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Legislative Document

No. 1689

S.P. 545

In Senate, May 10, 2021

**An Act To Ensure Equity in the Clean Energy Economy by
Providing a Limited Tax Exemption for Certain Clean Energy
Infrastructure Projects**

Received by the Secretary of the Senate on May 6, 2021. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MAXMIN of Lincoln.
Cosponsored by Representative PLUECKER of Warren and
Senators: HICKMAN of Kennebec, President JACKSON of Aroostook, Representative:
CUDDY of Winterport.

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

2 **Sec. 1. 26 MRSA §1407** is enacted to read:

3 **§1407. Certification of clean energy projects**

4 The Department of Labor, referred to in this section as "the department," shall certify
5 clean energy projects seeking an exemption from sales tax pursuant to Title 36, section
6 2021 in accordance with this section.

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

9 A. "Biomass" includes:

- 10 (1) By-products of pulping and wood manufacturing processes;
- 11 (2) Animal waste;
- 12 (3) Solid organic fuels from wood;
- 13 (4) Forest or field residues;
- 14 (5) Wood from demolition or construction debris;
- 15 (6) Food waste;
- 16 (7) Fuel alcohols derived from algae and other sources;
- 17 (8) Crops specifically grown to provide biomass;
- 18 (9) Biosolids; and
- 19 (10) Yard waste.

20 "Biomass" does not include wood that has been treated with chemical preservatives
21 such as creosote, pentachlorophenol or copper chrome arsenate; wood from old growth
22 forests; or municipal solid waste.

23 B. "Clean energy" means electricity generated using fuel cells, wind, solar cells,
24 biomass, tides or waves, geothermal resources or technology that converts otherwise
25 lost energy from exhaust.

26 C. "Clean energy project" means the development and construction of infrastructure
27 for the generation, storage, transformation or transmission of clean energy.

28 D. "Fuel cell" means an electrochemical cell that generates electricity by combining
29 atoms of hydrogen and oxygen in the presence of a catalyst.

30 E. "Machinery and equipment" means fixtures, devices and support facilities that are
31 integral and necessary to the generation of clean energy. "Machinery and equipment"
32 does not include:

- 33 (1) Hand-powered tools;
- 34 (2) Property with a useful life of less than one year;
- 35 (3) Repair parts required to restore machinery and equipment to normal working
36 order;
- 37 (4) Replacement parts that do not increase productivity, improve efficiency or
38 extend the useful life of machinery and equipment;

1 (5) Buildings; or

2 (6) Building fixtures that are not integral and necessary to the generation of
3 electricity that are permanently affixed to and become a physical part of a building.

4 F. "Used directly" means that the machinery and equipment provides any part of the
5 process that captures the energy of wind, sun, biomass, tides or waves, geothermal
6 resources or technology that converts otherwise lost energy from exhaust, converts that
7 energy to electricity and stores, transforms or transmits that electricity for entry into or
8 operation in parallel with electric transmission and distribution systems.

9 Machinery and equipment is used directly in generating electricity by fuel cells if it
10 provides any part of the process that captures the energy of the fuel, converts that
11 energy to electricity and stores, transforms or transmits that electricity for entry into or
12 operation in parallel with electric transmission and distribution systems.

13 **2. Information requirements.** A person seeking an exemption from the sales tax
14 pursuant to Title 36, section 2021 shall provide the following information to the department
15 on an application developed by the department:

16 A. A copy of any license required and issued by the State in order for the person to
17 legally engage in a clean energy project;

18 B. Proof of insurance coverage appropriate for the clean energy project;

19 C. Proof of compliance with requirements imposed on employers pursuant to this Title;

20 D. Certification that the purchase is for machinery and equipment used directly in a
21 clean energy project. If the purchase is for machinery and equipment used directly in
22 the generation of electricity by a solar energy system, the person shall provide
23 certification that such system is capable of generating more than 100 kilowatts but less
24 than 500 kilowatts of electricity. As used in this paragraph, "kilowatt" has the same
25 meaning as in Title 35-A, section 3481, subsection 8; and

26 E. Other documentation as required by the department and reasonably necessary to
27 making the determination pursuant to subsection 3.

28 **3. Certification of clean energy project; amount of exemption.** A person that
29 purchases machinery and equipment used directly in a clean energy project is entitled to an
30 exemption of 75% of the sales tax due on the purchase of that machinery and equipment if
31 the person demonstrates, to the satisfaction of the department, that the clean energy project:

32 A. Results in a meaningful economic impact on an overburdened community. As used
33 in this paragraph, unless the context otherwise indicates, the following terms have the
34 following meanings.

35 (1) "Low-income" means household income as defined by the department except
36 that household income may not exceed 80% of the area median income, as
37 determined by the United States Department of Housing and Urban Development,
38 or 200% of the federal poverty level, as defined in Title 22, section 3762,
39 subsection 1, paragraph C, whichever is higher.

40 (2) "Overburdened community" means any census block group, as determined by
41 the most recent United States Census, in which:

42 (a) At least 35% of the households qualify as low-income households;

1 **(b) At least 40% of the residents identify as members of a minority group or**
2 **as members of a federally recognized Indian tribe; or**

3 **(c) At least 40% of the households have limited English-speaking proficiency.**
4 **As used in this subparagraph, "census block group" has the same meaning as "block**
5 **group" as defined in Title 21-A, section 1202, subsection 2;**

6 **B. Supports local manufacturing; and**

7 **C. Is developed under a community benefits agreement or project labor agreement.**
8 **As used in this paragraph, "community benefits agreement or project labor agreement"**
9 **means a prehire collective bargaining agreement with one or more labor organizations**
10 **that establishes the terms and conditions of employment for a specific construction**
11 **project and is an agreement described in 29 United States Code, Section 158(f).**

12 **4. Issuance of certificate.** The department shall issue to a person whose clean energy
13 **project qualifies under subsection 3 a certificate of compliance stating the percentage of**
14 **the sales tax exemption to which the person is entitled for machinery and equipment used**
15 **directly in that clean energy project.**

16 **5. Procedure for claiming exemption.** A person issued a certificate of compliance
17 **pursuant to subsection 4 shall pay the full amount of the sales tax due on all machinery and**
18 **equipment and submit, on an application provided by the Department of Administrative**
19 **and Financial Services, Bureau of Revenue Services, a claim for a refund of the amount of**
20 **sales tax paid and exempt pursuant to the certificate of compliance issued pursuant to**
21 **subsection 4. Alternatively, a person issued a certificate of compliance pursuant to**
22 **subsection 4 may apply, pursuant to Title 36, section 2021, subsection 3, to the State Tax**
23 **Assessor for a certificate to make purchases free of sales tax.**

24 **6. Rules.** The department shall adopt rules to implement the provisions of this section.
25 **Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5,**
26 **chapter 375, subchapter 2-A.**

27 **Sec. 2. 36 MRSA §2021** is enacted to read:

28 **§2021. Refund of sales tax on purchases of machinery and equipment used in clean**
29 **energy projects**

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

32 **A. "Biomass" includes:**

- 33 **(1) By-products of pulping and wood manufacturing processes;**
- 34 **(2) Animal waste;**
- 35 **(3) Solid organic fuels from wood;**
- 36 **(4) Forest or field residues;**
- 37 **(5) Wood from demolition or construction debris;**
- 38 **(6) Food waste;**
- 39 **(7) Fuel alcohols derived from algae and other sources;**
- 40 **(8) Crops specifically grown to provide biomass;**

1 (9) Biosolids; and

2 (10) Yard waste.

3 "Biomass" does not include wood that has been treated with chemical preservatives
4 such as creosote, pentachlorophenol or copper chrome arsenate; wood from old growth
5 forests; or municipal solid waste.

6 B. "Certificate of compliance" means the certificate of compliance issued by the
7 Department of Labor pursuant to Title 26, section 1407, subsection 4.

8 C. "Clean energy" means electricity generated using fuel cells, wind, solar cells,
9 biomass, tides or waves, geothermal resources or technology that converts otherwise
10 lost energy from exhaust.

11 D. "Clean energy project" means the development and construction of infrastructure
12 for the generation, storage, transformation or transmission of clean energy.

13 E. "Fuel cell" means an electrochemical cell that generates electricity by combining
14 atoms of hydrogen and oxygen in the presence of a catalyst.

15 F. "Machinery and equipment" means fixtures, devices and support facilities that are
16 integral and necessary to the generation of clean energy. "Machinery and equipment"
17 does not include:

18 (1) Hand-powered tools;

19 (2) Property with a useful life of less than one year;

20 (3) Repair parts required to restore machinery and equipment to normal working
21 order;

22 (4) Replacement parts that do not increase productivity, improve efficiency or
23 extend the useful life of machinery and equipment;

24 (5) Buildings; or

25 (6) Building fixtures that are not integral and necessary to the generation of
26 electricity that are permanently affixed to and become a physical part of a building.

27 G. "Used directly" means that the machinery and equipment provides any part of the
28 process that captures the energy of wind, sun, biomass, tides or waves, geothermal
29 resources or technology that converts otherwise lost energy from exhaust, converts that
30 energy to electricity and stores, transforms or transmits that electricity for entry into or
31 operation in parallel with electric transmission and distribution systems.

32 Machinery and equipment is used directly in generating electricity by fuel cells if it
33 provides any part of the process that captures the energy of the fuel, converts that
34 energy to electricity and stores, transforms or transmits that electricity for entry into or
35 operation in parallel with electric transmission and distribution systems.

36 **2. Refund authorized.** The State Tax Assessor shall refund to a person that purchases
37 machinery and equipment used directly in a clean energy project the amount of sales tax
38 paid with respect to that machinery and equipment upon the person's presenting evidence
39 that the purchase is eligible for a refund under this section. The refund claim must be
40 submitted on a form prescribed by the assessor and must be accompanied by a certificate
41 of compliance indicating that the purchaser is engaged in the development and construction

1 of a clean energy project and the percentage of the sales tax exemption the purchaser is
2 entitled to pursuant to the determination of the Department of Labor pursuant to Title 26,
3 section 1407, subsection 3 and such additional information as the assessor may require. An
4 application for a refund under this subsection must be filed with the assessor within 36
5 months of the date of purchase.

6 **3. Purchases made free of tax with certificate.** Sales tax need not be paid on the
7 purchase of machinery and equipment used directly in a clean energy project if the
8 purchaser has obtained a certificate from the assessor stating that the purchaser is engaged
9 in the development and construction of a clean energy project and authorizing the purchaser
10 to purchase machinery and equipment used directly in a clean energy project without
11 paying Maine sales tax. A purchaser may obtain a certificate under this subsection by
12 applying to the assessor, on a form prescribed by the assessor, and including a copy of the
13 certificate of compliance issued by the Department of Labor pursuant to Title 26, section
14 1407, subsection 4 and such additional information as the assessor may require. The seller
15 shall obtain a copy of the certificate together with an affidavit as prescribed by the assessor,
16 to be maintained in the seller's records, attesting to the qualification of purchases for
17 exemption pursuant to this section.

18 **4. Audit.** The assessor may audit a claim for refund filed under subsection 2 or the
19 use of a certificate issued under subsection 3. If the assessor determines that the amount
20 of the claimed refund is incorrect or that the certificate has been used inappropriately, the
21 assessor may issue an assessment within 3 years from the date of purchase or the date the
22 claim was filed, whichever is later, or at any time if a fraudulent claim was filed. The
23 claimant may seek reconsideration of the assessment pursuant to section 151.

24 **5. Payment of claims.** The assessor shall pay the approved amount to qualified
25 applicants under this section within 30 days after receipt of a properly completed claim.
26 Interest is not allowed on any payment made to a claimant pursuant to this section.

27 **Sec. 3. Supply chain manufacturing assessment.** The Governor's Office of
28 Policy Innovation and the Future shall develop a detailed supply chain manufacturing
29 assessment of how the State can support existing manufacturing and attract additional
30 manufacturing associated with renewable energy industries, including, but not limited to,
31 heat pumps and solar, offshore wind, hydrogen and tidal power.

32 SUMMARY

33 This bill allows a person who purchases machinery or equipment for direct use in the
34 development and construction of a clean energy product a refund or exemption from a
35 portion of the sales tax due on that machinery or equipment. "Clean energy project" is
36 defined as the development and construction of infrastructure for the generation, storage,
37 transformation or transmission of electricity generated using fuel cells, wind, solar cells,
38 biomass, tides or waves, geothermal resources or technology that converts otherwise lost
39 energy from exhaust.

40 A person may obtain a refund or exemption of 75% of the sales tax by demonstrating
41 to the Department of Labor that the clean energy project results in a meaningful economic
42 impact on an overburdened community, as defined; supports local manufacturing; and is
43 developed under a community benefits agreement or project labor agreement.

1 Finally, this bill requires the Governor's Office of Policy Innovation and the Future to
2 develop a detailed supply chain manufacturing assessment of how the State can support
3 existing manufacturing and attract additional manufacturing associated with renewable
4 energy industries, including, but not limited to, heat pumps and solar, offshore wind,
5 hydrogen and tidal power.