a measure of a facility's  
3           productivity that most closely reflects all activities  
4           involving the pollutant and is as free from nonproduction  
5           influences as possible. A unit of product measure is chosen  
6           by and unique to the operations at a facility.

7           2. API calculated. The API indicates whether production in  
8           subsequent years has increased or decreased in relation to base  
9           year production. All facilities start with an API of one in the  
10          base year. The API is calculated using a unit of product that is  
11          chosen by and unique to the operations at a facility.

12          3. Credit allowed. Subject to the limitations contained in  
13          this section, a taxpayer is allowed a credit against the tax  
14          imposed by this Part, calculated according to this subsection.

15          A. A credit may be claimed equal to the tons of a  
16          taxpayer's permanent reduction of nitric oxides and sulfur  
17          dioxide, multiplied by the average traded market price of  
18          one ton of nitric oxides or sulfur dioxide during the  
19          preceding calendar year. The taxpayer may not claim the  
20          credit provided by this paragraph until its permanent  
21          reductions of nitric oxides and sulfur dioxide exceed 25% of  
22          base year emissions for these pollutants. The credit  
23          claimed in a tax year after permanent reductions exceed 25%  
24          of base year emissions is determined based on the total  
25          actual tons of permanent reduction in nitric oxides and  
26          sulfur dioxide achieved from the base year through the end  
27          of any calendar year after which permanent reductions exceed  
28          25% of base year emissions. For any additional increment of  
29          permanent reduction claimed in a tax year thereafter, the  
30          credit is based on the tons of permanent reductions achieved  
31          during a subsequent calendar year that exceed the tons of  
32          permanent reductions previously claimed from the base year  
33          through the end of the calendar year used to calculate the  
34          previously claimed credit.

35          B. A credit may be claimed equal to the pounds of a  
36          taxpayer's permanent reduction of biological oxygen  
37          demanding materials or total suspended solids multiplied by  
38          the fee charged for discharging one pound of biological  
39          oxygen demanding materials or total suspended solids, as  
40          published in the department's licensing fee schedule in  
41          effect on the last day of the calendar year used to  
42          calculate the claimed credit, multiplied by 10. Poundage is  
43          based on a facility's monthly average discharge parameter.  
44          The taxpayer may not claim the credit provided by this  
45          paragraph until its permanent reductions of biological  
46          oxygen demanding materials and total suspended solids exceed  
47          25% of base year emissions for these pollutants. The credit  
48

2 claimed in a tax year after permanent reductions exceed 25%  
4 of base year emissions is determined based on the total  
6 actual pounds of permanent reduction in biological oxygen  
8 demanding materials and total suspended solids achieved from  
10 the base year through the end of any calendar year after  
12 permanent reductions exceed 25% of base year emissions. For  
14 any additional increment of permanent reduction claimed in a  
16 tax year thereafter, the credit is based on the pounds of  
18 permanent reduction achieved during a subsequent calendar  
20 year that exceed the pounds of permanent reduction  
22 previously claimed for the time period from the base year  
24 through the end of the calendar year used to calculate the  
26 previously claimed credit.

28 A facility's permanent reductions must be determined by a  
30 taxpayer claiming the credit allowed by this section in  
32 consultation with the department and in a manner consistent with  
34 the provisions of this section and any applicable rules adopted  
36 by the department. Each increment of permanent source reduction  
38 claimed is eligible once for the credit established in this  
40 section.

42 Maintenance of a permanent reduction in light of changes in  
44 production must be determined by using the activity production  
46 index.

48 **4. Limitations on credit.** In order to be eligible for the  
50 credit established in this section, a person:

52 A. Must be in substantial compliance with all applicable  
54 state and federal environmental requirements during the tax  
56 year for which the credit is claimed or to which the credit  
58 is carried pursuant to subsection 5;

60 B. Must continue in operation throughout the tax year in  
62 which the credit is claimed. The cessation of operations  
64 does not create permanent source reductions;

66 C. Must not sell any marketable emissions reductions during  
68 the tax year in which the credit is claimed; and

70 D. Must obtain from the department and attach to its tax  
72 return a statement certifying that person's permanent  
74 reduction.

76 **5. Carryover.** The credit allowed pursuant to this section  
78 may not be used to reduce the taxpayer's tax liability under this  
80 Part to less than zero. A credit provided by this section,  
82 subject to the limitations provided by subsections 4 and 7, that

2 exceeds the limitation of this subsection may be carried forward  
3 to the next succeeding 5 taxable years.

4 6. Recapture. Credit amounts previously claimed must be  
5 recaptured when there is a subsequent net decrease in a  
6 taxpayer's permanent reduction at a facility used to calculate  
7 the credit compared to the level of pollutants emitted by the  
8 taxpayer during the previously used calendar year. The recapture  
9 amount is equal to each ton, or part of a ton, of decrease in  
10 permanent reduction of nitric oxides or sulfur dioxide,  
11 multiplied by the average traded market price used to calculate  
12 the credit claimed under this section on the taxpayer's most  
13 recently filed return, plus each pound, or part of a pound, of  
14 decrease in permanent reduction of biological oxygen demanding  
15 materials or total suspended solids, multiplied by the licensing  
16 fee used to calculate the credit claimed under this section on  
17 the taxpayer's most recently filed return. If the decrease in  
18 permanent reduction exceeds the permanent reduction used as a  
19 basis for calculating the credit on the most recently filed  
20 return, the taxpayer shall, for purposes of calculating the  
21 recapture amount for the excess in the decrease of permanent  
22 reduction, use the next available previous tax year for which a  
23 credit was claimed under this section. Any amounts recaptured  
24 pursuant to this subsection must be added back to the total  
25 credit amount available under subsection 7. The department shall  
26 notify the State Tax Assessor of those taxpayers subject to the  
27 recapture provisions of this subsection. The notification must  
28 identify each taxpayer and the amount subject to recapture.

30 7. Credit amount available. In any given state fiscal  
31 year, no more than \$1,500,000 in credits may be claimed pursuant  
32 to this section. Any single taxpayer may claim no more than  
33 \$500,000 of the total \$1,500,000 credit available in any given  
34 fiscal year. Permanent reduction certifications are accepted  
35 based on the date and time of receipt by Maine Revenue Services.  
36 The first date in any tax year on which certifications are  
37 accepted by Maine Revenue Services is July 1st. Accepted  
38 certifications must be stamped by Maine Revenue Services, with  
39 one copy returned to the claimant and one copy sent to the  
40 department. Upon accepting certifications equal to the maximum  
41 aggregated amount available in any given state fiscal year, all  
42 unprocessed certifications pending or subsequently received must  
43 be returned to claimants with appropriate notification.

44 8. Certification. A taxpayer calculating permanent  
45 reductions shall do so on a form established by the department.  
46 All calculations certified by the department must be filed with  
47 Maine Revenue Services as part of a taxpayer's corporate income  
48 tax submission. A taxpayer claiming this credit shall annually



2 certify to the department that its permanent reductions continue  
3 to exist.

4 9. **Affiliated groups.** In the case of corporations that are  
5 members of an affiliated group engaged in a unitary business, the  
6 credit allowed pursuant to this section is equal to the aggregate  
7 credit for all taxable corporations that are members of the  
8 affiliated group and applied to the total tax liability of the  
9 members under this Part.

10 **Sec. 8. Application.** That section of this Act that amends the  
11 Maine Revised Statutes, Title 36, section 1752, subsection 7-B,  
12 that section of this Act that repeals Title 36, section 1760,  
13 subsections 29 and 30 and that section of this Act that enacts  
14 Title 36, section 5219-U apply to tax years beginning on or after  
15 January 1, 2002.

16 **Sec. 9. Revisor's review; cross-references.** The Revisor of  
17 Statutes shall review the Maine Revised Statutes and include in  
18 the errors and inconsistencies bill submitted to the Second  
19 Regular Session of the 120th Legislature pursuant to Title 1,  
20 section 94 any sections necessary to correct and update any  
21 cross-references in the statutes to provisions of law repealed in  
22 this Act.  
23

## 24 SUMMARY

25 This bill establishes an incentive for taxpayers to  
26 voluntarily commit to permanent pollutant reductions and  
27 elimination beyond those required to comply with regulatory  
28 standards by providing a corporate income tax credit to taxpayers  
29 that invest in technologies or make changes in processes that  
30 substantially reduce or eliminate pollution otherwise allowed to  
31 be released to the environment.  
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