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Legislative Document

No. 1639

S.P. 591

In Senate, June 9, 2017

**An Act To Promote Major Business Headquarters Expansions in
Maine, Promote the Commercialization of Research and
Development in Maine and Create Jobs**

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
Secretary of the Senate

Presented by Senator JACKSON of Aroostook. (GOVERNOR'S BILL)
Cosponsored by Representative FREDETTE of Newport and
Senators: BREEN of Cumberland, DOW of Lincoln, VOLK of Cumberland, Representatives:
Speaker GIDEON of Freeport, HILLIARD of Belgrade.

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

2 **Sec. 1. 36 MRSA §5219-OO** is enacted to read:

3 **§5219-OO. Credit for major business headquarters expansions**

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

6 A. "Base period" means the 3 calendar years prior to the year in which a certificate is
7 approved by the commissioner under this section.

8 B. "Certified applicant" means a qualified applicant that has received a certificate of
9 approval from the commissioner pursuant to this section.

10 C. "Commissioner" means the Commissioner of Economic and Community
11 Development.

12 D. "Employees based in the State" means employees that perform more than 50% of
13 employee-related activities for the employer at the headquarters in the State.

14 E. "Facility" means one or more buildings and includes the real and personal
15 property located in those buildings.

16 F. "Full-time" means an average of 36 hours weekly during the period of
17 measurement.

18 G. "Headquarters" means the principal facility from which the applicant directs its
19 national or global business activities, as determined by the commissioner at the time
20 of application.

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

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

24 (2) The applicant employs at least 5,000 full-time employees worldwide of
25 which at least 25% are or will be based in this State;

26 (3) The applicant has business locations in at least 3 other states or foreign
27 countries; and

28 (4) The applicant intends to make a qualified investment in the State within 5
29 years following the date of the application.

30 I. "Qualified investment" means an investment of at least \$35,000,000 to design,
31 permit, construct, modify, equip or expand the applicant's headquarters in the State
32 or, for full-time employees based in the State, to train, retrain or educate them, or pay
33 their student loan debt. The investments and activities of a qualified applicant and
34 other entities that are members of the qualified applicant's unitary business must be
35 aggregated to determine whether a qualified investment has been made. A qualified
36 investment does not include an investment made prior to the issuance of a certificate
37 of approval or after December 31, 2022.

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

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

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

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

22 D. A certified applicant shall obtain approval from the commissioner to transfer the
23 certificate of approval or, if the certified applicant has obtained a certificate of
24 completion, that certificate of completion to another person. A certificate of approval
25 or certificate of completion may be transferred only if all or substantially all of the
26 assets of the certified applicant are, or will be, transferred to that person or if 50% or
27 more of the certified applicant's voting stock is, or will be, acquired by that person.
28 The commissioner shall approve the transfer of the certificate of approval or the
29 certificate of completion only if at least one of the following conditions is satisfied:

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

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

36 If the commissioner approves the transfer of the certificate, the transferee, from the
37 date of the transfer, must be treated as the certified applicant and as eligible to claim
38 any remaining benefit under the certificate of approval or the certificate of
39 completion that has not been previously claimed by the transferor.

40 E. The commissioner must revoke a certificate of approval if the certified applicant
41 or a person to whom a certificate of approval has been transferred pursuant to
42 paragraph D fails to make a qualified investment within 5 years of the date of the
43 certificate of approval. The commissioner shall revoke a certificate of approval or a
44 certificate of completion if the applicant ceases operations of the headquarters in the

1 State or the certificate of approval or certificate of completion is transferred to
2 another person without approval from the commissioner pursuant to paragraph D. A
3 certified applicant whose certificate of completion is revoked within 5 years after the
4 date issued, for the tax year during which the certificate is revoked, shall add to the
5 taxpayer's income tax liability imposed by this Part an amount equal to the total
6 credits claimed under this section. A certified applicant whose certificate of
7 completion is revoked 6 years after through 10 years after the date the certificate was
8 issued, shall, for the tax year during which the certificate is revoked, add to the
9 taxpayer's income tax liability imposed by this Part an amount equal to the total
10 credits claimed under this section for the period 6 years after through 10 years after
11 the date the certificate was issued.

12 F. Upon making the qualified investment and completing the headquarters and
13 employment criteria in subsection 1, paragraph H, a certified applicant shall submit
14 an application to the commissioner for a certificate of completion. If the
15 commissioner determines that a qualified investment has been made, the applicant's
16 headquarters is located in the State and at least 25% of the company's employees, as
17 measured at the time of application for the certificate of approval, are based in the
18 State, the commissioner shall issue a certificate of completion to the certified
19 applicant as soon as is practical.

20 The commissioner may not issue certificates of approval under this subsection that total,
21 in the aggregate, more than \$100,000,000 of qualified investment.

22 **3. Refundable credit allowed.** A qualified applicant is allowed a credit as provided
23 in this subsection.

24 A. Subject to the limitations under paragraph B, beginning with the tax year during
25 which the certificate of completion is issued and the tax year beginning in 2020,
26 whichever is later, and for each of the following 19 tax years, a certified applicant is
27 allowed a credit against the tax due under this Part for the taxable year in an amount
28 equal to 2% of the certified applicant's qualified investment. The credit allowed
29 under this paragraph is refundable.

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

31 (1) A credit is not allowed for any tax year during which the taxpayer employs a
32 number of full-time employees based in the State during the taxable year that is
33 less than:

34 (a) During the first 5 tax years after the certificate of completion is issued,
35 the certified applicant's number of full-time employees based in the State on
36 the date the certificate of completion is issued; or

37 (b) More than 5 tax years after the certificate of completion is issued, 110%
38 of the number of the certified applicant's full-time employees based in the
39 State on the date the certificate of completion is issued. The level of
40 employment for the tax year is measured on the last day of the tax year; and

41 (2) Cumulative credits under this subsection may not exceed \$16,000,000 under
42 any one certificate.

1 **4. Reporting required.** A certified applicant and the commissioner are required to
2 make reports pursuant to this subsection.

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

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

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

11 The commissioner may prescribe forms for the annual report described in this
12 paragraph. The commissioner shall provide copies of the reports to the State Tax
13 Assessor at the time the report is received.

14 B. The commissioner shall report to the joint standing committee of the Legislature
15 having jurisdiction over taxation matters aggregate data on employment levels and
16 qualified investment amounts of certified applicants for each year. The report must be
17 submitted by April 15th of the first regular session of each Legislature.

18 **5. Refund of certain unused credit carry-forward amounts.** Notwithstanding the
19 limits on the amount of credit carry-forward that may be claimed by a taxpayer during the
20 taxable year under sections 5215, 5219-K, 5219-L, 5219-GG, 5219-JJ, 5219-MM and
21 5219-NN, a qualified applicant claiming a credit under subsection 3, subject to the
22 carry-forward period specified in section 5215, 5219-K, 5219-L, 5219-GG, 5219-JJ,
23 5219-MM or 5219-NN, as applicable, may claim for the taxable year the full amount of
24 the unused credit carry-forward amount under those sections. The total aggregate credit
25 carry-forward amount allowed for the taxable year under this subsection is limited to the
26 amount of credit allowed for the taxable year under subsection 3. The credit
27 carry-forward amount allowed under this subsection is refundable. If a credit
28 carry-forward amount is claimed under this subsection, the associated credit
29 carry-forward amount under sections 5215, 5219-K, 5219-L, 5219-GG, 5219-JJ,
30 5219-MM and 5219-NN must be reduced by the associated amount claimed under this
31 subsection and the credit carry-forward amount claimed under this subsection may not be
32 claimed under section 5215, 5219-K, 5219-L, 5219-GG, 5219-JJ, 5219-MM or 5219-NN.

33 **Sec. 2. Legislative findings.** The Legislature finds that it is in the best interest of
34 the people of the State of Maine to encourage the location and expansion of major
35 business headquarters in the State and to encourage the recruitment and training of
36 employees for these facilities. The Legislature further finds that the location and
37 expansion of major business headquarters in Maine will create jobs, benefit small
38 businesses that supply goods and services to the major business headquarters and its
39 employees, increase the tax base, and provide many other direct and indirect economic
40 benefits to the State.

41 The Legislature further finds that providing benefits only to those major businesses
42 located in the State is an appropriate way to encourage major businesses to locate in this
43 State and to encourage major businesses in this State to expand. The Legislature further

1 finds that the benefits to the State from providing those businesses far exceeds the costs
2 to the State of providing the incentives provided in this legislation and that the provisions
3 of this legislation are necessary to accomplish these objectives.

4 **SUMMARY**

5 This bill creates a refundable Maine income tax credit for the construction or
6 expansion of major business headquarters in the State as long as certain investment and
7 employment levels are met. The refundable so-called headquarters credit is equal to 2%
8 of the qualified investment per year for 20 years, subject to certain limitations.

9 The bill also allows a taxpayer receiving the headquarters credit to elect to have any
10 unused credit carry-forward for the research expense tax credit, super credit for
11 substantial expansions of research and development, jobs and investment tax credit and
12 Maine capital investment credit be made refundable for any tax year to the extent of the
13 headquarters credit.