

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1697, L.D. 2377, Bill, "An Act to Amend and Clarify the Law Enabling State Tax Increment Financing"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 30-A MRSA §5252, sub-§1-A, as enacted by PL 1991, c. 606, Pt. A, §2 and affected by §4, is repealed.

Sec. 2. 30-A MRSA §5252, sub-§§1-B and 2-A are enacted to read:

1-B. Base period. "Base period" means the 3 calendar years preceding the calendar year in which an application for approval of a state tax increment financing district is submitted to the Commissioner of Economic and Community Development by a municipality.

2-A. Designated business. "Designated business" means a business located within the boundaries of a development district and designated by the municipality as a "designated business" for purposes of state tax increment financing.

Sec. 3. 30-A MRSA §5252, sub-§8-A, as enacted by PL 1991, c. 606, Pt. A, §2 and affected by §4, is repealed.

Sec. 4. 30-A MRSA §5254, sub-§3, ¶B, as amended by PL 1991, c. 431, §8, is further amended to read:

B. Annually set aside all tax increment revenues on retained captured assessed values and all state tax increment revenues payable to the municipality for public

2 purposes and deposit all tax-increment such revenues to the  
3 appropriate development program fund account in the  
4 following priority:

6 (1) To the development sinking fund account, an amount  
7 sufficient, together with estimated future revenues to  
8 be deposited to the account and earnings on the amount,  
9 to satisfy all annual debt service on bonds and notes  
10 issued under section 5257 and the financial plan; and

12 (2) To the project cost account, an amount sufficient,  
13 together with estimated future revenues to be deposited  
14 to the account and earnings on the amount, to satisfy  
15 all annual project costs to be paid from the account;

16 **Sec. 5. 30-A M RSA §5254-A**, as enacted by PL 1991, c. 606,  
17 Pt. A, §3 and affected by §4, is amended to read:

18 **§5254-A. State tax increment financing**

20 **1. Eligibility.** Any tax increment financing district,  
21 created designated by a municipality and duly-designated approved  
22 by the State,--in-which Commissioner of Economic and Community  
23 Development under section 5253, subsection 1, paragraph F  
24 provided captured assessed value within the district is created  
25 after the--effective--date--of--this--section July 30, 1991, is  
26 eligible to be approved as a state tax increment financing  
27 district. ~~Municipalities--must--demonstrate--that--without--the~~  
28 ~~approval--as--a--state--tax--increment--financing--district--the--project~~  
29 ~~will--not--go--forward,--and--as--a--result--will--not--generate--new--sales~~  
30 ~~tax--revenues--or--create--new--jobs--that--will--result--in--new~~  
31 ~~individual--income--taxes,--Upon--determination--by--the--designating~~  
32 ~~authority--that--these--conditions--have--been--met,--the--designating~~  
33 ~~authority--shall--approve--the--municipal--creation--of--the--state--tax~~  
34 ~~increment--financing--district.~~

36 **1-A. Procedure for establishing state tax increment**  
37 **financing district.** A municipality desiring to establish a state  
38 tax increment financing district must apply to the Commissioner  
39 of Economic and Community Development for approval of the  
40 proposed state tax increment financing district. The procedure  
41 for application is as follows.

42 **A.** The proposed state tax increment financing district must  
43 be approved locally by vote of the municipal officers of the  
44 municipality within which the proposed district will be  
45 located. Before approving a state tax increment financing  
46 district, the municipal officers shall hold at least one  
47 public hearing. Notice of the hearing must be published at  
48

2 least 10 days before the hearing in a newspaper of general  
3 circulation within the county in which the municipality is  
4 located.

6 B. The municipal officers shall adopt for the proposed  
7 state tax increment financing district a development program  
8 that identifies all designated businesses within the  
9 district and sets forth the amount of sales tax paid by  
10 designated businesses in connection with operations within  
11 the proposed district, the number of employees at designated  
12 businesses and the total state income taxes withheld by  
13 designated business for the base period. The development  
14 program may be combined with or integrated into the  
15 development program for the underlying municipal development  
16 district or may be separately stated, maintained and  
17 implemented. The development program may specify the  
18 allocable shares of the municipality and each designated  
19 business for liability for refund of the state tax increment  
20 revenues resulting from an audit. That allocation may be  
21 made by any means determined by the municipal officers to  
22 reasonably reflect the economic benefit derived from  
23 operation of the district.

24 C. Prior to approval of the proposed state tax increment  
25 financing district, the Commissioner of Administrative and  
26 Financial Services shall estimate the annual amount to be  
27 deposited in the state tax increment contingent account for  
28 all existing state tax increment financing districts,  
29 including the proposed district, and that estimate must be  
30 used in determining compliance with the limitations imposed  
31 under subsection 4, paragraphs D and E.

32 D. The municipality, acting through its municipal officers  
33 or their designee, shall submit an application to the  
34 Commissioner of Economic and Community Development on such  
35 form or forms and with such supporting data as the  
36 commissioner requires for approval of the proposed state tax  
37 increment financing district, including without limitation  
38 certifications by the designated businesses as to the  
39 average annual number of persons employed by each designated  
40 business within the boundaries of the proposed district, the  
41 average total state income taxes withheld by designated  
42 businesses during the base period and the average annual  
43 amount of sales tax remittances paid by each designated  
44 business from operations within the boundaries of the  
45 proposed district during the base period.

46 E. Upon approval of the state tax increment financing  
47 district, the Commissioner of Economic and Community  
48 Development shall issue a certificate of approval.  
49

2 1-B. Criteria for approval. Prior to issuing a certificate  
4 of approval for any state tax increment financing district, the  
6 Commissioner of Economic and Community Development must determine  
8 that:

10 A. The economic development described in the development  
12 program will not go forward without the approval of the  
14 state tax increment financing district. This requirement  
16 does not apply to the addition of state tax increment  
18 financing provisions to municipal development districts  
20 created prior to the effective date of this subsection;

22 B. The proposed district will make a contribution to the  
24 economic growth of the State, the control of pollution in  
26 the State or the betterment of the health, welfare or safety  
28 of the inhabitants of the State; and

30 C. The economic development described in the development  
32 program will not result in a substantial detriment to  
34 existing businesses in the State. In order to make this  
36 determination, the Commissioner of Economic and Community  
38 Development shall consider, pursuant to Title 5, chapter  
40 375, subchapter II, those factors the commissioner  
42 determines necessary to measure and evaluate the effect of  
44 the proposed district on existing businesses, including:

46 (1) Whether a proposed district should be approved if,  
48 as a result of the benefits to designated businesses,  
50 there will not be sufficient demand within the market  
area of the State to be served by the project to employ  
the efficient capacity of existing businesses; and

(2) Whether any adverse economic effect of the  
proposed district on existing businesses is outweighed  
by the contribution described in paragraph B.

The municipality has the burden of demonstrating that the  
proposed district will not result in a substantial detriment  
to existing businesses in accordance with the requirements  
of this paragraph, including rules adopted in accordance  
with this paragraph, except that when no interested parties  
object to the proposed district, the requirements of this  
paragraph are deemed satisfied. Interested parties must be  
given an opportunity, with or without a hearing at the  
discretion of the Commissioner of Economic and Community  
Development, to present their objections to the proposed  
district on grounds that the proposed district will result  
in a substantial detriment to existing businesses. If any  
interested party presents objections with reasonable

2 specificity and persuasiveness, the commissioner may divulge  
4 any information concerning the economic development  
6 described in the development program that the commissioner  
8 considers necessary for a fair presentation by the objecting  
party and an evaluation of those objections. If the  
commissioner finds that the municipality has failed to meet  
its burden as specified in this paragraph, the application  
must be denied.

10 2. Retained state tax revenues. On--an--annual--basis,  
12 designated-businesses-within-the-district-shall-report-the-amount  
14 of--new--sales--tax--and--number--of--new--employees--and--their  
16 compensation-levels,--above-the-average-level-of-the-previous-3  
18 years.--The-State-Tax-Assessor-shall-determine-the-net-annual  
20 gain-in-state-tax-revenues-through-newly-generated-individual  
22 income-and-sales-taxes.--The-municipality-may-receive-up-to-25%  
24 of-the-total-of-new-sales-tax-revenues-and-up-to-25%-of-the-total  
of--new--individual--income--taxes-generated-by--each--designated  
business-within-the-district,--as-determined-by-the-State-Tax  
Assessor-subject-to-the-further-limitations-in-subsection-4.--The  
municipality-shall-then-place-this-state-tax-increment-financing  
revenue-in-the-development-sinking-fund-established-in-accordance  
with-section-5254,-subsection-3. The following provisions govern  
retained state tax revenues.

26 A. On or before April 15th of each year, designated  
28 businesses located within a state tax increment financing  
30 district shall report the amount of sales tax paid in  
32 connection with operations within the district, the number  
of employees, the state income taxes withheld for the  
immediately preceding calendar year and any further  
information the State Tax Assessor may reasonably require.

34 On or before June 30th of each year, the State Tax Assessor  
36 shall determine, based on a comparison of the current  
38 reports and the base-period reports contained in the  
40 application to the Commissioner of Economic and Community  
42 Development for approval of a state tax increment financing  
district, the net annual gain in sales tax paid in  
connection with operations within the district and the state  
income taxes withheld. The net annual gain is referred to  
as the state tax increment.

44 B. A municipality may receive up to 25% of the state tax  
46 increment generated by or at designated businesses within a  
48 state tax increment financing district as determined by the  
State Tax Assessor subject to the further limitations in  
subsection 4 and that amount is referred to as retained  
state tax increment revenues.

# COMMITTEE AMENDMENT

2           2-A. Calculation of state tax increment. The State Tax  
3           Assessor shall take the following into account when calculating  
4           state tax increments.

6           A. In determining the state tax increment for a particular  
7           district, the State Tax Assessor shall consider the  
8           following factors:

10                   (1) The incremental change in sales tax revenues and  
11                   income taxes withheld pursuant to Title 36, section  
12                   5250 attributable to each designated business within  
13                   the district, taking into consideration tax revenues  
14                   attributable to businesses affiliated with designated  
15                   businesses. For purposes of this subsection, 2  
16                   businesses are affiliated if one owns 50% or more of  
17                   the stock or controlling interest in the other or if  
18                   50% or more of the stock or controlling interest in  
19                   each business is directly or indirectly owned by a  
20                   common owner or owners;

22                   (2) The growth in sales tax revenues and income taxes  
23                   withheld pursuant to Title 36, section 5250  
24                   attributable to all businesses within the district; and

26                   (3) The growth in sales tax revenues and income taxes  
27                   withheld pursuant to Title 36, section 5250 in the  
28                   State as a whole.

30           B. In calculating the state tax increment attributable to  
31           retail business operations within a state tax increment  
32           financing district, the State Tax Assessor shall make an  
33           annual calculation of the state tax increment that consists  
34           of sales tax revenues determined to be in addition to total  
35           state sales tax revenues that would have been collected in  
36           the absence of the state tax increment financing district.  
37           In determining the state tax increment attributable to  
38           retail business operations, the State Tax Assessor shall  
39           make calculations necessary to establish the sales tax  
40           incremental revenues attributable to the district and remove  
41           all retail sales that may have shifted from other  
42           locations. The base period for making projections of  
43           taxable retail sales is the last full calendar year  
44           preceding the initial capital improvements financed by the  
45           state tax increment financing revenue. The State Tax  
46           Assessor may consider the factors contained in paragraph A,  
47           except the individual income taxes withheld by retail  
48           businesses pursuant to Title 36, section 5250. In addition,  
              the State Tax Assessor may consider any factors appropriate

2 to the determination of the state tax increment attributable  
3 to retail business operations, including the following  
4 factors:

5 (1) The amount of taxable sales in the district during  
6 the base period and in all subsequent periods;

7 (2) The amount of taxable sales during the base period  
8 and in all subsequent periods in the geographic region  
9 in which the district is located;

10 (3) The amount of taxable sales in the State during  
11 the base period and in all subsequent periods; and

12 (4) The existence of more than one state tax increment  
13 financing district in the same geographic region, in  
14 which case any state tax increment may be prorated  
15 among them based on their taxable sales.

16 C. The incremental sales and income tax revenues  
17 attributable to a particular designated business are equal  
18 to the margin, if any, by which the business's growth caused  
19 by the state tax increment financing investment exceeds the  
20 higher of the growth rate of the State as a whole and the  
21 growth rate of any affiliated businesses.

22 D. Designated businesses with a negative sales and income  
23 tax increment serve to offset those with a positive  
24 increment.

25 3. State tax increment contingent account created. At the  
26 end--of On or before June 30th of each fiscal year, the  
27 Commissioner of Finance Administrative and Financial Services  
28 shall deposit up-to-25% of the net annual gain in sales and  
29 individual income tax revenues as determined by the State Tax  
30 Assessor an amount equal to the total retained state tax  
31 increment revenues for the preceding calendar year for approved  
32 state tax increment financing districts in the state tax  
33 increment contingent account established, maintained and  
34 administered by the commissioner. The State Controller shall pay  
35 the funds to municipalities as certified by the State Tax  
36 Assessor. On or before July 31st of each year, the commissioner  
37 shall pay to each municipality an amount equal to the retained  
38 state tax increment revenues for the preceding calendar year from  
39 all state tax increment financing districts located within that  
40 municipality.

41 3-A. Application of payment to municipalities. All  
42 retained state tax increment revenues paid to a municipality must  
43 be deposited in the appropriate development program fund  
44



2 established in section 5254, subsection 3 and invested, used and  
3 applied in the manner described in the development program.

4 **4. Limitations.** The following limitations apply.

6 A. A state tax increment financing district may apply only  
7 to benefitted designated businesses involved in nonretail  
8 commercial activities, including but not limited to  
9 manufacturing, wholesaling, warehousing, distribution,  
10 office, administration and other service-related commercial  
11 activities. Notwithstanding this paragraph, a state tax  
12 increment financing district may apply to designated  
13 businesses involved in retail commercial activities pursuant  
14 to subsection 4-A. The state tax increment must be  
15 calculated pursuant to this section.

16 A-1. A development program for a state tax increment  
17 financing district must identify all designated businesses  
18 within the district and specify the direct financial  
19 benefits to be provided to the designated businesses, if  
20 any. A municipality may designate a business relocating  
21 from another location in this State, when that relocation  
22 involves moving the locus of employment and sales, only if  
23 the municipal officers find that the relocation will result  
24 in an increase in the amount of sales or the number of  
25 employees of the business above the average annual sales and  
26 employment levels at the prior location during the base  
27 period. When such a relocating business is designated, the  
28 sales tax, the number of employees and the state income  
29 taxes withheld for the base period must be those reported in  
30 the development program for that business at its prior  
31 location.

32 ~~B. A business relocating from another location in this~~  
33 ~~State, moving employment and sales, is not eligible for the~~  
34 ~~state tax increment financing.~~

35 ~~C. A business must demonstrate that the operation within a~~  
36 ~~tax increment financing district will have no adverse effect~~  
37 ~~on other businesses in the State nor will it create an~~  
38 ~~unfair competitive advantage in relation to other businesses~~  
39 ~~in the State.~~

40 ~~D. A state tax increment financing district may not~~  
41 ~~designate an aggregate amount of~~ The retained state tax  
42 ~~increment revenues greater than~~ attributable to an  
43 ~~individual state tax increment financing district may not~~  
44 ~~exceed 10% of the aggregated total allowed within the state~~  
45 ~~tax increment contingent account.~~  
46 individual state tax increment financing district may not  
47 exceed 10% of the aggregated total allowed within the state  
48 tax increment contingent account.

2 E. At no time may the aggregate annual liability retained  
4 state tax increment revenues for all state tax increment  
financing districts exceed \$20,000,000.

6 F. A transfer of ownership of interest in or any of the  
8 assets of an existing business may not be construed as  
10 creating newly generated state tax revenues except to the  
extent of actual increase in the amount of sales or the  
number of employees above the average annual sales and  
employment levels during the base period.

12 G. State tax increment revenues received by a municipality  
14 pursuant to subsection 2 may not be used by the municipality  
16 to cover tax increment financing obligations arising under  
section 5254.

18 H. State tax increment revenues received by a municipality  
20 with respect to a particular state tax increment financing  
22 district pursuant to subsection 2 may not exceed the amount  
of estimated state tax increment revenues contained in the  
24 district's development program approved by the Commissioner  
of Economic and Community Development pursuant to subsection  
1-A.

26 **4-A. Districts containing retail business operations.** The  
28 Commissioner of Economic and Community Development shall approve  
a state tax increment financing district in which a retail  
30 business operation is a designated business upon making a factual  
determination that the following conditions are satisfied:

32 A. The district will result in total annual sales tax  
34 revenues equal to or greater than \$4,000,000 or the district  
involves, aids or otherwise relates to downtown  
36 redevelopment. For purposes of this subsection, "downtown  
redevelopment" means any rehabilitation or improvement of an  
38 area described in the development program that has been used  
primarily for retail trade and related purposes for at least  
40 25 years, is identified in the municipality's comprehensive  
plan or zoning ordinance as an area designated for retail  
42 trade and related uses and is a blighted area or an area in  
need of rehabilitation or redevelopment; and

44 B. A state tax increment is likely to result from the  
46 district and that increment will not include sales tax  
revenues derived from a transferring or shifting of retail  
48 sales from another geographic area within the State to the  
district.

# COMMITTEE AMENDMENT

2 The municipality making the application bears the burden of  
4 proving to the Commissioner of Economic and Community Development  
6 by a preponderance of the evidence that the district satisfies  
8 the criteria under paragraphs A and B. For purposes of this  
10 subsection, "retail business operation" means a business location  
12 engaged in making retail sales of consumer goods for household  
14 use to consumers who personally visit the location to purchase  
16 the goods.

18 **5. Duration of state designation.** State tax increment  
20 financing districts have a maximum duration of 10 years.

22 **6. Program; administration.** The Commissioner of Economic  
24 and Community Development shall administer --a- the state tax  
26 increment financing program. The commissioner shall adopt rules  
28 pursuant to the Maine Administrative Procedure Act for  
30 implementation of the program, including, but not limited to,  
32 rules for determining and certifying eligibility and, in  
34 consultation with the State Tax Assessor, the amount of the tax  
36 increment attributable to particular districts. The commissioner  
38 may also establish by rule fees for administration of the  
40 program, including fees payable to the State Tax Assessor for  
42 obligations under this Part. All fees collected pursuant to this  
44 subsection must be deposited into the General Fund.

46 **7. Repeal of state tax increment financing districts.** The  
designation of new state tax increment financing districts ceases  
~~2-years-after-the-effective-date-of-this-section~~ June 30, 1994,  
subject to review by the joint standing committees of the  
Legislature having jurisdiction over economic development and  
taxation matters. Designation of new state tax increment  
financing districts may only be resumed by act of the Legislature.

**8. Confidential information.** The following records are  
designated as confidential for purposes of Title 1, section 402,  
subsection 3, paragraph A:

A. Any record obtained or developed by a municipality, the  
Commissioner of Economic and Community Development or the  
State Tax Assessor for designation or approval of a state  
tax increment financing district. After receipt by the  
municipality, the Commissioner of Economic and Community  
Development or the State Tax Assessor of the application or  
proposal, a record pertaining to the application or proposal  
is not considered confidential unless it meets the  
requirements of paragraphs B to F;

2 B. Any record obtained or developed by a municipality, the  
4 Commissioner of Economic and Community Development or the  
State Tax Assessor that meets one of the following:

6 (1) A person, which may include a municipality, to  
8 whom the record belongs or pertains has requested that  
the record be designated confidential; or

10 (2) The municipality has determined that information  
12 in the record gives the owner or a user of that  
14 information an opportunity to obtain business or  
16 competitive advantage over another person who does not  
18 have access to the information or that access to the  
information by others would result in a business or  
competitive disadvantage, loss of business or other  
significant detriment to any person to whom the record  
belongs or pertains;

20 C. Any record, including any financial statement or tax  
22 return, obtained or developed by the municipality, the  
Commissioner of Economic and Community Development or the  
24 State Tax Assessor, the disclosure of which would constitute  
an invasion of personal privacy, as determined by the  
26 governmental entity in possession of that record or  
information;

28 D. Any record, including any financial statement or tax  
30 return, obtained or developed by the municipality, the  
Commissioner of Economic and Community Development or the  
32 State Tax Assessor in connection with any monitoring or  
servicing activity by the municipality, the Commissioner of  
34 Economic and Community Development or the State Tax Assessor  
that pertains to a state tax increment financing district;

36 E. Any record obtained or developed by the municipality,  
38 the Commissioner of Economic and Community Development or  
the State Tax Assessor that contains an assessment by a  
40 person who is not employed by that municipality or the State  
of the creditworthiness or financial condition of any person  
42 or project; and

44 F. Any financial statement if a person to whom the  
statement belongs or pertains has requested that the record  
46 be designated confidential.

48 A person may not knowingly divulge or disclose records declared  
confidential by this subsection.



2 Provides funds for a Management Analyst II  
4 to administer the state tax increment  
financing district process.

6	<b>DEPARTMENT OF ADMINISTRATIVE AND</b>	
	<b>FINANCIAL SERVICES</b>	
8	<b>TOTAL</b>	<u>\$48,420</u>

10

12 **FISCAL NOTE**

1992-93

14	<b>APPROPRIATIONS/ALLOCATIONS</b>	
16	General Fund	\$48,420

18 This bill expands the state tax increment financing program  
20 to include retail establishments. The State Tax Assessor shall  
22 deposit up to 25% of the net annual gain in tax revenue, if any,  
24 resulting from the activities of designated businesses within a  
26 state tax increment financing district. Since the amounts to be  
28 transferred into the contingent account will be new revenues not  
30 included in the budget estimates, as determined by the State Tax  
32 Assessor, this program will not appreciably affect General Fund  
revenues collected through income and sales taxes. The  
Department of Economic and Community Development and the State  
Tax Assessor will be able to charge fees to administer the  
program. The amount of General Fund revenue resulting from these  
fees can not be determined at this time. If these fees are not  
sufficient to offset the costs of administration, there will be a  
cost to the General Fund.'

34

36 **STATEMENT OF FACT**

38 This amendment replaces the bill and accomplishes the  
following.

40 1. It establishes a base period from which growth within a  
42 state tax increment financing district is measured. Currently,  
44 the law provides for a "floating" base period, which necessitates  
that a municipality wishing to make use of the state increment  
financing program experience continued growth in order to receive  
state tax increment financing revenues.

46 2. It defines "designated business." This term is used  
48 repeatedly throughout the state tax increment financing laws but  
is not defined.

COMMITTEE AMENDMENT "A" to H.P. 1697, L.D. 2377

- 2           3. It enacts the procedure for establishing state tax  
increment financing districts.
- 4
- 6           4. It enables tax increment financing districts to be  
created in the unorganized territory.
- 8           5. It adds an appropriation and a fiscal note.

Reported by the Committee on Taxation  
Reproduced and distributed under the direction of the Clerk of the  
House  
3/26/92                           (Filing No. H-1286)