

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Date: (Filing No. S-)

TAXATION

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 505, L.D. 1586, Bill, “An Act To Promote Major Food Processing and Manufacturing Facility Expansion and To Create Jobs in Maine”

Amend the bill by striking out everything after the title and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, food processing and manufacturing facilities based in Maine create employment opportunities and generate significant economic growth; and

Whereas, there is an immediate need for greater employment opportunities and economic growth in the food processing and manufacturing industry; and

Whereas, investment in new food processing and manufacturing facilities is not likely to occur without the incentives provided in this legislation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §191, sub-§2, ¶¶HHH and III are enacted to read:

HHH. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-VV, subsection 4, paragraph B of the revenue loss, including the loss due to refundable credits, attributable to each taxpayer claiming the tax credit for major food processing and manufacturing facility expansion provided under that section, regardless of the number of persons eligible for the credit.

COMMITTEE AMENDMENT

1 III. The disclosure of information to the Department of Economic and Community
2 Development necessary for the administration of the tax credit for major food
3 processing and manufacturing facility expansion pursuant to section 5219-VV.

4 **Sec. 2. 36 MRSA §5219-VV** is enacted to read:

5 **§5219-VV. Credit for major food processing and manufacturing facility expansion**

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

8 A. "Base level of employment" means the greater of:

9 (1) The total employment of a qualified applicant as of the March 31st, June
10 30th, September 30th and December 31st immediately preceding the application
11 for a certificate of approval under subsection 2 divided by 4; and

12 (2) The qualified applicant's average employment during the base period.

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

16 C. "Certified applicant" means a qualified applicant that has received a certificate of
17 approval from the commissioner pursuant to this section.

18 D. "Commissioner" means the Commissioner of Economic and Community
19 Development.

20 E. "Employees based in the State" means employees that perform 100% of
21 employee-related activities for the employer at the facility in the State.

22 F. "Facility" means a food processing and manufacturing facility, plant or mill,
23 including one or more structures and including the equipment, machinery, fixtures
24 and personal property located in, on, over, under and adjacent to those structures, by
25 which the applicant, as determined by the commissioner at the time of application,
26 processes, produces and manufactures food from agricultural products primarily
27 grown and harvested in the State.

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

30 H. "Headquarters" means the principal office from which a qualified applicant
31 directs its national or global business activities, as determined by the commissioner at
32 the time of application.

33 I. "Primarily grown and harvested in the State" means that not less than 95% of the
34 agricultural products processed in the facility are grown and harvested in the State,
35 except when such products are not reasonably available by reason of an act of God,
36 pestilence, weather or other factors beyond the reasonable control of the applicant or
37 applicant's suppliers.

38 J. "Qualified applicant" means an applicant that, at the time an application for a
39 certificate of approval is submitted, is itself, or is the parent or subsidiary of, an entity
40 that satisfies all of the following criteria:

1 (1) The applicant's headquarters are, and have been for each of the last 5 years
2 prior to application for a certificate of approval, located in the State;

3 (2) The applicant intends to make a qualified investment in the State within 5
4 years following the date of the application;

5 (3) Construction of the applicant's facility begins no sooner than April 1, 2019 as
6 evidenced by the date of issuance of an appropriate municipal building permit;

7 (4) The applicant employs or will employ upon start-up of the facility at least 40
8 full-time employees based in the State; and

9 (5) The annual income derived from employment with the applicant of at least
10 75% of the applicant's employees exceeds the most recent annual per capita
11 personal income in the county in which the facility is located.

12 K. "Qualified investment" means an investment of at least \$35,000,000 to design,
13 permit, construct, modify, equip or expand the applicant's facility in the State. The
14 investments and activities of a qualified applicant and other entities that are members
15 of the qualified applicant's unitary business may be aggregated to determine whether
16 a qualified investment has been made. A qualified investment does not include an
17 investment made prior to April 1, 2019 or after December 31, 2024.

18 **2. Procedures for application; certificate of approval.** The provisions of this
19 subsection govern the procedures for providing for and obtaining a certificate of
20 approval.

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

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

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

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

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

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

11 D. The commissioner shall revoke a certificate of approval if the certified applicant
12 or a person to whom a certificate of approval has been transferred pursuant to
13 paragraph C fails to make a qualified investment within 5 years of the date of the
14 certificate of approval. The commissioner shall revoke a certificate of approval or a
15 certificate of completion under paragraph E if the applicant or transferee ceases
16 operations of the facility in the State or the certificate of approval or certificate of
17 completion is transferred to another person without approval from the commissioner
18 pursuant to paragraph C. A certified applicant whose certificate of completion is
19 revoked within 5 years after the date issued shall return within 60 days following
20 revocation of the certificate to the State an amount equal to the total credits claimed
21 for all tax years under this section. A certified applicant whose certificate of
22 completion is revoked during the period from 6 years after through 10 years after the
23 date the certificate was issued shall return within 60 days following revocation of the
24 certificate to the State an amount equal to the total credits claimed under this section
25 for the period from 6 years after through 10 years after the date the certificate was
26 issued. The amount to be returned to the State under this paragraph is, for purposes
27 of this Title, a tax subject to the collection and enforcement provisions contained in
28 Part 1, including the application of applicable interest and penalties. The amount to
29 be returned to the State must be added to the tax imposed on the taxpayer under this
30 Part for the taxable year during which the certificate is revoked.

31 E. A certified applicant shall submit an application to the commissioner for a
32 certificate of completion. If the commissioner determines that the certified applicant
33 has made a qualified investment and satisfied the facility and employment criteria in
34 subsection 1, paragraph J, the commissioner shall issue a certificate of completion to
35 the certified applicant as soon as is practical. The certificate of completion must state
36 the amount of qualified investment made by the certified applicant.

37 The commissioner may not issue certificates of approval under this subsection that total,
38 in the aggregate, more than \$100,000,000 of qualified investment or any individual
39 certificate of approval for more than \$85,000,000 of qualified investment.

40 **3. Refundable credit allowed.** A certified applicant is allowed a credit as provided
41 in this subsection.

42 A. Subject to the limitations under paragraph B, beginning with the first full tax year
43 after the certified applicant has been issued a certificate of completion under
44 subsection 2, paragraph E or the tax year beginning on January 1, 2022, whichever is

1 later, and for each of the following 19 tax years, a certified applicant is allowed a
2 credit against the tax due under this Part for the taxable year in an amount equal to
3 1.8% of the certified applicant's qualified investment. If the certified applicant is a
4 pass-through entity, the owner or owners of the certified applicant are allowed the
5 credit. The credit allowed under this paragraph is refundable.

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

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

10 (a) For each of the first 3 tax years for which the credit is claimed, there
11 must be a total of at least 40 full-time employees based in the State above the
12 certified applicant's base level of employment whose jobs were added since
13 the first day of the first tax year for which the credit was claimed.

14 (b) For each tax year after the 3rd tax year for which the credit is claimed,
15 the taxpayer must employ a total of at least 60 full-time employees based in
16 the State above the certified applicant's base level of employment whose jobs
17 were added since the first day of the first tax year for which the credit was
18 claimed.

19 Jobs for additional full-time employees that are counted for determining
20 eligibility for the credit under one certificate of completion under subsection 2,
21 paragraph E may not be counted for determining eligibility for the credit under a
22 separate certificate of completion. For purposes of this subparagraph, "additional
23 full-time employees" does not include employees who are shifted to a certified
24 applicant's facility in the State from an affiliated business in the State. The
25 commissioner shall determine whether a shifting of employees has occurred. For
26 purposes of this subparagraph, "affiliated business" has the same meaning as in
27 section 6753, subsection 1-A.

28 (2) A credit is not allowed for any tax year following 2 consecutive tax years
29 during which the certified applicant did not have between \$5,500,000 and
30 \$12,000,000 in ordinary business income.

31 (3) Cumulative credits under this subsection may not exceed \$34,000,000 under
32 any one certificate.

33 **4. Appeals.** The applicant or certified applicant may appeal in accordance with Title
34 5, chapter 375, subchapter 7 any determination, action or failure to act by the
35 commissioner under this section.

36 **5. Reporting required.** A certified applicant, the commissioner and the assessor are
37 required to make reports pursuant to this subsection.

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

1 (1) The number of full-time employees based in the State of the certified
2 applicant on the last day of the tax year ending during the calendar year
3 immediately preceding the report year; and

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

5 The commissioner may prescribe forms for the annual report described in this
6 paragraph. The commissioner shall provide copies of the report to the assessor, to the
7 Office of Program Evaluation and Government Accountability and to the joint
8 standing committee of the Legislature having jurisdiction over taxation matters at the
9 time the report is received.

10 B. By April 1st of each year, the commissioner shall report to the Office of Program
11 Evaluation and Government Accountability and to the joint standing committee of the
12 Legislature having jurisdiction over taxation matters aggregate data on employment
13 levels and qualified investment amounts of certified applicants for each year that the
14 certified applicant claimed a credit under this section, and the assessor shall report to
15 the Office of Program Evaluation and Government Accountability and to the
16 committee the revenue loss during the previous calendar year, including the loss due
17 to refundable credits, as a result of this section for each taxpayer claiming the credit.

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

20 **6. Rulemaking.** The commissioner may adopt routine technical rules as defined in
21 Title 5, chapter 375, subchapter 2-A to implement this section.

22 **7. Evaluation; specific public policy objectives; performance measures.** The
23 credit provided under this section is subject to ongoing legislative review in accordance
24 with Title 3, chapter 37. The Office of Program Evaluation and Government
25 Accountability shall submit an evaluation of the credit provided under this section to the
26 joint legislative committee established to oversee program evaluation and government
27 accountability and the joint standing committee of the Legislature having jurisdiction
28 over taxation matters. In developing evaluation parameters to perform the review, the
29 office shall consider:

30 A. That the specific public policy objectives of the credit provided under this section
31 are:

32 (1) To create high-quality jobs in the State by encouraging major businesses to
33 locate or expand their food processing and manufacturing facilities in this State
34 and to encourage the recruitment and training of employees for these facilities;
35 and

36 (2) To directly and indirectly improve the overall economy of the State including
37 the agricultural economy, small businesses, employment in rural areas and
38 expansion of the tax base; and

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

40 (1) The number, geographic distribution and income of full-time employees
41 added or retained during a period being reviewed who would not have been
42 added or retained in the absence of the credit;

