

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2243

S.P. 837

In Senate, March 2, 1998

**An Act to Encourage Accountability and Return on Investment for
Maine Taxpayers from Economic Development Initiatives.**

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 PINGREE of Knox.
Cosponsored by Speaker MITCHELL of Vassalboro and
Senators: CASSIDY of Washington, DAGGETT of Kennebec, LAWRENCE of York,
RUHLIN of Penobscot, Representatives: GAGNON of Waterville, GREEN of Monmouth,
LEMONT of Kittery, TRIPP of Topsham.

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

4 Sec. 1. 5 MRSA §12004-I, sub-§6-E is enacted to read:

6 6-E. Economic Legislative 5 MRSA
6 Economic Development per diem §13070-M
8 Development Incentive and expenses
8 Commission

10 Sec. 2. 5 MRSA c. 383, sub-c. II, art. 6 is enacted to read:

12 **ARTICLE 6**

14 **RETURN ON PUBLIC INVESTMENT FROM**
16 **ECONOMIC DEVELOPMENT INCENTIVES**

18 **§13070-J. Employer obligations associated with eligibility for**
18 **public subsidies and incentives**

20 In order to ensure that the taxpayers of this State receive
22 appropriate value for various types of public subsidies offered
22 to businesses as economic development incentives, employers
24 qualifying for those programs shall comply with the requirements
24 of this section.

26 1. Application. This section applies to an employer who
28 qualifies under state law for a state or local government subsidy
28 or grant payment, tax credit, reimbursement for taxes paid, real
30 estate transfer or development, workforce training guarantee or
30 subsidy or transportation, telecommunications, utility or other
32 infrastructure improvements as part of an economic development
32 incentive offered by the State or a local unit of government, the
34 total value of which exceeds \$250,000 in one year or \$2,500,000
34 over 10 years. The commissioner shall, by rule, identify state
36 and local economic development incentives, including those
36 recommended by the Economic Development Incentive Commission as
38 provided in section 13070-M, subsection 3, paragraph B, that
38 qualify an employer for coverage under this subsection. Rules
40 adopted under this subsection are routine technical rules
40 pursuant to chapter 375, subchapter II-A.

42 2. File report; required policies. Prior to claiming,
44 filing or applying for an economic development incentive, an
44 employer must file a written report with the commissioner
46 containing a disclosure of other government subsidies currently
46 being received; a statement of the public purpose that will be
48 served if the employer is granted the economic development
48 incentive; a description of the financial need met by the
50 economic development incentive and of what the employer's
50 investment or expansion practices would be in the absence of the

2 incentive; a description of the specific uses to which the funds
4 realized as a result of the incentive will be put, including, but
6 not limited to, the facilities that will be renovated or
8 constructed; and the number and types of jobs that will be
created or maintained. The commissioner shall retain a copy of
the report, which is a public record. A copy of the report must
be sent to the Economic Development Incentive Commission
established in section 13070-M.

10 3. Materials available for public inspection. Any
12 application for an economic development incentive must be
14 submitted to the appropriate agency or official and available for
public inspection for at least 21 days prior to the final
decision to grant or allow the incentive.

16 4. Impact statement. The commissioner shall prepare an
18 economic and social impact statement for the Economic Development
20 Incentive Commission. The impact statement must be made
available to any member of the public who requests it and must
include:

22 A. A thorough evaluation of all temporary and permanent
24 jobs that will be created, retained, modified or lost as a
result of the economic development incentive;

26 B. A record of the employer's compliance with federal,
28 state and local labor, environmental and tax laws and
ordinances; and

30 C. A record of state and local subsidies granted to the
32 employer in the past.

34 5. Public comment. An economic development incentive for
36 which an application is required must be submitted to the public
38 for comment by the commissioner at a public meeting held during
the 21-day period established in subsection 3. At the meeting,
the commissioner shall present and receive comments on:

40 A. The commissioner's economic and social impact statement;
and

42 B. The Economic Development Incentive Commission's review
44 of the employer incentive package and recommendation issued
under section 13070-M, subsection 3, paragraph C.

46 6. Employment conditions. An employer who is subject to
48 this section shall, at a minimum, comply with the following
conditions.

2 A. For any employees employed in the State, the employer may
3 not discriminate with respect to wages, benefits or terms
4 and conditions of employment between full-time employees and
5 other employees, except that benefits may be prorated based
6 on the amount of time worked. This paragraph does not
7 prohibit variations in the rate of pay based on a difference
8 in employee seniority.

9
10 B. The employer must offer health insurance coverage to all
11 employees employed in the State on the same financial terms,
12 except that employees who are not full-time permanent
13 employees may be offered coverage on a prorated basis based
14 on the amount of time they work.

15
16 C. The employer must provide to all employees employed in
17 the State a pension plan that includes an employer
18 contribution of at least 3% of gross pay.

19
20 D. The employer may not pay any employee an hourly wage
21 that is less than the prevailing wage for that occupation in
22 the State as determined by the Commissioner of Labor or a
23 living wage, whichever is higher. For the purposes of this
24 paragraph, "living wage" means an income calculated on a
25 calendar year basis that is greater than the average annual
26 per capita income in the labor market area in which the
27 employee is employed. Contractors and subcontractors of the
28 employer engaged in a construction project associated with
29 an economic development incentive must pay their employees
30 the prevailing wage for that occupation in the labor market
31 in this State as calculated under the federal Davis Bacon
32 Act, 40 United States Code.

33
34 E. The employer may not substitute for laid-off employees
35 of the employer contracted labor performing the same
36 essential function.

37
38 F. The employer may not use permanent replacement workers or
39 professional strikebreakers in the event of a labor strike
40 or lockout.

41
42 G. Notwithstanding Title 26, section 625-B, subsection 1,
43 paragraph A, the employer is subject to the severance pay
44 provisions of Title 26, section 625-B.

45
46 H. The employer must develop and implement a closing and
47 layoff policy, which must, at a minimum, require that the
48 employer will not close, relocate or eliminate jobs without
49 providing at least 6-month's notice to the State and the
50 unit of local government that provides the economic
development incentive, without engaging in meetings with

2 state and local government officials and local unions to
3 explore alternatives and without engaging in at least one
4 public hearing in the affected community.

6 I. If an employer sells a business that has qualified for
7 an economic development incentive, the purchaser is subject
8 to this section for 5 years beyond the termination of the
9 economic development incentive or for a length of time equal
10 to the period during which the business received the
11 economic development incentive if that period was less than
12 5 years. The purchaser must conform to the terms of any
13 existing collective bargaining agreement between the former
14 employer and any of that employer's employees.

16 7. Amendment of terms of economic development incentive.

17 In agreement with an employer who is receiving an economic
18 development incentive, the commissioner may amend the terms of
19 the incentive provided the new terms are in the best interests of
20 the State as determined by the commissioner and in compliance
21 with the provisions of this section and other provisions of law.

22 8. Disclosure. An investment that qualifies the employer

23 for an economic development incentive of \$250,000 in one year or
24 \$2,500,000 over 10 years must be disclosed to the commissioner
25 and the Legislature. Annually, an employer receiving an economic
26 development incentive shall submit a written report to the
27 commissioner disclosing the employer's level of employment in the
28 State and the effect on employment as a result of the economic
29 development incentive, assessing the public benefit resulting
30 from the economic development incentive and identifying any
31 provisions of this section with which the employer is unable to
32 comply. The State Tax Assessor shall keep a record of and
33 provide an annual report to the Legislature on the amount of
34 public funds expended and the revenues foregone through tax
35 exemptions, credits or abatements, grant payments or real estate
36 transfers to provide economic development incentives. That
37 report must include a breakdown that shows the amount of subsidy
38 received by each employer.

40 9. General oversight. The commissioner shall investigate

41 and enforce the provisions of this section. Every 2 years after
42 receipt of an economic development incentive, the commissioner
43 and the Economic Development Incentive Commission shall jointly
44 review the impact of the incentive. At a minimum the review
45 consists of an assessment of the impact on employment as a result
46 of the incentive, an assessment of the public benefit resulting
47 from the incentive and identification of any provisions of this
48 section with which the employer is out of compliance. The
49 results of the review must be published in a report by the
50 commissioner and copies sent to members of the Legislature. If

2 the commissioner finds an employer in violation of this section,
3 that employer becomes ineligible for any form of state or local
4 aid. The State Tax Assessor shall include in the annual report
5 to the Legislature provided in subsection 8 an assessment of the
6 impact on the General Fund of state economic development
7 incentives to employers and report the return to the State on the
8 State's investment including changes in personal and corporate
9 income tax revenues and other changes resulting from economic
10 development incentives.

11 **10. Sanctions.** An employer who fails to comply with this
12 section is subject to the following.

13 **A.** The commissioner may initiate legal action to
14 discontinue payment of a public subsidy as an economic
15 development incentive and to recapture the incentive in
16 whole or in part, with or without interest.

17 (1) The appropriate remedy is recapture of the full
18 value of the subsidy plus 7% for the following
19 violations:

20 (a) Using an economic development incentive to
21 relocate workers outside the State; or

22 (b) Failure of the purchaser of a business
23 receiving an economic development incentive to
24 comply with the requirements provided in
25 subsection 6, paragraph I.

26 (2) The appropriate remedy for failure to meet job
27 creation or retention goals established under this
28 section as part of an economic development incentive is
29 the recapture of a percentage of the subsidy for the
30 year in which the failure occurs that is equal to the
31 percentage that the jobs not created or retained bears
32 to the job creation goal.

33 (3) The appropriate remedy is recapture of the value
34 of the subsidy for the year in which the violation
35 occurs for the following violations:

36 (a) Knowingly awarding a contract to a business
37 that is in violation of state or federal laws or
38 rules or local ordinances;

39 (b) Failure to pay state taxes;

40 (c) Failure to use an economic development
41 incentive for the intended purpose as stated in
42

2 the employer's report to the commissioner under
3 subsection 2; or

4 (d) Any other violation of this section.

6 C. An employer is liable to any adversely affected employee
7 for any amount of lost wages, out-of-pocket damages caused
8 by benefits lost and any other cost incurred or damages
9 suffered as a result of the violation. A civil action to
10 recover damages pursuant to this section may be maintained
11 in any court of competent jurisdiction by any one or more
12 employees for and on behalf of that employee and any other
13 employees similarly situated.

14 D. In any civil action in which the court finds that there
15 was a violation of this section by the employer and that the
16 employer knew or should have known that its actions were or
17 would be a violation of law, the court shall award to the
18 plaintiff or plaintiffs, in addition to any damages awarded,
19 an equal amount of liquidated damages, reasonable attorney's
20 fees and the costs of the action.

21 E. The State may deny to that employer future state
22 economic development incentives and the right to bid on
23 state purchasing contracts.

24 F. The commissioner may notify the Treasurer of State and
25 the Board of Trustees of the Maine State Retirement System.
26 Within one year of receipt of notice, the board shall divest
27 itself of any stock of that employer held in any fund of the
28 retirement system and inform the employer of the reason for
29 doing so.

30 11. Violation of other laws. An employer who commits gross
31 repeated or willful violations of any federal, state or local
32 law, rule or ordinance or labor agreement is not eligible to
33 receive an economic development incentive. If an employer who is
34 receiving an economic development incentive violates any federal,
35 state or local law, rule or ordinance, the appropriate remedy is
36 recapture of the value of the subsidy for the year in which the
37 violation occurs.

38 12. Limitation on use of economic development incentive.
39 An employer may not use any funds derived from an economic
40 development incentive to relocate any of its employees outside
41 the State.

42 13. Recovery of sale proceeds. If an employer sells a
43 business subject to this section, the State or a local unit of
44 government may recover from the sale proceeds the total value of
45 the business.

2 the public subsidy or incentive granted under this section plus
3 7% of that amount.

4 14. Citizen suits. Any resident of the State may bring an
5 action in either the Superior Court or District Court for
6 equitable relief, including an injunction, to enforce the
7 requirements of this article. There is a right to a jury trial
8 in any action brought in Superior Court under this section.

10 **§13070-K. Economic development incentive contract**

12 Whenever the commissioner enters into a contractual
13 relationship with an employer regarding the provision of an
14 economic development incentive in return for the employer's
15 agreement to locate, expand or retain its facilities in the
16 State, that contract must contain a statement of the State's
17 expected return on its investment of public funds.

18 **§13070-L. Collaboration with other states**

20 Whenever the commissioner engages in negotiations with an
21 employer regarding the possible location, expansion or retention
22 of its facilities in the State in return for the granting of an
23 economic development incentive by the State or a local unit of
24 government, the commissioner shall collaborate to the extent
25 possible with the appropriate officials in any other state that
26 is also negotiating with that employer. An employer who enters
27 such negotiations with the commissioner is required to report to
28 the commissioner when other negotiations with other states are
29 under way and disclose any agreements that have been reached.

32 **§13070-M. Economic Development Incentive Commission**

34 The Economic Development Incentive Commission, established
35 in section 12004-I, subsection 6-E and referred to in this
36 section as the "commission," is created to review and advise the
37 commissioner and the Legislature on public benefits derived from
38 economic development incentives provided to employers.

40 1. Membership. The commission consists of 13 members
41 appointed as follows:

42 A. Three members of the Senate appointed by the President
43 of the Senate, as least one of whom is a member of the
44 minority party;

45 B. Three members of the House of Representatives appointed
46 by the Speaker of the House, at least one of whom is a
47 member of the minority party;

2 C. A representative of the department appointed by the
commissioner; and

4 D. Six public members appointed by majority vote of the
other 7 members as follows:

6 (1) One consumer representative appointed from
8 nominations submitted by nonprofit public interest
groups in the State;

10 (2) One labor representative appointed from
12 nominations submitted by labor organizations in the
State;

14 (3) Two business representatives, one representing
16 businesses receiving economic development incentives of
18 \$250,000 per year or more and one representing
20 businesses not covered by this article and employing
fewer than 50 employees. Both business representatives
must be appointed from nominations by business
organizations and trade associations in the State;

22 (4) One municipal government representative appointed
24 from nominations by the Maine Municipal Association and
municipal officers; and

26 (5) One representative of a nongovernmental
28 organization promoting sustainable economic development
30 appointed from nominations by such organizations in the
State.

32 Following the effective date of this section and at such
34 other times as necessary to fill vacancies on the
commission, the commission may declare an open nomination
36 period for the purpose of receiving nominations to fill
vacancies on the commission. The open nomination period may
be for up to 3 months.

38 2. Terms; vacancies. Terms of the 6 public members are for
40 3 years, except that of the members first appointed the labor
42 representative and municipal representative must be appointed to
2-year terms and the large business representative and the
44 representative of nongovernmental organizations promoting
sustainable economic development must be appointed to one-year
46 terms. Vacancies must be filled for the remainder of the term in
the same manner as the original appointment. Nonpublic members
48 serve at the pleasure of the appointing authority or until their
term of office or employment that qualified them for appointment
50 ends. A quorum of the commission is 7 members, and the
affirmative vote of at least 7 members of the commission is

2 necessary to conduct business. Each year the members shall
3 select a chair from among themselves.

4 3. Duties. The commission has the following duties:

6 A. Gathering information pertaining to economic development
7 incentives provided in the State and analyzing the
8 effectiveness of those incentives relative to alternative
9 public investment opportunities, including, but not limited
10 to, small business development and education;

12 B. Making recommendations to the commissioner on which
13 economic development incentives that qualify an employer for
14 coverage under section 13070-J, subsection 1;

16 C. Reviewing the package of economic development incentives
17 available to an employer and making recommendations to the
18 commissioner;

20 D. Making recommendations to the commissioner on the
21 negotiation of economic development incentive contracts with
22 employers. Recommendations may include actions to meet
23 community needs;

24 E. Reviewing economic and social impact statements produced
25 by the commissioner and making recommendations to the
26 commissioner;

28 F. Reviewing every 2 years with the commissioner all
29 economic development incentives provided to employers and
30 compliance with this article, including the rate of
31 compliance with the terms of any agreements between
32 employers and the State;

34 G. Reporting biannually to the Legislature, the Governor
35 and the commissioner on the rate of return to the State on
36 its economic development incentives as determined by the
37 commission; and

38 H. Examining whether economic incentive programs inhibit
39 competition or provide preferential treatment to private
40 employers and making recommendations to the Governor and the
41 Legislature for improvement in the purpose, award criteria,
42 administration, accountability and enforcement of economic
43 development incentive programs.

SUMMARY

2

4 The purpose of this bill is to ensure that Maine taxpayers
get the most for their money when state and local governments
make large investments in economic development projects.

6

8 The bill has 3 components. First, corporations seeking
economic development assistance of more than \$250,000 in one
year, or \$2,500,000 over 10 years, would be subject to minimum
10 disclosure and public review provisions. Aid applicants must
document their financial need, the public purpose to be served,
12 the specific use to which public funds will be put and the number
and type of jobs that will be created or preserved. The
14 Department of Economic and Community Development, DECD, will then
prepare an economic and social impact statement, to be followed
16 by a 21-day public comment period and public hearing.

18

20 Second, in addition to complying with federal, state and
local laws, subsidized corporations are expected to pay
prevailing wages and provide health and pension benefits. If an
aid recipient fails to meet those basic conditions, or uses Maine
22 taxpayer dollars to move jobs out of the State, DECD shall take
action to recapture an appropriate amount of the public's
24 investment. Egregious violations may result in a bar on future
assistance or state contracts or in divestment of the violator's
26 stock from the Maine State Retirement System.

28

30 Third, the bill creates a 13-member Economic Development
Incentive Commission, representing the Legislature; DECD;
municipalities; and business, labor and community interests. The
commission will participate in the initial incentive application
32 process, review the effectiveness of incentive programs and
report biannually to the Legislature and the Governor on
34 compliance with the law and the rate of return received on public
investments.