

# MAINE STATE LEGISLATURE

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DATE: *April 9, 2002* (Filing No. S-*616*)

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE OF CONFERENCE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1655, L.D. 2162, Bill, "An Act to Supplement Maine's Academic Attainment and to Retain Talent"

Amend the amendment by striking out everything after the title and before the summary and inserting in its place the following:

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

'Sec. 1. 10 MRSA c. 110, sub-c. XI is enacted to read:

SUBCHAPTER XI

EDUCATIONAL ATTAINMENT AND RECRUITMENT TAX CREDITS

§1100-Y. Definitions

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

A. "Eligible student" means a student who:

(1) Is a resident of the State;

(2) Is a graduate of an approved secondary school or the equivalent, including, but not limited to, a student who received equivalent instruction through home instruction, a student who matriculated at an accredited public or private institution of higher

education in the State prior to high school graduation or a student who successfully completed a general educational development examination or its equivalent;

(3) Is or will be matriculated at an institution of higher education; and

(4) Signs a statement of intent to reside in the State upon graduation from that institution of higher education.

B. "Need-based scholarship" means a scholarship awarded by a qualified scholarship organization to an eligible student based on financial need as determined by eligibility requirements established by the qualified scholarship organization that awards the scholarship.

C. "Qualified scholarship organization" means an organization certified by the authority under subsection 2.

D. "Resident of the State" means a person who is either an independent student who has been domiciled in the State for at least one calendar year prior to the date of attendance at an accredited public or private educational institution or a dependent student whose parent or legal guardian has been domiciled in the State at least one calendar year prior to the date of attendance at an accredited public or private educational institution. A residence established in the State solely for the purpose of attending an accredited public or private institution of higher education in the State is not sufficient to establish domicile in the State.

**2. Certification of qualified scholarship organizations.**

The authority shall provide initial and annual certification for qualified scholarship organizations in accordance with this subsection.

A. For initial certification, the organization must be a private, nonprofit organization that is qualified under Section 501(c)(3) of the Internal Revenue Code, that has as one of its purposes the provision of need-based scholarships to eligible students, that meets the standards adopted by the authority by rule under subsection 7, that files reports as required by this section and that:

(1) Is affiliated with and designated by an accredited institution of higher education in this State; or

2           (2) Has filed as a nonprofit corporation with the  
3           Secretary of State on or before April 1, 2002 and  
4           remains in good standing with the Secretary of State.

5           B. Following initial certification pursuant to paragraph A,  
6           annual certification standards for a qualified scholarship  
7           organization must include the requirement that the qualified  
8           scholarship organization has awarded in the form of  
9           need-based scholarships at least 95% of the contributions  
10           received during the preceding calendar year that are  
11           eligible for a tax credit under Title 36, section 2527 or  
12           5219-U.

13           3. Annual filing. A qualified scholarship organization  
14           shall file an annual report of its activities with the  
15           authority. The annual report must state the eligibility  
16           requirements established by the qualified scholarship  
17           organization for awarding need-based scholarships to eligible  
18           students, the total number of contributions to the organization  
19           and the total dollar amount contributed to the organization over  
20           the reporting period and must identify the total number of  
21           scholarships awarded and the amount of money paid by the  
22           organization for need-based scholarships identified by the county  
23           of residence of the eligible student and the institutions of  
24           higher education receiving scholarship funds.

25           4. Information to contributors. A qualified scholarship  
26           organization shall, by January 31st annually, provide to each  
27           person who contributed \$250 or more to that organization during  
28           the previous calendar year a statement:  
29           the previous calendar year a statement:

30           A. Identifying the total amount contributed by the  
31           contributor during the year to that organization and  
32           notifying the contributor that the contribution may be  
33           eligible for credits provided under Title 36, sections 2527  
34           and 5919-U; and

35           B. Notifying the contributor that the total amount  
36           contributed during the year and the amount of the  
37           contribution eligible for the credits provided under Title  
38           36, sections 2527 and 5919-U will be reported to the  
39           Department of Administrative and Financial Services, Bureau  
40           of Revenue Services.

41           5. Information to Bureau of Revenue Services. A qualified  
42           scholarship organization shall, by January 31st annually, provide  
43           a statement to the Department of Administrative and Financial  
44           Services, Bureau of Revenue Services identifying the amount of  
45           the contribution made by each taxpayer that has made a  
46           contribution that is eligible for the credits provided under  
47           the contribution that is eligible for the credits provided under  
48           the contribution that is eligible for the credits provided under  
49           the contribution that is eligible for the credits provided under  
50           the contribution that is eligible for the credits provided under

2 Title 36, sections 2527 and 5219-U, the total amount contributed  
4 by each taxpayer during the previous calendar year for need-based  
6 scholarships to the qualified scholarship organization and the  
8 amount of the total contribution by the taxpayer that is eligible  
10 for the credits provided under Title 36, sections 2527 and 5219-U.

12 6. Report to committees. The authority, in conjunction  
14 with the Department of Administrative and Financial Services,  
16 Bureau of Revenue Services, shall file a report annually with the  
18 joint standing committee of the Legislature having jurisdiction  
20 over education and cultural affairs and the joint standing  
22 committee of the Legislature having jurisdiction over taxation  
24 matters. The report must provide a summary of the information  
26 collected under this section and analyze the costs and benefits  
28 of the tax credits provided under Title 36, sections 2527, 2528,  
30 5219-U and 5219-V. The report may make recommendations for  
32 increasing the effectiveness of these tax credits.

34 7. Rulemaking. The authority, after consultation with the  
36 Bureau of Revenue Services, shall establish rules for the  
38 application, eligibility and annual filing requirements necessary  
40 to implement the certification of qualified scholarship  
42 organizations pursuant to this section and may include any rules  
44 necessary to establish initial application fees and penalties,  
46 which may include monetary penalties and revocation of  
48 certification, to ensure that a qualified scholarship  
50 organization is fulfilling the requirements of this section.  
These rules may also include any necessary conflict-of-interest  
provisions pertaining to qualified scholarship organizations.  
The authority shall also establish any rules necessary to define  
postsecondary education loans that are eligible for the  
recruitment credits provided under Title 36, sections 2528 and  
5219-V. Rules adopted pursuant to this subsection, including  
those setting initial application fees and penalties, are routine  
technical rules as defined in Title 5, chapter 375, subchapter  
II-A. The authority shall submit a report to the joint standing  
committee of the Legislature having jurisdiction over education  
and cultural affairs and to the joint standing committee of the  
Legislature having jurisdiction over taxation matters by January  
30, 2003 on the rules and rule-making process to implement the  
tax credit program established pursuant to this subchapter.

42 **Sec. 2. 36 MRS.A §§2527 and 2528 are enacted to read:**

44 **§2527. Educational attainment investment tax credit**

46 **1. Definitions. As used in this section, the terms**  
48 **"need-based scholarship" and "qualified scholarship organization"**  
50 **have the same meaning as under Title 10, section 1100-Y,**  
**subsection 1.**

2           2. Credit allowed. A taxpayer is allowed a credit against  
3           the tax otherwise due under this chapter in the amount of:

4                   A. Ten percent of the amount contributed during the taxable  
5                   year to a qualified scholarship organization for need-based  
6                   scholarships for tax years beginning in 2003;

7                   B. Twenty percent of the amount contributed during the  
8                   taxable year to a qualified scholarship organization for  
9                   need-based scholarships for tax years beginning in 2004; or

10                  C. Fifty percent of the amount contributed during the  
11                  taxable year to a qualified scholarship organization for  
12                  need-based scholarships for tax years beginning after 2004.

13           The total combined credit for each taxpayer under this section  
14           and section 2528 may not exceed \$10,000 annually for the  
15           taxpayer. For purposes of this subsection, the contribution may  
16           not directly benefit a director, trustee, officer or employee of  
17           the taxpayer claiming the credit or the spouse or child of a  
18           director, trustee, officer or employee. The contribution may be  
19           made in cash, its equivalent or in stock. In no case may the  
20           credit reduce the tax otherwise due under this chapter to less  
21           than zero.

22           3. Carry over to succeeding years. A taxpayer entitled to  
23           a credit under this section for any taxable year may carry over  
24           and apply to the tax liability for any one or more of the next  
25           succeeding 5 taxable years the portion, as reduced from year to  
26           year, of any unused credits.

27           **§2528. Recruitment credit**

28           1. Credit allowed. A taxpayer is allowed a credit against  
29           the tax otherwise due under this chapter in the amount of:

30                   A. Beginning in 2003, 10% of the amount of loan repayments  
31                   paid during the taxable year to a creditor on behalf of an  
32                   employee of the taxpayer as part of a postsecondary  
33                   education loan repayment agreement between the taxpayer and  
34                   the employee of the taxpayer; and

35                   B. Beginning in 2004, 15% of the amount of loan repayments  
36                   paid during the taxable year to a creditor on behalf of an  
37                   employee of the taxpayer as part of a postsecondary  
38                   education loan repayment agreement between the taxpayer and  
39                   the employee of the taxpayer.

2 2. Conditions. The credit allowed under subsection 1 is  
3 subject to the conditions under this subsection.

4 A. At the time the taxpayer and the employee enter into a  
5 loan repayment agreement under this section, the employee of  
6 the taxpayer must have graduated from an accredited public  
7 or private institution of higher education, be a resident  
8 individual as defined in section 5102, subsection 5 and have  
9 an outstanding postsecondary education loan as defined by  
10 rules established by the Finance Authority of Maine pursuant  
11 to Title 10, section 1100-Y, subsection 7.

12 B. A postsecondary education loan repayment agreement under  
13 this section may not directly benefit a director, trustee or  
14 officer of the taxpayer claiming the credit or the spouse or  
15 child of a director, trustee or officer of the taxpayer  
16 claiming the credit.

17 C. The total credit for each taxpayer under this section  
18 and section 2527 may not exceed \$10,000 annually for the  
19 taxpayer and may not reduce the tax otherwise due under this  
20 chapter to less than zero. A taxpayer entitled to a credit  
21 under this section for any taxable year may carry over and  
22 apply to the tax liability for any one or more of the next  
23 succeeding 5 taxable years the portion, as reduced from year  
24 to year, of any unused credits.

25 **Sec. 3. 36 MRSA §5122, sub-§1, ¶¶M and N, as enacted by PL**  
26 **2001, c. 559, Pt. GG, §10, and affected by §26, are amended to**  
27 **read:**

28 M. The absolute value of the amount of any net operating  
29 loss arising from a tax year beginning or ending in 2001  
30 that the taxpayer, pursuant to Section 102 of the federal  
31 Job Creation and Worker Assistance Act of 2002, Public Law  
32 107-147, carries back more than 2 years to the taxable year  
33 for federal income tax purposes; and

34 N. For any taxable year beginning in 2002, an amount equal  
35 to the net increase in depreciation attributable to a 30%  
36 bonus depreciation deduction claimed by the taxpayer  
37 pursuant to Section 101 of the federal Job Creation and  
38 Worker Assistance Act of 2002, Public Law 107-147 with  
39 respect to property placed in service during the taxable  
40 year, multiplied by the factor obtained by subtracting from  
41 the number 1.0 the conformity factor calculated by the State  
42 Tax Assessor under section 112, subsection 12+;

43 **Sec. 4. 36 MRSA §5122, sub-§1, ¶¶O and P are enacted to read:**

2           O. The amount of the contribution to a qualified  
4           scholarship organization that is included in the credit base  
6           of the educational attainment investment tax credit under  
          section 5219-U to the extent that the contribution has been  
          used to adjust federal adjusted gross income; and

8           P. The amount of the loan repayment included in the credit  
10          base of the recruitment credit under section 5219-V to the  
12          extent that the repayment has been used to adjust federal  
          adjusted gross income.

14          **Sec. 5. 36 MRS §5200-A, sub-§1, ¶¶M and N**, as enacted by PL  
2001, c. 559, Pt. GG, §15 and affected by §26, is amended to read:

16           M. The absolute value of the amount of any net operating  
18           loss arising from a tax year beginning or ending in 2001  
20           that the taxpayer, pursuant to Section 102 of the federal  
22           Job Creation and Worker Assistance Act of 2002, Public Law  
          107-147, carries back more than 2 years to the taxable year  
          for federal income tax purposes; and

24           N. For any taxable year beginning in 2002, an amount equal  
26           to the net increase in depreciation attributable to a 30%  
28           bonus depreciation deduction claimed by the taxpayer  
30           pursuant to Section 101 of the federal Job Creation and  
32           Worker Assistance Act of 2002, Public Law 107-147 with  
          respect to property placed in service during the taxable  
          year, multiplied by the factor obtained by subtracting from  
          the number 1.0 the conformity factor calculated by the State  
          Tax Assessor under section 112, subsection 12.;

34          **Sec. 6. 36 MRS §5200-A, sub-§1, ¶¶O and P** are enacted to read:

36           O. The amount of the contribution to a qualified  
38           scholarship organization that is included in the credit base  
40           of the educational attainment investment tax credit under  
          section 5219-U to the extent that the contribution has been  
          used to adjust federal taxable income; and

42           P. The amount of the loan repayment included in the credit  
44           base of the recruitment credit under section 5219-V to the  
          extent that the contribution has been used to adjust federal  
          taxable income.

46          **Sec. 7. 36 MRS §§5219-U and 5219-V** are enacted to read:

48          §5219-U. Educational attainment investment tax credit



2       1. Definitions. As used in this section, the terms  
4       "need-based scholarship" and "qualified scholarship organization"  
6       have the same meaning as under Title 10, section 1100-Y,  
8       subsection 1.

10       2. Credit allowed. A taxpayer is allowed a credit against  
12       the tax otherwise due under this Part in the amount of:

14           A. Ten percent of the amount contributed to a qualified  
16           scholarship organization for need-based scholarships for tax  
18           years beginning in 2003;

20           B. Twenty percent of the amount contributed to a qualified  
22           scholarship organization for need-based scholarships for tax  
24           years beginning in 2004; or

26           C. Fifty percent of the amount contributed to a qualified  
28           scholarship organization for need-based scholarships for tax  
30           years beginning after 2004.

32       The credit may not exceed \$2,000 for an individual taxpayer or  
34       \$10,000 for each taxpayer who is an employing unit as defined in  
36       Title 26, section 1043, subsection 10. For individual taxpayers,  
38       the total combined tax credit under this section and under  
40       section 5219-V may not exceed \$10,000 annually. For purposes of  
42       this subsection, the contribution may not directly benefit the  
44       taxpayer claiming the credit, a spouse or child of an individual  
46       taxpayer claiming the credit, a director, trustee, officer or  
48       employee of an employing unit claiming the credit or the spouse  
50       or child of a director, trustee, officer or employee of an  
      employing unit claiming the credit. The contribution may be made  
      in cash, its equivalent or in stock. In no case may the credit  
      reduce the tax otherwise due under this Part to less than zero.

36       3. Carry over to succeeding years. A taxpayer entitled to  
38       a credit under this section for any taxable year may carry over  
40       and apply to the tax liability for any one or more of the next  
42       succeeding 5 taxable years the portion, as reduced from year to  
44       year, of any unused credits.

46       §5219-V. Recruitment credit

48       1. Credit allowed. A taxpayer who is an employing unit as  
50       defined in Title 26, 1043, subsection 10 is allowed a credit  
      against the tax otherwise due under this Part in the amount of:

A. Beginning in 2003, 10% of the amount of loan repayments  
      paid during the taxable year to a creditor on behalf of an  
      employee of the taxpayer as part of a postsecondary

education loan repayment agreement between the taxpayer and  
the employee of the taxpayer; and

B. Beginning in 2004, 15% of the amount of loan repayments  
paid during the taxable year to a creditor on behalf of an  
employee of the taxpayer as part of a postsecondary  
education loan repayment agreement between the taxpayer and  
the employee of the taxpayer.

2. Conditions. The credit allowed under subsection 1 is  
subject to the conditions under this subsection.

A. At the time the taxpayer and the employee enter into the  
loan repayment agreement under this section, the employee of  
the taxpayer must have graduated from an accredited public  
or private institution of higher education, be a resident  
individual as defined in section 5102, subsection 5 and have  
an outstanding postsecondary education loan as defined by  
rules established by the Finance Authority of Maine pursuant  
to Title 10, section 1100-Y, subsection 7.

B. A postsecondary education loan repayment agreement under  
this section may not directly benefit a director, trustee or  
officer of the taxpayer claiming the credit or the spouse or  
child of a director, trustee or officer of the taxpayer  
claiming the credit.

C. The total combined credit for each taxpayer under this  
section and under section 5219-U may not exceed \$10,000  
annually and may not reduce the tax otherwise due under this  
Part to less than zero. A taxpayer entitled to a credit  
under this section for any taxable year may carry over and  
apply to the tax liability for any one or more of the next  
succeeding 5 taxable years the portion, as reduced from year  
to year, of any unused credits.

**Sec. 8. Reserve fund; transfers from unappropriated surplus at end  
of fiscal year 2001-02.** There is created a reserve within the General  
Fund to carry out the purposes of this Act called the Educational  
Attainment Tax Credit Reserve, referred to in this section as the  
"reserve."

After the transfers authorized in Public Law 2001, chapter  
559, Part GG, section 25, subsection 3 and as the next priority  
after the transfers in subsection 3, at the close of fiscal year  
2001-02, the State Controller shall transfer from the  
unappropriated surplus of the General Fund after all required  
deductions of appropriations and budgeted financial commitments,  
an amount not to exceed \$271,294 to the reserve.

2           **Sec. 9. Review of policy alternatives available to Legislature in**  
3           **creating endowment fund to provide scholarships.** Beginning January  
4           1, 2003 the Maine Higher Educational Attainment Council  
5           established pursuant to the Maine Revised Statutes, Title 5,  
6           section 12004-G, subsection 10-B to address policies related to  
7           higher education attainment in the State shall review the policy  
8           alternatives available to the Legislature in creating an  
9           endowment fund for the benefit of eligible residents of the State  
10          to meet the high cost of attending an institution of higher  
11          education. The advisory council review must include an  
12          examination of existing endowment programs in the State as well  
13          as endowment programs established in other states to provide  
14          financial assistance to eligible residents enrolled at an  
15          institution of higher education. The advisory council shall  
16          submit a report that includes its findings and recommendations,  
17          including any suggested legislation, to the joint standing  
18          committee of the Legislature having jurisdiction over education  
19          and cultural affairs and the Legislative Council no later than  
20          December 1, 2003. If the advisory council requires a limited  
21          extension of time to complete its report, it may apply to the  
22          Legislative Council, which may grant the extension. The advisory  
23          council is not authorized to introduce legislation under this  
24          section. Following receipt and review of the report, the joint  
25          standing committee of the Legislature having jurisdiction over  
26          education and cultural affairs may report out a bill to the  
27          Second Regular Session of the 121st Legislature.

28                 This section takes effect only if the Maine Higher  
29                 Educational Attainment Council is established in the Maine  
30                 Revised Statutes, Title 5, section 12004-G, subsection 10-B.

31           **Sec. 10. Application.** Those sections of this Act that enact  
32           the Maine Revised Statutes, Title 36, sections 2527; 2528; 5122,  
33           subsection 1, paragraphs O and P; section 5200-A, subsection 1,  
34           paragraphs O and P; and sections 5219-U and 5219-V apply to tax  
35           years beginning on or after January 1, 2003.

36           **Sec. 11. Contingent effective date.** Those sections of this act  
37           that enact the Maine Revised Statutes, Title 36, section 2527,  
38           subsection 2, paragraph A; section 2528, subsection 1, paragraph  
39           A; section 5219-U, subsection 2, paragraph A; and section 5219-V,  
40           subsection 1, paragraph A take effect only if the State  
41           Controller certifies to the State Tax Assessor that \$271,294 has  
42           been transferred to the Educational Attainment Tax Credit Reserve  
43           from the General Fund unappropriated surplus at the close of  
44           fiscal year 2001-02.

45                 Before the close of June 30, 2003, the State Controller  
46                 shall transfer any balance in the reserve to the General Fund  
47                 unappropriated surplus.



COMMITTEE OF CONFERENCE AMENDMENT "A" to COMMITTEE AMENDMENT "A"  
to H.P. 1655, L.D. 2162

2           1. It changes modifications to federal income in connection  
4 with the educational investment tax credit and the recruitment  
credit; and

6           2. It places a contingent effective date on the initial tax  
8 credit scheduled to take effect for the 2003 tax year. The tax  
10 credit of 10% would only take effect if there are sufficient  
12 funds in the General Fund unappropriated surplus at the close of  
fiscal year 2001-02 to cover the cost of the tax credit,  
estimated to be \$271,294. The tax credit for tax years after  
2003 is unaffected by the contingency.

14           The amendment also adds a fiscal note.