

MAINE STATE LEGISLATURE

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House of Representatives, April 3, 2007

An Act To Create Jobs by Expanding Educational Opportunity for Maine Residents

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative ADAMS of Portland.

Cosponsored by Representatives: FISCHER of Presque Isle, WOODBURY of Yarmouth,
Senator MARRACHÉ of Kennebec, Senator MARTIN of Aroostook and

Representatives: BERRY of Bowdoinham, CLARK of Millinocket, CLEARY of Houlton,
Speaker CUMMINGS of Portland, DRISCOLL of Westbrook, DUCHESNE of Hudson,
EATON of Sullivan, FARRINGTON of Gorham, HAYES of Buckfield, HILL of York,
HINCK of Portland, MAZUREK of Rockland, MOORE of Standish, PATRICK of Rumford,
PEOPLES of Westbrook, PERCY of Phippsburg, PRATT of Eddington, RAND of Portland,
RINES of Wiscasset, THERIAULT of Madawaska, WALCOTT of Lewiston, WEDDELL of
Frankfort, WHEELER of Kittery, Senators: BARTLETT of Cumberland, DOW of Lincoln.

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

2 **Sec. 1. 20-A MRSA c. 428-C** is enacted to read:

3 **CHAPTER 428-C**

4 **JOB CREATION THROUGH EDUCATIONAL OPPORTUNITY**
5 **PROGRAM**

6 **§12541. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Accredited Maine junior college, college or university.** "Accredited Maine
10 junior college, college or university" means:

11 A. A campus of the Maine Community College System;

12 B. A campus of the University of Maine System;

13 C. The Maine Maritime Academy;

14 D. An educational institution in the State that has authorization to confer an associate
15 degree or a bachelor's degree, in accordance with sections 10704 and 10704-A;

16 E. An educational institution in the State that is exempted from chapter 409 under
17 section 10708, subsection 1 or 2; or

18 F. An educational institution in the State that is operating under a certificate of
19 temporary approval from the state board under section 10703.

20 **2. Benchmark loan payment.** "Benchmark loan payment" means the amount
21 described in section 12542, subsection 2, paragraph C.

22 **3. Educational institution.** "Educational institution" has the same meaning as in
23 section 10701, subsection 3.

24 **4. Educational opportunity tax credit.** "Educational opportunity tax credit" means
25 the tax credit provided for in Title 36, section 5217-D.

26 **5. Opportunity contract.** "Opportunity contract" means the contract developed by
27 the state board pursuant to section 12542, subsection 3.

28 **6. Principal cap.** "Principal cap" means the cap described in section 12542,
29 subsection 2.

30 **7. Resident.** "Resident" means a person who qualifies for residence in this State
31 under Title 21-A, section 112.

1 **§12542. Job Creation Through Educational Opportunity Program**

2 **1. Establishment; goals.** The Job Creation Through Educational Opportunity
3 Program, referred to in this chapter as “the program,” is established to reimburse
4 residents for education-related costs if they agree to live, work and pay taxes in this State
5 after being graduated from college. The program is designed to achieve the following
6 goals:

7 A. Promote economic opportunity and a highly skilled workforce in the State by
8 increasing enrollment in Maine’s institutions of higher education;

9 B. Bring more and higher-paying jobs to this State by increasing the skill level of
10 this State's workforce;

11 C. Offer educational opportunity and retraining to individuals affected by job loss,
12 workplace injury, disability or other hardship;

13 D. Keep young people in this State through incentives for educational opportunity
14 and creation of more high-paying jobs; and

15 E. Accomplish all of the goals in this subsection with as little bureaucracy as
16 possible.

17 **2. Principal cap.** The principal cap limits the loan principal that can serve as the
18 basis for a claim of the educational opportunity tax credit. The cap is based on in-state
19 tuition and mandatory fees for either the Maine Community College System or the
20 University of Maine System, depending on whether the opportunity contract is for pursuit
21 of an associate degree or a bachelor’s degree.

22 A. After an individual has earned a degree from the Maine Community College
23 System or from the University of Maine System, the financial aid office shall certify
24 whether or not the total principal of loans the individual received as part of that
25 individual's financial aid package exceeds the cost of in-state tuition and mandatory
26 fees that the individual incurred in pursuit of the degree. That cost constitutes the
27 principal cap for that individual.

28 B. After an individual has earned a degree from an accredited Maine junior college,
29 college or university other than the Maine Community College System or the
30 University of Maine System, the financial aid office shall certify whether or not the
31 total principal of loans the individual received as part of that individual's financial aid
32 package exceeds the published in-state tuition and mandatory fees for full-time
33 enrollment in the Maine Community College System or in the University of Maine
34 System, depending on whether the degree is an associate degree or a bachelor’s
35 degree, during the relevant years. The published in-state tuition and mandatory fees
36 constitute the principal cap for that individual. If the individual has not attended full
37 time throughout the pursuit of that individual's degree, an appropriate principal cap
38 must be determined in a manner consistent with the tax credit limitations in this
39 subsection.

40 C. For an individual whose student loans exceed the principal cap established in
41 paragraph A or B, a benchmark loan payment must be calculated pursuant to this
42 paragraph. The financial aid office shall calculate what the monthly payment would

1 be on a loan for the amount of the principal cap, to be paid over 10 years, at the
2 interest rate offered for federal Stafford loans under 20 United States Code, Section
3 1077a, during the individual's last year of enrollment. The financial aid office shall
4 specify the benchmark loan payment on the individual's opportunity contract.

5 **3. Opportunity contract.** The state board shall draft an opportunity contract for use
6 in enrolling individuals in the program. The terms of the opportunity contract must
7 require an individual who wishes to participate in the program to:

8 A. Certify that the individual is a resident;

9 B. Agree to attend and to obtain a specified degree, either an associate or bachelor's
10 degree, from an accredited Maine junior college, college or university. The individual
11 need not obtain the degree from the institution in which that individual originally
12 enrolled, as long as all course work toward the degree is performed at accredited
13 Maine junior colleges, colleges or universities;

14 C. Agree to live in this State while pursuing the degree and, after obtaining the
15 degree, during any period when that individual seeks to claim the educational
16 opportunity tax credit;

17 D. Agree to maintain records relating to loan payments claimed under the
18 educational opportunity tax credit for 5 years after those payments are claimed; and

19 E. With respect to educational loans, agree that:

20 (1) The individual will claim the educational opportunity tax credit only with
21 respect to loans that are part of that individual's financial aid package and that
22 have a term of at least 8 years;

23 (2) If the individual in any way accelerates repayment, the individual will forfeit
24 any right to claim an educational opportunity tax credit for that taxable year or
25 any future taxable year; and

26 (3) The individual may refinance the loans only if they remain separate from
27 other debt and if the effect of the refinancing is to decrease both the annual
28 repayment and the total remaining indebtedness.

29 The contract must provide that, in exchange for the consideration outlined in paragraphs
30 B to E, the State agrees to permit the individual to take advantage of the educational
31 opportunity tax credit.

32 The opportunity contract must contain space for the financial aid office of the accredited
33 Maine junior college, college or university to certify that the individual has obtained the
34 relevant degree and to certify whether or not the loan principal that the individual
35 incurred in pursuing the relevant degree exceeds the principal cap.

36 **4. Administration.** The program must be administered as follows.

37 A. A resident who gains admission to an accredited Maine junior college, college or
38 university and who receives financial aid in the form of loans must have the
39 opportunity to participate in the program. The financial aid office of the relevant
40 institution shall offer to the individual the chance to sign an opportunity contract with

1 the State. The financial aid office shall retain the opportunity contract until the
2 individual obtains the degree.

3 B. After the individual obtains the degree, the individual shall specify on the
4 opportunity contract the source, principal amount, interest rate and term of any loans
5 that are part of the individual's financial aid package. The financial aid office shall
6 certify on the opportunity contract that the individual has obtained the relevant
7 degree, whether the individual's loans exceed the principal cap and, if appropriate,
8 what the benchmark loan payment is. The individual shall then file the opportunity
9 contract with the Secretary of State. Every accredited Maine junior college, college
10 and university shall develop procedures to facilitate this process, in consultation with
11 the Secretary of State.

12 C. When the individual files the opportunity contract with the Secretary of State
13 pursuant to paragraph B, that individual becomes eligible to claim the educational
14 opportunity tax credit, subject to the requirements of this chapter and of Title 36,
15 section 5217-D. The individual may thereafter take advantage of any forbearance or
16 deferral provisions in the loan agreements without forfeiting the right to claim the
17 educational opportunity tax credit when the individual resumes repayment.

18 **5. Effective date; participation by individual already enrolled in degree**
19 **program.** The program must commence for the first semester that begins after the
20 effective date of this chapter. Residents who when the program commences are enrolled
21 in an associate or a bachelor's degree program at an accredited Maine junior college,
22 college or university before the effective date of this chapter may participate, subject to
23 the same essential terms as apply to other program participants. When such an individual
24 obtains the relevant degree, it must be specified in the individual's opportunity contract
25 what percentage of the course work completed in pursuit of the degree was performed
26 while the individual was participating in the program. The principal cap and benchmark
27 loan payment must be calculated as otherwise provided in this chapter, but the individual
28 must then apply the percentage calculated pursuant to this subsection to actual payments
29 or to the benchmark loan payment, whichever applies, in determining the amount the
30 individual may claim under the educational opportunity tax credit for a given year.

31 **§12543. Effect on funding of higher education**

32 It is the intent of the Legislature that neither the existence of the program nor the
33 benefits provided under the educational opportunity tax credit serve as justification to
34 decrease other funds appropriated or allocated to accredited Maine junior colleges,
35 colleges or universities or to other higher education programs.

36 **§12544. Rules**

37 The state board shall, in accordance with section 3, adopt rules, which are routine
38 technical rules pursuant to Title 5, chapter 375, subchapter 2-A, as necessary to carry out
39 the purposes of this chapter.

40 **Sec. 2. 36 MRSA §5217-D** is enacted to read:

1 **§5217-D. Credit for educational opportunity**

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

4 A. "Benchmark loan payment" has the same meaning as in Title 20-A, section
5 12541, subsection 2.

6 B. "Employer" has the same meaning as the term "employing unit," as defined in
7 Title 26, section 1043, subsection 10.

8 C. "Full-time employment" means employment with a normal workweek of 32 hours
9 or more.

10 D. "Independent contractor" has the same meaning as in Title 39-A, section 102,
11 subsection 13.

12 E. "Opportunity contract" means the contract described in Title 20-A, section 12542,
13 subsection 3.

14 F. "Opportunity program participant" means an individual who enters into an
15 opportunity contract with the State, obtains the specified degree and complies with
16 the requirements under Title 20-A, section 12542, subsections 3 to 5.

17 G. "Part-time employment" means employment with a normal workweek of between
18 16 and 32 hours.

19 H. "Qualified employee" means an employee or independent contractor who is
20 eligible for a tax credit under this section and who is employed at least part-time or
21 performs services as an independent contractor at least 16 hours per week.

22 I. "Resident individual" has the same meaning as in section 5102, subsection 5.

23 J. "Seasonal employment" means employment in a seasonal industry, as defined in
24 Title 26, section 1251 and in rules adopted under that section.

25 K. "Term of employment" includes all months when the individual is actually
26 employed. It includes time periods when an individual is on leave or vacation. It
27 extends to the full year for individuals working for employers who customarily
28 operate only during a regularly recurring period of 9 months or more in a calendar
29 year. For individuals working for employers who customarily operate only during
30 regularly recurring periods of less than 9 months in a calendar year, including
31 seasonal employment, the term of employment extends only to time periods when the
32 individual is actually working.

33 **2. Credit allowed.** A taxpayer that is an opportunity program participant or an
34 employer of a qualified employee is allowed a credit against the tax imposed by this Part
35 for each taxable year under the terms established in this section. The credit is created to
36 implement the Job Creation Through Educational Opportunity Program established under
37 Title 20-A, chapter 428-C.

38 The credit may not reduce the tax otherwise due under this Part to less than zero. A
39 taxpayer entitled to the credit for any taxable year may carry over and apply to the tax
40 liability for any one or more of the next succeeding 10 years the portion, as reduced from

1 year to year, of any unused credits. More than one taxpayer may claim a credit based on
2 loan payments actually made to a lender to benefit a single opportunity program
3 participant, but 2 taxpayers may not claim the credit based on the same payment.

4 **3. Calculation of credit.** The following provisions govern the calculation of the
5 credit in this section.

6 A. If the opportunity program participant's opportunity contract limits the amount of
7 the credit to a benchmark loan payment and the opportunity program participant's
8 actual monthly payment due is higher than that amount, then the credit claimed may
9 not exceed the product of the benchmark loan payment and the number of months in
10 which the taxpayer made loan payments.

11 B. If the opportunity program participant's opportunity contract certifies that the
12 principal for the loans is at or below the level of the principal cap, or if the
13 opportunity program participant's actual monthly payment is below the benchmark
14 loan payment, the taxpayer may claim a credit based only on regularly scheduled loan
15 payments actually made.

16 C. If the credit is claimed on behalf of an individual who was already enrolled in an
17 associate or a bachelor's degree program at an accredited Maine junior college,
18 college or university, as defined in Title 20-A, section 12541, subsection 1, on the
19 commencement of the Job Creation Through Educational Opportunity Program under
20 Title 20-A, chapter 428-C, the percentage figure listed in the opportunity contract, as
21 determined pursuant to Title 20-A, section 12542, subsection 5, must be multiplied
22 by the amount determined under paragraph A or B.

23 **4. Conditions for opportunity program participant claiming credit.** An
24 opportunity program participant may claim the credit only if the participant is a resident
25 individual. The participant may claim the credit based only on regular payments made
26 during months in which the individual was working for an employer located in this State.
27 A married couple filing jointly under Title 36, section 5221 may claim the credit only to
28 the extent that the spouse on whose behalf the credit is claimed meets these requirements.

29 **5. Conditions for employer claiming credit.** A taxpayer that is an employer may
30 claim the credit under this section under the following circumstances. The employer may
31 make partial or full loan payments directly to the lender on behalf of a qualified
32 employee, after taking reasonable steps to ascertain that the employee or independent
33 contractor is in fact a qualified employee, and may claim a credit based on amounts that
34 came due and were paid by the employer during the term of employment. An employer
35 who claims the credit under this section shall retain for 5 years any proof of eligibility
36 that the employee or independent contractor provides.

37 The employer may claim a credit for the amount that the qualified employee could have
38 claimed during any months when the qualified employee was employed had the qualified
39 employee made the partial or full loan payments instead, under conditions in which the
40 qualified employee had sufficient income to claim the full credit for the taxable year. If
41 the qualified employee is employed or performs services as an independent contractor
42 only on a part-time basis, the employer may claim a credit only up to half of the total that
43 the qualified employee could have claimed had the qualified employee made all payments

1 and earned sufficient income to claim the full credit for the taxable year, but the amount
2 the employer claims must still be based on amounts actually paid.

3 An employer claiming this credit on behalf of a qualified employee for a taxable year
4 may not simultaneously claim a credit under section 5219-V on behalf of the same
5 employee.

6 **SUMMARY**

7 This bill provides a tax credit to reimburse educational loan payments for a Maine
8 resident who earns an associate degree or a bachelor's degree in Maine and lives, works
9 and pays taxes in Maine after earning that degree. Under an agreement with the State, a
10 Maine resident who obtains an associate degree or a bachelor's degree from an accredited
11 Maine junior college, college or university may take advantage of the credit. A person
12 who qualifies may claim the credit for payments made during each year the person lives
13 and works in Maine. In addition, the qualified person's employer, or, if the qualified
14 person is an independent contractor, the entity contracting with that qualified person, may
15 make the loan payments and claim the credit. The credit is limited to what the person
16 actually pays in loan payments or to the amount that would be necessary to pay for an
17 education in the University of Maine System or Maine Community College System,
18 whichever is less.