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Legislative Document

No. 1475

S.P. 595

In Senate, April 5, 2023

**An Act to Promote Biomanufacturing and Biotechnology
Development by Establishing a Tax Credit**

Reference to the Committee on Taxation suggested and ordered printed.

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

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative TERRY of Gorham and
Senators: BENNETT of Oxford, LIBBY of Cumberland, PIERCE of Cumberland, STEWART
of Aroostook, Representatives: BELL of Yarmouth, CLOUTIER of Lewiston, COLLAMORE
of Waldoboro, MILLETT of Waterford.

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

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

3 **§5219-AAA. Credit for biotechnology incubators and biomanufacturing facilities**

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

6 A. "Affiliated group" has the same meaning as in section 5102, subsection 1-B.

7 B. "Biomanufacturing" means a facility of at least 5,000 square feet that engages in
8 advanced manufacturing of biotechnology products.

9 C. "Biotechnology incubator" means a facility of at least 5,000 square feet that offers
10 laboratory space, management and meeting space and other resources to start-up, early-
11 stage or established biotechnology companies seeking to develop new biotechnology
12 products.

13 D. "Biotechnology products" means commercially important biomaterials and
14 biomolecules for use in advanced research, medicines, food and beverage processing
15 or industrial applications that are manufactured using biological processes.

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

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

20 G. "Facility" means one or more buildings and includes the real and personal property
21 located in those buildings.

22 H. "Qualified applicant" means an applicant that, at the time an application for a
23 certificate of approval is submitted, intends to make a qualified investment within 2
24 years following the date of the application.

25 I. "Qualified investment" means an investment of at least \$5,000,000 and not more
26 than \$15,000,000 to design, permit, construct, modify, equip or expand a
27 biotechnology incubator or a biomanufacturing facility that will be located in this State.

28 **2. Procedures for application; certificate of approval.** This subsection governs the
29 procedures for providing for and obtaining a certificate of approval.

30 A. An applicant may apply to the commissioner for a certificate of approval. An
31 applicant shall submit to the commissioner information demonstrating that the
32 applicant is qualified. If a certified applicant intends to make an additional qualified
33 investment, the certified applicant may apply to the commissioner for an additional
34 certificate of approval.

35 B. The commissioner, within 30 days of receipt of an application submitted pursuant
36 to paragraph A, shall determine whether the applicant is qualified and shall issue either
37 a certificate of approval or a written denial indicating why the applicant is not qualified.
38 The certificate of approval issued by the commissioner must describe the qualified
39 investment and specify the total amount of qualified investment approved under the
40 certificate. A qualified applicant may invest more than \$15,000,000 in such projects,
41 but only \$15,000,000 of the investment may be considered a qualified investment for

1 purposes of this section. The investments and activities of a qualified applicant and
2 other entities that are members of the qualified applicant's affiliated group must be
3 aggregated to determine whether a qualified investment has been made. A qualified
4 investment includes capital from all sources, including loans, grants, gifts and other
5 financing sources.

6 C. Upon completing a qualified investment, a certified applicant shall submit an
7 application to the commissioner for a certificate of completion. If the commissioner
8 determines that a qualified investment has been made, the commissioner shall issue a
9 certificate of completion to the certified applicant within 30 days. The certificate of
10 completion must state the amount of qualified investment made by the certified
11 applicant.

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

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

26 (1) The person receiving the certificate of approval or certificate of completion is
27 a member of the certified applicant's affiliated group at the time of the transfer; or

28 (2) The commissioner finds that the person receiving the certificate of approval or
29 certificate of completion will, and has the capacity to, maintain operations of the
30 biotechnology incubator or biomanufacturing facility in the State in a manner that
31 meets the minimum qualifications for continued eligibility of benefits under this
32 section after the transfer occurs.

33 If the commissioner approves a transfer of a certificate of approval or certificate of
34 completion, the person receiving the certificate of approval or certificate of completion,
35 from the date of the transfer, must be treated as the certified applicant and is eligible to
36 claim any remaining benefit under the certificate of approval or the certificate of
37 completion that has not been previously claimed by the certified applicant as long as
38 the person receiving the certificate of approval or certificate of completion meets the
39 same eligibility requirements and conditions for the credit as applied to the original
40 certified applicant.

41 F. The commissioner shall revoke a certificate of approval if the certified applicant or
42 a person that received a certificate of approval pursuant to paragraph D fails to make a
43 qualified investment within 2 years of the date of the certificate of approval. The
44 commissioner shall revoke a certificate of approval or a certificate of completion if the
45 certified applicant or person receiving the certificate of approval or certificate of

1 completion ceases operations of the biotechnology incubator or biomanufacturing
2 facility in the State for more than 183 days or the certificate of approval or certificate
3 of completion is transferred to another person without approval from the commissioner
4 pursuant to paragraph E. A certified applicant whose certificate of completion is
5 revoked within 3 years after the date it was issued shall return to the State an amount
6 equal to the total credits claimed for all tax years under this section. A certified
7 applicant whose certificate of completion is revoked during the period from 4 years to
8 the end of 5 years after the date the certificate was issued shall return to the State an
9 amount equal to the total credits claimed under this section for the period from 4 years
10 to the end of 5 years after the date the certificate was issued. If credit amounts are
11 recaptured after a certificate of approval has been transferred as provided in paragraph
12 E, the person receiving the certificate of approval or certificate of completion is
13 responsible for payment of any credit amounts that must be returned to the State. The
14 amount to be returned to the State under this paragraph is, for purposes of this Title, a
15 tax subject to the collection and enforcement provisions contained in Part 1, including
16 the application of applicable interest and penalties. The amount to be returned to the
17 State must be added to the tax imposed on the taxpayer under this Part for the taxable
18 year during which the certificate is revoked.

19 The commissioner may not issue certificates of approval under this subsection that total, in
20 the aggregate, more than \$30,000,000 of qualified investment for biotechnology incubators
21 and more than \$30,000,000 of qualified investment for biomanufacturing facilities, for a
22 maximum of \$60,000,000 of qualified investment for all certificates of approval.

23 **3. Refundable credit allowed.** A certified applicant that has received a certificate of
24 completion is allowed a refundable tax credit as provided in this subsection.

25 A. Subject to the limitations in paragraph D, beginning with the tax year during which
26 the certificate of completion is issued or the tax year beginning in 2025, whichever is
27 later, and for each of the following 4 tax years, a certified applicant that has made a
28 qualified investment in a biotechnology incubator is allowed a credit against the tax
29 due under this Part for the taxable year in an amount equal to 6% of the qualified
30 investment, up to a total credit of \$900,000 in any tax year. The credit allowed under
31 this paragraph is refundable to the extent that the certified applicant does not have tax
32 liability in this State for the taxable year, or is not subject to income tax in this State.

33 B. Subject to the limitations in paragraph D, beginning with the tax year during which
34 the certificate of completion is issued or the tax year beginning in 2025, whichever is
35 later, and for each of the following 4 tax years, a certified applicant that has made a
36 qualified investment in a biomanufacturing facility is allowed a credit against the tax
37 due under this Part for the taxable year in an amount equal to 6% of the qualified
38 investment, up to a total credit of \$900,000 in any tax year. The credit allowed under
39 this paragraph is refundable to the extent that the certified applicant does not have tax
40 liability in this State for the taxable year, or is not subject to income tax in this State.

41 C. An individual or owner of a pass-through entity that has received a certificate of
42 completion is allowed a refundable credit under this subsection based on the
43 individual's or owner's percentage interest in the profits and losses of the pass-through
44 entity. For purposes of this paragraph, "pass-through entity" means a corporation that
45 for the applicable tax year is treated, for federal tax purposes, as an S corporation or a

1 partnership, trust, limited liability company or similar entity that for the applicable tax
2 year is not taxed as a C corporation for federal tax purposes.

3 D. The credits under this subsection are limited as follows.

4 (1) Except for the first year that the credit is available, the credits available under
5 subsection 3, paragraph A may not be taken in any tax year in which more than
6 25% of the facility is being used for a purpose other than as a biotechnology
7 incubator.

8 (2) Except for the first year that the credit is available, the credits available under
9 subsection 3, paragraph B may not be taken in any tax year in which more than
10 25% of the facility is being used for a purpose other than as a biomanufacturing
11 facility.

12 (3) Cumulative credits under subsection 3, paragraph A may not exceed
13 \$4,500,000 for any biotechnology incubator, or \$9,000,000 in total for all
14 biotechnology incubators.

15 (4) Cumulative credits under subsection 3, paragraph B may not exceed \$4,500,000
16 for any biomanufacturing facility, or \$9,000,000 in total for all biomanufacturing
17 facilities.

18 **4. Reporting required.** A certified applicant, the commissioner and the assessor are
19 required to make reports pursuant to this subsection.

20 A. On or before March 1st of each year, a certified applicant shall file a report with
21 the commissioner for the tax year ending during the immediately preceding calendar
22 year, referred to in this subsection as "the report year," containing the following
23 information:

24 (1) For a biotechnology incubator, the percentage of the facility being used as a
25 biotechnology incubator, the names of all businesses occupying the facility during
26 the report year and a description of their usage and the incremental amount of
27 qualified investment made in the report year; and

28 (2) For a biomanufacturing facility, the percentage of the facility being used as a
29 biomanufacturing facility, the names of all businesses occupying the facility during
30 the report year and a description of their usage and the incremental amount of
31 qualified investment made in the report year.

32 The commissioner may prescribe forms for the annual report required by this
33 paragraph. The commissioner shall provide copies of the report at the time the report
34 is received to the assessor and to the joint standing committee of the Legislature having
35 jurisdiction over taxation matters.

36 B. By December 31st of each year, the assessor shall report to the joint standing
37 committee of the Legislature having jurisdiction over taxation matters the revenue loss
38 during the report year as a result of this subsection for each taxpayer claiming the credit
39 and, if necessary, shall include updated revenue loss amounts for any previous tax year.
40 For purposes of this paragraph, "revenue loss" means the credit claimed by a taxpayer
41 and allowed pursuant to this section, consisting of the amount of the credit used to
42 reduce the tax liability of the taxpayer and the amount of the credit refunded to the
43 taxpayer, separately identified.

1 Notwithstanding any other provision of law to the contrary, the reports required by this
2 subsection are public records as defined in Title 1, section 402, subsection 3.

3 **5. Evaluation; specific public policy objective; performance measures.** The credit
4 provided under this section is subject to ongoing legislative review in accordance with Title
5 3, chapter 37. In developing evaluation parameters to perform the review, the Office of
6 Program Evaluation and Government Accountability, the joint legislative committee
7 established to oversee program evaluation and government accountability matters and the
8 joint standing committee of the Legislature having jurisdiction over taxation matters shall
9 consider:

10 A. The specific public policy objective of the credit provided under this section to
11 promote and incentivize the incubation of start-up and early-stage biotechnology
12 incubators, biomanufacturing facilities and biotechnology research and product
13 development in the State; and

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

15 (1) The number of start-up and early-stage biotechnology companies that have
16 been developed in biotechnology incubators that have been the subject of the credit
17 provided by this section, and the successes achieved by these companies in the
18 biotechnology field;

19 (2) The number and general types of biotechnology products manufactured in
20 biomanufacturing facilities that have been the subject of the credit provided by this
21 section, and the commercial importance of the biomaterials and biomolecules
22 produced in those facilities, with sensitivity to the confidential and competitive
23 nature of early-stage products;

24 (3) The amount of biotechnology research and development taking place in the
25 State resulting from subparagraphs (1) and (2); and

26 (4) Measures of fiscal impact and overall economic impact to the State resulting
27 from investments in biotechnology incubators and biomanufacturing facilities.

28 **6. Rules.** The commissioner and the assessor may adopt rules to implement the credit
29 under this section, including, but not limited to, rules for determining and certifying
30 eligibility. Notwithstanding Title 5, section 8071, subsection 3, the commissioner may also
31 by rule establish fees for obligations under this section. Any fees collected pursuant to this
32 section must be deposited into a special revenue account administered by the
33 commissioner, and those fees may be used only to defray the actual costs of administering
34 the credit under this section. Rules adopted pursuant to this subsection are routine technical
35 rules as defined in Title 5, chapter 375, subchapter 2-A.

36 **SUMMARY**

37 This bill establishes a refundable Maine income tax credit for investment in
38 biotechnology incubators and biomanufacturing facilities. The amount of the credit is 30%
39 of qualified investment, taken in the form of an annual credit of 6% of the qualified
40 investment each year for 5 years after a certificate of completion has been issued by the
41 Commissioner of Economic and Community Development. The amount of investment in
42 a biotechnology incubator that is eligible for a credit is capped at \$15 million for each
43 project and \$30 million for all projects in total. The amount of investment in a

1 biomanufacturing facility that is eligible for a credit is capped at \$15 million for each
2 project and \$30 million for all projects in total. The bill also provides for situations in
3 which the facilities are no longer being primarily used for the purposes of biotechnology
4 incubation or biomanufacturing.