

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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Legislative Document

No. 1903

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S.P. 733

In Senate, April 9, 2018

### **An Act To Improve the Effectiveness of the Major Business Headquarters Expansion Tax Credit**

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Reported by Senator DOW of Lincoln for the Joint Standing Committee on Taxation pursuant to Public Law 2017, chapter 297, section 3.

Reference to the Committee on Taxation suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

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

2 **Sec. 1. 36 MRSA §5219-QQ**, as corrected by RR 2017, c. 1, §33, is amended to  
3 read:

4 **§5219-QQ. Credit for major business headquarters expansions**

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

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

9 A-1. "Base level of employment" means either the total employment of a qualified  
10 applicant as of the March 31st, June 30th, September 30th and December 31st of the  
11 calendar year immediately preceding the application for a certificate of approval  
12 under subsection 2 divided by 4 or the qualified applicant's average employment  
13 during the base period, whichever is greater.

14 A-2. "Base period" means the 3 calendar years prior to the year in which a qualified  
15 applicant's application for a certificate of approval under subsection 2 is approved by  
16 the commissioner.

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

19 C. "Employees based in the State" means employees that perform more than 50% of  
20 employee-related activities for the employer at the headquarters in the State.

21 D. "Facility" means one or more buildings and includes the real and personal  
22 property located in those buildings.

23 E. "Full-time" means an average of 36 hours weekly during the period of  
24 measurement.

25 F. "Headquarters" means the principal facility from which the applicant directs its  
26 national or global business activities, as determined by the commissioner at the time  
27 of application.

28 G. "Qualified applicant" means an applicant that, at the time an application for a  
29 certificate of approval is submitted, satisfies all of the following criteria:

30 (1) The applicant's headquarters are or will be located in the State;

31 (2) The applicant employs at least 5,000 full-time employees worldwide of  
32 which at least 25% are or will be based in ~~this~~ the State;

33 (3) The applicant has business locations in at least 3 other states or foreign  
34 countries; and

35 (4) The applicant intends to make a qualified investment in the State within 5  
36 years following the date of the application.

37 H. "Qualified investment" means an investment of at least \$35,000,000 to design,  
38 permit, construct, modify, equip or expand the applicant's headquarters in the State.

1 The investments and activities of a qualified applicant and other entities that are  
2 members of the qualified applicant's unitary business must be aggregated to  
3 determine whether a qualified investment has been made. A qualified investment  
4 does not include an investment made prior to the issuance of a certificate of approval  
5 or after December 31, 2022.

6 **2. Procedures for application; certificate of approval.** The provisions of this  
7 subsection govern the procedures for providing for and obtaining a certificate of  
8 approval.

9 A. A qualified applicant may apply to the commissioner for a certificate of approval.  
10 An applicant shall submit to the commissioner information demonstrating that the  
11 applicant is a qualified applicant. If a certified applicant undertakes to make an  
12 additional qualified investment, the certified applicant may apply to the  
13 commissioner for an additional certificate of approval.

14 B. The commissioner, within 30 days of receipt of an application submitted pursuant  
15 to paragraph A, shall determine whether the applicant is a qualified applicant and  
16 shall issue either a certificate of approval or a written denial indicating why the  
17 applicant is not qualified. The certificate issued by the commissioner must describe  
18 the qualified investment and specify the total amount of qualified investment  
19 approved under the certificate.

20 C. Upon issuance of a certificate of completion in accordance with paragraph F, the  
21 commissioner shall issue, on behalf of the State, a memorandum to the qualified  
22 applicant describing the benefits provided by this section at the time the certificate of  
23 completion is issued. The memorandum must provide that the certificate of  
24 completion does not prohibit the commissioner from revoking a certificate in  
25 accordance with paragraph E and does not prohibit the assessor from assessing and  
26 collecting an overpaid benefit in accordance with the provisions of this Title.

27 D. A certified applicant shall obtain approval from the commissioner to transfer the  
28 certificate of approval or, if the certified applicant has obtained a certificate of  
29 completion, that certificate of completion to another person. A certificate of approval  
30 or certificate of completion may be transferred only if all or substantially all of the  
31 assets of the certified applicant are, or will be, transferred to that person or if 50% or  
32 more of the certified applicant's voting stock is, or will be, acquired by that person.  
33 The commissioner shall approve the transfer of the certificate of approval or the  
34 certificate of completion only if at least one of the following conditions is satisfied:

35 (1) The transferee is a member of the applicant's unitary affiliated group at the  
36 time of the transfer; or

37 (2) The commissioner finds that the transferee will, and has the capacity to,  
38 maintain operations of the headquarters in the State in a manner that meets the  
39 minimum qualifications for continued eligibility of benefits under this section  
40 after the transfer occurs.

41 If the commissioner approves the transfer of the certificate, the transferee, from the  
42 date of the transfer, must be treated as the certified applicant and as eligible to claim  
43 any remaining benefit under the certificate of approval or the certificate of

1 completion that has not been previously claimed by the transferor as long as the  
2 transferee meets the same eligibility requirements and conditions for the credit as  
3 applied to the original certified applicant.

4 E. The commissioner must revoke a certificate of approval if the certified applicant  
5 or a person to whom a certificate of approval has been transferred pursuant to  
6 paragraph D fails to make a qualified investment within 5 years of the date of the  
7 certificate of approval. The commissioner shall revoke a certificate of approval or a  
8 certificate of completion if the applicant ceases operations of the headquarters in the  
9 State or the certificate of approval or certificate of completion is transferred to  
10 another person without approval from the commissioner pursuant to paragraph D. A  
11 certified applicant whose certificate of completion is revoked within 5 years after the  
12 date issued shall within 60 days following revocation of the certificate return to the  
13 State an amount equal to the total credits claimed under this section. A certified  
14 applicant whose certificate of completion is revoked during the period from 6 years  
15 after through 10 years after the date the certificate was issued shall within 60 days  
16 following revocation of the certificate return to the State an amount equal to the total  
17 credits claimed under this section for the period from 6 years after through 10 years  
18 after the date the certificate was issued. If credit amounts are recaptured after a  
19 certificate of approval has been transferred as provided in paragraph D, the transferee  
20 is responsible for payment of any credit amounts that must be returned to the State.

21 F. Upon making the qualified investment and completing the headquarters and  
22 employment criteria in subsection 1, paragraph G, a certified applicant shall submit  
23 an application to the commissioner for a certificate of completion. If the  
24 commissioner determines that a qualified investment has been made, the applicant's  
25 headquarters is located in the State and at least 25% of the applicant's full-time  
26 employees, as measured at the time of application for the certificate of approval, are  
27 based in the State, the commissioner shall issue a certificate of completion to the  
28 certified applicant as soon as is practical. The certificate of completion must state the  
29 amount of qualified investment made by the certified applicant.

30 The commissioner may not issue certificates of approval under this subsection that total,  
31 in the aggregate, more than \$100,000,000 of qualified investment or any individual  
32 certificate of approval for more than \$40,000,000 of qualified investment.

33 **3. Refundable credit allowed.** A ~~qualified~~ certified applicant is allowed a credit as  
34 provided in this subsection.

35 A. Subject to the limitations under paragraph B, beginning with the tax year during  
36 which the certificate of completion is issued or the tax year beginning in 2020,  
37 whichever is later, and for each of the following 19 tax years, a certified applicant is  
38 allowed a credit against the tax due under this Part for the taxable year in an amount  
39 equal to 2% of the ~~certified applicant's qualified investment~~ amount of actual  
40 qualified investment specified on the certified applicant's certificate of completion  
41 under subsection 2, paragraph F or the amount of qualified investment approved by  
42 the commissioner in the certificate of approval under subsection 2, paragraph B,  
43 whichever is less. The credit allowed under this paragraph is refundable.

44 B. The credit under this subsection is limited as follows:

1 (1) A credit is not allowed for any tax year during which the taxpayer does not  
2 meet or exceed the following employment targets as measured on the last day of  
3 the tax year.

4 (a) For each of the first 10 tax years for which the credit is claimed, there  
5 must be a total of at least 80 additional full-time employees based in the State  
6 above the certified applicant's base level of employment whose jobs were  
7 added since the first day of the first tax year for which the credit was claimed  
8 multiplied by the number of years for which the credit has been claimed.

9 (b) For each tax year after the 10th tax year for which the credit is claimed,  
10 the taxpayer must employ a total of at least 800 additional full-time  
11 employees based in the State above the certified applicant's base level of  
12 employment whose jobs were added since the first day of the first tax year  
13 for which the credit was claimed.

14 Jobs for additional full-time employees that are counted for determining  
15 eligibility for the credit under one certificate of completion may not be counted  
16 for determining eligibility for the credit under a separate certificate of  
17 completion.

18 (2) Cumulative credits under this subsection may not exceed \$16,000,000 under  
19 any one certificate.

20 **4. Reporting required.** A certified applicant and the commissioner are required to  
21 make reports pursuant to this subsection.

22 A. On or before March 1st of each year, a certified applicant shall file a report with  
23 the commissioner for the tax year ending during the immediately preceding calendar  
24 year, referred to in this paragraph as "the report year," containing the following  
25 information:

26 (1) The number of all full-time employees based in ~~this the~~ State of the certified  
27 applicant on the last day of the ~~tax year ending during the calendar year~~  
28 ~~immediately preceding the report year;~~ and

29 (2) The incremental amount of qualified investment made in the report year;

30 (3) The total number of additional full-time employees added in the State by the  
31 certified applicant above the certified applicant's base level of employment since  
32 the date a certificate of approval was issued;

33 (4) The incremental number of additional full-time employees added in the State  
34 by the certified applicant above the certified applicant's base level of employment  
35 during the report year;

36 (5) The average and median wages of all additional full-time employees above  
37 the certified applicant's base level of employment in the State whose jobs were  
38 added since the first day of the first tax year for which the credit was claimed;  
39 and

40 (6) The percentage and number of all additional full-time employees above the  
41 certified applicant's base level of employment who have access to retirement  
42 benefits and health benefits.

1 The commissioner may prescribe forms for the annual report described in this  
2 paragraph. The commissioner shall provide copies of the report to the State Tax  
3 Assessor and to the joint standing committee of the Legislature having jurisdiction  
4 over taxation matters at the time the report is received.

5 B. By April 1st of each year, the commissioner shall report to the joint standing  
6 committee of the Legislature having jurisdiction over taxation matters aggregate data  
7 on employment levels and qualified investment amounts of certified applicants for  
8 each year that the certified applicant claimed a credit under this section, and the State  
9 Tax Assessor shall report to the committee the revenue loss during the previous  
10 calendar year, including the loss due to refundable credits, as a result of this section  
11 for each taxpayer claiming the credit.

12 Notwithstanding any other provision of law to the contrary, the reports provided under  
13 this subsection are public records as defined in Title 1, section 402, subsection 3.

14 **5. Evaluation; specific public policy objective; performance measures.** The  
15 credit provided under this section is subject to ongoing legislative review in accordance  
16 with Title 3, chapter 37. In developing evaluation parameters to perform the review, the  
17 Office of Program Evaluation and Government Accountability, the joint legislative  
18 committee established to oversee program evaluation and government accountability  
19 matters and the joint standing committee of the Legislature having jurisdiction over  
20 taxation matters shall consider:

21 A. That the specific public policy objective of the credit provided under this section  
22 is to create and retain high-quality jobs in the State by encouraging major businesses  
23 to locate their headquarters in the State or to expand their headquarters in the State.  
24 For purposes of this subsection, "high-quality jobs" means jobs for which health  
25 insurance benefits and retirement benefits are available; and

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

27 (1) The number of additional full-time employees added during a period being  
28 reviewed and how employment during that period compares to the minimum  
29 employment requirements set forth in subsection 3, paragraph B;

30 (2) The amount of qualified investment during a period being reviewed, and how  
31 expenditures compare to the minimum level of expenditure set forth in subsection  
32 1, paragraph H;

33 (3) The change in the number of major business headquarters located in the State  
34 and the number of expansions of those headquarters during a period being  
35 reviewed;

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

37 (5) The number of new employees for whom health benefits and retirement  
38 benefits are available.

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**SUMMARY**

This bill makes the following changes to improve the effectiveness of the income tax credit for major business expansions.

1. It provides that the number of additional employees that must be added by a certified applicant must be determined based on the number of qualifying employees above the certified applicant's base level of employment.

2. It provides that a certificate of completion issued by the Commissioner of Economic and Community Development must state the amount of the qualified investment made by the certified applicant, and it clarifies that the credit is 2% of the lesser of the amount of actual qualified investment specified in the certified applicant's certificate of completion and the amount of qualified investment approved in the certificate of approval.

3. It amends reporting requirements and establishes evaluation guidance to improve the future review of the credit under the Maine Revised Statutes, Title 3, chapter 37 by the Office of Program Evaluation and Government Accountability, the joint legislative committee established to oversee program evaluation and government accountability matters and the joint standing committee of the Legislature having jurisdiction over taxation matters.

4. It clarifies that, if a certificate of approval has been transferred, the transferee is responsible for any repayment obligations if there is a recapture of credit amounts.

**FISCAL NOTE REQUIRED**  
**(See attached)**





# 128th MAINE LEGISLATURE

LD

LR 2996(01)

## An Act To Improve the Effectiveness of the Major Business Headquarters Expansion Tax Credit

**Fiscal Note for Original Bill**

**Committee: Taxation**

**Fiscal Note Required: Yes**

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### Fiscal Note

Minor cost increase - General Fund

#### **Fiscal Detail and Notes**

Additional costs to the Legislature's Office of Program Evaluation and Government Accountability and the Departments of Administrative and Financial Services and Economic and Community Development can be absorbed within existing budgeted resources.