

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 1966

S.P. 725

In Senate, December 17, 2001

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### **An Act to Amend the Laws Relating to Development Districts.**

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Submitted by the Department of Economic and Community Development pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 17, 2001. Referred to the Committee on Taxation and ordered printed pursuant to Joint Rule 308.2

A handwritten signature in cursive script that reads "Pamela L. Cahill".

PAMELA L. CAHILL  
Secretary of the Senate

Presented by Senator GAGNON of Kennebec.  
Cosponsored by Representative RICHARDSON of Brunswick and  
Representatives: McGOWAN of Pittsfield, MURPHY of Berwick.

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

4 **Sec. 1. 30-A MRSA c. 206 is enacted to read:**

6 **CHAPTER 206**

8 **DEVELOPMENT DISTRICTS**

10 **SUBCHAPTER I**

12 **MUNICIPAL DEVELOPMENT DISTRICTS**

14 **§5221. Findings and declaration of necessity**

16 **1. Legislative finding.** The Legislature finds that there is a need for new development in areas of municipalities to:

18 **A. Provide new employment opportunities;**

20 **B. Improve and broaden the tax base; and**

22 **C. Improve the general economy of the State.**

24 **2. Authorization.** For the reasons set out in subsection 1, municipalities may develop a program for improving a district of the municipality:

28 **A. To provide impetus for industrial or commercial development, or both;**

30 **B. To increase employment; and**

32 **C. To provide the facilities outlined in the development program adopted by the legislative body of the municipality.**

34 **3. Declaration of public purpose.** It is declared 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.

40 **§5222. Definitions**

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

44 **1. Amenities.** "Amenities" means items of street furniture, signs and landscaping, including, but not limited to, plantings, benches, trash receptacles, street signs, sidewalks and pedestrian malls.

2           **2. Captured assessed value.** "Captured assessed value"  
3 means the amount, as a percentage or stated sum, of increased  
4 assessed value that is utilized from year to year to finance the  
5 project costs contained within the development program.

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

8           **4. Department.** "Department" means the Department of  
9 Economic and Community Development.

10           **5. Development district.** "Development district" means a  
11 specified area within the corporate limits of a municipality that  
12 has been designated as provided under section 5226 and that is to  
13 be developed by the municipality under a development program.

14           **6. Development program.** "Development program" means a  
15 statement of means and objectives designed to provide new  
16 employment opportunities, retain existing employment, improve or  
17 broaden the tax base and improve the physical facilities and  
18 structures or the quality of pedestrian and vehicular  
19 transportation, as described in section 5224, subsection 2.

20           **7. Downtown.** "Downtown" means the traditional central  
21 business district of a community that has served as the center of  
22 socioeconomic interaction in the community, characterized by a  
23 cohesive core of commercial and mixed-use buildings, often  
24 interspersed with civic, religious and residential buildings and  
25 public spaces, that are typically arranged along a main street  
26 and intersecting side streets and served by public infrastructure.

27           **8. Downtown tax increment financing district.** "Downtown tax  
28 increment financing district" means a tax increment financing  
29 district described in a downtown redevelopment plan that is  
30 consistent with the downtown criteria established pursuant to  
31 rules of the department.

32           **9. Financial plan.** "Financial plan" means a statement of  
33 the project costs and sources of revenue required to accomplish  
34 the development program.

35           **10. Increased assessed value.** "Increased assessed value"  
36 means the valuation amount by which the current assessed value of  
37 a tax increment financing district exceeds the original assessed  
38 value of the district. If the current assessed value is equal to  
39 or less than the original, there is no increased assessed value.

40           **11. Maintenance and operation.** "Maintenance and operation"  
41 means all activities necessary to maintain facilities after they  
42 have been developed and all activities necessary to operate the  
43 facilities.

1 facilities, including, but not limited to, informational,  
2 promotional and educational programs and safety and surveillance  
3 activities.

4  
5 12. Original assessed value. "Original assessed value"  
6 means the assessed value of a development district as of March  
7 31st of the preceding tax year.

8  
9 13. Project costs. "Project costs" means any expenditures  
10 or monetary obligations incurred or expected to be incurred that  
11 are authorized by section 5225, subsection 1 and included in a  
12 development program.

13  
14 14. Tax increment. "Tax increment" means real and personal  
15 property taxes assessed by a municipality, in excess of any  
16 state, county or special district tax, upon the increased  
17 assessed value of property in the development district.

18  
19 15. Tax increment financing district. "Tax increment  
20 financing district" means a type of development district, or  
21 portion of a district, that uses tax increment financing under  
22 section 5227.

23  
24 16. Tax shifts. "Tax shifts" means the effect on a  
25 municipality's state revenue sharing, education subsidies and  
26 county tax obligations that results from the designation of a tax  
27 increment financing district and the capture of increased  
28 assessed value.

29 **§5223. Development districts**

30  
31 1. Creation. A municipal legislative body may designate a  
32 development district within the boundaries of the municipality in  
33 accordance with the requirements of this chapter. If the  
34 municipality has a charter, the designation of a development  
35 district may not be in conflict with the provisions of the  
36 municipal charter.

37  
38 2. Considerations for approval. Before designating a  
39 development district within the boundaries of a municipality, or  
40 before establishing a development program for a designated  
41 development district, the legislative body of a municipality must  
42 consider whether the proposed district or program will contribute  
43 to the economic growth or well-being of the municipality or to  
44 the betterment of the health, welfare or safety of the  
45 inhabitants of the municipality. Interested parties must be  
46 given a reasonable opportunity to present testimony concerning  
47 the proposed district or program at the hearing provided for in  
48 section 5226, subsection 1. If an interested party claims at the  
49 public hearing that the proposed district or program will result  
50

2 in a substantial detriment to that party's existing business in  
3 the municipality and produces substantial evidence to that  
4 effect, the legislative body must consider that evidence. When  
5 considering that evidence, the legislative body also shall  
6 consider whether any adverse economic effect of the proposed  
7 district or program on that interested party's existing business  
8 in the municipality is outweighed by the contribution made by the  
9 district or program to the economic growth or well-being of the  
10 municipality or to the betterment of the health, welfare or  
11 safety of the inhabitants of the municipality.

12 3. Conditions for approval. Designation of a development  
13 district is subject to the following conditions.

14 A. At least 25%, by area, of the real property within a  
15 development district must meet at least one of the following  
16 criteria:

17 (1) Must be a blighted area;

18 (2) Must be in need of rehabilitation, redevelopment  
19 or conservation work; or

20 (3) Must be suitable for commercial uses.

21 B. The total area of a single development district may not  
22 exceed 2% of the total acreage of the municipality. All  
23 development districts may not exceed 5% of the total acreage  
24 of the municipality.

25 C. The original assessed value of a proposed tax increment  
26 financing district plus the original assessed value of all  
27 existing tax increment financing districts within the  
28 municipality may not exceed 5% of the total value of taxable  
29 property within the municipality as of April 1st preceding  
30 the date of the commissioner's designation of the proposed  
31 tax increment financing district.

32 D. The aggregate value of municipal general obligation  
33 indebtedness financed by the proceeds from tax increment  
34 financing districts within any county may not exceed  
35 \$50,000,000 adjusted by a factor equal to the percentage  
36 change in the United States Bureau of Labor Statistics  
37 Consumer Price Index, United States City Average from  
38 January 1, 1996 to the date of calculation.

39 (1) The commissioner may adopt rules necessary to  
40 allocate or apportion the designation of captured  
41 assessed value of property within proposed tax  
42 increment financing districts to permit compliance with  
43 the following conditions:

2 the condition in this paragraph. Rules adopted  
4 pursuant to this paragraph are routine technical rules  
6 as defined in Title 5, chapter 375, subchapter II-A.

8 (2) The acquisition, construction and installment of  
10 all real and personal property improvements, buildings,  
12 structures, fixtures and equipment included within the  
14 development program and financed through municipal  
16 bonded indebtedness must be completed within 5 years of  
18 the commissioner's designation of the tax increment  
20 financing district.

22 Excluded from the calculation in paragraph C is any district  
24 whose development program contains project costs in excess of  
26 \$10,000,000 that are incurred exclusively within the district,  
28 the geographic area of which consists entirely of contiguous  
30 property owned by a single taxpayer and the assessed value of  
32 which exceeds 10% of the total value of taxable property within  
34 the municipality. For the purpose of this paragraph, "contiguous  
36 property" includes a parcel or parcels of land divided by a road,  
38 power line or right-of-way.

40 The conditions in paragraphs A to D do not apply to approved  
42 downtown tax increment financing districts.

44 **4. Powers of municipality.** Within development districts  
46 and consistent with the development program, the municipality may  
48 acquire, construct, reconstruct, improve, preserve, alter,  
50 extend, operate or maintain property or promote development  
intended to meet the objectives of the development program.  
Pursuant to the development program, the municipality may acquire  
property, land or easements through negotiation or by using  
eminent domain powers in the manner authorized for community  
development programs under section 5204. The municipality's  
legislative body may adopt ordinances regulating traffic in and  
access to any facilities constructed within the development  
district. The municipality may install public improvements.

**§5224. Development programs**

**1. Adoption.** The legislative body of a municipality shall  
adopt a development program for each development district. The  
program must be adopted at the same time as is the district, as  
part of the district adoption proceedings or, if at a different  
time, in the same manner as adoption of the district, with the  
same notice, hearing and consultation requirements of section  
5226. Before adopting a development program, the municipal  
legislative body shall consider the factors and evidence  
specified in section 5223, subsection 2.

2. Requirements. The development program must include:

A. A financial plan in accordance with subsections 3 and 4;

B. A description of public facilities, improvements or programs to be financed in whole or in part by the development program;

C. A description of commercial facilities, improvements or projects to be financed in whole or in part by the development program;

D. Plans for the relocation of persons displaced by the development activities;

E. The proposed regulations and facilities to improve transportation;

F. The environmental controls to be applied;

G. The proposed operation of the development district after the planned capital improvements are completed; and

H. The duration of the program, which may not exceed 30 years from the date of designation of the district.

3. Financial plan for development program. The financial plan for a development program must include:

A. Cost estimates for the development program;

B. The amount of indebtedness to be incurred;

C. Sources of anticipated revenues; and

D. A description of the terms and conditions of any agreements, contracts or other obligations related to the development program.

4. Financial plan for tax increment financing districts. In addition to the items required by subsection 3, the financial plan for a development program for a tax increment financing district must include the following for each year of the program:

A. Estimates of increased assessed values of the district;

B. The portion of the increased assessed values to be applied to the development program as captured assessed values and resulting tax increments in each year of the program; and



2           C. A calculation of the tax shifts resulting from  
3           designation of the tax increment financing district.

4  
5           5. Limitation. For tax increment financing districts, the  
6           municipality may expend the tax increments received for any  
7           development program only in accordance with the financial plan.

8  
9           §5225. Project costs

10           1. Authorized project costs. The commissioner shall review  
11           proposed project costs to ensure compliance with this  
12           subsection. Authorized project costs are:

13           A. Costs of improvements made within the tax increment  
14           financing district, including, but not limited to:

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

16                           (a) The acquisition or construction of land,  
17                           improvements, buildings, structures, fixtures and  
18                           equipment for public or commercial use;

19                           (b) The demolition, alteration, remodeling,  
20                           repair or reconstruction of existing buildings,  
21                           structures and fixtures;

22                           (c) Site preparation and finishing work; and

23                           (d) All fees and expenses that are eligible to be  
24                           included in the capital cost of such improvements,  
25                           including, but not limited to, licensing and  
26                           permitting expenses and planning, engineering,  
27                           architectural, testing, legal and accounting  
28                           expenses;

29                   (2) Financing costs, including, but not limited to,  
30                   closing costs, issuance costs and interest paid to  
31                   holders of evidences of indebtedness issued to pay for  
32                   project costs and any premium paid over the principal  
33                   amount of that indebtedness because of the redemption  
34                   of the obligations before maturity;

35                   (3) Real property assembly costs;

36                   (4) Professional service costs, including, but not  
37                   limited to, licensing, architectural, planning,  
38                   engineering and legal expenses;

2 (5) Administrative costs, including, but not limited  
4 to, reasonable charges for the time spent by municipal  
employees in connection with the implementation of a  
development program;

6 (6) Relocation costs, including, but not limited to,  
8 relocation payments made following condemnation; and

10 (7) Organizational costs relating to the establishment  
12 of the district, including, but not limited to, the  
14 costs of conducting environmental impact and other  
studies and the costs of informing the public about the  
creation of development districts and the  
implementation of project plans;

16 B. Costs of improvements that are made outside the tax  
18 increment financing district but are directly related to or  
are made necessary by the establishment or operation of the  
20 district, including, but not limited to:

22 (1) That portion of the costs reasonably related to the  
24 construction, alteration or expansion of any facilities  
26 not located within the district that are required due  
28 to improvements or activities within the district,  
30 including, but not limited to, sewage treatment plants,  
water treatment plants or other environmental  
protection devices; storm or sanitary sewer lines;  
water lines; improvements to fire stations; and  
amenities on streets;

32 (2) Costs of public safety improvements made necessary  
by the establishment of the district; and

34 (3) Costs of funding to mitigate any adverse impact of  
36 the district upon the municipality and its  
constituents. This funding may be used for public  
38 facilities and improvements if:

40 (a) The public facilities or improvements are  
located in a downtown tax increment financing  
42 district; and

44 (b) The entire tax increment from the downtown  
tax increment financing district is committed to  
46 the development program of the tax increment  
financing district;

48 C. Costs related to economic development, environmental  
50 improvements or employment training within the municipality,  
including, but not limited to:

2           (1) Costs of funding economic development programs or  
3           events developed by the municipality or funding the  
4           marketing of the municipality as a business location;

6           (2) Costs of funding environmental improvement  
7           projects developed by the municipality for commercial  
8           use or related to commercial activities;

10          (3) Funding to establish permanent economic  
11          development revolving loan funds or investment funds;

12          (4) Costs of services to provide skills development  
13          and training for residents of the municipality. These  
14          costs may not exceed 20% of the total project costs and  
15          must be designated as training funds in the development  
16          program; and

18          (5) Child care costs, including finance costs and  
19          construction, staffing, training, certification and  
20          accreditation costs related to child care; and

22          D. Costs of constructing or improving facilities or  
23          buildings used by State Government that are located in  
24          approved downtown tax increment financing districts.

26          2. Unauthorized project costs. Except as provided in  
27          subsection 1, paragraph D, the commissioner may not approve as a  
28          project cost the cost of facilities, buildings or portions of  
29          buildings used predominantly for the general conduct of  
30          government or for public recreational purposes, including, but  
31          not limited to, city halls and other headquarters of government  
32          where the governing body meets regularly, courthouses, jails,  
33          police stations and other state and local government office  
34          buildings, recreation centers, athletic fields and swimming pools.

36          3. Limitation. Tax increments received from any  
37          development program may not be used to circumvent other tax laws.

40          **§5226. Procedure**

42          1. Notice and hearing. Before designating a development  
43          district or adopting a development program, the municipal  
44          legislative body or the municipal legislative body's designee  
45          must hold at least one public hearing. Notice of the hearing  
46          must be published at least 10 days before the hearing in a  
47          newspaper of general circulation within the municipality.

48          2. Review by commissioner. Before final designation of a  
49          tax increment financing district, the commissioner shall review  
50          the district.

2 the proposal to ensure that the proposal complies with statutory  
3 requirements. In the case of a downtown tax increment financing  
4 district, the State Planning Office and the Department of  
5 Transportation shall review the proposal and provide advice to  
6 assist the commissioner in making a decision under this  
7 subsection.

8 3. Effective date. A designation of a tax increment  
9 financing district is effective upon approval by the  
10 commissioner. A designation of a development district other than  
11 a tax increment financing district is effective upon approval by  
12 the municipal legislative body.

13 4. Administration of district. The legislative body of a  
14 municipality may create a department, designate an existing  
15 department, office, agency, municipal housing or redevelopment  
16 authority or enter into a contractual arrangement with a private  
17 entity to administer activities authorized under this chapter.

18 5. Amendments. A municipality may amend a designated  
19 development district or an adopted development program only after  
20 meeting the requirements of this section for designation of a  
21 development district or adoption of a development program. A  
22 municipality may not amend the designation of a development  
23 district if the amendment would result in the district's being  
24 out of compliance with any of the conditions in section 5223,  
25 subsection 3.

26 **§5227. Tax increment financing**

27  
28  
29  
30  
31 1. Designation of captured assessed value. A municipality  
32 may retain all or part of the tax increment revenues generated  
33 from the increased assessed value of a tax increment financing  
34 district for the purpose of financing the development program.  
35 The amount of tax increment revenues to be retained is determined  
36 by designating the captured assessed value. When a development  
37 program for a tax increment financing district is adopted, the  
38 municipal legislative body shall adopt a statement of the  
39 percentage of increased assessed value to be retained as captured  
40 assessed value in accordance with the development program. The  
41 statement of percentage may establish a specific percentage or  
42 percentages or may describe a method or formula for determination  
43 of the percentage. The municipal assessor shall certify the  
44 amount of the captured assessed value to the municipality each  
45 year.

46  
47 2. Certification of assessed value. On or after formation  
48 of a tax increment financing district, the assessor of the  
49 municipality in which it is located shall certify the original  
50 assessed value of the taxable property within the boundaries of

2 the tax increment financing district. Each year after the  
3 designation of a tax increment financing district, the municipal  
4 assessor shall certify the amount by which the assessed value has  
5 increased or decreased from the original value.

6 Nothing in this subsection allows or sanctions unequal  
7 apportionment or assessment of the taxes to be paid on real  
8 property in the State. An owner of real property within the tax  
9 increment financing district shall pay real property taxes  
10 apportioned equally with property taxes paid elsewhere in the  
11 municipality.

12  
13 3. Development program fund; tax increment revenues. If a  
14 municipality has designated captured assessed value under  
15 subsection 1, the municipality shall:

16  
17 A. Establish a development program fund that consists of  
18 the following:

19  
20 (1) A project cost account that is pledged to and  
21 charged with the payment of project costs that are  
22 outlined in the financial plan and are paid in a manner  
23 other than as described in subparagraph (2); and

24  
25 (2) In instances of municipal indebtedness, a  
26 development sinking fund account that is pledged to and  
27 charged with the payment of the interest and principal  
28 as the interest and principal fall due and the  
29 necessary charges of paying interest and principal on  
30 any notes, bonds or other evidences of indebtedness  
31 that were issued to fund or refund the cost of the  
32 development program fund;

33  
34 B. Annually set aside all tax increment revenues on  
35 captured assessed values and deposit all such revenues to  
36 the appropriate development program fund account established  
37 under paragraph A in the following order of priority:

38  
39 (1) To the development sinking fund account, an amount  
40 sufficient, together with estimated future revenues to  
41 be deposited to the account and earnings on the amount,  
42 to satisfy all annual debt service on bonds and notes  
43 issued under section 5231 and the financial plan; and

44  
45 (2) To the project cost account, an amount sufficient,  
46 together with estimated future revenues to be deposited  
47 to the account and earnings on the amount, to satisfy  
48 all annual project costs to be paid from the account;

2 C. Make transfers between development program fund accounts  
3 established under paragraph A as required, provided that the  
4 transfers do not result in a balance in the development  
5 sinking fund account that is insufficient to cover the  
6 annual obligations of that account; and

7  
8 D. Annually return to the municipal general fund any tax  
9 increment revenues remaining in the development sinking fund  
10 account established under paragraph A in excess of those  
11 estimated to be required to satisfy the obligations of the  
12 development sinking fund account after taking into account  
13 any transfers made under paragraph C. The municipality, at  
14 any time during the term of the district, by vote of the  
15 municipal officers, may return to the municipal general fund  
16 any tax increment revenues remaining in the project cost  
17 account established under paragraph A in excess of those  
18 estimated to be required to satisfy the obligations of the  
19 development project cost account after taking into account  
20 any transfer made under paragraph C. In either case, the  
21 corresponding amount of local valuation may not be included  
22 as part of the captured assessed value as specified by the  
23 municipality.

24 **§5228. Assessments**

25 1. Assessments. A municipality may estimate and make the  
26 following assessments:

27  
28 A. A development assessment upon lots or property within  
29 the development district. The assessment must be made upon  
30 lots or property that have been benefited by improvements  
31 constructed or created under the development program and may  
32 not exceed a just and equitable proportionate share of the  
33 cost of the improvement. All revenues from assessments  
34 under this paragraph are paid into the appropriate  
35 development fund program account established under section  
36 5227, subsection 3;

37  
38 B. A maintenance assessment upon all lots or property  
39 within the development district. The assessment must be  
40 assessed equally and uniformly on all lots or property  
41 receiving benefits from the development program and the  
42 continued operation of the public facilities. The total  
43 maintenance assessments may not exceed the cost of  
44 maintenance and operation of the public facilities within  
45 the district. The cost of maintenance and operation must be  
46 in addition to the cost of maintenance and operation already  
47 being performed by the municipality within the district when  
48 the development district was adopted; and

50

2           C. An implementation assessment upon all lots or property  
3           within the development district. The assessment must be  
4           assessed equally and uniformly on all lots or property  
5           receiving benefits from the development program. The  
6           implementation assessments may be used to fund activities  
7           that, in the opinion of the municipal legislative body, are  
8           reasonably necessary to achieve the purposes of the  
9           development program. The activities funded by  
10           implementation assessments must be in addition to those  
11           already conducted within the district by the municipality  
12           when the development district was adopted.

13           2. Notice and hearing. Before estimating and making an  
14           assessment under subsection 1, the municipality must give notice  
15           and hold a hearing. Notice of the hearing must be published at  
16           least 10 days before the hearing in a newspaper of general  
17           circulation within the municipality. The notice must include:

18           A. The date, time and place of hearing;

19           B. The boundaries of the development district by legal  
20           description;

21           C. A statement that all interested persons owning real  
22           estate or taxable property located within the district will  
23           be given an opportunity to be heard at the hearing and an  
24           opportunity to file objections to the amount of the  
25           assessment;

26           D. The maximum rate of assessments to be extended in any  
27           one year; and

28           E. A statement indicating that a proposed list of  
29           properties to be assessed and the estimated assessments  
30           against those properties is available at the city or town  
31           office or at the office of the assessor.

32           The notice may include a maximum number of years the assessments  
33           will be levied.

34           3. Apportionment formula. A municipality may adopt  
35           ordinances apportioning the value of improvements within a  
36           development district according to a formula that reflects actual  
37           benefits that accrue to the various properties because of the  
38           development and maintenance.

39           4. Increase of assessments and extension of time limits. A  
40           municipality may increase assessments or extend the specified  
41           period after notice and hearing as required under subsection 2.

2        5. Collection. Assessments made under this section must be  
3        collected in the same manner as municipal taxes. The constable  
4        or municipal tax collector has all the authority and powers by  
5        law to collect the assessments. If any property owner fails to  
6        pay any assessment or part of an assessment on or before the  
7        dates required, the municipality has all the authority and powers  
8        to collect the delinquent assessments vested in the municipality  
9        by law to collect delinquent municipal taxes.

10        **§5229. Rules**

12        The commissioner may adopt rules necessary to carry out the  
13        duties imposed by section 5226, subsection 2 and to ensure  
14        municipal compliance with this subchapter following designation  
15        of a tax increment financing district. Rules adopted pursuant to  
16        this section are routine technical rules as defined in Title 5,  
17        chapter 375, subchapter II-A.

18        **§5230. Grants**

20        A municipality may receive grants or gifts for any of the  
21        purposes of this chapter. The tax increment revenues within a  
22        development district may be used as the local match for certain  
23        grant programs.

24        **§5231. Bond financing**

26        The legislative body of a municipality may authorize, issue  
27        and sell bonds, including, but not limited to, general obligation  
28        or revenue bonds or notes, that mature within 20 years from the  
29        date of issue to finance all project costs needed to carry out  
30        the development program within the development district. The  
31        municipal officers authorized to issue the bonds or notes may  
32        borrow money in anticipation of the sale of the bonds for a  
33        period of up to 3 years by issuing temporary notes and notes in  
34        renewal of the bonds. All revenues derived under section 5227 or  
35        under section 5228, subsection 1 received by the municipality are  
36        pledged for the payment of the activities described in the  
37        development program and used to reduce or cancel the taxes that  
38        may otherwise be required to be expended for that purpose. The  
39        notes, bonds or other forms of financing may not be included when  
40        computing the municipality's net debt. Nothing in this section  
41        restricts the ability of the municipality to raise revenue for  
42        the payment of project costs in any manner otherwise authorized  
43        by law.

44        **§5232. Tax exemption**

46        All publicly owned parking structures and pedestrian skyway  
47        systems are exempt from taxation by the municipality, county and  
48        city.



2 State. This section does not exempt any lessee or person in  
3 possession from taxes or assessments payable under Title 36,  
4 section 551.

6 **§5233. Advisory board**

8 The legislative body of a municipality may create an  
9 advisory board, a majority of whose members must be owners or  
10 occupants of real property located in or adjacent to the  
11 development district they serve. The advisory board shall advise  
12 the legislative body and the designated administrative entity on  
13 the planning, construction and implementation of the development  
14 program and maintenance and operation of the district after the  
15 program has been completed.

16 **§5234. Special provisions**

18 Notwithstanding the provisions of section 5223, subsection 1  
19 and any other provision of law, in the case of investments  
20 exceeding \$100,000,000 in shipyard facilities in districts  
21 authorized prior to June 30, 1999, revenues must be set aside and  
22 deposited by the municipality to the appropriate development  
23 program fund account established under section 5227, subsection 3  
24 and expended to satisfy the obligations of the accounts without  
25 the need for further action by the municipality by appropriation  
26 or otherwise. Unless otherwise provided by the municipality in  
27 connection with its approval of the district, tax increment  
28 revenues on all captured assessed value may not be taken into  
29 account for purposes of calculating any limitation on the  
30 municipality's annual expenditures or appropriations, and the  
31 payment of tax increment revenues on captured assessed value is  
32 not subject to any limitation or restriction on the  
33 municipality's authority or power to enter into contracts with  
34 respect to making payments for a term equal to the term of the  
35 district.

36 **§5235. Unorganized territory**

38 For the purposes of this chapter, a county may act as a  
39 municipality for the unorganized territory within the county and  
40 may designate development districts within the unorganized  
41 territory. When a county acts under this section, the county  
42 commissioners act as the municipality and as the municipal  
43 legislative body, the State Tax Assessor acts as the municipal  
44 assessor and the unorganized territory fund receives the funds  
45 designated for the municipal general fund. For purposes of  
46 section 5228, the State acts as the municipal assessing authority.  
47  
48

SUBCHAPTER II

STATE TAX INCREMENT FINANCING DISTRICTS

§5241. Definitions

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

1. 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 by a municipality.

2. Affiliated business. "Affiliated business" 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 of the stock or a controlling interest is directly or indirectly owned by a common owner or owners.

3. Affiliated group. "Affiliated group" means a designated business and its corresponding affiliated businesses.

4. Captured assessed value. "Captured assessed value" means the amount, as a percentage or stated sum, of increased assessed value that is utilized from year to year to finance the project costs contained within the development program.

5. Commission. "Commission" means the Commission on Performance Budgeting established in Title 5, section 1710-L.

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

7. Committee. "Committee" means the Revenue Forecasting Committee established in Title 5, section 1710-E.

8. 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.

9. Development district. "Development district" means a specified area within the corporate limits of a municipality that has been designated as provided under section 5226 and that is to be developed by the municipality under a development program.

2       10. Development program. "Development program" means a  
statement of means and objectives designed to provide new  
4       employment opportunities, retain existing employment, improve or  
broaden the tax base and improve the physical facilities and  
6       structures or the quality of pedestrian and vehicular  
transportation, as described in section 5224.

8       11. Financial plan. "Financial plan" means a statement of  
the project costs and sources of revenue required to accomplish  
10       the development program.

12       12. Gross state tax increment. "Gross state tax increment"  
means the difference, if any, between the sales and income tax  
14       revenues attributable to the state tax increment financing  
district for the current period and the sales and income tax  
16       revenues attributable to the state tax increment financing  
district for the base period.

18       13. Market area. "Market area" means a geographic region  
20       exclusive of a state tax increment financing district that will  
be affected by the operation of the district.

22       14. Project costs. "Project costs" means any expenditures  
24       or monetary obligations incurred or expected to be incurred that  
are authorized by section 5225, subsection 1 and included in a  
26       development program.

28       15. State tax increment. "State tax increment" means the  
net annual gain, if any, in sales tax paid as a result of taxable  
30       events occurring within a state tax increment financing district  
and the net annual gain, if any, in state income taxes withheld  
32       as a result of wages paid for labor performed within the district.

34       16. State tax increment financing district. "State tax  
increment financing district" means a type of tax increment  
36       financing district, or portion of a district, that uses state tax  
increment financing under section 5242.

38       17. Tax increment financing district. "Tax increment  
40       financing district" means a type of development district, or  
portion of a district, that uses tax increment financing under  
42       section 5227.

44       §5242. State tax increment financing

46       1. Eligibility. Any tax increment financing district  
designated by a municipality and approved by the commissioner  
48       under section 5226, subsection 2 is eligible to be approved as a  
state tax increment financing district if captured assessed value  
50       within the district is created after July 30, 1991, except that,  
in accordance with subsection 12, no new state tax increment

2 financing district may be created after June 30, 1996.

4 2. Procedure for establishing state tax increment financing  
6 district. A municipality desiring to establish a state tax  
8 increment financing district must apply to the commissioner for  
10 approval of the proposed state tax increment financing district.  
12 The procedure for application is as follows.

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

32 B. The municipal officers shall adopt for the proposed  
34 state tax increment financing district a development program  
36 that identifies all designated businesses within the  
38 district and sets forth the amount of sales tax paid by  
40 designated businesses in connection with operations within  
42 the proposed district, the number of employees at designated  
44 businesses and the total state income taxes withheld by  
46 designated businesses for the base period. The development  
48 program may be combined with or integrated into the  
50 development program for the underlying municipal development  
district pursuant to subchapter 1 or may be separately  
stated, maintained and implemented. The development program  
may specify the allocable shares of the municipality and  
each designated business for liability for refund of the  
state tax increment revenues resulting from an audit. That  
allocation may be made by any means determined by the  
municipal officers to reasonably reflect the economic  
benefit derived from operation of the district.

38 C. Prior to approval of the proposed state tax increment  
40 financing district, the committee shall estimate the annual  
42 amount to be deposited in the state tax increment contingent  
44 account pursuant to subsection 6 for all existing state tax  
46 increment financing districts, including the proposed  
48 district, and that estimate may be used only in determining  
50 compliance with the limitations imposed under subsection 8,  
paragraphs C and D.

48 D. The municipality, acting through its municipal officers  
50 or their designee, shall submit an application to the  
commissioner on such form or forms and with such supporting  
data as the commissioner requires for approval of the  
proposed state tax increment financing district, including

2 without limitation certifications by the designated  
3 businesses as to the average annual number of persons  
4 employed by each designated business within the boundaries  
5 of the proposed district, the average total state income  
6 taxes withheld by designated businesses during the base  
7 period and the average annual amount of sales tax  
8 remittances paid by each designated business from operations  
9 within the boundaries of the proposed district during the  
10 base period.

11 3. Approval. Prior to issuing a certificate of approval  
12 for any state tax increment financing district, the commissioner  
13 must determine that:

14 A. The economic development described in the development  
15 program will not go forward without the approval of the  
16 state tax increment financing district. This requirement  
17 does not apply to the addition of state tax increment  
18 financing provisions to municipal development districts that  
19 are created prior to June 30, 1992;

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

24 C. The economic development described in the development  
25 program will not result in a substantial detriment to  
26 existing businesses in the State. In order to make this  
27 determination, the commissioner shall consider, pursuant to  
28 Title 5, chapter 375, subchapter II, those factors the  
29 commissioner determines necessary to measure and evaluate  
30 the effect of the proposed district on existing businesses,  
31 including:

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

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

40 Upon approval of the state tax increment financing district, the  
41 commissioner shall issue a certificate of approval.

2       The municipality has the burden of demonstrating that the  
4       proposed district will not result in a substantial detriment  
6       to existing businesses in accordance with the requirements  
8       of this paragraph, including rules adopted pursuant to this  
10       paragraph, except that, when no interested parties object to  
12       the proposed district, the requirements of this paragraph  
14       are deemed satisfied. Interested parties must be given an  
16       opportunity, with or without a hearing at the discretion of  
18       the commissioner, to present their objections to the  
20       proposed district on grounds that the proposed district will  
22       result in a substantial detriment to existing businesses.  
24       If any interested party presents objections with reasonable  
26       specificity and persuasiveness, the commissioner may divulge  
28       any information concerning the economic development  
30       described in the development program that the commissioner  
32       considers necessary for a fair presentation by the objecting  
34       party and an evaluation of those objections. If the  
36       commissioner finds that the municipality has failed to meet  
38       its burden as specified in this paragraph, the application  
40       must be denied.

42       Rules adopted pursuant to this paragraph are routine  
44       technical rules as defined in Title 5, chapter 375,  
46       subchapter II-A

48       **4. Retained state tax revenues.** The following provisions  
50       govern retained state tax revenues.

52       A. On or before April 15th of each year, designated  
54       businesses located within a state tax increment financing  
56       district shall report the amount of sales tax paid in  
58       connection with operations within the district, the number  
60       of employees within the district, the state income taxes  
62       withheld from employees within the district for the  
64       immediately preceding calendar year and any further  
66       information the State Tax Assessor may reasonably require.

68       On or before June 30th of each year, the State Tax Assessor  
70       shall determine the state tax increment of a district for  
72       the preceding calendar year.

74       B. A municipality may receive up to 25% of the state tax  
76       increment revenues generated by or at designated businesses  
78       within a state tax increment financing district as  
80       determined by the State Tax Assessor subject to the further  
82       limitations in subsection 8, and that amount is referred to  
84       in this section as "retained state tax increment revenues."

86       **5. Calculation of state tax increment.** The State Tax  
88       Assessor shall calculate a state tax increment for a particular  
90       state tax increment financing district by:

2           A. Determining the gross state tax increment as applicable  
3           to the particular district;  
4  
5           B. Determining the state tax increment as applicable to the  
6           particular district by removing from the gross state tax  
7           increment:  
8  
9                   (1) Revenues attributed to business activity shifted  
10                   from affiliated businesses to the state tax increment  
11                   financing district. This adjustment is calculated by  
12                   comparing the current year's sales and income tax  
13                   revenues for each designated business that is a member  
14                   of an affiliated group with revenues for the group as a  
15                   whole. If the growth in sales and income tax revenue  
16                   for the entire group exceeds the growth of sales and  
17                   income tax revenue generated by the designated  
18                   business, the gross state tax increment does not have  
19                   to be adjusted to remove business activity shifted from  
20                   affiliated businesses. If the growth in sales and  
21                   income tax revenue for the affiliated group is less  
22                   than the growth in sales and income tax revenue for the  
23                   designated business, the difference is presumed to have  
24                   been shifted from affiliated businesses to the  
25                   designated business and the gross state tax increment  
26                   for the district is reduced by the difference; and  
27  
28                   (2) Revenues attributed to normal growth. This  
29                   adjustment is calculated by subtracting from the gross  
30                   state tax increment a figure obtained by multiplying  
31                   the previous year's total amount of sales taxes  
32                   reported and income taxes withheld by designated  
33                   businesses within the district by the percentage change  
34                   in sales tax receipts and withholding taxes for all  
35                   businesses within the State as a whole;  
36  
37           C. Offsetting designated businesses with negative tax  
38           increments with those with positive increments in  
39           determining the state tax increment for the district as a  
40           whole; and  
41  
42           D. Excluding all income tax revenue in calculating the  
43           state tax increment attributable to retail business  
44           operations.  
45  
46           6. State tax increment contingent account created. The  
47           Commissioner of Administrative and Financial Services shall  
48           establish, maintain and administer the state tax increment  
49           contingent account. On or before June 30th of each year, the  
50           Commissioner of Administrative and Financial Services shall  
51           deposit an amount equal to the total retained state tax increment

2 revenues for the preceding calendar year for approved state tax  
3 increment financing districts in the state tax increment  
4 contingent account. On or before July 31st of each year, the  
5 Commissioner of Administrative and Financial Services shall pay  
6 to each municipality an amount equal to the retained state tax  
7 increment revenues for the preceding calendar year from all state  
8 tax increment financing districts located within that  
9 municipality.

10 7. Application of payment to municipalities. All retained  
11 state tax increment revenues paid to a municipality must be  
12 deposited in the appropriate development program fund established  
13 in section 5227, subsection 3 and invested, used and applied in  
14 the manner described in the development program, except that:

15 A. The amount of retained state tax increment revenues paid  
16 to a municipality may not exceed the amount of tax increment  
17 revenues generated by the municipality pursuant to section  
18 5227, subsection 3 and required to be deposited in a  
19 development program fund account; and

20 B. All retained state tax increment revenues not required  
21 to satisfy the estimated obligations of the development  
22 program fund account revert to the State.

23 8. Limitations. The following limitations apply.

24 A. A state tax increment financing district may apply only  
25 to designated businesses involved in nonretail commercial  
26 activities, including, but not limited to, manufacturing,  
27 wholesaling, warehousing, distribution, office,  
28 administration and other service-related commercial  
29 activities. Notwithstanding this paragraph, a state tax  
30 increment financing district may apply to designated  
31 businesses involved in retail commercial activities pursuant  
32 to subsection 9. The state tax increment must be calculated  
33 pursuant to this section.

34 B. A development program for a state tax increment  
35 financing district must identify all designated businesses  
36 within the district and specify the direct financial  
37 benefits to be provided to the designated businesses, if  
38 any. A municipality may designate a business relocating  
39 from another location in this State, when that relocation  
40 involves moving the locus of employment and sales, only if  
41 the municipal officers find that the relocation will result  
42 in an increase in the amount of sales or the number of  
43 employees of the business above the average annual sales and  
44 employment levels at the prior location during the base  
45 period. When such a relocating business is designated, the  
46 state tax increment financing district shall pay to the  
47 municipality an amount equal to the retained state tax  
48 increment revenues for the preceding calendar year from all  
49 state tax increment financing districts located within that  
50 municipality.



2 sales tax, the number of employees and the state income  
3 taxes withheld for the base period must be those reported in  
4 the development program for that business at its prior  
5 location.

6 C. The retained state tax increment revenues attributable  
7 to an individual state tax increment financing district may  
8 not exceed 10% of the aggregated total allowed within the  
9 state tax increment contingent account.

10 D. At no time may the aggregate annual retained state tax  
11 increment revenues for all state tax increment financing  
12 districts exceed \$20,000,000.

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

19 F. State tax increment revenues received by a municipality  
20 pursuant to subsection 4 may be used by the municipality to  
21 offset up to 1/2 of existing tax increment financing  
22 obligations arising under section 5227.

23 G. State tax increment revenues received by a municipality  
24 with respect to a particular state tax increment financing  
25 district pursuant to subsection 4 may not exceed the amount  
26 of estimated state tax increment revenues contained in the  
27 district's development program approved by the commissioner  
28 pursuant to subsection 2.

29 **9. Districts containing retail business operations.** The  
30 commissioner shall approve a state tax increment financing  
31 district in which a retail business operation is a designated  
32 business upon making a factual determination that the following  
33 conditions are satisfied:

34 A. The district will result in total annual sales tax  
35 revenues equal to or greater than \$3,000,000 or the district  
36 involves, aids or otherwise relates to downtown  
37 redevelopment. For purposes of this subsection, "downtown  
38 redevelopment" means any rehabilitation or improvement of an  
39 area described in the development program that has been used  
40 primarily for retail trade and related purposes for at least  
41 25 years, is identified in the municipality's comprehensive  
42 plan or zoning ordinance as an area designated for retail  
43 trade and related uses and is a blighted area or an area in  
44 need of rehabilitation or redevelopment; and

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

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

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

20           11. Program; administration. The commissioner shall  
22           administer this subchapter. The commissioner shall adopt rules  
24           pursuant to the Maine Administrative Procedure Act for  
26           implementation of the program, including, but not limited to,  
28           rules for determining and certifying eligibility and, in  
30           consultation with the State Tax Assessor, the amount of the tax  
              increment attributable to particular districts. The commissioner  
              may also establish by rule fees for administration of the  
              program, including fees payable to the State Tax Assessor for  
              obligations under this Part. All fees collected pursuant to this  
              subsection must be deposited into the General Fund. Rules  
              adopted pursuant to this subsection are routine technical rules  
              as defined in Title 5, chapter 375, subchapter II-A.

32           12. Designation of new state tax increment financing  
34           districts prohibited. The designation of new state tax increment  
36           financing districts is prohibited, subject to review by the joint  
38           standing committees of the Legislature having jurisdiction over  
40           economic development and taxation matters. Designation of new  
              state tax increment financing districts may be resumed only by  
              act of the Legislature.

42           13. Confidential information. The following records are  
44           confidential for purposes of Title 1, section 402, subsection 3,  
              paragraph A:

46           A. Any record obtained or developed by a municipality, the  
48           commissioner or the State Tax Assessor for designation or  
50           approval of a state tax increment financing district. After  
              receipt by the municipality, the commissioner or the State  
              Tax Assessor of the application or proposal, a record  
              pertaining to the application or proposal is not considered

2 confidential unless it meets the requirements of paragraphs  
3 B to F;

4 B. Any record obtained or developed by a municipality, the  
5 commissioner or the State Tax Assessor when:

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

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

18 C. Any record, including any financial statement or tax  
19 return, obtained or developed by the municipality, the  
20 commissioner or the State Tax Assessor, the disclosure of  
21 which would constitute an invasion of personal privacy, as  
22 determined by the governmental entity in possession of that  
23 record or information;

24 D. Any record, including any financial statement or tax  
25 return, obtained or developed by the municipality, the  
26 commissioner or the State Tax Assessor in connection with  
27 any monitoring or servicing activity by the municipality,  
28 the commissioner or the State Tax Assessor that pertains to  
29 a state tax increment financing district;

30 E. Any record obtained or developed by the municipality,  
31 the commissioner or the State Tax Assessor that contains an  
32 assessment by a person who is not employed by that  
33 municipality or the State of the creditworthiness or  
34 financial condition of any person or project; and

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

38 A person may not knowingly divulge or disclose records determined  
39 confidential by this subsection.

40 14. Audit process. Nothing in this section may be  
41 construed to limit the State Tax Assessor's authority to conduct  
42 an audit of any taxpayer included as a designated business in a  
43 designated business district.

2 development program pursuant to subsection 2, paragraph B. If  
4 distributions are made to a municipality with respect to a state  
6 tax increment financing district, the designated businesses  
8 within that district are subject to audit. When it is determined  
10 by the State Tax Assessor upon audit that a municipality has  
12 received a distribution larger than that to which it is entitled  
14 under this section, the overpayment must be applied against  
16 subsequent distributions. When there is not a subsequent  
18 distribution, the designated business or businesses to which  
20 overpayments were made are liable for the amount of the  
22 overpayments and may be assessed pursuant to Title 36.

24 **§5243. Development program fund; state tax increment revenues**

26 If a municipality has designated captured assessed value  
28 under section 5227, subsection 1, the municipality shall annually  
30 set aside all state tax increment revenues payable to the  
32 municipality for public purposes and deposit all such revenues to  
34 the appropriate development program fund account in the following  
36 priority:

38 **1. Development sinking fund account.** To the development  
40 sinking fund account established pursuant to section 5227,  
42 subsection 3, an amount sufficient, together with estimated  
44 future revenues to be deposited to the account and earnings on  
46 the amount, to satisfy all annual debt service on bonds and notes  
48 issued under section 5231 and the financial plan; and

50 **2. Project cost account.** To the project cost account  
52 established pursuant to section 5227, subsection 3, an amount  
54 sufficient, together with estimated future revenues to be  
56 deposited to the account and earnings on the amount, to satisfy  
58 all annual project costs to be paid from the account.

60 **Sec. 3. 30-A MRSA c. 207, as amended, is repealed.**

62 **Sec. 4. 30-A MRSA §5301, sub-§§1 and 2, as enacted by PL 1987,**  
64 **c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6,**  
66 **c. 9, §2 and c. 104, Pt. C, §§8 and 10, are further amended to**  
68 **read:**

70 **1. Administering authority.** "Administering authority"  
72 means an urban renewal authority, municipal officers or any other  
74 persons or organizations empowered by the provisions of chapters  
76 203, 205 and 207 206 to implement an urban renewal plan,  
78 community development program or municipal development district  
80 plan.

82 **2. Development plan.** "Development plan" means an urban  
84 renewal plan, community development program or municipal

2 development district plan as defined and described in chapters  
203, 205 and 207 206.

4 **Sec. 5. 36 MRSA §6754, sub-§2, ¶D**, as enacted by PL 1995, c.  
669, §5, is amended to read:

6  
8 D. A business may not claim reimbursement under this  
chapter for income withholding taxes attributed to employees  
10 employed within any state tax increment financing district  
approved under Title 30-A, chapter 207 206.

12  
14 **SUMMARY**

16 This bill amends the provisions of law relating to municipal  
development districts and places provisions relating to state tax  
18 increment financing districts in a separate subchapter.