

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2002 to April 25, 2002**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 25, 2002**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2002**

insurance coverage offered by the State, recipients of a service retirement benefit under the Maine State Retirement System who are retired state employees and who are reemployed as state employees must be treated as retirees under section 285, subsection 1-A for purposes of eligibility for coverage under the group plan.

**Sec. 8. Status of employees who have retired and returned to covered participating local district employment under Maine State Retirement System.** Notwithstanding the Maine Revised Statutes, Title 5, section 18251, subsection 1, recipients of a service retirement benefit from the Maine State Retirement System for service in the employment of a participating local district who have returned to covered employment under the retirement system in a position that would otherwise be covered by the retirement plan for a participating local district may not contribute to the retirement system, do not earn creditable service for their employment after retirement and do not earn any additional retirement benefits as a result of that employment.

See title page for effective date.

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## CHAPTER 700

H.P. 1655 - L.D. 2162

### An Act to Supplement Maine's Academic Attainment and to Retain Talent

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

**Sec. 1. 10 MRSA c. 110, sub-c. XI** is enacted to read:

#### SUBCHAPTER XI

#### EDUCATIONAL ATTAINMENT AND RECRUITMENT TAX CREDITS

#### §1100-Y. Definitions

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

**A. "Eligible student" means a student who:**

- (1) Is a resident of the State;
- (2) Is a graduate of an approved secondary school or the equivalent, including, but not limited to, a student who received equivalent instruction through home instruction, a student who matriculated at an accredited

public or private institution of higher education in the State prior to high school graduation or a student who successfully completed a general educational development examination or its equivalent;

(3) Is or will be matriculated at an institution of higher education; and

(4) Signs a statement of intent to reside in the State upon graduation from that institution of higher education.

**B. "Need-based scholarship" means a scholarship awarded by a qualified scholarship organization to an eligible student based on financial need as determined by eligibility requirements established by the qualified scholarship organization that awards the scholarship.**

**C. "Qualified scholarship organization" means an organization certified by the authority under subsection 2.**

**D. "Resident of the State" means a person who is either an independent student who has been domiciled in the State for at least one calendar year prior to the date of attendance at an accredited public or private educational institution or a dependent student whose parent or legal guardian has been domiciled in the State at least one calendar year prior to the date of attendance at an accredited public or private educational institution. A residence established in the State solely for the purpose of attending an accredited public or private institution of higher education in the State is not sufficient to establish domicile in the State.**

**2. Certification of qualified scholarship organizations.** The authority shall provide initial and annual certification for qualified scholarship organizations in accordance with this subsection.

**A. For initial certification, the organization must be a private, nonprofit organization that is qualified under Section 501(c)(3) of the Internal Revenue Code, that has as one of its purposes the provision of need-based scholarships to eligible students, that meets the standards adopted by the authority by rule under subsection 7, that files reports as required by this section and that:**

(1) Is affiliated with and designated by an accredited institution of higher education in this State; or

(2) Has filed as a nonprofit corporation with the Secretary of State on or before April 1, 2002 and remains in good standing with the Secretary of State.

B. Following initial certification pursuant to paragraph A, annual certification standards for a qualified scholarship organization must include the requirement that the qualified scholarship organization has awarded in the form of need-based scholarships at least 95% of the contributions received during the preceding calendar year that are eligible for a tax credit under Title 36, section 2527 or 5219-U.

**3. Annual filing.** A qualified scholarship organization shall file an annual report of its activities with the authority. The annual report must state the eligibility requirements established by the qualified scholarship organization for awarding need-based scholarships to eligible students, the total number of contributions to the organization and the total dollar amount contributed to the organization over the reporting period and must identify the total number of scholarships awarded and the amount of money paid by the organization for need-based scholarships identified by the county of residence of the eligible student and the institutions of higher education receiving scholarship funds.

**4. Information to contributors.** A qualified scholarship organization shall, by January 31st annually, provide to each person who contributed \$250 or more to that organization during the previous calendar year a statement:

A. Identifying the total amount contributed by the contributor during the year to that organization and notifying the contributor that the contribution may be eligible for credits provided under Title 36, sections 2527 and 5219-U; and

B. Notifying the contributor that the total amount contributed during the year and the amount of the contribution eligible for the credits provided under Title 36, sections 2527 and 5219-U will be reported to the Department of Administrative and Financial Services, Bureau of Revenue Services.

**5. Information to Bureau of Revenue Services.** A qualified scholarship organization shall, by January 31st annually, provide a statement to the Department of Administrative and Financial Services, Bureau of Revenue Services identifying the amount of the contribution made by each taxpayer that has made a contribution that is eligible for the credits provided under Title 36, sections 2527 and 5219-U, the total amount contributed by each taxpayer during the previous calendar year for need-based scholarships to the qualified scholarship organization and the amount of the total contribution by the taxpayer that is eligible for the credits provided under Title 36, sections 2527 and 5219-U.

**6. Report to committees.** The authority, in conjunction with the Department of Administrative and Financial Services, Bureau of Revenue Services, shall file a report annually with the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters. The report must provide a summary of the information collected under this section and analyze the costs and benefits of the tax credits provided under Title 36, sections 2527, 2528, 5219-U and 5219-V. The report may make recommendations for increasing the effectiveness of these tax credits.

**7. Rulemaking.** The authority, after consultation with the Bureau of Revenue Services, shall establish rules for the application, eligibility and annual filing requirements necessary to implement the certification of qualified scholarship organizations pursuant to this section and may include any rules necessary to establish initial application fees and penalties, which may include monetary penalties and revocation of certification, to ensure that a qualified scholarship organization is fulfilling the requirements of this section. These rules may also include any necessary conflict-of-interest provisions pertaining to qualified scholarship organizations. The authority shall also establish any rules necessary to define postsecondary education loans that are eligible for the recruitment credits provided under Title 36, sections 2528 and 5219-V. Rules adopted pursuant to this subsection, including those setting initial application fees and penalties, are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The authority shall submit a report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and to the joint standing committee of the Legislature having jurisdiction over taxation matters by January 30, 2003 on the rules and rule-making process to implement the tax credit program established pursuant to this subchapter.

**Sec. 2. 36 MRSA §§2527 and 2528** are enacted to read:

**§2527. Educational attainment investment tax credit**

**1. Definitions.** As used in this section, the terms "need-based scholarship" and "qualified scholarship organization" have the same meaning as under Title 10, section 1100-Y, subsection 1.

**2. Credit allowed.** A taxpayer is allowed a credit against the tax otherwise due under this chapter in the amount of:

A. Ten percent of the amount contributed during the taxable year to a qualified scholarship or-

ganization for need-based scholarships for tax years beginning in 2003;

B. Twenty percent of the amount contributed during the taxable year to a qualified scholarship organization for need-based scholarships for tax years beginning in 2004; or

C. Fifty percent of the amount contributed during the taxable year to a qualified scholarship organization for need-based scholarships for tax years beginning after 2004.

The total combined credit for each taxpayer under this section and section 2528 may not exceed \$10,000 annually for the taxpayer. For purposes of this subsection, the contribution may not directly benefit a director, trustee, officer or employee of the taxpayer claiming the credit or the spouse or child of a director, trustee, officer or employee. The contribution may be made in cash, its equivalent or in stock. In no case may the credit reduce the tax otherwise due under this chapter to less than zero.

**3. Carry over to succeeding years.** A taxpayer entitled to a credit under this section for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 5 taxable years the portion, as reduced from year to year, of any unused credits.

#### §2528. Recruitment credit

**1. Credit allowed.** A taxpayer is allowed a credit against the tax otherwise due under this chapter in the amount of:

A. Beginning in 2003, 10% of the amount of loan repayments paid during the taxable year to a creditor on behalf of an employee of the taxpayer as part of a postsecondary education loan repayment agreement between the taxpayer and the employee of the taxpayer; and

B. Beginning in 2004, 15% of the amount of loan repayments paid during the taxable year to a creditor on behalf of an employee of the taxpayer as part of a postsecondary education loan repayment agreement between the taxpayer and the employee of the taxpayer.

**2. Conditions.** The credit allowed under subsection 1 is subject to the conditions under this subsection.

A. At the time the taxpayer and the employee enter into a loan repayment agreement under this section, the employee of the taxpayer must have graduated from an accredited public or private institution of higher education, be a resident individual as defined in section 5102, subsection 5

and have an outstanding postsecondary education loan as defined by rules established by the Finance Authority of Maine pursuant to Title 10, section 1100-Y, subsection 7.

B. A postsecondary education loan repayment agreement under this section may not directly benefit a director, trustee or officer of the taxpayer claiming the credit or the spouse or child of a director, trustee or officer of the taxpayer claiming the credit.

C. The total credit for each taxpayer under this section and section 2527 may not exceed \$10,000 annually for the taxpayer and may not reduce the tax otherwise due under this chapter to less than zero. A taxpayer entitled to a credit under this section for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 5 taxable years the portion, as reduced from year to year, of any unused credits.

**Sec. 3. 36 MRSA §5122, sub-§1, ¶¶M and N,** as enacted by PL 2001, c. 559, Pt. GG, §10, and affected by §26, are amended to read:

M. The absolute value of the amount of any net operating loss arising from a tax year beginning or ending in 2001 that the taxpayer, pursuant to Section 102 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-147, carries back more than 2 years to the taxable year for federal income tax purposes; and

N. For any taxable year beginning in 2002, an amount equal to the net increase in depreciation attributable to a 30% bonus depreciation deduction claimed by the taxpayer pursuant to Section 101 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-147 with respect to property placed in service during the taxable year, multiplied by the factor obtained by subtracting from the number 1.0 the conformity factor calculated by the State Tax Assessor under section 112, subsection 12-1;

**Sec. 4. 36 MRSA §5122, sub-§1, ¶¶O and P** are enacted to read:

O. The amount of the contribution to a qualified scholarship organization that is included in the credit base of the educational attainment investment tax credit under section 5219-U to the extent that the contribution has been used to adjust federal adjusted gross income; and

P. The amount of the loan repayment included in the credit base of the recruitment credit under section 5219-V to the extent that the repayment

has been used to adjust federal adjusted gross income.

**Sec. 5. 36 MRSA §5200-A, sub-§1, ¶¶M and N**, as enacted by PL 2001, c. 559, Pt. GG, §15 and affected by §26, is amended to read:

M. The absolute value of the amount of any net operating loss arising from a tax year beginning or ending in 2001 that the taxpayer, pursuant to Section 102 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-147, carries back more than 2 years to the taxable year for federal income tax purposes; ~~and~~

N. For any taxable year beginning in 2002, an amount equal to the net increase in depreciation attributable to a 30% bonus depreciation deduction claimed by the taxpayer pursuant to Section 101 of the federal Job Creation and Worker Assistance Act of 2002, Public Law 107-147 with respect to property placed in service during the taxable year, multiplied by the factor obtained by subtracting from the number 1.0 the conformity factor calculated by the State Tax Assessor under section 112, subsection 12-;

**Sec. 6. 36 MRSA §5200-A, sub-§1, ¶¶O and P** are enacted to read:

O. The amount of the contribution to a qualified scholarship organization that is included in the credit base of the educational attainment investment tax credit under section 5219-U to the extent that the contribution has been used to adjust federal taxable income; and

P. The amount of the loan repayment included in the credit base of the recruitment credit under section 5219-V to the extent that the contribution has been used to adjust federal taxable income.

**Sec. 7. 36 MRSA §§5219-U and 5219-V** are enacted to read:

**§5219-U. Educational attainment investment tax credit**

**1. Definitions.** As used in this section, the terms "need-based scholarship" and "qualified scholarship organization" have the same meaning as under Title 10, section 1100-Y, subsection 1.

**2. Credit allowed.** A taxpayer is allowed a credit against the tax otherwise due under this Part in the amount of:

A. Ten percent of the amount contributed to a qualified scholarship organization for need-based scholarships for tax years beginning in 2003;

B. Twenty percent of the amount contributed to a qualified scholarship organization for need-based scholarships for tax years beginning in 2004; or

C. Fifty percent of the amount contributed to a qualified scholarship organization for need-based scholarships for tax years beginning after 2004.

The credit may not exceed \$2,000 for an individual taxpayer or \$10,000 for each taxpayer who is an employing unit as defined in Title 26, section 1043, subsection 10. For individual taxpayers, the total combined tax credit under this section and under section 5219-V may not exceed \$10,000 annually. For purposes of this subsection, the contribution may not directly benefit the taxpayer claiming the credit, a spouse or child of an individual taxpayer claiming the credit, a director, trustee, officer or employee of an employing unit claiming the credit or the spouse or child of a director, trustee, officer or employee of an employing unit claiming the credit. The contribution may be made in cash, its equivalent or in stock. In no case may the credit reduce the tax otherwise due under this Part to less than zero.

**3. Carry over to succeeding years.** A taxpayer entitled to a credit under this section for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 5 taxable years the portion, as reduced from year to year, of any unused credits.

**§5219-V. Recruitment credit**

**1. Credit allowed.** A taxpayer who is an employing unit as defined in Title 26, section 1043, subsection 10 is allowed a credit against the tax otherwise due under this Part in the amount of:

A. Beginning in 2003, 10% of the amount of loan repayments paid during the taxable year to a creditor on behalf of an employee of the taxpayer as part of a postsecondary education loan repayment agreement between the taxpayer and the employee of the taxpayer; and

B. Beginning in 2004, 15% of the amount of loan repayments paid during the taxable year to a creditor on behalf of an employee of the taxpayer as part of a postsecondary education loan repayment agreement between the taxpayer and the employee of the taxpayer.

**2. Conditions.** The credit allowed under subsection 1 is subject to the conditions under this subsection.

A. At the time the taxpayer and the employee enter into the loan repayment agreement under this section, the employee of the taxpayer must

have graduated from an accredited public or private institution of higher education, be a resident individual as defined in section 5102, subsection 5 and have an outstanding postsecondary education loan as defined by rules established by the Finance Authority of Maine pursuant to Title 10, section 1100-Y, subsection 7.

B. A postsecondary education loan repayment agreement under this section may not directly benefit a director, trustee or officer of the taxpayer claiming the credit or the spouse or child of a director, trustee or officer of the taxpayer claiming the credit.

C. The total combined credit for each taxpayer under this section and under section 5219-U may not exceed \$10,000 annually and may not reduce the tax otherwise due under this Part to less than zero. A taxpayer entitled to a credit under this section for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 5 taxable years the portion, as reduced from year to year, of any unused credits.

**Sec. 8. Reserve fund; transfers from unappropriated surplus at end of fiscal year 2001-02.** There is created a reserve within the General Fund to carry out the purposes of this Act called the Educational Attainment Tax Credit Reserve, referred to in this section as the "reserve."

After the transfers authorized in Public Law 2001, chapter 559, Part GG, section 25, subsection 3 and as the next priority after the transfers in subsection 3, at the close of fiscal year 2001-02, the State Controller shall transfer from the unappropriated surplus of the General Fund after all required deductions of appropriations and budgeted financial commitments, an amount not to exceed \$271,294 to the reserve.

**Sec. 9. Review of policy alternatives available to Legislature in creating endowment fund to provide scholarships.** Beginning January 1, 2003 the Maine Higher Educational Attainment Council established pursuant to the Maine Revised Statutes, Title 5, section 12004-G, subsection 10-B to address policies related to higher education attainment in the State shall review the policy alternatives available to the Legislature in creating an endowment fund for the benefit of eligible residents of the State to meet the high cost of attending an institution of higher education. The advisory council review must include an examination of existing endowment programs in the State as well as endowment programs established in other states to provide financial assistance to eligible residents enrolled at an institution of higher education. The advisory council shall submit a report

that includes its findings and recommendations, including any suggested legislation, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the Legislative Council no later than December 1, 2003. If the advisory council requires a limited extension of time to complete its report, it may apply to the Legislative Council, which may grant the extension. The advisory council is not authorized to introduce legislation under this section. Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over education and cultural affairs may report out a bill to the Second Regular Session of the 121st Legislature.

This section takes effect only if the Maine Higher Educational Attainment Council is established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 10-B.

**Sec. 10. Application.** Those sections of this Act that enact the Maine Revised Statutes, Title 36, sections 2527; 2528; 5122, subsection 1, paragraphs O and P; section 5200-A, subsection 1, paragraphs O and P; and sections 5219-U and 5219-V apply to tax years beginning on or after January 1, 2003.

**Sec. 11. Contingent effective date.** Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 2527, subsection 2, paragraph A; section 2528, subsection 1, paragraph A; section 5219-U, subsection 2, paragraph A; and section 5219-V, subsection 1, paragraph A take effect only if the State Controller certifies to the State Tax Assessor that \$271,294 has been transferred to the Educational Attainment Tax Credit Reserve from the General Fund unappropriated surplus at the close of fiscal year 2001-02.

Before the close of June 30, 2003, the State Controller shall transfer any balance in the reserve to the General Fund unappropriated surplus.

**Sec. 12. State controller; post-closing.** The State Controller is authorized to keep open the official system of general accounts of State Government for fiscal year 2001-02 in order to make post-closing entries and adjustments to carry out the provisions of this Act until September 30, 2002.

See title page for effective date, unless otherwise indicated.