

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1781

H.P. 1227

House of Representatives, January 11, 2018

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DeCHANT of Bath.
Cosponsored by Senator VITELLI of Sagadahoc and
Representatives: ESPLING of New Gloucester, FREDETTE of Newport, Speaker GIDEON of
Freeport, GOLDEN of Lewiston, PIERCE of Dresden, Senators: JACKSON of Aroostook,
MASON of Androscoggin, President THIBODEAU of Waldo.

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

2 **Sec. 1. 36 MRSA §5219-RR** is enacted to read:

3 **§5219-RR. Tax credit for major shipbuilding facility investment**

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

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

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

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

14 D. "Exception year" means a calendar year in which a certified applicant has
15 employment of less than 5,000 if the Maine income taxes deducted and withheld by
16 the certified applicant from qualified employees for that year total at least
17 \$6,000,000. Beginning January 1, 2023, "exception year" means a calendar year in
18 which a certified applicant has employment of less than 4,000 if the total Maine
19 income taxes deducted and withheld by the certified applicant from qualified
20 employees for that year totals at least \$6,000,000. A certified applicant is allowed 2
21 exception years between January 1, 2020 and December 31, 2039.

22 E. "Facility" includes real estate, tangible personal property, fixtures, machinery and
23 equipment.

24 F. "Measurement day" means the last business day of every other month of a
25 calendar year.

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

28 (1) The applicant owns or operates or proposes to construct a shipbuilding
29 facility within the State;

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

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

33 H. "Qualified employee" means a person:

34 (1) Who is a full-time employee of the certified or qualified applicant, as the
35 case may be;

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

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

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

5 (5) Whose income calculated on a calendar year basis is greater than the average
6 annual per capita income in the State.

7 I. "Qualified investment" means expenditures incurred on or after January 1, 2018
8 that total at least \$100,000,000 and are related to the construction, improvement,
9 modernization or expansion of a shipbuilding facility within the State, including,
10 without limitation, all expenditures for investigation; planning; design; engineering;
11 permitting; acquisition; financing; construction; demolition; alteration; relocation;
12 remodeling; repair; reconstruction; design, purchase or installation of machinery and
13 equipment; clearing; filling; grading; reclamation of land; activities undertaken to
14 upgrade a waterway serving the facility; training of employees; capitalized interest;
15 professional services, including, but not limited to, architectural, engineering, legal,
16 accounting or financial services; administration; environmental and utility costs,
17 including, without limitation, sewage treatment plants, water, air and solid waste
18 equipment and treatment plants, environmental protection devices, electrical
19 facilities, storm or sanitary sewer lines, water lines or amenities, any other utility
20 services, preparation of environmental impact studies, informing the public about the
21 facility and environmental impact and environmental remediation, mitigation, clean-
22 up and protection costs; related offices, support facilities and structures; and any of
23 the foregoing expenditures made or costs incurred prior to or after the effective date
24 of this section or certification of an applicant. "Qualified investment" includes only
25 expenditures that are capitalized for federal income tax purposes. Except for
26 employees who are engaged in the design, engineering and construction of the
27 facility, "qualified investment" does not include the salaries or other compensation
28 paid to the employees of the qualified applicant or of any affiliate of the qualified
29 applicant. "Qualified investment" does not include any expenditure included as a
30 qualified investment by an applicant under chapter 919.

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

33 A. A qualified applicant may apply to the commissioner for a certificate of approval.
34 An applicant shall submit to the commissioner information demonstrating that the
35 applicant is a qualified applicant. A certified applicant may hold only one certificate
36 under this section at any time.

37 B. The commissioner, within 30 days of receipt of an application under paragraph A,
38 shall review the information contained in the application and issue a written
39 determination as to whether the applicant is a qualified applicant. If the
40 commissioner determines that the applicant is a qualified applicant, the commissioner
41 shall issue a certificate of approval to the qualified applicant at the time of the
42 determination. If the commissioner determines that the applicant is not a qualified
43 applicant, the commissioner shall issue a denial of the application at the time of the
44 determination.

1 C. Upon issuance of a certificate of approval to a qualified applicant, the
2 commissioner shall enter into an agreement on behalf of the State with the qualified
3 applicant. That agreement must provide that:

4 (1) The State shall allow the credit provided for in this section as it is in effect on
5 the date the certificate of approval is issued for as long as the qualified applicant
6 qualifies for the credit provided for in this section on the date the certificate is
7 issued;

8 (2) The qualified applicant, when awarding contracts, purchasing supplies or
9 subcontracting work related to a qualified investment, shall give preference, to
10 the greatest extent possible, to Maine workers, companies and bidders as long as
11 the supplies, products and bids meet the standards required by the qualified
12 applicant for best value, including, without limitation, quality and delivery, and
13 are competitively priced; and

14 (3) The qualified applicant, in conjunction with the Department of Economic and
15 Community Development, shall sponsor regional seminars for Maine businesses
16 on how to do business with the qualified applicant.

17 D. If a certified applicant proposes to transfer, including, without limitation, transfer
18 by operation of law, all or substantially all of the shipbuilding facility in which a
19 qualified investment was made to another person or if a person proposes to acquire
20 50% or more of the voting stock of the certified applicant, application may be made
21 to the commissioner to approve transfer of the certificate of approval to that person in
22 connection with the transfer of the stock or facility. The commissioner shall grant the
23 transfer of the certificate only if:

24 (1) The transferee of the shipbuilding facility or of the certified applicant's stock
25 is a member of the certified applicant's affiliated group as defined in section
26 5102, subsection 1-B at the time of the transfer; or

27 (2) The transferee of the shipbuilding facility or of the certified applicant's stock
28 is not a member of the certified applicant's affiliated group as defined in section
29 5102, subsection 1-B at the time of the transfer and the commissioner finds that
30 the transferee intends to continue the operations of the shipbuilding facility in
31 substantially the same manner as prior to the transfer and has the financial
32 capability to do so. In addition, prior to approval of any transfer, the
33 commissioner may request and be provided with the report and audit of the
34 transferor pursuant to section 6854. The commissioner may condition the
35 approval of the transfer based upon the findings of the report and audit.

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

42 E. A certificate of approval must be revoked by the commissioner if the certified
43 applicant has not made qualified investments of at least \$100,000,000 within 5 years
44 after issuance of the certificate of approval. A certified applicant whose certificate of

1 approval is revoked within 5 years after issuance of the certificate of approval shall
2 pay to the State the amount of any credits claimed by the certified applicant under
3 this section prior to revocation of the certificate. A certified applicant whose
4 certificate of approval is revoked between 6 and 10 years after issuance of the
5 certificate of approval shall pay to the State the amount of any credit claimed by the
6 certified applicant under this section between the 6th year and the year in which the
7 certificate is revoked.

8 F. The applicant or certified applicant may appeal in accordance with Title 5, chapter
9 375, subchapter 7 any determination, action or failure to act by the commissioner or
10 the State Tax Assessor.

11 **3. Credit.** A certified applicant is allowed a credit against the tax otherwise due
12 under this Part as provided in this subsection.

13 A. Beginning with the tax year following the calendar year during which the
14 qualified investment reaches \$100,000,000 and for each of the following 19 tax years,
15 a certified applicant is allowed a credit against the tax due under this Part in each tax
16 year in an amount equal to 3% of the certified applicant's total qualified investment.

17 B. The credit allowed under this subsection must be applied after subtraction of all
18 other credits for which the certified applicant is eligible. Any unused credit is fully
19 refundable.

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

22 A. Cumulative credits taken under this section may not exceed \$60,000,000 to any
23 certified applicant or transferee.

24 B. A credit is not allowed for any calendar year beginning before January 1, 2020 or
25 after December 31, 2039.

26 C. Until January 1, 2023, a credit is not allowed for a calendar year in which the
27 qualified applicant has employment of less than 5,000 unless that calendar year is an
28 exception year. Beginning January 1, 2023, a credit is not allowed for a calendar year
29 in which the qualified applicant has employment of less than 4,000 unless that
30 calendar year is an exception year. The amount of the credit in an exception year is
31 provided for in subsection 9.

32 **5. Annual reporting by certified applicant.** On or before March 1st annually a
33 certified applicant shall file a report with the State Tax Assessor and the commissioner
34 for the immediately preceding calendar year, referred to in this section as "the report
35 year," containing the following information:

36 A. The employment of the certified applicant for the report year; and

37 B. The incremental level of qualified investments made during the report year.

38 The State Tax Assessor may prescribe forms for the annual reports described in this
39 subsection. The report required by this subsection is not subject to the confidentiality
40 provisions of section 191 and may be made available to the public upon request.

1 modernization or expansion of the shipbuilding facility and maintain at least 5,000
2 employees. If the shipbuilding facility employs at least 5,250 employees, the facility is
3 entitled to an amount equal to 110% of the credit. The facility may employ fewer than
4 5,000 employees in 2 separate years within the 20-year period and still qualify for the
5 credit, but at a prorated reduction.

6 The purpose of this bill is to encourage major investments in shipbuilding facilities in
7 this State, to ensure the long-term survival of the shipbuilding industry, to preserve
8 numerous opportunities for jobs for the people of this State and to make the State more
9 competitive in the shipbuilding industry and thus ensure the preservation and betterment
10 of the economy of the State for the benefit of its people.