

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2460

S.P. 974

In Senate, February 29, 1992

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

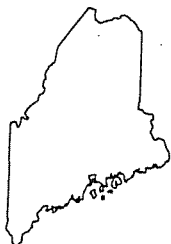
Presented by Senator COLLINS of Aroostook (GOVERNOR'S BILL).

Cosponsored by Senator BOST of Penobscot, Representative CASHMAN of Old Town and Representative KERR of Old Orchard Beach.

STATE OF MAINE

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

**An Act to Encourage the Development of Business and Infrastructure
through the Extension of State Tax Increment Financing.**



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 A, §2 and affected by §4, is repealed.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 and 2-A** are enacted to read:

8 **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 **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.

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 A, §2 and affected by §4, is repealed.

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

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

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

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

42 **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:

46 **§5254-A. State tax increment financing**

48 **1. Eligibility.** Any tax increment financing district, created designated by a municipality and duly-designated approved

2 by the State, in which Commissioner of Economic and Community
3 Development under section 5253, subsection 1, paragraph F
4 provided captured assessed value within the district is created
5 after the effective date of this section July 30, 1991, is
6 eligible to be approved as a state tax increment financing
7 district. Municipalities must demonstrate that without the
8 approval as a state tax increment financing district the project
9 will not go forward, and as a result will not generate new sales
10 tax revenues or create new jobs that will result in new
11 individual income taxes. Upon determination by the designating
12 authority that these conditions have been met, the designating
13 authority shall approve the municipal creation of the state tax
14 increment financing district.

15 1-A. Procedure for establishing state tax increment
16 financing district. A municipality desiring to establish a state
17 tax increment financing district must apply to the Commissioner
18 of Economic and Community Development for approval of the
19 proposed state tax increment financing district. The procedure
20 for application is as follows.

21 A. The proposed state tax increment financing district must
22 be approved locally by vote of the municipal officers of the
23 municipality within which the proposed district will be
24 located. Before approving a state tax increment financing
25 district, the municipal officers shall hold at least one
26 public hearing. Notice of the hearing must be published at
27 least 10 days before the hearing in a newspaper of general
28 circulation within the county in which the municipality is
29 located.

30 B. The municipal officers shall adopt for the proposed
31 state tax increment financing district a development program
32 that identifies all designated businesses within the
33 district and sets forth the amount of sales tax paid by
34 designated businesses in connection with operations within
35 the proposed district, the number of employees at designated
36 businesses and the total state income taxes withheld by
37 designated business for the base period. The development
38 program may be combined with or integrated into the
39 development program for the underlying municipal development
40 district or may be separately stated, maintained and
41 implemented. The development program may specify the
42 allocable shares of the municipality and each designated
43 business for liability for refund of the state tax increment
44 revenues resulting from an audit. That allocation may be
45 made by any means determined by the municipal officers to
46 reasonably reflect the economic benefit derived from
47 operation of the district.

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

10 D. The municipality, acting through its municipal officers
12 or their designee, shall submit an application to the
14 Commissioner of Economic and Community Development on such
16 form or forms and with such supporting data as the
18 commissioner requires for approval of the proposed state tax
20 increment financing district, including without limitation
22 certifications by the designated businesses as to the
24 average annual number of persons employed by each designated
business within the boundaries of the proposed district, the
average total state income taxes withheld by designated
businesses 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.

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

30 1-B. Criteria for approval. Prior to issuing a certificate
32 of approval for any state tax increment financing district, the
Commissioner of Economic and Community Development must determine
that:

34 A. The economic development described in the development
36 program will not go forward without the approval of the
38 state tax increment financing district. This requirement
40 does not apply to the addition of state tax increment
financing provisions to municipal development districts
created prior to the effective date of this subsection;

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

46 C. The economic development described in the development
48 program will not result in a substantial detriment to
50 existing businesses in the State. In order to make this
determination, the Commissioner of Economic and Community
Development shall consider, pursuant to Title 5, chapter

2 375, subchapter II, those factors the commissioner
4 determines necessary to measure and evaluate the effect of
6 the proposed district on existing businesses, including:

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

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

24 The municipality has the burden of demonstrating that the
26 proposed district will not result in a substantial detriment
28 to existing businesses in accordance with the requirements
30 of this paragraph, including rules adopted in accordance
32 with this paragraph, except that when no interested parties
34 object to the proposed district, the requirements of this
36 paragraph are deemed satisfied. Interested parties must be
38 given an opportunity, with or without a hearing at the
40 discretion of the Commissioner of Economic and Community
42 Development, to present their objections to the proposed
44 district on grounds that the proposed district will result
46 in a substantial detriment to existing businesses. If any
48 interested party presents objections with reasonable
50 specificity and persuasiveness, the commissioner may divulge
any information concerning the economic development
described in the development program that the commissioner
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.

2. Retained state tax revenues. ~~On--an--annual--basis,~~
~~designated--businesses--within--the--district--shall--report--the--amount~~
~~of--new--sales--tax--and--number--of--new--employees--and--their~~
~~compensation--levels,--above--the--average--level--of--the--previous--3~~
~~years.--The--State--Tax--Assessor--shall--determine--the--net--annual~~
~~gain--in--state--tax--revenues--through--newly--generated--individual~~
~~income--and--sales--taxes.--The--municipality--may--receive--up--to--25%~~
~~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.

2 A. On or before April 15th of each year, designated
4 businesses located within a state tax increment financing
6 district shall report the amount of sales tax paid in
8 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.

10 On or before June 30th of each year, the State Tax Assessor
12 shall determine, based on a comparison of the current
14 reports and the base-period reports contained in the
16 application to the Commissioner of Economic and Community
18 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.

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

28 2-A. Calculation of state tax increment. The State Tax
30 Assessor shall take the following into account when calculating
32 state tax increments.

34 A. In determining the state tax increment for a particular
36 district, the State Tax Assessor shall consider the
38 following factors:

40 (1) The incremental change in sales tax revenues and
42 income taxes withheld pursuant to Title 36, section
44 5250 attributable to each designated business within
46 the district, taking into consideration tax revenues
attributable to businesses affiliated with designated
businesses. For purposes of this subsection, 2
businesses are affiliated if one owns 50% or more of
the stock or controlling interest in the other or if
50% or more of the stock or controlling interest in
each business is directly or indirectly owned by a
common owner or owners;

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

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

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

- (1) The amount of taxable sales in the district during the base period and in all subsequent periods;
- (2) The amount of taxable sales during the base period and in all subsequent periods in the geographic region in which the district is located;
- (3) The amount of taxable sales in the State during the base period and in all subsequent periods; and
- (4) The existence of more than one state tax increment financing district in the same geographic region, in which case any state tax increment may be prorated among them based on their taxable sales.

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

2 D. Designated businesses with a negative sales and income
3 tax increment serve to offset those with a positive
4 increment.

5 **3. State tax increment contingent account created.** At the
6 end of On or before June 30th of each fiscal year, the
7 Commissioner of Finance Administrative and Financial Services
8 shall deposit up to 25% of the net annual gain in sales and
9 individual income tax revenues as determined by the State Tax
10 Assessor an amount equal to the total retained state tax
11 increment revenues for the preceding calendar year for approved
12 state tax increment financing districts in the state tax
13 increment contingent account established, maintained and
14 administered by the commissioner. The State Controller shall pay
15 the funds to municipalities as certified by the State Tax
16 Assessor. On or before July 31st of each year, the commissioner
17 shall pay to each municipality an amount equal to the retained
18 state tax increment revenues for the preceding calendar year from
19 all state tax increment financing districts located within that
20 municipality.

21 **3-A. Application of payment to municipalities.** All
22 retained state tax increment revenues paid to a municipality must
23 be deposited in the appropriate development program fund
24 established in section 5254, subsection 3 and invested, used and
25 applied in the manner described in the development program.

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

27 **A.** A state tax increment financing district may apply only
28 to benefitted designated businesses involved in nonretail
29 commercial activities, including but not limited to
30 manufacturing, wholesaling, warehousing, distribution,
31 office, administration and other service-related commercial
32 activities. Notwithstanding this paragraph, a state tax
33 increment financing district may apply to designated
34 businesses involved in retail commercial activities pursuant
35 to subsection 4-A. The state tax increment must be
36 calculated pursuant to this section.

37 **A-1.** A development program for a state tax increment
38 financing district must identify all designated businesses
39 within the district and specify the direct financial
40 benefits to be provided to the designated businesses, if
41 any. A municipality may designate a business relocating
42 from another location in this State, when that relocation
43 involves moving the locus of employment and sales, only if
44 the municipal officers find that the relocation will result
45 in an increase in the amount of sales or the number of
46 employees of the business above the average annual sales and
47 revenues for the preceding calendar year.

2 employment levels at the prior location during the base
3 period. When such a relocating business is designated, the
4 sales tax, the number of employees and the state income
5 taxes withheld for the base period must be those reported in
6 the development program for that business at its prior
7 location.

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

11 ~~C. A business must demonstrate that the operation within a~~
12 ~~tax increment financing district will have no adverse effect~~
13 ~~on other businesses in the State nor will it create an~~
14 ~~unfair competitive advantage in relation to other businesses~~
15 ~~in the State.~~

16
17 D. A state tax increment financing district may not
18 designate an aggregate amount of The retained state tax
19 increment revenues greater than attributable to an
20 individual state tax increment financing district may not
21 exceed 10% of the aggregated total allowed within the state
22 tax increment contingent account.

23
24 E. At no time may the aggregate annual liability retained
25 state tax increment revenues for all state tax increment
26 financing districts exceed \$20,000,000.

27
28 F. A transfer of ownership of interest in or any of the
29 assets of an existing business may not be construed as
30 creating newly generated state tax revenues except to the
31 extent of actual increase in the amount of sales or the
32 number of employees above the average annual sales and
33 employment levels during the base period.

34
35 G. State tax increment revenues received by a municipality
36 pursuant to subsection 2 may not be used by the municipality
37 to cover tax increment financing obligations arising under
38 section 5254.

39
40 H. State tax increment revenues received by a municipality
41 with respect to a particular state tax increment financing
42 district pursuant to subsection 2 may not exceed the amount
43 of estimated state tax increment revenues contained in the
44 district's development program approved by the Commissioner
45 of Economic and Community Development pursuant to subsection
46 1-A.

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48
49 4-A. Districts containing retail business operations. The
50 Commissioner of Economic and Community Development shall approve

2 a state tax increment financing district in which a retail
3 business operation is a designated business upon making a factual
4 determination that the following conditions are satisfied:

5 A. The district will result in total annual sales tax
6 revenues equal to or greater than \$3,000,000 or the district
7 involves, aids or otherwise relates to downtown
8 redevelopment. For purposes of this subsection, "downtown
9 redevelopment" means any rehabilitation or improvement of an
10 area described in the development program that has been used
11 primarily for retail trade and related purposes for at least
12 25 years, is identified in the municipality's comprehensive
13 plan or zoning ordinance as an area designated for retail
14 trade and related uses and is a blighted area or an area in
15 need of rehabilitation or redevelopment; and

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

21 The municipality making the application bears the burden of
22 proving to the Commissioner of Economic and Community Development
23 by a preponderance of the evidence that the district satisfies
24 the criteria under paragraphs A and B. For purposes of this
25 subsection, "retail business operation" means a business location
26 engaged in making retail sales of consumer goods for household
27 use to consumers who personally visit the location to purchase
28 the goods.

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

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

43 **7. Repeal of state tax increment financing districts.** The
44 designation of new state tax increment financing districts ceases
45 ~~2-years-after-the-effective-date-of-this-section~~ June 30, 1994,

2 subject to review by the joint standing committees of the
Legislature having jurisdiction over economic development and
4 taxation matters. Designation of new state tax increment
financing districts may only be resumed by act of the Legislature.

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

10 A. Any record obtained or developed by a municipality, the
12 Commissioner of Economic and Community Development or the
14 State Tax Assessor for designation or approval of a state
16 tax increment financing district. After receipt by the
18 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;

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

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

28 (2) The municipality has determined that information
30 in the record gives the owner or a user of that
32 information an opportunity to obtain business or
34 competitive advantage over another person who does not
36 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;

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

46 D. Any record, including any financial statement or tax
48 return, obtained or developed by the municipality, the
50 Commissioner of Economic and Community Development or the
State Tax Assessor in connection with any monitoring or
servicing activity by the municipality, the Commissioner of

2 Economic and Community Development or the State Tax Assessor
3 that pertains to a state tax increment financing district;

4 E. Any record obtained or developed by the municipality,
5 the Commissioner of Economic and Community Development or
6 the State Tax Assessor that contains an assessment by a
7 person who is not employed by that municipality or the State
8 of the creditworthiness or financial condition of any person
9 or project; and

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

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

15 9. Audit process. Nothing in this section may be construed
16 to limit the State Tax Assessor's authority to conduct an audit
17 of any taxpayer included as a designated business in a
18 development program pursuant to subsection 1-A, paragraph B. If
19 distributions are made to a municipality with respect to a state
20 tax increment financing district, the designated businesses
21 within that district are subject to audit. When it is determined
22 by the State Tax Assessor upon audit that a municipality has
23 received a distribution larger than that to which it is entitled
24 under this section, the overpayment must be applied against
25 subsequent distributions. When there is no subsequent
26 distribution, the designated business or businesses to which
27 overpayments were made are liable for the amount of the
28 overpayments and may be assessed pursuant to Title 36.

29 Sec. 6. 30-A MRSA §5261 is enacted to read:

30 §5261. Unorganized territory

31 For the purposes of this chapter, a county may act as a
32 municipality for the unorganized territory within the county and
33 may designate development districts within the unorganized
34 territory. When a county acts under this section, the county
35 commissioners act as the municipality and as the municipal
36 legislative body, the State Tax Assessor acts as the municipal
37 assessor and the unorganized territory fund receives the funds
38 designated for the municipal general fund. A development
39 district created under this section is not eligible for state tax
40 increment financing under section 5254-A. For purposes of
41 section 5255, the State acts as the municipal assessing authority.

42 **STATEMENT OF FACT**

43 This bill accomplishes the following.

2 1. It establishes a base period from which growth within a
4 state tax increment financing district is measured. Currently,
6 the law provides for a "floating" base period, which necessitates
8 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.

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

14 3. It enacts the procedure for establishing state tax
increment financing districts.

16 4. It enables tax increment financing districts to be
created in the unorganized territory.