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TAXATION

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STATE OF MAINE
SENATE
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FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 591, L.D. 1639, Bill, "An Act To Promote Major Business Headquarters Expansions in Maine, Promote the Commercialization of Research and Development in Maine and Create Jobs"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 36 MRSA §191, sub-§2, ¶DDD is enacted to read:

DDD. The disclosure to the joint standing committee of the Legislature having jurisdiction over taxation matters pursuant to section 5219-QQ, subsection 4, paragraph B of the revenue loss, including the loss due to refundable credits, attributable to each taxpayer claiming the tax credit for major business headquarters expansions provided under that section, regardless of the number of persons eligible for the credit.

Sec. 2. 36 MRSA §5219-QQ is enacted to read:

§5219-QQ. Credit for major business headquarters expansions

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

- A. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this section.
B. "Commissioner" means the Commissioner of Economic and Community Development.
C. "Employees based in the State" means employees that perform more than 50% of employee-related activities for the employer at the headquarters in the State.
D. "Facility" means one or more buildings and includes the real and personal property located in those buildings.
E. "Full-time" means an average of 36 hours weekly during the period of measurement.

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1 F. "Headquarters" means the principal facility from which the applicant directs its
2 national or global business activities, as determined by the commissioner at the time
3 of application.

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

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

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

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

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

13 H. "Qualified investment" means an investment of at least \$35,000,000 to design,
14 permit, construct, modify, equip or expand the applicant's headquarters in the State.
15 The investments and activities of a qualified applicant and other entities that are
16 members of the qualified applicant's unitary business must be aggregated to
17 determine whether a qualified investment has been made. A qualified investment
18 does not include an investment made prior to the issuance of a certificate of approval
19 or after December 31, 2022.

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

23 A. A qualified applicant may apply to the commissioner for a certificate of approval.
24 An applicant shall submit to the commissioner information demonstrating that the
25 applicant is a qualified applicant. If a certified applicant undertakes to make an
26 additional qualified investment, the certified applicant may apply to the
27 commissioner for an additional certificate of approval.

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

34 C. Upon issuance of a certificate of completion in accordance with paragraph F, the
35 commissioner shall issue, on behalf of the State, a memorandum to the qualified
36 applicant describing the benefits provided by this section at the time the certificate of
37 completion is issued. The memorandum must provide that the certificate of
38 completion does not prohibit the commissioner from revoking a certificate in
39 accordance with paragraph E and does not prohibit the assessor from assessing and
40 collecting an overpaid benefit in accordance with the provisions of this Title.

41 D. A certified applicant shall obtain approval from the commissioner to transfer the
42 certificate of approval or, if the certified applicant has obtained a certificate of

1 completion, that certificate of completion to another person. A certificate of approval
2 or certificate of completion may be transferred only if all or substantially all of the
3 assets of the certified applicant are, or will be, transferred to that person or if 50% or
4 more of the certified applicant's voting stock is, or will be, acquired by that person.
5 The commissioner shall approve the transfer of the certificate of approval or the
6 certificate of completion only if at least one of the following conditions is satisfied:

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

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

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

19 E. The commissioner must revoke a certificate of approval if the certified applicant
20 or a person to whom a certificate of approval has been transferred pursuant to
21 paragraph D fails to make a qualified investment within 5 years of the date of the
22 certificate of approval. The commissioner shall revoke a certificate of approval or a
23 certificate of completion if the applicant ceases operations of the headquarters in the
24 State or the certificate of approval or certificate of completion is transferred to
25 another person without approval from the commissioner pursuant to paragraph D. A
26 certified applicant whose certificate of completion is revoked within 5 years after the
27 date issued shall within 60 days following revocation of the certificate return to the
28 State an amount equal to the total credits claimed under this section. A certified
29 applicant whose certificate of completion is revoked during the period from 6 years
30 after through 10 years after the date the certificate was issued shall within 60 days
31 following revocation of the certificate return to the State an amount equal to the total
32 credits claimed under this section for the period from 6 years after through 10 years
33 after the date the certificate was issued.

34 F. Upon making the qualified investment and completing the headquarters and
35 employment criteria in subsection 1, paragraph H, a certified applicant shall submit
36 an application to the commissioner for a certificate of completion. If the
37 commissioner determines that a qualified investment has been made, the applicant's
38 headquarters is located in the State and at least 25% of the applicant's full-time
39 employees, as measured at the time of application for the certificate of approval, are
40 based in the State, the commissioner shall issue a certificate of completion to the
41 certified applicant as soon as is practical.

42 The commissioner may not issue certificates of approval under this subsection that total,
43 in the aggregate, more than \$100,000,000 of qualified investment or any individual
44 certificate of approval for more than \$40,000,000 of qualified investment.

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

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

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

10 (1) A credit is not allowed for any tax year during which the taxpayer does not
11 meet or exceed the following employment targets as measured on the last day of
12 the tax year.

13 (a) For each of the first 10 tax years for which the credit is claimed, there
14 must be a total of at least 80 additional full-time employees based in the State
15 whose jobs were added since the first day of the first tax year for which the
16 credit was claimed multiplied by the number of years for which the credit has
17 been claimed.

18 (b) For each tax year after the 10th tax year for which the credit is claimed,
19 the taxpayer must employ a total of at least 800 additional full-time
20 employees based in the State whose jobs were added since the first day of the
21 first tax year for which the credit was claimed.

22 Jobs for additional full-time employees that are counted for determining
23 eligibility for the credit under one certificate of completion may not be counted
24 for determining eligibility for the credit under a separate certificate of
25 completion.

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

28 **4. Reporting required.** A certified applicant and the commissioner are required to
29 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 full-time employees based in this State of the certified
35 applicant on the last day of the tax year ending during the calendar year
36 immediately preceding the report year; and

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

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

1 1. It removes provisions authorizing a taxpayer receiving the headquarters credit to
2 have any unused credit carry-forward for the research expense tax credit, super credit for
3 substantial expansions of research and development, jobs and investment tax credit and
4 Maine capital investment credit be made refundable for any tax year to the extent of the
5 headquarters credit.

6 2. It removes from consideration as qualified investments expenditures for employee
7 training and education and payment of student loan debt.

8 3. It provides that no credit may be claimed in any year in which employment targets
9 are not met. During the first 10 tax years for which the credit is claimed, the employment
10 target is a rolling average of 80 new full-time Maine jobs added per year. In the first year
11 of the credit, the 80 new jobs may include employees added since the first day of the tax
12 year to account for the fact that the certificate of completion may be granted late in the
13 tax year. In years 11 through 20 of the credit, the employment target requires that the 800
14 jobs created in years 1 through 10 be sustained. The amendment also provides that new
15 jobs may not be counted to establish eligibility under more than one certificate of
16 completion.

17 4. It provides that if the certificate of completion is transferred the transferee must
18 meet the same eligibility requirements and conditions as applied to the original certified
19 applicant.

20 5. It provides that reports by the taxpayer and the State Tax Assessor are public
21 records and provides that the State Tax Assessor must disclose information regarding
22 credits received to the joint standing committee of the Legislature having jurisdiction
23 over taxation matters.

24 6. It requires the Office of Program Evaluation and Government Accountability to
25 complete a design evaluation review of the credit, identifying the extent to which the
26 design of the credit supports the accomplishment of the credit's purposes, intent and
27 goals, the extent to which benefits are directed to the intended beneficiaries and the extent
28 to which the administration of the credit is efficient and effective. The office is directed to
29 include with its evaluation recommended performance measures for the credit and an
30 identification of the data needed for effective evaluation.

31 7. It provides that the purpose of the credit is to create high-quality jobs in the State
32 by encouraging the location or expansion of the headquarters of major businesses in the
33 State.

34 8. It makes technical corrections.