

MAINE STATE LEGISLATURE

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3/26/18
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Date: 3/26/18 Majority

(Filing No. H-685)

TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1227, L.D. 1781, Bill, "An Act To Encourage New Major Investments in Shipbuilding Facilities and the Preservation of Jobs"

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

'Sec. 1. 36 MRSA §191, sub-§2, ¶¶EEE and FFF are enacted to read:

EEE. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-RR, subsection 9, paragraph B of the revenue loss attributable to each taxpayer claiming the tax credit under that section, regardless of the number of persons eligible for the credit; and

FFF. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the tax credit for major shipbuilding facility investments pursuant to section 5219-RR.

Sec. 2. 36 MRSA §5219-RR is enacted to read:

§5219-RR. Tax credit for Maine shipbuilding facility investment

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

A. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this section.

B. "Commissioner" means the Commissioner of Economic and Community Development.

C. "Employment" means, for each tax year, the amount determined by adding the total number of qualified employees of a certified applicant on each of 6 consecutive measurement days of that tax year as chosen by the certified applicant and then dividing that sum by 6.

D. "Full-time" means an average of at least 32 hours weekly during the tax year.

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1 E. "Maine shipbuilding facility" means a facility or facilities located within the State
2 dedicated to the design, production, maintenance and repair of surface water vessels
3 and includes real estate, tangible personal property, fixtures, machinery and
4 equipment necessary for those activities.

5 F. "Measurement day" means the last business day of every other month of a tax
6 year.

7 G. "Qualified applicant" means an applicant for a tax credit under this section that
8 satisfies each of the following requirements:

9 (1) The applicant owns and operates or proposes to construct a Maine
10 shipbuilding facility;

11 (2) The applicant proposes to make a qualified investment; and

12 (3) The applicant employs at least 5,000 qualified employees at the time the
13 application is filed.

14 H. "Qualified employee" means an individual:

15 (1) Who is a full-time employee of the certified or qualified applicant, as the
16 case may be, working at a Maine shipbuilding facility owned and operated by
17 that applicant;

18 (2) Whose income from that employment is taxable under chapter 803;

19 (3) For whom a retirement program is provided subject to the federal Employee
20 Retirement Income Security Act of 1974, 29 United States Code, Sections 1001
21 to 1461, as amended;

22 (4) For whom group health insurance is provided; and

23 (5) Whose income derived from employment with the Maine shipbuilding
24 facility calculated on a calendar year basis is greater than the average annual per
25 capita income in the State.

26 I. "Qualified investment" means expenditures incurred on or after January 1, 2018
27 that total at least \$100,000,000 and are related to the construction, improvement,
28 modernization or expansion of a Maine shipbuilding facility, including, without
29 limitation, all expenditures for investigation; planning; design; engineering;
30 permitting; acquisition; financing; construction; demolition; alteration; relocation;
31 remodeling; repair; reconstruction; design, purchase or installation of machinery and
32 equipment; clearing; filling; grading; reclamation of land; activities undertaken to
33 upgrade a waterway serving the facility; training and development of employees;
34 capitalized interest; professional services, including, but not limited to, architectural,
35 engineering, legal, accounting or financial services; administration; environmental
36 and utility costs, including, without limitation, sewage treatment plants, water, air and
37 solid waste equipment and treatment plants, environmental protection devices,
38 electrical facilities, storm or sanitary sewer lines, water lines or amenities, any other
39 utility services, preparation of environmental impact studies, informing the public
40 about the facility and environmental impact and environmental remediation,
41 mitigation, clean-up and protection costs; related offices, support facilities and

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1 structures; and any of the foregoing expenditures made or costs incurred prior to or
2 after the effective date of this section or certification of an applicant. "Qualified
3 investment" includes only expenditures that are capitalized for federal income tax
4 purposes. Except for employees who are engaged in the design, engineering and
5 construction of the facility, "qualified investment" does not include the salaries or
6 other compensation paid to the employees of the qualified applicant or of any affiliate
7 of the qualified applicant. "Qualified investment" does not include any expenditure
8 included as a qualified investment by an applicant under chapter 919.

9 **2. Procedures for application; certificate of approval.** This subsection governs
10 the application and approval process for the tax credit under this section.

11 A. A qualified applicant may apply to the commissioner for a certificate of approval.
12 An applicant shall submit to the commissioner information demonstrating that the
13 applicant is a qualified applicant. A certified applicant may hold only one certificate
14 under this section at any time.

15 B. The commissioner, within 30 days of receipt of an application under paragraph A,
16 shall review the information contained in the application and issue a written
17 determination as to whether the applicant is a qualified applicant. If the commissioner
18 determines that the applicant is a qualified applicant, the commissioner shall issue a
19 certificate of approval to the qualified applicant at the time of the determination. If
20 the commissioner determines that the applicant is not a qualified applicant, the
21 commissioner shall issue a denial of the application at the time of the determination.

22 C. If a certified applicant proposes to transfer, including, without limitation, transfer
23 by operation of law, all or substantially all of the Maine shipbuilding facility in which
24 a qualified investment was made to another person or if a person proposes to acquire
25 more than 50% of the voting stock of the certified applicant, application may be made
26 to the commissioner to approve transfer of the certificate of approval to that person in
27 connection with the transfer of the stock or facility. The commissioner shall grant the
28 transfer of the certificate only if:

29 (1) The transferee of the Maine shipbuilding facility or of the certified
30 applicant's stock is a member of the certified applicant's unitary affiliated group
31 as defined in section 5102, subsection 1-B at the time of the transfer; or

32 (2) The transferee of the Maine shipbuilding facility or of the certified
33 applicant's stock is not a member of the certified applicant's unitary affiliated
34 group as defined in section 5102, subsection 1-B at the time of the transfer and
35 the commissioner finds that the transferee intends to continue the operations of
36 the Maine shipbuilding facility in substantially the same manner as prior to the
37 transfer and has the financial capability to do so.

38 If the commissioner grants a transfer of the certificate of approval, the transferee
39 must be treated as the certified applicant for all purposes of this section. For purposes
40 of calculation of employment and qualified investments of the certified applicant, the
41 qualified employees and the qualified investments of the transferor prior to transfer
42 must be considered the qualified employees and qualified investments of the
43 transferee.

1 D. The applicant or certified applicant may appeal in accordance with Title 5,
2 chapter 375, subchapter 7 any determination, action or failure to act by the
3 commissioner.

4 3. Credit. A certified applicant is allowed a credit annually against the tax otherwise
5 due under this Part as provided in this subsection.

6 A. Beginning with the tax year after the certified applicant has made qualified
7 investments of at least \$100,000,000, or the tax year beginning on or after January 1,
8 2020, whichever is later, and for each of the following 9 tax years, a certified
9 applicant is allowed a credit against the tax due under this Part for each taxable year
10 in an amount equal to 3% of the certified applicant's total qualified investment.

11 B. If a certified applicant completes an additional qualified investment of at least
12 \$100,000,000 prior to January 1, 2025, the certified applicant is allowed a credit
13 against the tax due under this Part beginning with the 11th tax year after the
14 investment required in paragraph A was made and continuing through the 15th tax
15 year after making that investment. The amount of the additional credit available in
16 each of those tax years is 3% of the certified applicant's additional qualified
17 investment. Eligibility for the additional credit must be demonstrated by the certified
18 applicant in the annual reports submitted pursuant to subsection 9.

19 C. The credit allowed under this subsection may not reduce the tax otherwise due
20 under this Part to less than zero.

21 4. Limitations. The following are limitations on the credit allowed under subsection
22 3.

23 A. Except as provided in subsection 5, the annual credit allowed to a certified
24 applicant or its transferee may not exceed \$3,000,000 in any tax year. Cumulative
25 credits taken under subsection 3, paragraph A may not exceed \$30,000,000 to any
26 certified applicant or transferee. Total cumulative credits taken under this section
27 may not exceed \$45,000,000 to any certified applicant or transferee.

28 B. For a tax year in which the qualified applicant has employment of fewer than
29 5,500, the amount of the credit is reduced as provided in subsection 6.

30 C. A taxpayer that is certified as a qualified Pine Tree Development Zone business
31 under Title 30-A, section 5250-O or that has received a certificate of approval for its
32 employment tax increment financing program pursuant to section 6755 is not eligible
33 for a credit under this section.

34 D. In no case may the credit be claimed for a tax year that begins after December 31,
35 2034.

36 5. Accelerated credit. If a certified applicant has employment in any tax year of at
37 least 6,000, the credit limitation in subsection 4, paragraph A is increased to \$3,125,000
38 for that tax year. If employment is at least 6,500, the credit limitation is increased to
39 \$3,250,000. If employment is at least 7,000, the credit is increased to \$3,375,000. If
40 employment is 7,500 or more, the credit is increased to \$3,500,000.

1 6. Reduced credit for reduced employment. If a certified applicant's employment
2 is fewer than 5,500 employees during the tax year, the credit allowed pursuant to
3 subsection 3 is reduced as follows.

4 A. If a certified applicant has employment in a tax year of fewer than 5,500 but at
5 least 5,250, the credit for that year is 90% of the credit otherwise allowed under
6 subsection 3.

7 B. If a certified applicant has employment in a tax year of fewer than 5,250 but at
8 least 5,000, the credit authorized for that year is 80% of the credit otherwise allowed
9 under subsection 3.

10 C. If a certified applicant has employment in a tax year of fewer than 5,000 but at
11 least 4,750, the credit for that year is 70% of the credit otherwise allowed under
12 subsection 3.

13 D. If a certified applicant has employment in a tax year of fewer than 4,750 but at
14 least 4,500, the credit for that year is 60% of the credit otherwise allowed under
15 subsection 3.

16 E. If a certified applicant has employment in a tax year of fewer than 4,500 but at
17 least 4,250, the credit for that year is 50% of the credit otherwise allowed under
18 subsection 3.

19 F. If a certified applicant has employment in a tax year of fewer than 4,250 but at
20 least 4,000, the credit for that year is 40% of the credit otherwise allowed under
21 subsection 3.

22 G. If a certified applicant has employment in a tax year of fewer than 4,000, the
23 credit allowed under subsection 3 may not be taken.

24 7. Revocation. A certificate of approval must be revoked by the commissioner if the
25 certified applicant has not made qualified investments of at least \$100,000,000 within 5
26 years after issuance of the certificate of approval.

27 8. Additional requirements. A certified applicant, when awarding contracts,
28 purchasing supplies or subcontracting work related to a qualified investment, shall give
29 preference, to the greatest extent possible, to Maine workers, companies and bidders as
30 long as the supplies, products, services and bids meet the standards required by the
31 certified applicant regarding value, quality, delivery terms and price.

32 9. Annual reporting requirement. A certified applicant, the commissioner and the
33 State Tax Assessor shall report annually in accordance with this subsection.
34 Notwithstanding any other provision of law to the contrary, the reports provided under
35 this subsection are public records as defined in Title 1, section 402, subsection 3.

36 A. On or before March 1st annually, a certified applicant shall file a report with the
37 commissioner for the immediately preceding calendar year, referred to in this
38 paragraph as the "report year," containing the following information:

39 (1) The employment of the certified applicant for the report year, including
40 specific information on:

1 (a) The number of qualified employees that are employed by the certified
2 applicant at the end of the report year;

3 (b) The total number of qualified employees hired during the report year;
4 and

5 (c) The number of qualified employees in positions that are covered by a
6 collective bargaining agreement;

7 (2) The total dollar amount of payroll associated with employment in the report
8 year, including specific information on:

9 (a) The average annual salary and wages for qualified employees; and

10 (b) The median annual salary and wages for qualified employees;

11 (3) The total dollar amount that was spent on goods and services obtained from
12 businesses with an office in the State from which business operations in the State
13 are managed; and

14 (4) The incremental level of qualified investments made during the report year,
15 including specific information on:

16 (a) The amount of qualified investment in facility, production equipment and
17 employee training and development, reported as an aggregate sum;

18 (b) The portion of the qualified investment reported under subparagraph (a)
19 that was spent on goods and services from businesses with an office in the
20 State from which business operations in the State are managed; and

21 (c) Whether the certified applicant has qualified for the additional credit
22 under subsection 3, paragraph B.

23 The commissioner may prescribe forms for the annual reports required under this
24 paragraph. The commissioner shall provide copies of the report to the State Tax
25 Assessor and to the joint standing committee of the Legislature having jurisdiction
26 over taxation matters at the time the report is received.

27 B. On or before April 1st annually, the commissioner shall report to the joint
28 standing committee of the Legislature having jurisdiction over taxation matters
29 aggregate data, with detail consistent with information required of certified applicants
30 under paragraph A, on employment levels and qualified investment amounts of
31 certified applicants for each year beginning with expenditures incurred on or after
32 January 1, 2018.

33 C. The State Tax Assessor shall report to the joint standing committee of the
34 Legislature having jurisdiction over taxation matters the revenue loss during each
35 state fiscal year as a result of this section for each taxpayer claiming the credit.

36 10. Evaluation; specific public policy objective; performance measures. The
37 credit provided under this section is subject to ongoing legislative review in accordance
38 with Title 3, chapter 37. In developing evaluation parameters to perform the review, the
39 Office of Program Evaluation and Government Accountability, the Legislature's

1 government oversight committee and the joint standing committee of the Legislature
2 having jurisdiction over taxation matters shall consider:

3 A. That the specific public policy objective of the credit provided under this section
4 is to create and retain jobs in the shipbuilding industry in this State by providing an
5 income tax credit to reduce the cost of investments in shipbuilding businesses and
6 thereby encourage investment in shipbuilding businesses and improve the
7 competitiveness of this State's shipbuilding industry; and

8 B. Performance measures, including, but not limited to:

9 (1) Employment during the period being reviewed and how employment during
10 that period compares to the minimum employment requirements set forth in
11 subsection 4, paragraph B;

12 (2) The amount of qualified investment during the period being reviewed, and
13 how expenditures compare to the minimum level of expenditure set forth in
14 subsection 1, paragraph I;

15 (3) Measures of industry competitiveness;

16 (4) Measures of fiscal impact and overall economic impact to the State; and

17 (5) Information regarding the procedures for ensuring compliance with the
18 preference requirements under subsection 8.

19 The Office of Program Evaluation and Government Accountability shall provide a report
20 of its evaluation under this subsection to the joint standing committee of the Legislature
21 having jurisdiction over taxation matters by August 15, 2024. Following receipt of the
22 report, the joint standing committee shall determine whether the credit provided under
23 this section is meeting its public policy objectives and whether it should be continued.
24 The joint standing committee may submit a bill to the First Regular Session of the 132nd
25 Legislature to accomplish its recommendations.'

26 SUMMARY

27 This amendment makes the following changes to the bill.

28 1. It changes the duration of the tax credit provided by the bill to a maximum of 15
29 years and requires an investment of at least \$100,000,000 be made to qualify for the first
30 10 years and an additional investment of \$100,000,000 to qualify for the next 5 years.

31 2. It changes the calculation for accelerated credits by changing the number of
32 qualified employees required and providing that the amount of accelerated credit is a
33 specified amount rather than a percentage.

34 3. It provides a reduced credit for years when employment drops below specified
35 levels and eliminates the availability of exception years.

36 4. It removes provisions making the credit refundable.

37 5. It provides that a certified applicant may not receive the credit if it is a qualified
38 Pine Tree Development Zone business or has received a certificate of approval for an
39 employment tax increment financing program.

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6. It eliminates language requiring the State and the qualified applicant to enter into an agreement that the State will provide the credit for as long as the qualified applicant meets the requirements of the law on the date the certificate of approval is issued.

7. It adds provisions requiring review of the credit by 2024 by the Office of Program Evaluation and Government Accountability under the tax expenditure review process and changes the reports required by the certified applicant, the Commissioner of Economic and Community Development and the State Tax Assessor to facilitate the review process.

8. It makes changes to clarify the intent of the credit and to improve its administration.

FISCAL NOTE REQUIRED

(See attached)



Approved: 03/19/18 *MAC*

128th MAINE LEGISLATURE

LD 1781

LR 2789(02)

An Act To Encourage New Major Investments in Shipbuilding Facilities and the Preservation of Jobs

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-685)

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Net Cost (Savings)				
General Fund	\$0	\$0	\$0	\$2,660,000
Revenue				
General Fund	\$0	\$0	\$0	(\$2,660,000)
Other Special Revenue Funds	\$0	\$0	\$0	(\$140,000)

Fiscal Detail and Notes

The bill provides an income tax credit for major investments in a shipbuilding facility beginning with tax years beginning on or after January 1, 2020. It would result in a loss of General Fund revenue of \$2,660,000 and a loss of Local Government Fund revenue of \$140,000 in fiscal year 2020-21.

Additional costs to the Department of Economic and Community Development and the Legislature's Office of Program Evaluation and Government Accountability to implement the requirements of this bill can be absorbed within existing budgeted resources.