

# MAINE STATE LEGISLATURE

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R.O.S.

L.D. 2162

DATE: 4/1/02

(Filing No. H-1055)

EDUCATION AND CULTURAL AFFAIRS  
TAXATION

Majority

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. 1655, L.D. 2162, Bill, "An Act to Supplement Maine's Academic Attainment and to Retain Talent"

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

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

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

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

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

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

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

42           5. Information to Bureau of Revenue Services. A qualified  
44           scholarship organization shall, by January 31st annually, provide  
46           a statement to the Department of Administrative and Financial  
48           Services, Bureau of Revenue Services identifying the amount of  
50           the contribution made by each taxpayer that has made a  
52           contribution that is eligible for the credits provided under  
              Title 36, sections 2527 and 5219-U, the total amount contributed  
              by each taxpayer during the previous calendar year for need-based  
              scholarships to the qualified scholarship organization and the  
              amount of the total contribution by the taxpayer that is eligible  
              for the credits provided under Title 36, sections 2527 and 5219-U.

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

7. Rulemaking. The authority, after consultation with the Bureau of Revenue Services, shall establish rules for the application, eligibility and annual filing requirements necessary to implement the certification of qualified scholarship organizations pursuant to this section and may include any rules necessary to establish initial application fees and penalties, which may include monetary penalties and revocation of certification, to ensure that a qualified scholarship 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.

**Sec. 2. 36 MRSA §§2527 and 2528** are enacted to read:

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

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

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

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

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

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

The total combined credit for each taxpayer under this section and section 2528 may not exceed \$10,000 annually for the taxpayer. For purposes of this subsection, the contribution may not directly benefit a director, trustee, officer or employee of the taxpayer claiming the credit or the spouse or child of a director, trustee, officer or employee. 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 chapter to less than zero.

3. Carry over to succeeding years. 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.

**§2528. Recruitment credit**

A taxpayer is allowed a credit against the tax otherwise due under this chapter in the amount of 10% in taxable years beginning in 2003 and 15% in taxable years beginning after 2003 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.

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

A. At the time the taxpayer and the employee enter into a 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.

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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 credit for each taxpayer under this section and section 2527 may not exceed \$10,000 annually for the taxpayer and may not reduce the tax otherwise due under this chapter 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. 3. 36 MRSA §5122, sub-§1, ¶¶M and N, as enacted by PL 2001, c. 559, Pt. GG, §10, and affected by §26, are amended to read:**

M. The absolute value of the amount of any net operating loss arising from a tax year beginning or ending in 2001 that the taxpayer, pursuant to Section 102 of the federal 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

N. For any taxable year beginning in 2002, an amount equal to the net increase in depreciation attributable to a 30% bonus depreciation deduction claimed by the taxpayer pursuant to Section 101 of the federal Job Creation and 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 12.1

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

O. The amount 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

P. The amount of the recruitment credit under section 5219-V to the extent that the repayment has been used to adjust federal adjusted gross income.

**Sec. 5. 36 MRSA §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:**

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2 M. The absolute value of the amount of any net operating  
4 loss arising from a tax year beginning or ending in 2001  
6 that the taxpayer, pursuant to Section 102 of the federal  
8 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

10 N. For any taxable year beginning in 2002, an amount equal  
12 to the net increase in depreciation attributable to a 30%  
14 bonus depreciation deduction claimed by the taxpayer  
16 pursuant to Section 101 of the federal Job Creation and  
18 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 12.1

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

22 O. The amount claimed as an educational attainment  
24 investment tax credit under section 5219-U to the extent  
that the contribution has been used to adjust federal  
taxable income; and

26 P. The amount claimed as repayment of a postsecondary  
28 education loan included in the recruitment credit under  
section 5219-V to the extent that the contribution has been  
used to adjust federal taxable income.

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

32 **§5219-U. Educational attainment investment tax credit**

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

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

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

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

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

The credit may not exceed \$2,000 for an individual taxpayer or \$10,000 for each taxpayer who is an employing unit as defined in Title 26, section 1043, subsection 10. For individual taxpayers, the total combined tax credit under this section and under section 5219-V may not exceed \$10,000 annually. For purposes of this subsection, the contribution may not directly benefit the taxpayer claiming the credit, a spouse or child of an individual taxpayer claiming the credit, a director, trustee, officer or employee of an employing unit claiming the credit or the spouse 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.

3. Carry over to succeeding years. 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.

**§5219-V. Recruitment credit**

A taxpayer who is an employing unit as defined in Title 26, section 1043, subsection 10 is allowed a credit against the tax otherwise due under this Part in the amount of 10% in taxable years beginning in 2003 and 15% in taxable years beginning after 2003 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.

1. Conditions. The credit allowed under this section 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 it's defined term for Part 8 individual 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

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

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

**Sec. 9. Application.** Those sections of this Act that enact the Maine Revised Statutes, Title 36, sections 2527; 2528; 5122, subsection 1, paragraphs O and P; section 5200-A, subsection 1, paragraphs O and P; and sections 5219-U and 5219-V apply to tax years beginning on or after January 1, 2003.'

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

**FISCAL NOTE**

**2002-03**

**REVENUES**

General Fund	(\$606,199)
Other Funds	(32,914)

The establishment of certain tax credits will decrease individual income and corporate income tax collections by \$639,113 in fiscal year 2002-03, \$3,318,906 in fiscal year 2003-04 and \$7,547,534 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 \$32,914, \$172,583 and \$392,472, respectively. The resulting net reductions of General Fund revenue will be \$606,199 in fiscal year 2002-03, \$3,146,323 in fiscal year 2003-04 and \$7,155,062 in fiscal year 2004-05.

The Finance Authority of Maine will incur additional costs to provide initial and annual certification for qualified scholarship organizations. The amount can not be determined at this time. The authority has indicated that the cost for the program will be offset by application and certification fees to be charged to program participants.

Any additional costs associated with creating and administering the program, including the adoption of rules and submitting the required report, will be absorbed by the authority utilizing existing budgeted resources.

The Department of the Secretary of State will incur some minor additional costs to administer certain filing requirements. These costs can be absorbed within the department's existing budgeted resources.'

**SUMMARY**

This amendment is the majority report of the Joint Standing Committee on Education and Cultural Affairs and the Joint Standing Committee on Taxation. The committee amendment strikes and replaces the bill to clarify the tax credits established for individuals or corporations that provide a contribution that promotes the postsecondary educational attainment of Maine

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residents or that promotes the recruitment and retention of college-educated persons to work in Maine. To accomplish these purposes, the amendment does the following.

1. It provides tax credits against the income tax and the insurance premium tax equal to a certain proportion, 10% during taxable years beginning in 2003, 20% for taxable years beginning in 2004 and 50% for taxable years beginning after 2004, of the amount contributed by an individual or corporation to a qualified scholarship organization that is a private, nonprofit 501(c)(3) corporation that provides need-based scholarships and is either affiliated with an accredited public or private institution of higher education in the State or that has filed as a nonprofit corporation with the Secretary of State on or before April 1, 2002 and remains in good standing.

2. It provides recruitment tax credits against the income tax and the insurance premium tax equal to a certain proportion, 10% during taxable years beginning in 2003 or 15% for taxable years beginning after 2003, of the amount paid by an employer to a creditor on behalf of certain employees for the purpose of repaying the employee's outstanding postsecondary education loans.

3. It provides that the total tax credit may not exceed \$2,000 for an individual taxpayer or \$10,000 for each taxpayer who is a corporation or an employing unit. It also provides that the contribution may not directly benefit the taxpayer claiming the credit or those directly related to a taxpayer that is claiming the credit. It further provides that the tax credits may not reduce the contributor's Maine income tax to less than zero but may be carried over for 5 taxable years.

4. It requires annual reporting of the costs and effectiveness of the tax credit programs by the Finance Authority of Maine, in conjunction with the Department of Administrative and Financial Services, Maine Revenue Services, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters.

5. It authorizes the Finance Authority of Maine to establish routine technical rules for the application, eligibility and annual filing requirements necessary to implement the certification of qualified scholarship organizations, including any rules necessary to establish fees and penalties to ensure that a qualified scholarship organization is fulfilling its purpose in accordance with this tax program. The authority is also required to submit a report to the joint standing committee of the Legislature having jurisdiction over education

# COMMITTEE AMENDMENT

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

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2 and cultural affairs and the joint standing committee of the  
Legislature having jurisdiction over taxation matters by January  
4 30, 2003 on the rule-making process and rules established to  
implement the tax credits.

6 6. It establishes that, beginning January 1, 2003 and  
pursuant to legislation that may be enacted during the Second  
8 Regular Session of the 120th Legislature to implement the  
recommendations of the Blue Ribbon Commission on Postsecondary  
10 Educational Attainment, the advisory council established to  
address policies related to higher education attainment in the  
12 State shall review the policy alternatives available to the  
Legislature in creating an endowment fund for the benefit of  
14 eligible residents of the State to meet the high cost of  
attending an institution of higher education. The advisory  
16 council shall submit a report, including any suggested  
legislation, by December 1, 2003. Following receipt and review  
18 of the report, the joint standing committee of the Legislature  
having jurisdiction over education and cultural affairs may  
20 report out a bill to the Second Regular Session of the 121st  
Legislature.

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7. It adds a fiscal note to the bill.