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S.P. 125

In Senate, February 10, 2011

An Act To Create the Maine Fishery Infrastructure Tax Credit Program

Reference to the Committee on Taxation suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator TRAHAN of Lincoln.

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

2 **Sec. 1. 5 MRSA §13070-J, sub-§1, ¶D**, as amended by PL 2009, c. 337, §5, is
3 further amended to read:

4 D. "Economic development incentive" means federal and state statutorily defined
5 programs that receive state funds, dedicated revenue funds and tax expenditures as
6 defined by section 1666 whose purposes are to create, attract or retain business
7 entities related to business development in the State, including but not limited to:

- 8 (1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;
- 9 (2) The Governor's Training Initiative Program under Title 26, chapter 25,
10 subchapter 4;
- 11 (3) Municipal tax increment financing under Title 30-A, chapter 206;
- 12 (4) The jobs and investment tax credit under Title 36, section 5215;
- 13 (5) The research expense tax credit under Title 36, section 5219-K;
- 14 (6) Reimbursement for taxes paid on certain business property under Title 36,
15 chapter 915;
- 16 (7) Employment tax increment financing under Title 36, chapter 917;
- 17 (8) The shipbuilding facility credit under Title 36, chapter 919;
- 18 (9) The credit for seed capital investment under Title 36, section 5216-B; ~~and~~
- 19 (10) The credit for pollution-reducing boilers under Title 36, section 5219-Z;
20 and
- 21 (11) The credit for Maine fishery infrastructure investment under Title 36,
22 section 5216-D.

23 **Sec. 2. 12 MRSA c. 903, sub-c. 8** is enacted to read:

24 **SUBCHAPTER 8**

25 **MAINE FISHERY INFRASTRUCTURE TAX CREDIT PROGRAM**

26 **§10331. Tax credit certificates**

27 **1. Authorization; short title.** In order to encourage investment in and contributions
28 to infrastructure improvements and facilities that enhance the State's fisheries, the
29 department is authorized to issue certificates of eligibility for the Maine fishery
30 infrastructure investment tax credit permitted by Title 36, section 5216-D, subject to the
31 requirements of this section. This program may be known and cited as "the Maine Fishery
32 Infrastructure Tax Credit Program."

33 **2. Eligibility for tax credit certificate; rules.** The department shall adopt rules in
34 accordance with the Maine Administrative Procedure Act to implement the Maine
35 Fishery Infrastructure Tax Credit Program. Rules adopted pursuant to this subsection are

1 major substantive rules as defined by Title 5, chapter 375, subchapter 2-A. The rules
2 must establish requirements for public fishery infrastructure project eligibility for a tax
3 credit certificate and must include at least the following.

4 A. A tax credit certificate may be issued in an amount not more than 50% of the
5 amount of cash actually invested in or contributed to an eligible public fishery
6 infrastructure project in any calendar year.

7 B. An eligible public fishery infrastructure projects must be determined by the
8 department to have a public benefit and be:

9 (1) A publicly owned infrastructure improvement or facility that enhances the
10 State's fisheries; or

11 (2) A privately owned infrastructure improvement or facility that is publicly
12 accessible.

13 **3. Credit certificate limit.** The aggregate investment or contribution eligible for tax
14 credits under this subchapter may not exceed \$5,000,000 per project.

15 **4. List of projects.** The department shall develop and maintain a list of projects
16 eligible under this subchapter and rules adopted under this subchapter.

17 **5. Revocation of tax credit certificate.** The department may revoke a tax credit
18 certificate under this subchapter if any representation to the department in connection
19 with the application for the certificate proves to have been false when made or if the
20 applicant violates any conditions established by the department and stated in the tax
21 credit certificate. The revocation may be in full or in part as the department determines.
22 The department shall specify the amount of credit being revoked and send notice of the
23 revocation to the investor or contributor and to the State Tax Assessor.

24 **6. Reports.** As a condition for determination of eligibility or continuation of
25 eligibility for a tax credit certificate under this subchapter, the department may require
26 any information or reports from the public fishery infrastructure project that it considers
27 necessary.

28 **Sec. 3. 36 MRSA §5216-D** is enacted to read:

29 **§5216-D. Maine Fishery Infrastructure Investment Tax Credit Program**

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

32 A. "Certificate" means a tax credit certificate issued by the Department of Inland
33 Fisheries and Wildlife pursuant to Title 12, chapter 903, subchapter 8.

34 B. "Investment" means an investment or contribution for which a certificate has been
35 received.

36 C. "Investor" means a taxpayer that has received a certificate.

37 **2. Credit.** An investor is entitled to a credit against the tax otherwise due under this
38 Part equal to the amount of the tax credit certificate issued by the Department of Inland

1 Fisheries and Wildlife in accordance with Title 12, section 10331 and as limited by
2 subsection 3. In the case of partnerships, limited liability companies, S corporations,
3 nontaxable trusts and any other entities that are treated as flow-through entities for tax
4 purposes under the Code, but not including flow-through entities taxed under chapter 819,
5 the individual partners, members, stockholders, beneficiaries or equity owners of such
6 entities must be treated as the investors under this section and are allowed a credit against
7 the tax otherwise due from them under this Part in proportion to their respective interests
8 in those partnerships, limited liability companies, S corporations, nontaxable trusts or
9 other flow-through entities. Except as limited or authorized by subsection 3 or 4, 25% of
10 the credit must be taken in the taxable year the investment is made and 25% per year
11 must be taken in each of the next 3 taxable years.

12 **3. Limitation.** The amount of the credit allowed under this section for any one
13 taxable year may not exceed 50% of the tax imposed by this Part on the investor for the
14 taxable year before application of the credit.

15 **4. Carry forward.** A credit under this section not taken because of the limitation in
16 subsection 3 must be taken in the next taxable year in which the credit may be taken, and
17 the limitation of subsection 3 also applies to the carry-forward years. In no case may this
18 carry-forward period exceed 15 years.

19 **5. Recapture.** If the Department of Inland Fisheries and Wildlife revokes a
20 certificate, there must be added to the tax imposed on the investor under this Part for the
21 taxable year in which the revocation occurs an amount equal to the excess of the amount
22 of credit revoked over the amount of credit not yet taken.

23 **6. Effect of other tax benefits.** A person may not claim a credit under this section if
24 the person also claims a deduction for the same investment under another provision of
25 this Part.

26 **SUMMARY**

27 This bill provides an income tax credit for investment in or contributions to eligible
28 public fishery infrastructure projects in the State. Eligible projects must be certified by
29 the Department of Inland Fisheries and Wildlife, which is required to adopt rules for
30 determination of eligibility. Tax certificates may be issued for up to \$5,000,000 per
31 project. Credits must be taken in increments of 25% over 4 years and may not exceed
32 50% of the total tax imposed on the investor for the taxable year before application of the
33 credit. Unused credits may be carried forward for up to 15 years.