



# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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Legislative Document

No. 1781

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H.P. 1227

House of Representatives, January 11, 2018

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

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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 **6. Audit of report.** The State Tax Assessor has the authority to audit any report or  
2 return filed under this section to ensure the certified applicant was eligible for the credit  
3 claimed by the certified applicant. If the certified applicant has claimed a credit in an  
4 amount that the State Tax Assessor concludes exceeded the amount that the certified  
5 applicant was entitled to claim for that calendar year, the State Tax Assessor shall issue  
6 an assessment for that amount pursuant to section 141. A certified applicant may seek  
7 reconsideration of any determination or assessment pursuant to section 151.

8 **7. Report to Legislature.** The State Tax Assessor shall report to the joint standing  
9 committee of the Legislature having jurisdiction over taxation matters aggregate data on  
10 employment levels and qualified investment amounts of a certified applicant for each  
11 year beginning with expenditures incurred on or after January 1, 2018. The report must  
12 be made during the first regular session of each Legislature, beginning with the 129th  
13 Legislature.

14 **8. Accelerated credit.** If a certified applicant has employment in any calendar year  
15 of at least 5,250, the credit authorized in subsection 3 must be increased to 110% of the  
16 credit due otherwise under subsection 3.

17 **9. Decelerated credit in exception year.** The credit due a certified applicant in an  
18 exception year is determined pursuant to this subsection.

19 **A.** If a certified applicant has employment in an exception year of less than 5,000 but  
20 at least 4,750, the credit authorized in subsection 3 for that year must be decreased to  
21 90% of the credit otherwise due under subsection 3.

22 **B.** If a certified applicant has employment in an exception year of less than 4,750 but  
23 at least 4,500, the credit authorized in subsection 3 for that year must be decreased to  
24 80% of the credit otherwise due under subsection 3.

25 **C.** If a certified applicant has employment in an exception year of less than 4,500 but  
26 at least 4,250, the credit authorized in subsection 3 for that year must be decreased to  
27 70% of the credit otherwise due under subsection 3.

28 **D.** If a certified applicant has employment in an exception year of less than 4,250 but  
29 at least 4,000, the credit authorized in subsection 3 for that year must be decreased to  
30 60% of the credit otherwise due under subsection 3.

31 **E.** If a certified applicant has employment in an exception year of less than 4,000, the  
32 credit authorized in subsection 3 for that year must be decreased to 50% of the credit  
33 otherwise due under subsection 3.

## 34 SUMMARY

35 For tax years beginning on or after January 1, 2020 and continuing for the next 19  
36 years, this bill provides a tax incentive for major investments in a shipbuilding facility  
37 and the preservation of jobs at that shipbuilding facility by allowing the shipbuilding  
38 facility an annual income tax credit equal to 3% of the shipbuilding facility's total  
39 qualified investment, as long as certain employment levels are maintained. In order to  
40 qualify for the credit, the shipbuilding facility must make expenditures after January 1,  
41 2018 of at least \$100,000,000 that are related to the construction, improvement,

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.