

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2377

H.P. 1697

House of Representatives, February 24, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative KERR of Old Orchard Beach.

Cosponsored by Representative CASHMAN of Old Town, President PRAY of Penobscot and
Speaker MARTIN of Eagle Lake.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

**An Act to Amend and Clarify the Law Enabling State Tax Increment
Financing.**

(AFTER DEADLINE)



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

2
4 **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 A, §2 and affected by §4, is repealed.

6 **Sec. 2. 30-A MRSA §5252, sub-§§1-B, 2-A and 4-A** are enacted to read:

8
10 **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.

14
16 **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.

20 **4-A. Estimated composite individual income tax rate.** "Estimated composite individual income tax rate" means the percentage tax rate for the relevant period resulting from a fraction, the numerator of which is the total state income tax revenue resulting from income tax on resident individuals for the applicable period, as reflected in the State Tax Assessor's records as of the date of calculation, and the denominator of which is the total taxable income of resident individuals as defined in Title 36, section 5121, as reflected in the State Tax Assessor's records as of the date of calculation. The estimated composite individual income tax rate for a base period is the arithmetic average of the rates in effect for each of the 3 years constituting the base period. If, as of the date of calculation, the State Tax Assessor's records do not contain either the amount of income tax revenue resulting from income tax on resident individuals or the total taxable income of resident individuals for the applicable period, then the State Tax Assessor's current estimate of such amount or amounts must be used in performing the calculation.

40 **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.

42
44 **Sec. 4. 30-A MRSA §5254, sub-§3, ¶B**, as amended by PL 1991, c. 431, §8, is further amended to read:

46 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
appropriate development program fund account in the
4 following priority:

6 (1) To the development sinking fund account, an amount
sufficient, together with estimated future revenues to
8 be deposited to the account and earnings on the amount,
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,
together with estimated future revenues to be deposited
14 to the account and earnings on the amount, to satisfy
all annual project costs to be paid from the account;

16 **Sec. 5. 30-A MRSA §5254-A**, as enacted by PL 1991, c. 606,
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,
22 created designated by a municipality and duly-designated approved
by the State Commissioner of Economic and Community Development
24 under section 5253, subsection 1, paragraph F, in which either
before or after the effective date of this section, provided
26 captured assessed value within the district is created after the
effective date of this section July 30, 1991, is eligible to be
28 approved as a state tax increment financing district.
Municipalities ~~must demonstrate that without the approval as a~~
30 ~~state tax increment financing district the project will not go~~
~~forward, and as a result will not generate new sales tax revenues~~
32 ~~or create new jobs that will result in new individual income~~
~~taxes. Upon determination by the designating authority that~~
34 ~~these conditions have been met, the designating authority shall~~
~~approve the municipal creation of the state tax increment~~
36 ~~financing district.~~

38 1-A. Procedure for establishing state tax increment
financing district. Municipalities desiring to establish state
40 tax increment financing districts must apply to the Commissioner
of Economic and Community Development for approval of the
42 proposed state tax increment financing district. The procedure
for application is as follows.

44 A. The proposed state tax increment financing district must
46 be approved locally by vote of the municipal officers of the
municipality within which the proposed district is to be
48 located.

2 B. The municipal officers shall adopt for the state tax
4 increment financing district a development program that must
6 identify all designated businesses within the district and
8 set forth the amount of sales tax paid by designated
10 businesses in connection with operations within the proposed
12 district and the number of employees at designated
14 businesses and their compensation levels for the base
16 period. The development program may be combined with or
18 integrated into the development program for the underlying
20 municipal development district or may be separately stated,
22 maintained and implemented.

24 C. Prior to approval of the proposed district, the
26 Commissioner of Finance shall estimate the annual amount to
28 be deposited in the state tax increment contingent account
30 over the duration of all existing state tax increment
32 financing districts, including the proposed district, and
34 that estimate must be used in determining compliance with
36 the limitation imposed under subsection 4, paragraphs D and
38 E.

40 D. The municipality, acting through its municipal officers
42 or their designee, shall submit an application to the
44 Commissioner of Economic and Community Development on such
46 form or forms and with such supporting data as the
48 commissioner requires for approval of the proposed state tax
50 increment financing district, including without limitation
certifications by the designated businesses as to the
average annual number of persons employed by each designated
business within the boundaries of the proposed district and
their average annual compensation levels during the base
period and the average annual amount of sales tax
remittances paid by each designated business from operations
within the boundaries of the proposed district during the
base period.

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

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

46 A. The economic development described in the development
48 program will not go forward without the approval of the
50 state tax increment financing district. This requirement
does not apply to the addition of state tax increment
financing provisions to municipal development districts

2 created prior to the effective date of this subsection;

4 B. The proposed district will make a contribution to the
6 economic growth of the State, the control of pollution in
8 the State or the betterment of the health, welfare or safety
10 of the inhabitants of the State; and

12 C. The project will not result in a substantial detriment
14 to existing business in the State. In order to make this
16 determination, the Commissioner of Economic and Community
18 Development shall consider, pursuant to Title 5, chapter
20 375, subchapter II, those factors the commissioner
22 determines necessary to measure and evaluate the effect of
24 the proposed district on existing business, including:

26 (1) Whether a proposed district should be approved if,
28 as a result of the benefits to designated business,
30 there will not be sufficient demand within the market
32 area of the State to be served by the project to employ
34 the efficient capacity of existing business; and

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

42 The municipality has the burden of demonstrating that the
44 proposed district will not result in a substantial detriment
46 to existing business in accordance with the requirements of
48 this paragraph, including rules adopted in accordance with
50 this paragraph, except that when no interested parties
52 object to the proposed district, the requirements of this
54 paragraph are deemed satisfied. Interested parties must be
56 given an opportunity, with or without a hearing at the
58 discretion of the Commissioner of Economic and Community,
60 to present their objections to the proposed district on grounds
62 that the proposed district will result in a substantial
64 detriment to existing business. If any interested party
66 presents objections with reasonable specificity and
68 persuasiveness, the commissioner may divulge any information
70 concerning the project the commissioner considers necessary
72 for a fair presentation by the objecting party and an
74 evaluation of those objections. If the commissioner finds

2 that the municipality has failed to meet its burden as
3 specified in the paragraph, the application must be denied.

4 2. Retained state tax revenues. On an annual basis On or
5 before February 15th of each year during the duration of the
6 district, designated businesses located within the district shall
7 report the amount of new sales tax and paid in connection with
8 operations within the district, the number of new employees and
9 their compensation levels,--above--the--average--level--of--the
10 previous-3-years for the immediately preceding calendar year and
11 any further information the State Tax Assessor may reasonably
12 require to perform the following calculations. The On or before
13 April 15th of each year the State Tax Assessor shall determine,
14 based upon a comparison of current reports to the base period
15 reports contained in the application to the Commissioner of
16 Economic and Community Development for approval of the district,
17 the net annual gain in state tax revenues through newly generated
18 individual income taxes paid by employees at the designated
19 businesses within the district and sales taxes, paid by
20 designated businesses within the district, and that net gain is
21 referred to as the "state tax increment." In making that
22 determination regarding the individual income taxes, the State
23 Tax Assessor shall apply the applicable estimated composite
24 individual income tax rate to both the average annual employee
25 compensation level for the base period and the employee
26 compensation level for the prior calendar year. The municipality
27 may receive up to 25% of the total of new sales tax revenues and
28 up to 25% of the total of new individual income taxes generated
29 by each-designated-business or at designated businesses within
30 the district, as determined by the State Tax Assessor subject to
31 the-further-limitations-in-subsection-4.--The-municipality-shall
32 then-place-this-state-tax-increment-financing-revenue-in-the
33 development-sinking-fund-established-in-accordance-with-section
34 5254,-subsection-3, and that amount is referred to as "retained
35 state tax increment revenues."

36 3. State tax increment contingent account created. At the
37 end-of-each-fiscal-year On or before April 15th of each year, the
38 Commissioner of Finance shall deposit up to 25% of the net annual
39 gain-in-sales-and-individual-income-tax-revenues-as-determined-by
40 the-State-Tax-Assessor an amount equal to the total retained
41 state tax increment revenues for the preceding calendar year for
42 approved state tax increment financing districts in the state tax
43 increment contingent account established, maintained and
44 administered by the commissioner. The-State-Controller-shall-pay
45 the-funds-to-municipalities-as-certified-by-the-State-Tax
46 Assessor. On or before July 31st of each year, the commissioner
47 shall pay over to each municipality an amount equal to the
48 state tax increment revenues.

2 retained state tax increment revenues for the preceding calendar
3 year from all state tax increment financing districts located
4 within that municipality.

5 3-A. Application of payment to municipalities. All
6 retained state tax increment revenues paid to a municipality must
7 be deposited in the appropriate development program fund
8 established in section 5254, subsection 3 and invested, used and
9 applied in the manner described in the development program.

10
11 **4. Limitations.** The following limitations apply.

12
13 ~~A. A state tax increment financing district may apply only~~
14 ~~to benefitted businesses involved in nonretail commercial~~
15 ~~activities, including but not limited to manufacturing,~~
16 ~~wholesaling, warehousing, distribution, office,~~
17 ~~administration and other service related commercial~~
18 ~~activities.~~

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

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

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

44
45 ~~D. A state tax increment financing district may not~~
46 ~~designate an aggregate amount of The retained state tax~~

2 increment revenues greater---than attributable to an
3 individual state tax increment financing district may not
4 exceed 10% of the aggregated total allowed within the state
5 tax increment contingent account.

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

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

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

20 **6. Program; administration.** The Commissioner of Economic
21 and Community Development shall administer a the state tax
22 increment financing program. The commissioner shall adopt rules
23 pursuant to the Maine Administrative Procedure Act for
24 implementation of the program, including, but not limited to,
25 rules for determining and certifying eligibility and the amount
26 of the tax increment attributable to particular districts. The
27 commissioner may also establish by rule fees for administration
28 of the program including fees payable to the State Tax Assessor
29 for obligations under this Part.

30 **7. Repeal of state tax increment financing districts.** The
31 designation of new state tax increment financing districts ceases
32 2 years after the effective date of this section, subject to
33 review by the joint standing committees of the Legislature having
34 jurisdiction over economic development and taxation matters.
35 Designation of new state tax increment financing districts may
36 only be resumed by act of the Legislature.

40 STATEMENT OF FACT

42 This bill accomplishes the following:

44 1. It establishes a base period from which growth within a
45 state tax increment financing district is measured. Currently,
46 the law provides for a "floating" base period, which necessitates
that a municipality wishing to make use of the state tax

2 increment financing program experience continued growth in order
to receive state tax increment financing revenues.

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

8 3. It defines "estimated composite individual income tax
rate."
10

12 4. It enacts the procedure for establishing state tax
increment financing districts.