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# Assessment of the Design of the Newly Enacted Major Business Headquarters Expansion Program, February 2018

Office of Program Evaluation and Government Accountability

Maine State Legislature

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**Assessment of the Design of the Newly Enacted  
Major Business Headquarters Expansion Program**

**Prepared by**

**the Office of Program Evaluation and Government Accountability  
Pursuant to Public Law 2017, Chapter 297, Section 3**

**Submitted to the Legislature's**

**Joint Standing Committee on Taxation  
and  
Government Oversight Committee**

**February 2018**

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## ***Introduction***

Public Law 2017, Chapter 297 enacted the Major Business Headquarters Expansion (MBHE) Program<sup>1</sup>. This program provides qualifying businesses with a refundable tax credit for up to 20 years. The amount of credit each business is eligible for annually is equal to 2% of the business's qualified investment in a headquarters facility in Maine. Credits are only claimable in years when a business meets employment targets. A business must create at least 800 new Maine jobs, at an average of at least 80 jobs per year, over the first 10 years of claiming credits and must maintain those 800 jobs for years 11 through 20 in order to claim credits in those years.

The MBHE Program limits cumulative credits to \$16 million per certified headquarters project spread over 20 years. Each certified project must include a qualified investment of between \$35 million and \$40 million in a headquarters facility in Maine, and as a result of current statutory limits only two headquarters projects can be certified<sup>2</sup>. Key steps for business participants in the MBHE Program are highlighted in Appendix B.

In addition to enacting the MBHE Program, Public Law 2017, Chapter 297 also required OPEGA to perform an assessment of the program's design and administration prior to the program's full implementation. Specifically, OPEGA was required to assess:

1. The extent to which the design of the tax expenditure supports accomplishment of the tax expenditure's purpose, intent and goals;
2. The extent to which the design of the tax expenditure directs benefits to the intended beneficiaries;
3. The extent to which the State's current or planned administration of the tax expenditure, including enforcement efforts, is efficient and effective; and
4. The performance measures that would be appropriate for analyzing the evaluation objectives established for full evaluations under 3 M.R.S. § 999(1)(A), and the data that would be necessary to support those measures.

As part of this assessment OPEGA reviewed the original bill for the MBHE program, L.D. 1639, along with the subsequent Committee Amendment A and final Public Law as passed by the 128th Legislature. OPEGA staff also consulted with Taxation Committee staff in the Legislature's nonpartisan Office of Fiscal and Program Review; contacted the Department of Economic and Community Development (DECD) and Maine Revenue Services (MRS) regarding their plans for administering the program; and conducted interviews with a number of stakeholders including:

- the Chairs of the 128<sup>th</sup> Joint Legislative Committee on Taxation, which heard the bill;
- an attorney who drafted much of the initial bill's language;
- a representative of IDEXX, a firm that testified in favor of the bill and publicly expressed interest in participating in the program; and
- representatives of Maine & Company.

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<sup>1</sup> Public Law 2017, Chapter 297 is included in its entirety in Appendix A.

<sup>2</sup> 36 M.R.S. § 5219-QQ(2) limits total aggregate approved qualified investments under this program to \$100 million. OPEGA notes that since individual qualified investments must be between \$35 million and \$40 million, only \$70 to \$80 million of the \$100 million cap will be usable.

In reviewing public testimony on L.D. 1639 OPEGA noted that IDEXX appeared to be a likely participant in the program. However the program currently has capacity for two participants. With this in mind, OPEGA evaluated the program's design and administrative procedures from the perspective that any, currently unknown, business could apply to be a participant and that the program should be robust enough to ensure that the desired outcomes are achieved regardless of the particular businesses that participate.

### ***Program Purpose, Goals and Intended Beneficiaries***

OPEGA's assessment of the MBHE Program's design is based on the purpose, goals and beneficiaries identified in unallocated language in Section 4 of the enacting law. This section describes the program's purpose as creating high-quality jobs in the State by encouraging major businesses to locate or expand their headquarters in Maine. The language in Section 4 also suggests a number of additional goals including:

- encouraging the recruitment and training of employees for these facilities,
- benefitting small businesses that supply goods and services to the major business headquarters and its employees,
- increasing the tax base, and
- providing many other direct and indirect economic benefits to the State.

Based on these purposes and goals it seems the intended beneficiaries of the MBHE Program are:

- major businesses that locate or expand their headquarters in Maine, and
- small businesses that supply goods and services to major businesses and their employees.

**Public Law 2017, Chapter 297:**

Sec. 4. Legislative findings, purpose. The Legislature finds that it is in the best interest of the people of the State of Maine to encourage the location and expansion of major business headquarters in the State and to encourage the recruitment and training of employees for these facilities. The Legislature further finds that the location and expansion of major business headquarters in Maine will create jobs, benefit small businesses that supply goods and services to the major business headquarters and its employees, increase the tax base and provide many other direct and indirect economic benefits to the State.

The purpose of this credit is to create high-quality jobs in the State by encouraging major businesses to locate their headquarters in this State or to expand their headquarters in the State.

If these do not accurately reflect the outcomes the Legislature expects from this program, then the program's goals and intended beneficiaries should be clarified to ensure a consistent understanding of the program's purpose and provide a solid basis for future evaluations. See Observation 1 on page 7 for further discussion.

### ***Assessment of Program Design***

The MBHE Program goals of benefitting small businesses that supply goods and services to the major business headquarters and its employees; encouraging the recruitment and training of employees for these facilities; and providing many other direct and indirect economic benefits to the State are either too general to measure or are not supported by the program's design. Other program goals to create high quality jobs, encourage major businesses to locate or expand their headquarters in Maine, and increase the tax base are

partially supported by the program’s design as discussed below. See Observation 1 for further discussion of the need to clarify program goals and ensure they are supported by the program’s design.

**Creating high-quality jobs.** The creation of jobs is guaranteed by the program design. A business must add 800 new jobs at a rate that averages at least 80 jobs per year over the first 10 years it claims credits. The business must then maintain those 800 jobs the subsequent 10 years in order to remain eligible for MBHE credits in those years. A business is not eligible to claim credits in any year that these thresholds are not met. However, the only quality requirement in statute is that these jobs must be full-time. Other State tax expenditure programs focused on jobs define “high quality” in terms of minimum salary or benefit levels. MBHE statute has no such provisions.

Another way in which the MBHE program targets the creation of jobs is the requirement that businesses have at least 1,250 employees (25% of the 5,000 worldwide minimum) in Maine before they can receive the certificate of completion required as a prerequisite to claiming credits. For businesses already established in Maine, this minimum may not result in any additional hiring. However, for businesses that have little or no current presence in Maine this likely necessitates additional hiring beyond the 800 jobs required to claim credits.

**Encouraging major businesses to locate or expand their headquarters in Maine.** The MBHE Program requirements limit the program’s benefits to businesses with at least 5,000 employees worldwide and locations in at least three other states or countries. Statutory requirements ensure that only businesses that meet those criteria as of their initial application to the program, and that locate or expand headquarters facilities in the State, will receive credits. These requirements effectively restrict the program to a narrow group of large national or international businesses that could be considered major businesses.

<p><u>36 M.R.S. § 5219-00(1)(F):</u> “Headquarters” means the principal facility from which the applicant directs its national or global business activities, as determined by the commissioner at the time of application.</p>
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Businesses are not required to meet the business size criteria beyond the initial application period. However, they must continue operations of the headquarters in Maine for the entire 20 years that they claim credits. Unlike the requirements for “major business”, MBHE requirements for “headquarters” are very general and leave significant room for judgment on the part of the DECD Commissioner. Without clarification of the program’s desired outcomes to guide this judgment, there is a risk that program benefits may not be limited to the type of headquarters facility the Legislature had intended to support.

**Increasing the tax base.** The MBHE Program includes elements that should result in increases to the tax base due to economic ripple effects, but program requirements could be strengthened to ensure more of these indirect tax effects are captured. Direct tax effects that could be expected to stem from the program include:

- Property tax increases stemming from the required investment of at least \$35 million in the headquarters facility.
- Sales tax increases from both the initial investment and any ongoing, increased local spending by the facility and its growing staff.
- Individual income tax receipts associated with the 800 new employees businesses must hire in order to receive the full amount of credits available under the program.



- Business income taxes increases depending on how the business accounts for its revenue.

Many factors affect whether these potential increases in the tax base would be realized. One significant factor in the short term is the participation of MBHE businesses in other State tax incentive programs such as the Employment Tax Increment Financing, Business Equipment Tax Exemption or Pine Tree Development Zone Programs. Participation in these programs could offset some, or all, of the direct increases in sales, property and income taxes for the duration of a business’s participation in these other programs.

Indirect tax effects – for example, additional income taxes paid by any Maine businesses with increased revenue due to MBHE participants’ spending – could still be realized immediately regardless of MBHE businesses’ participation in other programs. However, current statutory language does nothing to require or encourage MBHE businesses to use Maine vendors, to the degree possible, for any of their construction or ongoing operating needs. As a result, there is a risk that the significant investment and ongoing spending associated with the new or expanded headquarters facilities could be directed to out-of-state businesses.

### ***Assessment of Planned Program Administration***

Both DECD and MRS have responsibilities for administering portions of the MBHE Program, and as of the drafting of this report neither has finished planning their administrative efforts. In December 2017, both DECD and MRS posted information to their websites regarding enactment and availability of the credit. However, MRS explained that the agency does not expect to develop forms, instructions, guidance or rules until closer to the 2021 filing period because no credit may be claimed under the MBHE Program prior to that time. Consequently, the agencies planned efforts could not be assessed at this time.

OPEGA did assess the administrative procedures prescribed in statute and identified four areas where they could be improved. These areas include:

- **Statute does not require an employment baseline.** The MBHE Program’s statute requires qualifying businesses to create a certain number of new jobs, but does not set a baseline from which to measure jobs that are new to the State. See Observation 2 on page 9.
- **Clarification is needed for recapture provision.** In the event that an MBHE certificate is transferred and is later revoked, statute does not make it perfectly clear whether the transferor or transferee is responsible for returning amounts to the State that were paid prior to the transfer. See Observation 4 on page 10.
- **Credit may be calculated based on planned, not actual, investment amount.** MBHE participants are eligible for a credit in each taxable year equal to 2% of the participant’s “qualified investment.” However, the “qualified investment” amount is only specified on an applicant’s certificate of approval – the document issued before a program participant has actually made an investment. See Observation 3 on page 9.

Amounts Subject to Recapture  
 Under § 5219-QQ(2)(E), if a certificate is revoked within 5 years after the date issued all credits received under the program must be returned. Revocation of a certificate in years 6 through 10 requires return of only credits claimed during years 6 through 10.

- **Some reporting requirements are unclear.** The annual reporting required of businesses includes some mismatched timeframes and inconsistent language. In addition, the annual reporting required of DECD should be more specific to ensure the desired data is provided. See Observation 5 on page 10.

### ***Recommended Performance Measures and Required Data***

OPEGA suggests the performance measures below based on the intent, goals and beneficiaries identified for the MBHE program. If the Legislature specifies different intents, goals or intended beneficiaries, the performance measures appropriate to assess the program’s outcomes would need to be reassessed.

<b>Table 1. Suggested Performance Measures</b>	
A	Number of Direct Beneficiaries
B	Dollar Value of Tax Benefit to Beneficiaries
C	Total Direct Program Cost
D	Total Qualified Investment
E	Number of New Qualifying Employees and Total Employees
F	Average and Median Wages of New Employees and of All Employees
G	Percent of New and Total Employees with Access to Benefits
H	Average Annual Spending with In-State vendors
I	Direct Cost Per New Job Created
J	Net Impact on State Budget
K	Estimated Change in State and Local Tax Revenues
L	Change in Gross State Product
M	Return on State’s Investment – Estimated Change in Tax Revenue Divided by the Direct Cost of the Tax Expenditure
N	Change in Number of Major Business Headquarters in the State

The following data elements would be necessary to support some of the suggested performance measures above. Statute does not currently provide for the capture of this data.

- The average and the median wages for the group of new employees added to qualify the business for a certificate of completion and to claim the credit.
- The average and the median wages for all Maine-based employees for each business participant by year.
- Percent of employees (both new and total) who have access to benefits.
- Participants’ annual spending with in-State vendors (itemized or categorized by vendor type to support economic modeling).

- Additional economic modeling inputs: categorized or itemized expenditures that make up the qualified investment; total in-state spending prior to, and after, the business received a certificate of completion; NAICS<sup>3</sup> code(s) of qualified applicants; and the amount of benefit participants receive from other Maine tax expenditure or economic development programs.

Participants could be required to provide this data to an administering agency annually or could be required to retain the data until it is requested by an evaluator.

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<sup>3</sup> The North American Industry Classification System is the business classification standard used by Federal statistical agencies for analyzing and publishing data.

## Observations

### Observation 1 – Statute Should Be Amended to Clearly Reflect All Intended Outcomes Against Which Program’s Effectiveness Will be Assessed

OPEGA identified goals for the MBHE Program based on unallocated language in the legislative findings and purpose section of the enacting law. However, since unallocated language from public laws does not become part of statute, there are currently no statements of intent and no goals in the program’s statute to serve as the basis for future evaluations. In addition, OPEGA found the goals apparent in the enacting law’s unallocated language may not clearly reflect all of the outcomes the Legislature intended for the program. Below are specific opportunities for clarifying program goals or intended beneficiaries.

- A. Creating high quality jobs.** A business must add at least 800 new jobs over 10 years to be eligible for full MCHE credits, but the only quality requirement in statute is that these jobs must be full-time. This means that all full-time positions – whether vice presidents or custodians – at any certified headquarters facility will qualify under this program regardless of the wage level or benefits they provide. This is inconsistent with the State’s other jobs-focused programs which generally require qualifying jobs to meet or exceed wage and benefit thresholds. Keeping job quality standards consistent across programs would streamline job counting for program administrators and reporting for any businesses that access multiple programs.
  
- B. Targeting the type of headquarters facilities most likely to deliver the benefits the State desires.** Title 36 § 5219-QQ(1)(F) defines headquarters as “the principal facility from which the applicant directs its national or global business activities, as determined by the commissioner at the time of application.” This definition is general enough to allow a wide range of business facilities to potentially qualify for the program. Some possibilities include:
  - a large single building housing a cross-section of a business’s staff including manufacturing, marketing, accounting and executives;
  - an expansive call center with a few high level executives; or
  - a few buildings located near each other, one with key decision-making staff, one that is a warehouse, and one that is a retail storefront.

Stakeholders OPEGA spoke with suggested the MBHE Program was intended to target facilities that would make Maine more attractive to other businesses in the future by raising the State’s prestige; growing the State’s highly-skilled workforce; and developing a hub of sophisticated facilities that would benefit from the synergies of locating near each other. Much of the public testimony on the MBHE bill focused on how an expanded IDEXX facility could contribute to these goals. However, other businesses besides IDEXX may apply for the program, and with the vague definition of headquarters and unclear intent, MBHE benefits may not be limited the type of facilities envisioned when the program was enacted.

- C. Increasing the tax base via local spending.** There is currently nothing in MBHE statute encouraging or requiring program participants to use Maine businesses as vendors for their construction or ongoing operations purchases. As a result, the primary, ongoing benefit local businesses can expect is the indirect spending resulting from new employees the businesses must hire to claim MBHE credits. This is problematic for the goal of increasing the tax base, because if the majority of the headquarters' sizable initial investments and ongoing spending flows out of the State much of the anticipated downstream economic effects could follow.
- D. Benefitting small businesses.** The MBHE Program's enacting law seems to indicate a goal of benefitting small businesses. The goal is weakly targeted because there are no requirements for any Maine business to be used as vendors, as discussed in the bullet above. However, another issue is that what constitutes a "small business" is not clearly defined, and measuring the impacts to Maine businesses of a particular size would be challenging and resource intensive.
- E. Encouraging the recruitment and training of the employees.** There are no elements of the current statutory design that support encouraging recruitment and training. The initial draft of L.D. 1639 defined a participant's qualified investment as including, among other things, expenses for employees' training, education and student loan debt. These expenses were removed from the definition of qualified investment via Committee Amendment A and are not part the program language as enacted. However, the associated intent – to encourage the recruitment and training of employees for the headquarters facilities – was never removed from the bill and remains in Section 4 of the public law.
- F. Providing many other direct and indirect economic benefits to the State.** OPEGA's suggested performance measures include some measures of broader economic impacts. However, this goal does not currently include targets or outcomes specific enough to measure against. Any specific economic benefits expected to flow from this program should be made clear and public.

*OPEGA suggests amending statute to clarify the program's intended outcomes, including making sure all significant intended outcomes are recognized and determining how the success of the program should be measured – particularly for future evaluation purposes. OPEGA can provide suggested language for incorporating goals and performance measures into statute if requested.*

*Once the goals and performance measures are clear, OPEGA also suggests adjusting the statutory definitions and requirements as necessary to make sure the intended outcomes are targeted and relevant data for evaluating the program will be available. For example, the criteria for high quality may need to be adjusted if the Legislature determines a program goal is the creation of jobs of a specific level of quality.*

## **Observation 2 – An Employment Baseline Should Be Established to Ensure an Accurate Count of New Employees**

Statute requires MBHE participants to hire an average of at least 80 additional employees for each of the first 10 tax years that credits are claimed. However, statute does not provide for the establishment of an employment baseline for determining whether the targets for new employees have been met. Without a baseline, there is opportunity for confusion in counting the 80 minimum new jobs a business must add each year in order to be eligible for the credit. The fact that some businesses may have to hire additional Maine employees initially, to meet the criteria for a certificate of completion, before they can become eligible for credits creates additional potential for confusion.

Other Maine tax expenditure programs that focus on job creation – such as the Employment Tax Increment Financing (ETIF) Program – establish an employment baseline for each business that participates in the program. The baseline is used as a way of ensuring that new jobs claimed under the program are “net new” rather than new jobs that may have been created while other jobs were cut with the total employment at the business remain unchanged.

*OPEGA suggests amending statute to add a requirement for an employment baseline.*

## **Observation 3 – MBHE Credits Should Be Calculated Based on a Participant’s Actual Qualified Investment**

Title 36 § 5219-QQ(3)(A) specifies that qualifying MBHE participants are eligible for a credit in each taxable year equal to 2% of the participant’s “qualified investment.” The only qualified investment amount currently defined in statute is required to be specified on certificates of approval issued to qualified applicants prior to their actual investments. Once an MBHE participant has actually made the planned investment, a certificate of completion must be obtained from DECD before any credits can be claimed. However, statute does not require the certificate of completion to specify the amount actually invested.

Based on this, OPEGA believes the credit could currently be calculated based on the amount specified on the certificate of approval even though the participant does not appear to be legally bound to invest that exact amount. The amount actually invested could be different as long as it is still within the \$35 million to \$40 million range required under the program.

*OPEGA suggests amending statute to clarify that credits should be calculated based on the actual amount of qualified investment, up to the amount approved by the commissioner of DECD in the certificate of approval. For administrative ease, the actual investment amount could be provided by participants in applying for the certificate of completion and could be specified by the commissioner of DECD in that certificate.*

#### Observation 4 – The Party Responsible for Returning Funds When a Certificate Is Revoked After Having Been Transferred Should Be Clarified

Title 36 § 5219-QQ(2)(E) specifies that a portion of credits paid to program participants must be returned to the State if a participant’s certificate is revoked. However, statute leaves room for interpretation as to whether the transferor or transferee is responsible for returning the amounts paid prior to the transfer when a certificate is revoked after transfer. This situation may be unlikely to arise. However, with annual credits of up to \$800,000 per participant, clarifying this recapture provision would be worthwhile.

*OPEGA suggests amending statute to clarify responsibility for returning recaptured funds when a certificate has been transferred.*

#### Observation 5 – Statutory Reporting Requirements Should Be Clarified

OPEGA found some of the statutory reporting requirements for both DECD and program participants were unclear or inconsistent. Clarifying these requirements up front should ensure the Legislature has ready access to the program data it expects. OPEGA suggests clarification in the areas described below.

- A. DECD annual report to the Taxation Committee.** This report is required by 36 M.R.S. § 5219-QQ(4)(B) to include “aggregate data on employment levels and qualified investment amounts of certified applicants for each year”. Based on this current statutory language OPEGA finds it unclear whether DECD is required to provide aggregate data for just the current year, or for each of the program years to date including the current one. The latter data would provide a more complete picture of the program’s activity over time.
- B. Annual reports from program participants.** Under 36 M.R.S. § 5219-QQ(4)(A) certified applicants must report annually on:
  - “the number of full-time employees based in this State of the certified applicant on the last day of the tax year ending during the calendar year preceding the report year; and
  - the incremental amount of qualified investment made in the report year.”

There are two issues with this language. The first is that the timeframe for the employment and investment data does not match, so participants would be reporting employment and investment that occurred during two different periods. OPEGA understands from interviews with parties involved in drafting the bill that this was likely an oversight.

The second issue with the participant reporting language is the use of the phrase “employees based in *this* [emphasis added] State”. Elsewhere in statute, including under program definitions in § 5219-QQ(1)(C), Maine-based employees are referred to as “employees based in *the* [emphasis added] State”. Our

understanding is that the phrase “employees based in *the* [emphasis added] State” was intended to be used throughout the law and the use of the word “this” was an error.

*OPEGA suggests amending statute to clarify reporting requirements.*



**Appendix A: Complete Text of Public Law 2017, Chapter 297**

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

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

**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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. By April 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters aggregate data on employment levels and qualified investment amounts of certified applicants for each year, and the State Tax Assessor shall report to the committee the revenue loss during the previous calendar year, including the loss due to refundable credits, as a result of this section for each taxpayer claiming the credit.

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

**Sec. 3. Credit design evaluation.** By February 28, 2018, the Office of Program Evaluation and Government Accountability, referred to in this section as "the office," shall complete and submit to the Joint Standing Committee on Taxation and the Government Oversight Committee a tax expenditure design evaluation review of the credit for major business headquarters expansions established under the Maine Revised Statutes, Title 36, section 5219-QQ, referred to in this section as "the tax expenditure." The review must include an assessment of:

1. The extent to which the design of the tax expenditure supports accomplishment of the tax expenditure's purposes, intent and goals;
2. The extent to which the design of the tax expenditure directs benefits to the intended beneficiaries; and
3. The extent to which the State's current or planned administration of the tax expenditure, including enforcement efforts, is efficient and effective.

The office shall include with the review recommended performance measures appropriate for analyzing the evaluation objectives established for full evaluations under Title 3, section 999, subsection 1, paragraph A and make recommendations regarding data that would be necessary to perform the analyses. The Joint Standing Committee on Taxation may submit a bill to the Second Regular Session of the 128th Legislature regarding the credit for major business headquarters expansions.

**Sec. 4. Legislative findings, purpose.** The Legislature finds that it is in the best interest of the people of the State of Maine to encourage the location and expansion of major business headquarters in the State and to encourage the recruitment and training of employees for these facilities. The Legislature further finds that the location and expansion of major business headquarters in Maine will create jobs, benefit small businesses that supply goods and services to the major business headquarters and its employees, increase the tax base and provide many other direct and indirect economic benefits to the State.

The purpose of this credit is to create high-quality jobs in the State by encouraging major businesses to locate their headquarters in this State or to expand their headquarters in the State.

## Appendix B: Key Steps for Business Participants in the MBHE Program

