

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1449

H.P. 1063

House of Representatives, April 11, 2011

An Act To Strengthen Maine Industry through Energy Efficiency Investment

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative HINCK of Portland.

Cosponsored by Representatives: BERRY of Bowdoinham, FITTS of Pittsfield, FLEMINGS of Bar Harbor, HAYES of Buckfield, KNIGHT of Livermore Falls, RUSSELL of Portland, Senator: THIBODEAU of Waldo.

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

2 **Sec. 1. 35-A MRSA §10122** is enacted to read:

3 **§10122. Manufacturing energy savings tax credit**

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

6 A. "Certified project" means an eligible project funded by an investment for which a
7 tax credit certificate has been issued by the trust.

8 B. "Eligible project" means an energy efficiency improvement, a renewable energy
9 installation or smart grid technology installation.

10 C. "Energy efficiency improvement" means an improvement in a manufacturing
11 facility that meets energy efficiency standards adopted by the trust by rule.

12 D. "Energy savings tax credit" means the tax credit established in Title 36, section
13 5216-D.

14 E. "Manufacturing facility" has the same meaning as in Title 36, section 1752,
15 subsection 6-A.

16 F. "Qualified investment" means an investment in an eligible project that meets the
17 criteria established by the trust pursuant to subsection 2, paragraph B.

18 G. "Renewable energy installation" means an installation in a manufacturing facility
19 that uses fuel cells; tidal power; solar arrays and installations; geothermal
20 installations; hydroelectric generators that meet all state and federal fish passage
21 requirements applicable to the generator; or biomass generators that are fueled by
22 wood or wood waste.

23 H. "Smart grid technology" means technology that allows the use of smart grid
24 functions, as defined in section 3143, subsection 1, paragraph C, in accordance with
25 rules adopted by the trust.

26 I. "Tax credit certificate" means a certificate for an energy savings tax credit issued
27 by the trust under this section.

28 **2. Tax credit certification.** The trust may issue a tax credit certificate for a
29 qualified investment in accordance with this subsection.

30 A. The trust shall establish by rule application requirements for persons applying to
31 the trust for a tax credit certificate. The rules must specify the information required
32 to be submitted to demonstrate that an investment is a qualified investment.

33 B. To be eligible for a tax credit certificate, an investment must meet the following
34 requirements:

35 (1) The investment must be made in an eligible project after January 1, 2012;

36 (2) The investment must be cost effective and likely to reduce a manufacturing
37 facility's net energy costs; and

1 (3) If the investment exceeds \$500,000, the person making the investment must
2 certify that reasonable apprenticeship opportunities will be offered during the
3 course of the work funded by the investment. The trust shall provide for waivers
4 of this requirement in instances where the trust finds that providing such
5 opportunities would be inappropriate.

6 C. If the trust finds that an applicant has demonstrated that an investment is a
7 qualified investment, the trust shall issue a tax credit certificate for 50% of the
8 qualified investment except that, if the investment has not yet been made, the trust
9 may issue a tax credit certificate prospectively for 25% of the qualified investment
10 and, upon completion of the qualified investment, issue a tax credit for an additional
11 25% of the qualified investment. The tax credit certificate must specify all
12 conditions and requirements under which the certificate is issued and remains valid.

13 **3. Reporting.** A person receiving an energy savings tax credit shall report annually
14 to the trust. The report must include the amount of the qualified investment made, a
15 description and the status of the certified project and the projected and actual energy and
16 cost savings achieved over the useful life of the certified project.

17 **4. Revocation.** A tax credit certificate is subject to revocation pursuant to this
18 subsection.

19 A. The trust shall revoke in whole or in part a tax credit certificate if the trust
20 determines that:

21 (1) Any representation made to the trust in connection with the application for
22 the certificate was false;

23 (2) Any reporting requirement under subsection 3 has not been met; or

24 (3) Any requirement or condition specified in the tax credit certificate has been
25 violated.

26 B. The trust shall revoke an entire tax credit certificate if within 15 years after the
27 issuance of the certificate the trust determines that:

28 (1) Any portion of the certified project is transported out of the State;

29 (2) Any portion of the certified project is transferred to another entity, other than
30 as part of a sale of the manufacturing facility;

31 (3) The manufacturing facility ceases substantially all operations for more than
32 one year, not including any closure associated with a seasonal closure that is
33 customary for the industry, as defined by the trust by rule; or

34 (4) The activities of the manufacturing facility are transferred to another location
35 and there is a 20% or greater reduction in the facility's full-time equivalent
36 workforce, as defined by the trust by rule.

37 If the trust revokes a tax credit certificate under this subsection, the trust shall provide
38 notice to the person holding the certificate and to the State Tax Assessor.

39 **5. Rules.** The trust shall adopt rules to implement this section. Rules adopted under
40 this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1 **Sec. 2. 36 MRSA §1760, sub-§9-D**, as amended by PL 1999, c. 414, §20, is
2 further amended to read:

3 **9-D. Fuel and electricity used at a manufacturing facility.** Ninety-five percent of
4 the sale price of all fuel and electricity purchased prior to January 1, 2018 for use at a
5 manufacturing facility. For purposes of this subsection, "sale price" includes, in the case
6 of electricity, any charge for transmission and distribution.

7 **Sec. 3. 36 MRSA §1760-E** is enacted to read:

8 **§1760-E. Tax recapture**

9 **1. Recapture tax.** Upon the occurrence of an event described in subsection 2,
10 paragraph A or B, the owner of a manufacturing facility that has received the benefit of
11 the tax exemption under section 1760, subsection 9-D is subject to a recapture tax in the
12 amount of sales tax that would have been payable in the absence of the exemption
13 provided in section 1760, subsection 9-D:

14 A. Prior to January 1, 2018; and

15 B. After January 1st of the calendar year commencing 15 years prior to the event
16 described in subsection 2.

17 **2. Events causing tax.** The recapture tax described in subsection 1 is imposed if:

18 A. The manufacturing facility ceases substantially all operations for more than one
19 year, not including any closure associated with a seasonal closure that is customary
20 for the industry as defined by rules adopted by the Efficiency Maine Trust under Title
21 35-A, section 10122; or

22 B. The activities of the manufacturing facility are transferred to another location and
23 there is a 20% or greater reduction in the facility's full-time equivalent workforce, as
24 defined by rules adopted by the Efficiency Maine Trust under Title 35-A, section
25 10122.

26 **Sec. 4. 36 MRSA §5216-D** is enacted to read:

27 **§5216-D. Energy efficiency tax credit**

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

30 A. "Certificate" means a tax credit certificate issued by the trust pursuant to Title
31 35-A, section 10122.

32 B. "Credit limit" means an amount equal to 95% of the tax imposed under Part 3,
33 absent any exemption under section 1760, subsection 9-D, on the sale price of all fuel
34 and electricity purchased for use at the subject manufacturing facility during the
35 taxable year, including, in the case of electricity, any charge for transmission and
36 distribution.

37 C. "Investment" means an investment for which a certificate has been received.

D. "Investor" means a taxpayer who has received a certificate.

E. "Subject manufacturing facility" means the manufacturing facility, as defined in section 1752, subsection 6-A, in which an investment has been made.

F. "Trust" means the Efficiency Maine Trust under Title 35-A, section 10103.

2. Credit. An investor is entitled to a credit against the tax otherwise due under this Part equal to the amount of the certificate. In the case of a partnership, limited liability company, S corporation, nontaxable trust or any other entity that is treated as a flow-through entity for tax purposes under the Code, the individual partners, members, stockholders, beneficiaries or equity owners of the entity are each deemed to be investors under this section and are allowed a credit against the tax otherwise due from them under this Part in proportion to their respective interests in the partnership, limited liability company, S corporation, nontaxable trust or other flow-through entity.

3. Limitation; increased credit. The amount of the credit allowed under this section for any taxable year may not exceed the credit limit. If the amount of the credit allowed an investor under this section in any taxable year ending before January 1, 2018 is greater than zero but less than the credit limit, the investor is entitled to an additional credit so that the total credit allowed under this section is equal to the credit limit.

4. Carry forward. Credits not taken because of the limitation in subsection 3 must be taken in the next taxable year in which the credit may be taken. The provisions of subsection 3 apply to each carry-forward year. Credits may be carried forward up to 15 years.

5. Recapture. In the event that the trust revokes a certificate in whole or in part pursuant to Title 35-A, section 10122, subsection 4, there is added to the tax imposed on the investor under this Part for the taxable year in which the revocation occurs an amount equal to the excess of the amount of the credit revoked over the amount of credit not yet taken.

6. Payment conditions; transition. In order to ensure that an investor that receives a tax credit under this section does not receive the additional benefit of the tax exemption provided under section 1760, subsection 9-D, an investor may not receive a tax credit under this section in any taxable year ending prior to January 1, 2018 unless the investor pays to the State Tax Assessor in each taxable year prior to January 1, 2018 in which the investor claims the tax credit an amount equivalent to the credit limit. In the case of a partnership, limited liability company, S corporation, nontaxable trust or any other entity treated as a flow-through entity for tax purposes under the Code, the individual partners, members, stockholders, beneficiaries or equity owners of the entity are deemed to be investors under this subsection and are liable for payments under this subsection in proportion to their respective interests in the partnership, limited liability company, S corporation, nontaxable trust or other flow-through entity.

SUMMARY

This bill creates a 50% income tax credit for any capital investment in a manufacturing facility that the Efficiency Maine Trust has determined is cost effective

1 and is likely to reduce the facility's net energy costs through energy efficiency, renewable
2 energy technology or smart grid technology. During a transition period that ends January
3 1, 2018, a taxpayer may elect to take the credit rather than claiming the sales and use tax
4 exemptions applicable to the purchase of fuel and electricity for manufacturing facilities.
5 After that date, the income tax credit will replace the sales and use tax exemption.