

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTIETH LEGISLATURE

FIRST REGULAR SESSION
December 2, 2020 to March 30, 2021

FIRST SPECIAL SESSION
April 28, 2021 to July 19, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2021

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 18, 2021

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

Augusta, Maine
2021

~~paragraph B~~ and rates of compensation for assigned counsel and contract counsel under subsection ~~2~~ 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and

Sec. 6. 4 MRSA §1805, sub-§9-A is enacted to read:

9-A. Audits; recoupment. Conduct audits of financial requests and payments and recoup payments when necessary. The executive director may exercise the subpoena power of the commission granted under section 1804, subsection 3, paragraph O;

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

Effective July 15, 2021.

CHAPTER 482

S.P. 566 - L.D. 1713

An Act To Revitalize Maine's Paper Industry through the Establishment of an Income Tax Credit for Paper Manufacturing

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

Sec. 1. 36 MRSA §191, sub-§2, ¶NNN is enacted to read:

NNN. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-YY, subsection 4, paragraph C of the revenue loss, including the loss due to refundable credits, attributable to each taxpayer claiming the tax credit for paper manufacturing facility investment provided under that section, regardless of the number of persons eligible for the credit.

Sec. 2. 36 MRSA §191, sub-§2, ¶OOO is enacted to read:

OOO. The disclosure of information to the Department of Economic and Community Development necessary for the administration of the tax credit for paper manufacturing facility investment pursuant to section 5219-YY.

Sec. 3. 36 MRSA §5219-YY is enacted to read: **§5219-YY. Credit for paper manufacturing 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. "Employee based at a paper manufacturing facility" means an employee who performs more than 50% of the employee's employee-related activities for the employer at a paper manufacturing facility.

D. "Full-time" means an average of at least 36 hours weekly during the period of measurement.

E. "Headquarters" has the same meaning as in section 5219-QQ, subsection 1, paragraph F.

F. "Paper manufacturing facility" means a facility in the State that is used primarily to manufacture paper products, including facilities used in support of such paper manufacturing.

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

(1) The applicant owns a paper manufacturing facility located in a county in this State with an unemployment rate that is at least 20% higher than the state average unemployment rate, as determined in the most recent annual state and county unemployment rate report issued by the Department of Labor;

(2) The applicant directly employs at least 400 qualified employees, at least 75% of whom earn at least 115% of the most recent annual per capita personal income in the county in which the qualified employee is employed;

(3) The applicant intends to make a qualified investment in the State within 2 years following the date of the application;

(4) The applicant's paper manufacturing facility is not located within a low-income community. As used in this subparagraph, "low-income community" has the same meaning as in the Code, Section 45D(e)(1);

(5) The applicant has not received a qualified low-income community investment under section 5219-HH with respect to the paper manufacturing facility at which the qualified investment is made or intended to be made;

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

(7) The applicant is not certified under the Pine Tree Development Zone program pursuant to Title 30-A, section 5250-O or the Maine Employment Tax Increment Financing Program established in chapter 917.

H. "Qualified employee" means a full-time employee of the qualified applicant based at a paper manufacturing facility for whom a retirement program subject to the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Chapter 18 and group health insurance are provided and whose income derived from employment at a paper manufacturing facility, calculated on a calendar year basis, is greater than the most recent annual per capita personal income in the county in which the qualified employee is employed. "Qualified employee" does not include an employee who is transferred, as determined by the commissioner, to a qualified applicant from an affiliated business located in the State.

I. "Qualified investment" means expenditures of at least \$15,000,000 to design, permit, build, rebuild, modify, replace, repair or acquire machinery or equipment, including supporting equipment, to modernize or improve a paper manufacturing facility. The expenditures of a qualified applicant and other entities, whether or not incorporated, that are part of a single business enterprise must be aggregated to determine whether a qualified investment has been made. A qualified investment includes any amount spent, prior to the issuance of a certificate of approval, on machinery, equipment, repair parts, replacement parts or replacement equipment, including additions and accessions to other machinery and equipment, as long as the machinery, equipment, parts, additions or accessions are placed in service after the issuance of a certificate of approval. A qualified investment does not include an investment made prior to January 1, 2021 or after December 31, 2025. "Qualified investment" does not include any amount expended to qualify for Pine Tree Development Zone program benefits under Title 30-A, chapter 206, subchapter 4.

2. Procedures for application; certificate of approval. This subsection governs the procedures for providing for and obtaining a certificate of approval.

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

B. The commissioner, within 30 days of receipt of an application submitted pursuant to paragraph A, shall determine whether the applicant is a qualified applicant and shall issue either a certificate of approval or a written denial indicating why the applicant is not qualified. The certificate issued by the

commissioner must describe the qualified investment and specify the total amount of qualified investment approved under the certificate.

The commissioner may not issue certificates of approval under this subsection that total, in the aggregate, more than \$40,000,000 of qualified investment.

C. A certified applicant shall obtain approval from the commissioner prior to the transfer of a certificate of approval or, if the certified applicant has obtained a certificate of completion under paragraph E, that certificate of completion to another person. A certificate of approval or certificate of completion may be transferred only if all or substantially all of the assets of the certified applicant are, or will be, transferred to that person or if 50% or more of the certified applicant's voting stock or analogous noncorporate equity interest is, or will be, acquired by that person. The commissioner shall approve the transfer of the certificate of approval or the certificate of completion only if at least one of the following conditions is satisfied:

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

(2) The commissioner finds that the transferee will, and has the capacity to, maintain operations of the paper manufacturing facility in a manner that meets the minimum qualifications for continued eligibility of benefits under this section after the transfer occurs.

If the commissioner approves the transfer of the certificate, the transferee, from the date of the transfer, must be treated as the certified applicant and as eligible to claim any remaining benefit under the certificate of approval or the certificate of completion that has not been previously claimed by the transferor as long as the transferee meets the same eligibility requirements and conditions for the credit as applied to the original certified applicant.

D. The commissioner shall revoke a certificate of approval if the certified applicant or a person to whom a certificate of approval has been transferred pursuant to paragraph C fails to make a qualified investment within 2 years of the date of the certificate of approval. The commissioner shall revoke a certificate of approval or a certificate of completion under paragraph E if the applicant or transferee ceases operations of the paper manufacturing facility in the State or the certificate of approval or certificate of completion is transferred to another person without approval from the commissioner pursuant to paragraph C. A certified applicant whose certificate of completion is revoked within 5 years after the date issued shall return to the State an

amount equal to the total credits claimed under this section. A certified applicant whose certificate of completion is revoked during the period from 6 years after to 10 years after the date the certificate was issued shall return to the State an amount equal to the total credits claimed under this section for the period from 6 years after to 10 years after the date the certificate was issued. If credit amounts are subject to recapture after a certificate of approval has been transferred as provided in paragraph C, the transferee is responsible for payment of any credit amounts that must be returned to the State. A certified applicant whose certificate of approval or certificate of completion has been revoked pursuant to this paragraph is not eligible for the tax credit under this section for the tax year in which the certificate is revoked and any year thereafter. Any amount to be returned to the State pursuant to this paragraph must be added to the tax imposed on the taxpayer under this Part for the taxable year during which the certificate is revoked.

E. Upon making a qualified investment, a certified applicant shall submit an application to the commissioner for a certificate of completion. If the commissioner determines that a qualified investment has been made, the commissioner shall issue a certificate of completion to the certified applicant as soon as is practical. The certificate of completion must state the amount of qualified investment made by the certified applicant.

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

3. Refundable credit allowed. For tax years beginning on or after January 1, 2024, a certified applicant is allowed a credit as provided in this subsection.

A. Subject to the limitations under paragraph B, beginning with the tax year during which a certificate of completion is issued under subsection 2, paragraph E or the tax year beginning in 2023, whichever is later, and for each of the following 9 tax years, a certified applicant is allowed a credit against the tax due under this Part for the taxable year in an amount equal to 4% of the certified applicant's qualified investment.

The credit allowed under this subsection is refundable.

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

(1) A credit is not allowed for any tax year during which the taxpayer does not have at least 400 qualified employees based at the paper manufacturing facility where the qualified investment was made, at least 75% of whom earn at least 115% of the most recent annual per capita personal income in the county in which the qualified employee is employed, as measured on the last day of the tax year.

(2) Cumulative credits under this subsection for all certified applicants may not exceed \$1,600,000 per year and \$16,000,000 in total.

(3) A credit is not allowed to any person if the certified applicant has received a qualified low-income community investment under section 5219-HH with respect to the paper manufacturing facility at which the qualified investment is made under this section.

(4) A credit is not allowed to any person who receives benefits under the Pine Tree Development Zone program pursuant to Title 30-A, section 5250-O or the Maine Employment Tax Increment Financing Program established in chapter 917 related to the paper manufacturing facility in the tax year for which a credit is claimed under this section.

(5) A credit is not allowed to any person for any tax year during which the headquarters of the certified applicant are not located in the State.

4. Reporting required. A certified applicant, the commissioner and the assessor are required to make reports pursuant to this subsection.

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

(1) The number of qualified employees of the certified applicant on the last day of the report year; and

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

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

B. By April 1st of each year, the commissioner 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 certified applicants for each year that a certified applicant claimed a credit under this section.

C. By December 31st of each year, beginning in 2025, the assessor shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters the revenue loss during the report year as a result of this section for each taxpayer claiming the credit and, if necessary, shall include updated revenue loss amounts for any previous tax year. For purposes of this paragraph, "revenue loss" means the credit claimed by the taxpayer and allowed pursuant to this section, consisting of the amount of the credit used to reduce the tax liability of the taxpayer and the amount of the credit refunded to the taxpayer, stated separately.

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

5. Rules; fees. The commissioner and the assessor may jointly adopt rules to implement this section, including, but not limited to, rules for determining and certifying eligibility. The commissioner may also by rule establish fees to offset the costs of administering this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Any fees collected pursuant to this subsection must be deposited into a special revenue account administered by the commissioner, and those fees may be used only to defray the actual costs of administering the credit under this section.

6. Evaluation; specific public policy objectives; performance measures. The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. In developing evaluation parameters to perform the review, 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 shall consider:

A. That the specific public policy objectives of the credit provided under this section are to provide incentives for the revitalization of paper manufacturing facilities in counties with high unemployment and to create or retain high-quality jobs in the State by encouraging paper manufacturers to modernize their paper manufacturing equipment to better compete in the marketplace; and

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

(1) The number of qualified employees added or retained during the period being reviewed

and how employment during that period compares to the minimum employment requirements established in subsection 3, paragraph B, subparagraph (1);

(2) The amount of qualified investment made by certified applicants during the period being reviewed and how those investments compare to the minimum level of investment required in subsection 1, paragraph I;

(3) The increase in the vitality and competitiveness of the State's paper industry in the marketplace;

(4) The change in the number of paper manufacturers and machinery used for the production of paper products located in the State and the number of modernization projects undertaken at those paper manufacturing facilities during the period being reviewed; and

(5) Measures of fiscal impact and overall economic impact to the State and to the regions in which certified applicants are located.

Sec. 4. Legislative findings; purpose. The Legislature finds that it is in the best interest of the people of the State to encourage the modernization of the State's paper manufacturing facilities, particularly those facilities located in areas of high unemployment, to allow the State's paper manufacturing facilities to better compete in the paper industry. The Legislature further finds that investments in machines used for the production of paper products in the State will create new jobs, retain current jobs, benefit small businesses that supply goods and services to paper manufacturing facilities, increase the tax base and provide many other direct and indirect economic benefits to the State.

Sec. 5. Effective date. This Act takes effect January 1, 2024.

Effective January 1, 2024.

CHAPTER 483

S.P. 577 - L.D. 1733

**An Act To Provide Allocations
for the Distribution of State
Fiscal Recovery Funds**

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

PART A

Sec. A-1. Appropriations and allocations. The following appropriations and allocations are made.

**ECONOMIC AND COMMUNITY
DEVELOPMENT, DEPARTMENT OF**