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Legislative Document

No. 2123

S.P. 763

In Senate, February 27, 2020

An Act To Create Fairness in the Revitalization of Maine's Paper Industry

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 MARTIN of Sinclair and
Senators: CARPENTER of Aroostook, CHIPMAN of Cumberland, DOW of Lincoln,
POULIOT of Kennebec, Representatives: BICKFORD of Auburn, Speaker GIDEON of
Freeport, MARTIN of Eagle Lake, McCREA of Fort Fairfield.

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

2 **Sec. 1. 36 MRSA §191, sub-§2, ¶~~KKK~~** is enacted to read:

3 KKK. The disclosure to the joint standing committee of the Legislature having
4 jurisdiction over taxation matters pursuant to section 5219-WW, subsection 4,
5 paragraph B of the revenue loss, including the loss due to refundable credits,
6 attributable to each taxpayer claiming the tax credit for paper manufacturing facility
7 investment provided under that section, regardless of the number of persons eligible
8 for the credit.

9 **Sec. 2. 36 MRSA §191, sub-§2, ¶~~LLL~~** is enacted to read:

10 LLL. The disclosure of information to the Department of Economic and Community
11 Development necessary for the administration of the tax credit for paper
12 manufacturing facility investment pursuant to section 5219-WW.

13 **Sec. 3. 36 MRSA §5219-WW** is enacted to read:

14 **§5219-WW. Credit for paper manufacturing facility investment**

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

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

19 B. "Commissioner" means the Commissioner of Economic and Community
20 Development.

21 C. "Employee based at a paper manufacturing facility" means an employee that
22 performs more than 50% of the employee's employee-related activities for the
23 employer at a paper manufacturing facility.

24 D. "Full-time" means an average of at least 36 hours weekly during the period of
25 measurement.

26 E. "Paper manufacturing facility" means a facility in the State at which paper
27 products are manufactured, including facilities used in support of such paper
28 manufacturing.

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

31 (1) The applicant owns a paper manufacturing facility located in a county in this
32 State with an unemployment rate that is at least 20% higher than the state average
33 unemployment rate, as determined in the most recent annual state and county
34 unemployment rate report issued by the Department of Labor;

35 (2) The applicant directly employs at least 400 qualified employees, at least 75%
36 of whom earn at least 115% of the most recent annual per capita personal income
37 in the county in which the qualified employee is employed;

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

3 (4) The applicant's paper manufacturing facility is not located within a low-
4 income community. As used in this subparagraph, "low-income community" has
5 the same meaning as in the Code, Section 45D(e)(1); and

6 (5) The applicant's headquarters are or will be located in the State.

7 G. "Qualified employee" means a full-time employee based at a paper manufacturing
8 facility for whom a retirement program subject to the federal Employee Retirement
9 Income Security Act of 1974, 29 United States Code, Chapter 18 and group health
10 insurance are provided, and whose income derived from employment at a paper
11 manufacturing facility, calculated on a calendar year basis, is greater than the most
12 recent annual per capita personal income in the county in which the qualified
13 employee is employed. "Qualified employee" does not include an employee who is
14 transferred, as determined by the commissioner, to a qualified applicant from an
15 affiliated business located in the State.

16 H. "Qualified investment" means an investment of at least \$15,000,000 to design,
17 permit, build, rebuild, modify, replace, repair or acquire machinery or equipment,
18 including supporting equipment, to modernize or improve a paper manufacturing
19 facility. The investments and activities of a qualified applicant and other entities that
20 are members of the qualified applicant's unitary business must be aggregated to
21 determine whether a qualified investment has been made. A qualified investment
22 includes any amount spent, prior to the issuance of a certificate of approval, on
23 machinery, equipment, repair parts, replacement parts, replacement equipment,
24 including additions and accessions to other machinery and equipment, as long as the
25 machinery, equipment, parts, additions or accessions are placed in service after the
26 issuance of a certificate of approval. A qualified investment does not include an
27 investment made after December 31, 2023.

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

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

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

42 The commissioner may not issue certificates of approval under this subsection that
43 total, in the aggregate, more than \$40,000,000 of qualified investment.

1 C. A certified applicant shall obtain approval from the commissioner prior to the
2 transfer of the certificate of approval or, if the certified applicant has obtained a
3 certificate of completion under paragraph E, that certificate of completion to another
4 person. A certificate of approval or certificate of completion may be transferred only
5 if all or substantially all of the assets of the certified applicant are, or will be,
6 transferred to that person or if 50% or more of the certified applicant's voting stock or
7 analogous noncorporate equity interest is, or will be, acquired by that person. The
8 commissioner shall approve the transfer of the certificate of approval or the
9 certificate of completion only if at least one of the following conditions is satisfied:

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

12 (2) The commissioner finds that the transferee will, and has the capacity to,
13 maintain operations of the paper manufacturing facility in a manner that meets
14 the minimum qualifications for continued eligibility of benefits under this section
15 after the transfer occurs.

16 If the commissioner approves the transfer of the certificate, the transferee, from the
17 date of the transfer, must be treated as the certified applicant and as eligible to claim
18 any remaining benefit under the certificate of approval or the certificate of
19 completion that has not been previously claimed by the transferor as long as the
20 transferee meets the same eligibility requirements and conditions for the credit as
21 applied to the original certified applicant.

22 D. The commissioner shall revoke a certificate of approval if the certified applicant
23 or a person to whom a certificate of approval has been transferred pursuant to
24 paragraph C fails to make a qualified investment within 2 years of the date of the
25 certificate of approval. The commissioner shall revoke a certificate of approval or a
26 certificate of completion under paragraph E if the applicant or transferee ceases
27 operations of the paper manufacturing facility in the State or the certificate of
28 approval or certificate of completion is transferred to another person without approval
29 from the commissioner pursuant to paragraph C. A certified applicant whose
30 certificate of completion is revoked within 5 years after the date issued shall return
31 within 60 days following revocation of the certificate to the State an amount equal to
32 the total credits claimed under this section. A certified applicant whose certificate of
33 completion is revoked during the period from 6 years after to 10 years after the date
34 the certificate was issued shall return within 60 days following revocation of the
35 certificate to the State an amount equal to the total credits claimed under this section
36 for the period from 6 years after to 10 years after the date the certificate was issued.
37 If credit amounts are subject to recapture after a certificate of approval has been
38 transferred as provided in paragraph C, the transferee is responsible for payment of
39 any credit amounts that must be returned to the State.

40 E. Upon making a qualified investment, a certified applicant shall submit an
41 application to the commissioner for a certificate of completion. If the commissioner
42 determines that a qualified investment has been made, the commissioner shall issue a
43 certificate of completion to the certified applicant as soon as is practical. The
44 certificate of completion must state the amount of qualified investment made by the
45 certified applicant.

1 F. Upon issuance of a certificate of completion in accordance with paragraph E, the
2 commissioner shall issue, on behalf of the State, a memorandum to the qualified
3 applicant describing the tax credits provided by this section to the applicant at the
4 time the certificate of completion is issued. The memorandum must provide that the
5 certificate of completion does not prohibit the commissioner from revoking a
6 certificate in accordance with paragraph D and does not prohibit the assessor from
7 assessing and collecting an overpaid benefit in accordance with the provisions of this
8 Title.

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

11 A. Subject to the limitations under paragraph B, beginning with the tax year during
12 which a certificate of completion is issued under subsection 2, paragraph E or the tax
13 year beginning in 2021, whichever is later, and for each of the following 9 tax years,
14 a certified applicant is allowed a credit against the tax due under this Part for the
15 taxable year in an amount equal to 4% of the certified applicant's qualified
16 investment.

17 The credit allowed under this paragraph is refundable.

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

19 (1) A credit is not allowed for any tax year during which the taxpayer does not
20 have at least 400 qualified employees based at the paper manufacturing facility
21 where the qualified investment was made, as measured on the last day of the tax
22 year.

23 (2) Cumulative credits under this subsection for all certified applicants may not
24 exceed \$1,600,000 per year and \$16,000,000 in total.

25 (3) A credit is not allowed to any person who receives or has received a qualified
26 low-income community investment under section 5219-HH with respect to the
27 paper manufacturing facility at which the qualified investment is made.

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

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

34 (1) The number of qualified employees of the certified applicant on the last day
35 of the report year; and

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

37 The commissioner may prescribe forms for the annual report described in this
38 paragraph. The commissioner shall provide copies of the report to the assessor and to
39 the joint standing committee of the Legislature having jurisdiction over taxation
40 matters at the time the report is received.

1 B. By April 1st of each year, the commissioner shall report to the joint standing
2 committee of the Legislature having jurisdiction over taxation matters aggregate data
3 on employment levels and qualified investment amounts of certified applicants for
4 each year that a certified applicant claimed a credit under this section, and the
5 assessor shall report to the committee the revenue loss during the previous calendar
6 year, including the loss due to refundable credits, as a result of this section for each
7 taxpayer claiming the credit.

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

10 **5. Rules.** The commissioner and the assessor may jointly adopt routine technical
11 rules as defined in Title 5, chapter 375, subchapter 2-A to implement this section,
12 including, but not limited to, rules for determining and certifying eligibility. The
13 commissioner may also by routine technical rule establish fees to offset the costs of
14 administering this section. Any fees collected pursuant to this subsection must be
15 deposited into a special revenue account administered by the commissioner, and those
16 fees may be used only to defray the actual costs of administering the credit under this
17 section.

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

25 A. That the specific public policy objectives of the credit provided under this section
26 are to provide incentives for the revitalization of paper manufacturing facilities in
27 counties with high unemployment and to create or retain high-quality jobs in the State
28 by encouraging paper manufacturers to modernize their paper manufacturing
29 equipment to better compete in the marketplace; and

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

31 (1) The number of qualified employees added or retained during the period being
32 reviewed and how employment during that period compares to the minimum
33 employment requirements established in subsection 3, paragraph B, subparagraph
34 (1);

35 (2) The amount of qualified investment made by certified applicants during the
36 period being reviewed and how those investments compare to the minimum level
37 of investments required in subsection 1, paragraph H;

38 (3) The increase in the vitality and competitiveness of the State's paper industry
39 in the marketplace;

40 (4) The change in the number of paper manufacturers and machinery used for the
41 production of paper products located in the State and the number of
42 modernization projects undertaken at those paper manufacturing facilities during
43 the period being reviewed; and

