



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1449

H.P. 1063

House of Representatives, April 11, 2011

### An Act To Strengthen Maine Industry through Energy Efficiency Investment

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative HINCK of Portland.

Cosponsored by Representatives: BERRY of Bowdoinham, FITTS of Pittsfield, FLEMINGS of Bar Harbor, HAYES of Buckfield, KNIGHT of Livermore Falls, RUSSELL of Portland, Senator: THIBODEAU of Waldo.

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

2 **Sec. 1. 35-A MRSA §10122** is enacted to read:

3 **§10122. Manufacturing energy savings tax credit**

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

6 A. "Certified project" means an eligible project funded by an investment for which a  
7 tax credit certificate has been issued by the trust.

8 B. "Eligible project" means an energy efficiency improvement, a renewable energy  
9 installation or smart grid technology installation.

10 C. "Energy efficiency improvement" means an improvement in a manufacturing  
11 facility that meets energy efficiency standards adopted by the trust by rule.

12 D. "Energy savings tax credit" means the tax credit established in Title 36, section  
13 5216-D.

14 E. "Manufacturing facility" has the same meaning as in Title 36, section 1752,  
15 subsection 6-A.

16 F. "Qualified investment" means an investment in an eligible project that meets the  
17 criteria established by the trust pursuant to subsection 2, paragraph B.

18 G. "Renewable energy installation" means an installation in a manufacturing facility  
19 that uses fuel cells; tidal power; solar arrays and installations; geothermal  
20 installations; hydroelectric generators that meet all state and federal fish passage  
21 requirements applicable to the generator; or biomass generators that are fueled by  
22 wood or wood waste.

23 H. "Smart grid technology" means technology that allows the use of smart grid  
24 functions, as defined in section 3143, subsection 1, paragraph C, in accordance with  
25 rules adopted by the trust.

26 I. "Tax credit certificate" means a certificate for an energy savings tax credit issued  
27 by the trust under this section.

28 **2. Tax credit certification.** The trust may issue a tax credit certificate for a  
29 qualified investment in accordance with this subsection.

30 A. The trust shall establish by rule application requirements for persons applying to  
31 the trust for a tax credit certificate. The rules must specify the information required  
32 to be submitted to demonstrate that an investment is a qualified investment.

33 B. To be eligible for a tax credit certificate, an investment must meet the following  
34 requirements:

35 (1) The investment must be made in an eligible project after January 1, 2012;

36 (2) The investment must be cost effective and likely to reduce a manufacturing  
37 facility's net energy costs; and

1                   (3) If the investment exceeds \$500,000, the person making the investment must  
2                   certify that reasonable apprenticeship opportunities will be offered during the  
3                   course of the work funded by the investment. The trust shall provide for waivers  
4                   of this requirement in instances where the trust finds that providing such  
5                   opportunities would be inappropriate.

6                   C. If the trust finds that an applicant has demonstrated that an investment is a  
7                   qualified investment, the trust shall issue a tax credit certificate for 50% of the  
8                   qualified investment except that, if the investment has not yet been made, the trust  
9                   may issue a tax credit certificate prospectively for 25% of the qualified investment  
10                  and, upon completion of the qualified investment, issue a tax credit for an additional  
11                  25% of the qualified investment. The tax credit certificate must specify all  
12                  conditions and requirements under which the certificate is issued and remains valid.

13                  **3. Reporting.** A person receiving an energy savings tax credit shall report annually  
14                  to the trust. The report must include the amount of the qualified investment made, a  
15                  description and the status of the certified project and the projected and actual energy and  
16                  cost savings achieved over the useful life of the certified project.

17                  **4. Revocation.** A tax credit certificate is subject to revocation pursuant to this  
18                  subsection.

19                  A. The trust shall revoke in whole or in part a tax credit certificate if the trust  
20                  determines that:

21                         (1) Any representation made to the trust in connection with the application for  
22                         the certificate was false;

23                         (2) Any reporting requirement under subsection 3 has not been met; or

24                         (3) Any requirement or condition specified in the tax credit certificate has been  
25                         violated.

26                  B. The trust shall revoke an entire tax credit certificate if within 15 years after the  
27                  issuance of the certificate the trust determines that:

28                         (1) Any portion of the certified project is transported out of the State;

29                         (2) Any portion of the certified project is transferred to another entity, other than  
30                         as part of a sale of the manufacturing facility;

31                         (3) The manufacturing facility ceases substantially all operations for more than  
32                         one year, not including any closure associated with a seasonal closure that is  
33                         customary for the industry, as defined by the trust by rule; or

34                         (4) The activities of the manufacturing facility are transferred to another location  
35                         and there is a 20% or greater reduction in the facility's full-time equivalent  
36                         workforce, as defined by the trust by rule.

37                  If the trust revokes a tax credit certificate under this subsection, the trust shall provide  
38                  notice to the person holding the certificate and to the State Tax Assessor.

39                  **5. Rules.** The trust shall adopt rules to implement this section. Rules adopted under  
40                  this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1           **Sec. 2. 36 MRSA §1760, sub-§9-D**, as amended by PL 1999, c. 414, §20, is  
2 further amended to read:

3           **9-D. Fuel and electricity used at a manufacturing facility.** Ninety-five percent of  
4 the sale price of all fuel and electricity purchased prior to January 1, 2018 for use at a  
5 manufacturing facility. For purposes of this subsection, "sale price" includes, in the case  
6 of electricity, any charge for transmission and distribution.

7           **Sec. 3. 36 MRSA §1760-E** is enacted to read:

8           **§1760-E. Tax recapture**

9           **1. Recapture tax.** Upon the occurrence of an event described in subsection 2,  
10 paragraph A or B, the owner of a manufacturing facility that has received the benefit of  
11 the tax exemption under section 1760, subsection 9-D is subject to a recapture tax in the  
12 amount of sales tax that would have been payable in the absence of the exemption  
13 provided in section 1760, subsection 9-D:

14           A. Prior to January 1, 2018; and

15           B. After January 1st of the calendar year commencing 15 years prior to the event  
16 described in subsection 2.

17           **2. Events causing tax.** The recapture tax described in subsection 1 is imposed if:

18           A. The manufacturing facility ceases substantially all operations for more than one  
19 year, not including any closure associated with a seasonal closure that is customary  
20 for the industry as defined by rules adopted by the Efficiency Maine Trust under Title  
21 35-A, section 10122; or

22           B. The activities of the manufacturing facility are transferred to another location and  
23 there is a 20% or greater reduction in the facility's full-time equivalent workforce, as  
24 defined by rules adopted by the Efficiency Maine Trust under Title 35-A, section  
25 10122.

26           **Sec. 4. 36 MRSA §5216-D** is enacted to read:

27           **§5216-D. Energy efficiency tax credit**

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

30           A. "Certificate" means a tax credit certificate issued by the trust pursuant to Title  
31 35-A, section 10122.

32           B. "Credit limit" means an amount equal to 95% of the tax imposed under Part 3,  
33 absent any exemption under section 1760, subsection 9-D, on the sale price of all fuel  
34 and electricity purchased for use at the subject manufacturing facility during the  
35 taxable year, including, in the case of electricity, any charge for transmission and  
36 distribution.

37           C. "Investment" means an investment for which a certificate has been received.

- 1 D. "Investor" means a taxpayer who has received a certificate.  
2 E. "Subject manufacturing facility" means the manufacturing facility, as defined in  
3 section 1752, subsection 6-A, in which an investment has been made.  
4 F. "Trust" means the Efficiency Maine Trust under Title 35-A, section 10103.

5 **2. Credit.** An investor is entitled to a credit against the tax otherwise due under this  
6 Part equal to the amount of the certificate. In the case of a partnership, limited liability  
7 company, S corporation, nontaxable trust or any other entity that is treated as a flow-  
8 through entity for tax purposes under the Code, the individual partners, members,  
9 stockholders, beneficiaries or equity owners of the entity are each deemed to be investors  
10 under this section and are allowed a credit against the tax otherwise due from them under  
11 this Part in proportion to their respective interests in the partnership, limited liability  
12 company, S corporation, nontaxable trust or other flow-through entity.

13 **3. Limitation; increased credit.** The amount of the credit allowed under this  
14 section for any taxable year may not exceed the credit limit. If the amount of the credit  
15 allowed an investor under this section in any taxable year ending before January 1, 2018  
16 is greater than zero but less than the credit limit, the investor is entitled to an additional  
17 credit so that the total credit allowed under this section is equal to the credit limit.

18 **4. Carry forward.** Credits not taken because of the limitation in subsection 3 must  
19 be taken in the next taxable year in which the credit may be taken. The provisions of  
20 subsection 3 apply to each carry-forward year. Credits may be carried forward up to 15  
21 years.

22 **5. Recapture.** In the event that the trust revokes a certificate in whole or in part  
23 pursuant to Title 35-A, section 10122, subsection 4, there is added to the tax imposed on  
24 the investor under this Part for the taxable year in which the revocation occurs an amount  
25 equal to the excess of the amount of the credit revoked over the amount of credit not yet  
26 taken.

27 **6. Payment conditions; transition.** In order to ensure that an investor that receives  
28 a tax credit under this section does not receive the additional benefit of the tax exemption  
29 provided under section 1760, subsection 9-D, an investor may not receive a tax credit  
30 under this section in any taxable year ending prior to January 1, 2018 unless the investor  
31 pays to the State Tax Assessor in each taxable year prior to January 1, 2018 in which the  
32 investor claims the tax credit an amount equivalent to the credit limit. In the case of a  
33 partnership, limited liability company, S corporation, nontaxable trust or any other entity  
34 treated as a flow-through entity for tax purposes under the Code, the individual partners,  
35 members, stockholders, beneficiaries or equity owners of the entity are deemed to be  
36 investors under this subsection and are liable for payments under this subsection in  
37 proportion to their respective interests in the partnership, limited liability company, S  
38 corporation, nontaxable trust or other flow-through entity.

39 **SUMMARY**

40 This bill creates a 50% income tax credit for any capital investment in a  
41 manufacturing facility that the Efficiency Maine Trust has determined is cost effective

1 and is likely to reduce the facility's net energy costs through energy efficiency, renewable  
2 energy technology or smart grid technology. During a transition period that ends January  
3 1, 2018, a taxpayer may elect to take the credit rather than claiming the sales and use tax  
4 exemptions applicable to the purchase of fuel and electricity for manufacturing facilities.  
5 After that date, the income tax credit will replace the sales and use tax exemption.