

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1797

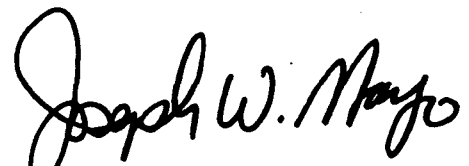
H.P. 1313

House of Representatives, February 20, 1996

**An Act to Implement the Recommendations of the Task Force on Tax
Increment Financing.**

Reported by Representative ROWE for the Task Force on Tax Increment Financing
pursuant to Resolve 1995, chapter 51, section 9.

Reference to the Joint Standing Committee on Taxation suggested and printing ordered
under Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

2
3 **Sec. 1. 30-A MRSA §5252, sub-§8**, as amended by PL 1991, c.
4 431, §§4 and 5, is further amended to read:

6 **8. Project costs.** "Project costs" means any expenditures
7 made or estimated to be made or monetary obligations incurred or
8 estimated to be incurred ~~by the municipality which~~ that are
9 ~~listed~~ included in a ~~project-plan~~ development program as costs of
10 improvements, including public works, acquisition, construction
11 or rehabilitation of land or improvements for sale or lease to,
12 or use by, commercial or industrial users, within a development
13 district plus any costs incidental to those improvements, reduced
14 by any income, special assessments or other revenues, other than
15 tax increments, received or reasonably expected to be received by
16 the municipality in connection with the implementation of this
17 plan.

18 A. The term "project costs" does not include the cost of
19 buildings, or portions of buildings, used predominantly for
20 the general conduct of government. These buildings include,
21 but are not limited to, city halls and other headquarters of
22 government where the governing body meets regularly,
23 courthouses, jails, police stations and other State
24 Government and local government office buildings.

25 B. The term "project costs" includes, but is not limited to:

26 (1) Capital costs, including, but not limited to:

27 (a) The actual costs of the construction of
28 public works or other improvements, new buildings,
29 structures and fixtures;

30 (b) The demolition, alteration, remodeling,
31 repair or reconstruction of existing buildings,
32 structures and fixtures;

33 (c) The acquisition of equipment; and

34 (d) ~~The clearing and grading of land~~ Site
35 preparation and finishing work; and

36 (e) All fees and expenses that are eligible to be
37 included in the capital cost of such improvements,
38 including, but not limited to, licensing and
39 permitting expense, planning, engineering,
40 architectural, testing, legal and accounting
41 expenses.

- 2 (2) Financing costs, including, but not limited to,
all closing costs, issuance costs, and interest paid to
4 holders of evidences of indebtedness issued to pay for
project costs and any premium paid over the principal
6 amount of that indebtedness because of the redemption
of the obligations before maturity;
- 8 (3) Real property assembly costs, ~~meaning any deficit
incurred resulting from the sale or lease as lesser by
10 the municipality of real or personal property within a
development district for consideration which is less
12 than its cost to the municipality;~~
- 14 (4) Professional service costs, including, but not
limited to, those costs incurred for architectural,
16 planning, engineering and legal advice and services;
- 18 (5) Administrative costs, including, but not limited
to, reasonable charges for the time spent by municipal
20 employees in connection with the implementation of a
project-plan development program;
- 22 (6) Relocation costs, including, but not limited to,
24 those relocation payments made following condemnation;
- 26 (7) Organizational costs, including, but not limited
to, the costs of conducting environmental impact and
28 other studies and the costs of informing the public
about the creation of development districts and the
30 implementation of project plans;
- 32 (8) ~~Payments made, in the discretion of the local
legislative body, which are found to be necessary or
34 convenient to the creation of development districts or
the implementation of project plans;~~
- 36 (9) That portion of the costs reasonably related to
38 the construction or, alteration or expansion of
sewerage any facilities not located within the district
40 that are required due to improvements or activities
42 within the district including, but not limited to,
44 sewage treatment plants, water treatment plants or
other environmental protection devices, storm or
46 sanitary sewer lines, water lines or amenities on
streets or ~~the rebuilding or expansion of which is
48 required by the project plan for a development
district, whether or not the construction, alteration,
rebuilding or expansion is within the development
district~~ fire stations;
- 50

2 (10) Training costs, including, but not limited to,
4 those costs associated with providing skills
6 development and training for employees of businesses
8 within the development district. These costs may not
exceed 20% of the total project costs and must be
designated as training funds within--3--years--of--the
designation-of-the-district in the development program;
and

10 (11) ~~Improvements,--meaning--costs~~ Costs associated with
12 developing new employment opportunities; promoting
14 public events; advertising cultural, educational and
commercial activities; providing public safety;
16 establishing and maintaining administrative and
18 management support; assisting in mitigating any adverse
impact of a district upon the municipality and its
constituents; funding economic development programs or
environmental improvement programs developed by the
municipality; and such other services as are necessary
or appropriate to carry out the development program if
the activities and programs generating such costs are
provided for in the development program and bear a
reasonable relationship to the improvements or
activities within the district or the impacts on the
district.

26 **Sec. 2. 30-A MRS §5253, sub-§1, ¶¶C to E,** as repealed and
28 replaced by PL 1991, c. 431, §6, are amended to read:

30 C. The aggregate value of equalized taxable property, as
32 defined in Title 36, sections 208 and 305, of a tax
increment financing district determined as of the April 1st
34 preceding the date the designation of the district becomes
effective, plus all existing tax increment financing
36 districts determined as of the April 1st preceding the date
the designation of each such district became effective, may
38 not exceed 5% of the total value of equalized taxable
property within the municipality as of the April 1st
40 preceding the date the designation of the development
district becomes effective. However, excluded from the
calculation of this limit is any district involving project
costs in excess of \$10,000,000, the geographic area of which
consists entirely of contiguous property owned by a single
taxpayer and the assessed value of which exceeds 10% of the
municipality's total assessed value. For the purpose of
this paragraph, "contiguous property" includes a parcel or
parcels of land divided by a road, power line or
right-of-way.

50 D. The aggregate value of municipal general obligation
indebtedness financed by the proceeds from tax increment

2 financing districts within any county may not exceed
3 \$50,000,000, adjusted by a factor equal to the percentage
4 change in the United States Bureau of Labor Statistics
5 Consumer Price Index, United States City Average, from
6 January 1, 1996 to the date of calculation.

8 E. The designation of captured assessed value of property
9 within a tax increment financing district is subject to the
10 following limitations.

12 (1) The Commissioner of Economic and Community
13 Development shall adopt rules necessary to allocate or
14 apportion the designation of captured assessed value of
15 property within tax increment financing districts in
16 accordance with these limitations.

18 (2) The acquisition, construction and installment of
19 all real and personal property improvements, buildings,
20 structures, fixtures and equipment within the district
21 contemplated by the development program must be
22 completed within 5 years of the designation of the tax
23 increment financing district by the Commissioner of
24 Economic and Community Development.

26 **Sec. 3. 30-A MRSA §5254-A, sub-§7, as amended by PL 1993, c.**
27 **741, §3, is further amended to read:**

28 **7. Repeal of state tax increment financing districts.** The
29 designation of new state tax increment financing districts ceases
30 June 30, 1996, subject to review by the joint standing committees
31 of the Legislature having jurisdiction over economic development
32 and taxation matters. Designation of new state tax increment
33 financing districts may only be resumed by act of the
34 Legislature. This subsection does not apply to any proposed
35 state tax increment financing district for which a completed
36 application has been submitted to the Commissioner of Economic
37 and Community Development on or before June 30, 1996.

38 **Sec. 4. 36 MRSA c. 917 is enacted to read:**

40 **CHAPTER 917**

42 **EMPLOYMENT TAX INCREMENT FINANCING**

44 **§6751. Short title**

46 This chapter may be known and cited as the "Maine Employment
47 Tax Increment Financing Act."

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46

§6752. Program established; declaration of public purpose

The Maine Employment Tax Increment Financing Program is established to encourage the creation of net new quality jobs in this State, improve and broaden the tax base and improve the general economy of the State. The Legislature declares that the actions required to assist the implementation of development programs are a public purpose and that the execution and financing of these programs are a public purpose.

§6753. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affiliated businesses. "Affiliated businesses" means 2 businesses exhibiting either of the following relationships:

A. One business owns 50% or more of the stock of the other business or owns a controlling interest in the other; or

B. Fifty percent or more of the stock or a controlling interest is directly or indirectly owned or acquired by a common owner or owners following approval by the commissioner, whether by acquisition of substantially all of the assets, 50% or more of the stock or through a merger, consolidation or reorganization.

2. Affiliated group. "Affiliated group" means a qualified business and its corresponding affiliated businesses.

3. Applicant. "Applicant" means a qualified business that has submitted an application to the commissioner for approval of an employment tax increment financing development program.

4. Base level of employment. "Base level of employment" means the greater of either the total employment of a business as of the December 31st immediately preceding the approval of the employment tax increment financing development program or its average employment during the base period.

5. Base period. "Base period" means the 3 calendar years prior to the year in which an applicant's employment tax increment financing development program is approved by the commissioner.

2 **6. Commissioner.** "Commissioner" means the Commissioner of
Economic and Community Development.

4 **7. Employment tax increment.** "Employment tax increment"
means that level of employment, payroll and state income
6 withholding taxes attributed to qualified employees employed by a
qualified business above the base level for the qualified
8 business, adjusted pursuant to section 6757 for shifts in
employment by affiliated businesses.

10 **8. Employment tax increment financing development program.**
"Employment tax increment financing development program" means a
12 statement describing:

14 A. An applicant's employment growth and capital investment
16 plans over the 5-year period beginning on the date an
application is submitted to the commissioner; and

18 B. A description of how funds reimbursed under this Act are
20 necessary to the achievement of those plans.

22 **9. Gross employment tax increment.** "Gross employment tax
increment" means that level of employment, payroll and State
24 income tax withholding taxes attributed to qualified employees
employed by a qualified business that is greater than the base
26 level for the qualified business.

28 **10. Labor market unemployment rate.** "Labor market
unemployment rate" means the unemployment rate as published by
30 the Department of Labor for the labor market or markets in which
potential qualified employees are located, and in which
32 reimbursement is claimed under this chapter, for the calendar
year in which reimbursement is claimed.

34 **11. Qualified business.** "Qualified business" means any
36 nonretail, for-profit business in this State that adds 15 or more
qualified employees above its base level of employment in this
38 State within any 2-year period commencing on or after January 1,
1996. Those businesses engaged in retail operations wherein less
40 than 50% of total annual revenues from Maine-based operations are
derived from sales taxable in the State and that otherwise meet
42 the definition, are considered to be nonretail businesses. For
purposes of this subsection, "retail operations" means sales of
44 consumer goods for household use to consumers who personally
visit the location to purchase the goods. A public utility as
46 defined by Title 35-A, section 102 is not a qualified business.

48 **12. Qualified employees.** "Qualified employees" means new,
full-time employees hired in this State by a qualified business

2 and for whom a retirement program subject to the Employee
3 Retirement Income Security Act of 1974, 29 United States Code,
4 Sections 101 to 1461, as amended, and group health insurance are
5 provided, and whose income, calculated on a calendar year basis
6 is greater than the average annual per capita income in the labor
7 market area in which the qualified employee is employed and whose
8 state income withholding taxes are subject to reimbursement to
9 the qualified business under this chapter. "Qualified employees"
10 must be residents of this State.

11 13. State unemployment rate. "State unemployment rate"
12 means the unemployment rate as published by the Department of
13 Labor for the State as a whole, for the calendar year for which
14 reimbursement is claimed.

15 **§6754. Reimbursement allowed**

16 1. Generally. Subject to the provisions of subsection 2, a
17 qualified business is entitled to reimbursement of state income
18 withholding taxes attributed to qualified employees after July 1,
19 1996 in the following amounts.

20 A. For qualified employees employed by a qualified business
21 in the state labor market areas in which the labor market
22 unemployment rate is at or below 125% of the state
23 unemployment rate, the reimbursement is equal to 30% of
24 withholding taxes attributed to those qualified employees.

25 B. For qualified employees employed by a qualified business
26 in the state labor market areas in which the labor market
27 unemployment rate is greater than 125% of the average state
28 unemployment rate, the reimbursement is equal to 50% of
29 withholding taxes attributed to those qualified employees.

30 2. Limitations. Reimbursement to a qualified business
31 under this chapter is subject to the following limitations.

32 A. A business previously qualified and approved by the
33 commissioner may not receive reimbursement under this
34 chapter for any period of time in which it failed to
35 maintain the minimum requirements for initial approval as a
36 qualified business.

37 B. Reimbursement to a qualified business approved pursuant
38 to this chapter expires 10 years after the date the
39 employment tax increment financing development program was
40 approved.

41 C. A business electing to take the jobs and investment tax
42 credit under section 5215 may not claim reimbursement under
43 section 6754.

2 this chapter until the full amount of allowable jobs and
3 investment tax credit benefits have been claimed.

4 D. A business may not claim reimbursement under this
5 chapter for income withholding taxes attributed to employees
6 employed within any state tax increment financing district
7 approved under Title 30-A, chapter 207.

8 E. Employee payroll withholding amounts are limited to the
9 standard amount withheld and may not include any excess
10 withholding.

11 F. The aggregate annual retained employment tax increment
12 revenues for all employment tax increment financing programs
13 may not exceed \$20,000,000, adjusted by a factor equal to
14 the percentage change in the United States Bureau of Labor
15 Statistics Consumer Price Index, United States City Average,
16 from January 1, 1996 to the date of calculation.

17 3. Multiple labor market areas. The commissioner may by
18 rule establish procedures for equitably apportioning
19 reimbursement to a qualified business employing qualified
20 employees in multiple labor market areas in the State.

21 **§6755. Procedures for application**

22 A qualified business that applies to the commissioner for
23 approval of its employment tax increment financing program shall
24 submit, in a form acceptable to the commissioner, the following
25 information:

26 1. Base level data. Employment, payroll and state
27 withholding data necessary to calculate the base level;

28 2. Number of qualified employees. The number of qualified
29 employees that the applicant has added or will add in the State
30 that qualify the business for reimbursement under this chapter,
31 including additional associated payroll and withholding data
32 necessary to calculate the gross employment tax increment and
33 establish the appropriate reimbursement percentage;

34 3. Certification. Certification that a retirement program
35 subject to the Employee Retirement Income Security Act of 1974,
36 29 United States Code, Sections 1001 to 1461 and group health
37 insurance have been made available to all of the applicant's
38 qualified employees;

2 4. Employment locations. A listing of all of the
applicant's employment locations within the State and the number
of employees at each location; and

4
6 5. Affiliations and data. A listing of all affiliated
business and affiliated groups, data regarding current
employment, payroll and state income withholding taxes for each
8 affiliated business in the State.

10 Upon receipt of the information required by this section,
the commissioner shall review the information in a timely
12 fashion. If the commissioner determines that the criteria
provided in section 6756 are satisfied, the commissioner must
14 issue a certificate of approval to the applicant.

16 **§6756. Criteria for approval**

18 Prior to issuing a certificate of approval for an employment
tax increment financing program, the commissioner must find that:

20 1. Approval needed. The economic development described in
the program will not go forward without the approval;

22 2. Contribution to State. The program will make a
24 contribution to the economic well-being of the State; and

26 3. No substantial harm to existing businesses. The
28 economic development described in the program will not result in
a substantial detriment to existing businesses in the State. In
30 order to make this determination, the commissioner shall
consider, pursuant to Title 5, chapter 375, subchapter II, those
32 factors the commissioner determines necessary to measure and
evaluate the effect of the proposed program on existing
34 businesses, including whether any adverse economic effect of the
proposed program on existing businesses is outweighed by the
36 contribution described in subsection 2.

38 The State Economist shall review applications for employment
tax increment financing and provide an advisory opinion to assist
40 the commissioner in making findings under this section.

42 **§6757. Calculation of employment tax increment**

44 The State Tax Assessor shall calculate the employment tax
increment for a particular program by removing from the gross
46 employment tax increment the revenues attributed to business
activity shifted from affiliated businesses to the applicant.
48 This adjustment is calculated by comparing the current year's
income withholding tax revenues for the applicant business that

2 is a member of an affiliated group with revenues for the group as
3 a whole. If the growth in income withholding tax revenue for the
4 entire group exceeds the growth of income withholding tax revenue
5 generated by the applicant, the gross employment tax increment
6 does not have to be adjusted to remove business activity shifted
7 from affiliated businesses. If the growth in income withholding
8 tax revenue for the affiliated group is less than the growth in
9 income withholding tax revenue for the applicant, the difference
10 is presumed to have been shifted from affiliated businesses to
11 the applicant and the gross employment tax increment for the
12 applicant business is reduced by the difference. The State Tax
13 Assessor shall adjust the calculation by subtracting from the
14 gross employment tax increment a figure obtained by the
15 multiplying the previous year's total amount of income taxes
16 withheld by a qualified business by the percentage change in
17 withholding taxes for all business within the State as a whole;
18 however, an adjustment may not be made if the percentage change
19 is 0 or less.

20 **§6758. Procedure for reimbursement**

21 **1. Reporting by qualified businesses.** On or before April
22 15th of each year, each qualified business approved by the
23 commissioner pursuant to this chapter shall report the number of
24 employees, the state income taxes withheld for the immediately
25 preceding calendar year and any further information the State Tax
26 Assessor may reasonably require.

27 **2. Determination by State Tax Assessor.** On or before June
28 30th of each year, the State Tax Assessor shall determine the
29 employment tax increment of each qualified business for the
30 preceding calendar year. A qualified business may receive up to
31 50% of the employment tax increment generated by that business as
32 determined by the State Tax Assessor, subject to the further
33 limitations in section 6753, subsection 2. That amount is
34 referred to as "retained employment tax increment revenues."

35 **3. Deposit and payment of revenue.** On or before June 30th
36 of each year, the Commissioner of Administrative and Financial
37 Services shall deposit an amount equal to the total retained
38 employment tax increment revenues for the preceding calendar year
39 for approved employment tax increment financing programs in the
40 state employment tax increment contingent account established,
41 maintained and administered by the Commissioner of Administrative
42 and Financial Services. On or before July 31st of each year, the
43 Commissioner of Administrative and Financial Services shall pay
44 to each approved qualified business an amount equal to the
45 retained employment tax increment revenues for the preceding
46 calendar year.

2
3 **§6759. Program administration**

4 The commissioner shall administer this Act. The
5 commissioner and the State Tax Assessor may adopt rules pursuant
6 to the Maine Administrative Procedure Act for implementation of
7 the program, including, but not limited to, rules for determining
8 and certifying eligibility. The commissioner may also by rule
9 establish fees, including fees payable to the State Tax Assessor
10 and the State Planning Office for obligations under this
11 chapter. Any fees collected pursuant to this chapter must be
12 deposited into a special revenue account administered by the
13 State Tax Assessor and those fees may be used only to defray the
14 actual costs of administering this Act.

15 **§6760. Confidentiality**

16 The following records are designated as confidential for
17 purposes of Title 1, section 402, subsection 3, paragraph A:

18 **1. Records used for designation or approval of program.**

19 Any record obtained or developed by the commissioner or the State
20 Tax Assessor for designation or approval of an employment tax
21 increment financing program. After receipt by the commissioner
22 or the State Tax Assessor of the application or proposal, a
23 record pertaining to the application or proposal is not
24 considered confidential unless it meets the requirements of
25 subsections 2 to 6:

26 **2. Records requested confidential or causing detriment.**

27 Any record obtained or developed by the commissioner or the State
28 Tax Assessor that:

29 A. A person, which may include a qualified business, to
30 whom the record belongs or pertains has requested be
31 designated confidential; or

32 B. The commissioner has determined contains information
33 that gives the owner or a user of that information an
34 opportunity to obtain business or competitive advantage over
35 another person who does not have access to the information
36 or access to which by others would result in a business or
37 competitive disadvantage, loss of business or other
38 significant detriment to any person to whom the record
39 belongs or pertains;

40 **3. Private records.**

41 Any record, including any financial
42 statement or tax return, obtained or developed by the
43 commissioner or the State Tax Assessor, the disclosure of which
44 would constitute an invasion of personal privacy, as determined

2 by the governmental entity in possession of that record or
3 information;

4 4. Employment tax increment program records. Any record,
5 including any financial statement or tax return, obtained or
6 developed by the commissioner or the State Tax Assessor in
7 connection with any monitoring or servicing activity by the
8 commissioner or the State Tax Assessor that pertains to an
9 employment tax increment program;

10 5. Creditworthiness records. Any record, including any
11 financial statement or tax return obtained or developed by the
12 commissioner or the State Tax Assessor, containing an assessment
13 by a person not employed by the State of the creditworthiness or
14 financial condition of any person or project; and

15 6. Confidential financial statements. Any financial
16 statement, if the person to whom the statement belongs or
17 pertains has requested that the record be designated confidential.

18 **§6761. Audit process**

19 This chapter may not be construed to limit the authority of
20 the State Tax Assessor to conduct an audit of a qualified
21 business. When it is determined by the State Tax Assessor upon
22 audit that a qualified business has received a distribution
23 larger than that to which it is entitled under this chapter, the
24 overpayment must be applied against subsequent distributions,
25 unless it is determined that the overpayment is the result of
26 fraud on the part of the qualified business, in which case the
27 State Tax Assessor may disqualify the business from receiving any
28 future distributions. When there is no subsequent distribution,
29 the qualified business to which overpayments were made is liable
30 for the amount of the overpayments and may be assessed pursuant
31 to provisions of Part 1.

32 **STATEMENT OF FACT**

33 **40** This bill is the proposed legislation of the Task Force on
34 Tax Increment Financing.