

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 10, 1997.

CHAPTER 449

S.P. 641 - L.D. 1863

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

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

Sec. 1. 36 MRSA c. 919 is enacted to read:

CHAPTER 919

SHIPBUILDING FACILITY CREDIT

§6850. Purpose and intent

The Legislature finds that encouragement of major investments in shipbuilding facilities in this State and the preservation of substantial numbers of jobs are in the public interest and promote the general welfare of the people of the State. The Legislature further finds that the enactment of incentives as set forth in this chapter to promote major shipbuilding investments in the State and substantial job retention is necessary in order to ensure the long-term survival of the shipbuilding industry in this State, to preserve numerous opportunities for jobs for the people of the State, to make this State more competitive in the shipbuilding industry and thus to ensure the preservation and betterment of the economy of the State for the benefit of its people. The Legislature further finds that the foregoing benefits to the State and its people far exceed the costs to the State of providing the incentives set forth in this chapter. The Legislature further finds that the provisions of this chapter are necessary to accomplish these objectives.

The Legislature recognizes that the incentives offered by the State pursuant to this chapter are intended to induce major investments in shipbuilding facilities and that any party who accepts and reasonably relies upon these inducements in making qualified investments is entitled to the full realization of these incentives without impairment by subsequent changes in law. The Legislature recognizes that when determining whether a project is financially feasible, an investing party must rely in good faith upon the Legislature to assure that the promised incentives of this law will be available for a period of up to 20 years and that a party's confidence in the full realization of

these benefits is a critical factor in inducing it to make the desired investment. It is the intent of this Legislature that all successor Legislatures honor the commitments held out by this chapter.

§6851. Definitions

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

1. Certified applicant. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this chapter and does not participate in the Employment Tax Increment Financing Program established in section 6752 while receiving this credit.

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

3. Employment. "Employment" means, for each calendar 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 calendar year as chosen by the certified applicant and then dividing that sum by 6.

4. Exception year. "Exception year" means the first calendar year in which a certified applicant has employment of less than 5,000 if the total Maine income taxes deducted and withheld by the certified applicant from qualified employees for that year totals at least \$6,000,000. Beginning January 1, 2003, "exception year" means the first calendar year in which a certified applicant has employment of less than 3,500 if the total Maine income taxes deducted and withheld by the certified applicant from qualified employees for that year totals at least \$6,000,000. A certified applicant is allowed 2 exception years between January 1, 1999 and December 31, 2018.

5. Facility. "Facility" includes real estate, tangible personal property, fixtures, machinery and equipment.

6. Measurement day. "Measurement day" means the last business day of every other month of any calendar year.

7. Qualified applicant. "Qualified applicant" means an applicant for benefits under this chapter that satisfies each of the following tests.

A. The applicant owns or operates or proposes to construct a shipbuilding facility within the State.

B. The applicant proposes to make a qualified investment.

C. The applicant employs at least 6,500 qualified employees at the time the application is filed.

D. The applicant does not otherwise qualify for the Maine Employment Tax Increment Financing Program set forth in section 6751 at the time the application is filed.

8. Qualified employee. "Qualified employee" means a person:

A. Who is a full-time employee of the certified or qualified applicant as the case may be;

B. Whose income from that employment is taxable under Title 36, chapter 803;

C. For whom a retirement program is provided subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended;

D. For whom group health insurance is provided; and

E. Whose income calculated on a calendar year basis is greater than the average annual per capita income in the State.

9. Qualified investment. "Qualified investment" means expenditures incurred after October 1, 1996 totaling at least \$200,000,000 related to the construction, improvement, modernization or expansion of a shipbuilding facility within the State that results in, supports or enables the utilization of an approximately 10-acre facility that will enable the applicant to erect ships on a flat surface and launch them on an abutting dry dock, including, without limitation, all expenditures for investigation; planning; design; engineering; permitting; acquisition; financing; construction; demolition; alteration; relocation; remodeling; repair; reconstruction; clearing; filling; grading; reclamation of land; activities undertaken to upgrade a waterway serving the facility; capitalized interest; professional services, including, but not limited to, architectural, engineering, legal, accounting or financial services; administration; environmental and utility costs, including, without limitation, sewerage treatment plants, water, air and solid waste equipment and treatment plants, environmental protection devices, electrical facilities, storm or sanitary sewer lines, water lines or amenities, any other utility services, preparation of environmental impact studies, informing the public about the facility and environmental impact and environmental remediation, mitigation, clean-up and protection costs; related offices, support facilities and structures; and any of the foregoing expenditures made or costs incurred prior to or after the effective date of this chapter or certification of an applicant and regardless

of whether the expenditure relates to an activity or improvement within or outside of the approximately 10-acre facility. "Qualified investment" includes only expenditures that are capitalized for federal income tax purposes. Except for employees who are engaged in the design, engineering and construction of the facility, "qualified investment" does not include the salaries or other compensation paid to the employees of the qualified applicant or of any affiliate of the qualified applicant.

10. Qualified ship. "Qualified ship" means any new ship launched by a certified applicant during or after 1998:

A. Built at a facility constructed, expanded, modified or modernized as part of a qualified investment; and

B. For which the certified applicant has a contract with an original contract value of at least \$200,000,000.

§6852. Procedures for application; certificate of approval

1. Application. A qualified applicant may apply to the commissioner for a certificate of approval. Applicants shall submit to the commissioner information demonstrating that the applicant is a qualified applicant. A certified applicant may hold only one certificate at any time.

2. Determination by commissioner. The commissioner, within 30 days of receipt of the application, shall review the information contained in the application and issue a written determination as to whether the applicant is a qualified applicant. If the commissioner determines that the applicant is a qualified applicant, the commissioner shall issue a certificate of approval to the qualified applicant at the time of the determination. If the commissioner determines that the applicant is not a qualified applicant, the commissioner shall issue a denial of the application at the time of the determination.

3. Memorandum of agreement. Upon issuance of a certificate of approval to a qualified applicant, the commissioner shall enter into an agreement on behalf of the State with the qualified applicant. That agreement must provide that the State shall allow the credit provided for in this chapter as it is in effect on the date the certificate of approval issues for as long as the applicant qualifies for the credit provided for in this chapter on the date the certificate issues.

4. Transfer of certificate. If a certified applicant proposes to transfer, including, without limitation, transfer by operation of law, all or substantially all of the shipbuilding facility in which a qualified investment was made to another person, or a person

proposes to acquire 50% or more of the voting stock of the certified applicant, application may be made to the commissioner to approve transfer of the certificate to that person in connection with the transfer of the stock or facility. The commissioner shall grant the transfer of the certificate only if one of the following conditions is satisfied.

A. The transferee of the shipbuilding facility or of the certified applicant's stock is a member of the certified applicant's affiliated group as defined in section 5102, subsection 1-B at the time of the transfer.

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

If the commissioner grants a transfer of the certificate, the transferee must be treated as the certified applicant for all purposes of this chapter. For purposes of calculation of employment, withholding taxes, qualified investment expenditures and the number of qualified ships of the certified applicant, the qualified employees of the transferor prior to transfer, the state income taxes deducted and withheld by the transferor from the wages of those qualified employees pursuant to chapter 827 prior to transfer, the qualified investment expenditures of the transferor prior to transfer and the qualified ships of the transferor prior to transfer must be considered the qualified employees, withholding taxes, qualified investment expenditures and qualified ships of the transferee, respectively.

5. Revocation of certificate. A certificate of approval must be revoked by the commissioner if the certified applicant has not made qualified investment expenditures of at least \$150,000,000 within 5 years and \$200,000,000 within 10 years after issuance of the certificate of approval or if the shipbuilding facility is closed or transferred in an unapproved transfer within 5 years after issuance of the certificate of approval. A certified applicant whose certificate of approval is revoked within 5 years after issuance of the certificate of approval shall pay to the State the amount of any credits claimed by the certified applicant under this chapter prior to revocation of the certificate. A certified applicant whose certificate of approval is

revoked between 6 and 10 years after issuance of the certificate of approval shall pay to the State the amount of any credit claimed by the certified applicant under this chapter between the 6th year and the year in which the certificate is revoked.

6. Appeal. The applicant or certified applicant may appeal in accordance with Title 5, chapter 375, subchapter VII any determination, action or failure to act by the commissioner or the State Tax Assessor.

§6853. Credit against withholding taxes allowed

1. Generally. Subject to the provisions of subsection 2 and notwithstanding any contrary provisions of chapter 827, a certified applicant is allowed a credit equal to \$3,000,000 for each calendar year, beginning with the 1999 calendar year, against \$3,000,000 that otherwise would be required to be remitted to the State Tax Assessor on or after July 1st of each calendar year by the certified applicant pursuant to chapter 827 for state income taxes deducted and withheld from wages of qualified employees by the certified applicant. The credit taken with respect to withholding taxes not remitted must be reflected on the withholding returns submitted by the certified applicant pursuant to chapter 827 and constitutes a credit against the applicant's liability for and obligation to remit the withholding tax against which the credit is taken.

1-A. Calendar year 1999 credit. Notwithstanding subsection 1, the credit to be taken in calendar year 1999 may be taken in 2 parts. The first part is a credit against the first \$1,000,000 that otherwise would be required to be remitted to the assessor on or after January 1, 1999. The remainder of the credit allowed for 1999 pursuant to this section and section 6856, if applicable, may not be taken until after July 1, 1999.

2. Limitations. The following are limitations on the credit allowed under subsection 1.

A. A credit is not allowed for any calendar year beginning after the earlier of the following:

(1) December 31, 2018; or

(2) December 31st of the calendar year during which the certified applicant has launched its 30th qualified ship.

B. A credit is not allowed for a calendar year in which the qualified applicant has employment of less than 5,000 unless that calendar year is an exception year. Beginning January 1, 2003, a credit is not allowed for a calendar year in which the qualified applicant has employment of less than 3,500 unless that calendar year is an exception year.

C. Total credits under this section may not exceed \$60,000,000 to any certified applicant or transferee.

3. Effect on employee. Notwithstanding any contrary provisions of chapter 827, the amount of income tax deducted and withheld by a certified applicant from the wages of a person pursuant to chapter 827 in any calendar year is considered paid to the State Tax Assessor on behalf of the person from whom the income tax was withheld without regard to any credit taken by a certified applicant under this chapter, and that person is credited with having paid that amount of tax for the taxable year beginning in the calendar year without regard to any credit taken by a certified applicant under this chapter. If more than one taxable year begins in a calendar year, that person may claim that amount as a credit for the most recent taxable year.

§6854. Reporting required

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

- A. The employment of the certified applicant for the calendar year immediately preceding the report year;
- B. The number of qualified ships launched by the certified applicant from January 1, 1998 to December 31st of the report year; and
- C. The incremental level of qualified investments made for the calendar year immediately preceding the report year.

The State Tax Assessor may prescribe forms for the annual reports described in this section.

2. Audit of report. The State Tax Assessor has the authority to audit any report or return filed under this chapter or chapter 827 to ensure the certified applicant was eligible for the credit claimed by the certified applicant. If the certified applicant has claimed a credit in an amount that the State Tax Assessor concludes exceeded the amount that the certified applicant was entitled to claim for that calendar year, the State Tax Assessor shall issue an assessment for that amount within 3 years after the date of the certified applicant's last withholding return on which the credit for that calendar year was claimed. A certified applicant may seek reconsideration of any determination or assessment pursuant to section 151.

3. Report to Legislature. The State Tax Assessor shall report, to the joint standing committee of the Legislature having jurisdiction over taxation matters, aggregate data on employment levels and qualified investment amounts of a certified applicant for each year beginning with expenditures incurred after October 1, 1996. The report must be made during the first regular session of each Legislature beginning with the 120th Legislature.

§6855. Land

1. Public benefit. The Legislature, recognizing that the submerged and intertidal lands as those terms are defined in Title 12, chapters 202 and 202-A, respectively, are owned by the State for the benefit of the public and are impressed with a public trust and having considered all factors relevant to that public trust and the impact that conveying or leasing the submerged and intertidal land described in this subsection to a certified applicant would have on the public trust and the benefits to the State and its people from the conveyance or lease, finds that a conveyance or lease to a certified applicant of all or any part of the State's right, title and interest in and to no more than 15 acres of submerged and intertidal lands owned by the State, and located on the westerly side of the Kennebec River between the southerly side of the Carlton Bridge and a point 2 miles southerly of the Carlton Bridge, in order to construct, improve, modernize or expand a shipbuilding facility, is necessary to ensure the long-term survival of the shipbuilding industry in this State, to preserve numerous opportunities for jobs for the people of this State, to make the State more competitive in the shipbuilding industry and thus to ensure the preservation and betterment of the economy of the State for the benefit of its people and the Legislature further finds that the grant or lease will benefit a class of persons much greater than the certified applicant and that the impact, if any, on the public trust in what remains would be minimal and that the foregoing benefits to the State and its people resulting from the conveyance or lease far exceed any impact on the public trust in submerged and intertidal lands.

2. Conveyance by State. The State is authorized to lease to a certified applicant for a period of up to 5 years or until a qualified investment of \$150,000,000 is made, whichever is sooner, all or any part of the State's right, title and interest in the submerged and intertidal lands not exceeding 15 acres located as described in subsection 1 as necessary or convenient for the certified applicant to construct, improve, modernize or expand a shipbuilding facility. At the end of the lease period, the State is authorized to convey to a certified applicant the same property that was leased. The conveyance must be made for consideration equal to the fair market value of submerged lands at the time of conveyance. The

provisions of Title 12, chapters 202 and 202-A do not apply to any conveyance or lease. Failure on the part of the certified applicant to purchase any submerged or intertidal lands under this subsection does not relieve the certified applicant of liability for violation of any state or federal environmental laws or regulations or local ordinances affecting submerged or intertidal lands during the lease period.

§6856. Accelerated credit

Beginning July 1, 1999, if a certified applicant has employment in any calendar year of at least 5,500, the credit authorized in section 6853 must be increased to \$3,125,000. If employment is at least 6,000, the credit must be increased to \$3,250,000. If employment is at least 6,500, the credit must be increased to \$3,375,000. If employment is 7,000 or more, the credit must be increased to \$3,500,000.

§6857. Decelerated credit

Beginning July 1, 2003, if a certified applicant has employment in any calendar year of less than 5,000 but equal to or greater than 4,500, the credit authorized in section 6853 must be decreased to \$2,875,000. If employment is less 4,500 but equal to or greater than 4,000, the credit must be decreased to \$2,750,000. If employment is less than 4,000 but equal to or greater than 3,500, the credit must be reduced to \$2,625,000.

§6858. Maine preference

As part of the contractual inducement for the qualified applicant to make a qualified investment and for the State to provide the credit pursuant to this chapter, the qualified applicant agrees when awarding contracts, purchasing supplies or subcontracting work related to a qualified investment or qualified ship to give, to the greatest extent possible, preference to Maine workers, companies and bidders provided the supplies, products and bids meet the standards required by the qualified applicant for best value, including, without limitation, quality and delivery, and are competitively priced.

The qualified applicant further agrees in conjunction with the Department of Economic and Community Development to sponsor regional seminars for Maine businesses on how to do business with the qualified applicant.

Sec. 2. Calculation and transfer. Notwithstanding the Maine Revised Statutes, Title 5, section 1585, or any other provision of law, the State Budget Officer shall calculate the amount that will remain on June 30, 1999 in all lapsing General Fund accounts and apply against each affected account the amount of the savings identified in section 3 and shall transfer the calculated amounts by financial order. These

transfers are to be considered adjustments to appropriations. The State Budget Officer shall provide the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs with a report of the transferred amounts no later than May 15, 1999.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1998-99

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Departments and Agencies - Statewide

Unallocated (\$949,000)

Deappropriates funds identified as amounts available in fiscal year 1998-99 that would otherwise lapse.

See title page for effective date.

CHAPTER 450

H.P. 303 - L.D. 367

An Act to Provide That the Operator of a Motor Vehicle Is Not Responsible for Securing in a Seat Belt a Passenger 18 Years of Age or Older

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

Sec. 1. 29-A MRSA §2081, sub-§3, as reenacted by PL 1995, c. 597, §1, is amended to read:

3. Person between 4 and 18. When a person 4 years of age or older; but less than ~~49~~ 18 years of age, is a passenger in a vehicle that is required by the United States Department of Transportation to be equipped with seat belts, the operator must have the person properly secured in a seat belt or in a child safety seat. When a person who is less than ~~49~~ 18 years of age is the operator of a vehicle that is required by the United States Department of Transportation to be equipped with seat belts, that operator must be properly secured in a seat belt.

Sec. 2. 29-A MRSA §2081, sub-§3-A, as amended by PL 1995, c. 597, §2, is further amended to read: