

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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Legislative Document

No. 1652

H.P. 1161

House of Representatives, March 22, 2007

An Act To Support County Corrections and Public Education

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BARSTOW of Gorham.

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

2 **PART A**

3 **Sec. A-1. 5 MRSA §13090-K, sub-§2**, as enacted by PL 2001, c. 439, Pt.
4 UUUU, §1, is amended to read:

5 **2. Source of fund.** Beginning July 1, ~~2003~~ 2008 and every July 1st thereafter, the
6 State Controller shall transfer to the Tourism Marketing Promotion Fund an amount, as
7 certified by the State Tax Assessor, that is equivalent to 5% of the ~~7%~~ tax imposed on
8 ~~tangible personal property and taxable services~~ the value of liquor sold in licensed
9 establishments, rental of living quarters in a hotel, rooming house or tourist or trailer
10 camp and prepared food pursuant to Title 36, section 1811, for the first 6 months of the
11 prior fiscal year after the reduction for the transfer to the Local Government Fund as
12 described by Title 30-A, section 5681, subsection 5. Beginning on October 1, ~~2003~~ 2008
13 and every October 1st thereafter, the State Controller shall transfer to the Tourism
14 Marketing Promotion Fund an amount, as certified by the State Tax Assessor, that is
15 equivalent to 5% of the ~~7%~~ tax imposed on ~~tangible personal property and taxable~~
16 ~~services~~ the value of liquor sold in licensed establishments, rental of living quarters in a
17 hotel, rooming house or tourist or trailer camp and prepared food pursuant to Title 36,
18 section 1811, for the last 6 months of the prior fiscal year after the reduction for the
19 transfer to the Local Government Fund. The tax amount must be based on actual sales
20 for that fiscal year and may not consider any accruals that may be required by law. The
21 amount transferred from General Fund sales and use tax revenues does not affect the
22 calculation for the transfer to the Local Government Fund.

23 **Sec. A-2. 36 MRSA §1752, sub-§1-H** is enacted to read:

24 **1-H. Amusement and recreational services.** "Amusement and recreational
25 services" means all services provided in this State to the general public or through private
26 clubs that involve exchanging a right to access to any amusement, recreational,
27 exhibitive, cultural or athletic activity for any user fee, price of admission, gate fee or
28 equivalent form of remuneration;

29 **Sec. A-3. 36 MRSA §1752, sub-§1-I** is enacted to read:

30 **1-I. Construction services.** "Construction services" means services provided in this
31 State to the general public by a person engaged in the activity of building. The activity of
32 building pertains to any building, highway, road, railroad, excavation, manufactured
33 building or other structure and involves any act of construction, alteration, repair,
34 substantial maintenance, addition to, subtraction from, improvement, movement or
35 demolition or the construction of scaffolding or other structures or work related to the
36 activity of building. "Construction services" includes, but is not limited to, the services
37 typically provided by building contractors, road and driveway contractors, concrete
38 contractors, excavators, carpenters, masons, electricians, plumbers, roofers, siding
39 applicators and house painters.

40 **Sec. A-4. 36 MRSA §1752, sub-§1-J** is enacted to read:

1 **1-J. Consumer purchases of memberships in social organizations.** "Consumer
2 purchases of memberships in social organizations" includes, but is not limited to,
3 consumer purchases of professional association, club and fraternal organization
4 memberships and employment agency fees. "Consumer purchases of memberships in
5 social organizations" does not include donations made to charitable organizations or labor
6 union dues.

7 **Sec. A-5. 36 MRSA §1752, sub-§8-C** is enacted to read:

8 **8-C. Personal services.** "Personal services" means services provided in this State to
9 the general public by a person of specialized skill, talent or experience. A provider of
10 "personal services" characteristically provides attendant care to the recipient of the
11 service or care, maintenance or repair services to the recipient's real or personal property.
12 "Personal services" includes, but is not limited to, such services as:

13 A. Personal attendant services, including, but not limited to, barbering, beautician,
14 manicure, tattooing, body piercing, massage, reflexology, tanning and exercise or
15 fitness services;

16 B. Laundering and dry cleaning services;

17 C. Painting, papering and interior decoration services;

18 D. Jewelry, camera, watch and gun cleaning and repair services;

19 E. Pet grooming and kennel services;

20 F. Musical instrument tuning and repair services;

21 G. Swimming pool installation, repair, cleaning and maintenance services;

22 H. Radio, television and sound system repair services;

23 I. Furniture, rug and upholstery cleaning and repair services;

24 J. Locksmith services;

25 K. Personal property and self-storage services, including storage and mooring
26 services for noncommercial watercraft;

27 L. Services related to the washing, cleaning, polishing, lubrication, painting or
28 detailing of motor vehicles;

29 M. Disinfection and pest extermination or control services;

30 N. Landscaping, lawn care, grounds maintenance and tree removal services;

31 O. Photography and photographic studio services;

32 P. Printing, imprinting, painting or lettering tangible personal property for persons
33 who furnish tangible personal property for that service;

34 Q. Any fabrication, printing or production of tangible personal property by special
35 order when tangible personal property is not intended for resale;

36 R. Repair services for noncommercial watercraft;

37 S. Dance instruction and dance studio services;

- 1 T. Dating, escort and personal introduction services;
2 U. Flower or balloon delivery services and services similarly provided as a
3 demonstration of personal appreciation;
4 V. Taxidermy services;
5 W. Flight instruction services;
6 X. Antique or art auctioning or dealership services;
7 Y. Domestic services, such as meal preparation, housecleaning or household
8 operation services;
9 Z. Moving and storage services; and
10 AA. Veterinarian services.

11 "Personal services" does not include construction services;

12 **Sec. A-6. 36 MRSA §1752, sub-§11, ¶A**, as amended by PL 2005, c. 218, §14,
13 is further amended to read:

14 A. "Retail sale" includes:

15 (1) Conditional sales, installment lease sales and any other transfer of tangible
16 personal property when the title is retained as security for the payment of the
17 purchase price and is intended to be transferred later; ~~and~~

18 (2) Sale of products for internal human consumption to a person for resale
19 through vending machines when sold to a person more than 50% of whose gross
20 receipts from the retail sale of tangible personal property are derived from sales
21 through vending machines. The tax must be paid by the retailer to the State; ~~and~~

22 (3) Any taxable service defined under subsection 17-B to the extent the taxable
23 service is provided in this State and only if the relationship between the provider
24 and the recipient of the taxable service is not an employment relationship with
25 respect to the provision of the service.

26 **Sec. A-7. 36 MRSA §1752, sub-§14**, as amended by PL 2005, c. 675, §1 and
27 affected by §2, is further amended to read:

28 **14. Sale price.** "Sale price" means the total amount of a retail sale valued in money,
29 whether received in money or otherwise.

30 A. "Sale price" includes:

31 (1) Services ~~which~~ that are a part of a retail sale; and

32 (2) All receipts, cash, credits and property of any kind or nature and any amount
33 for which credit is allowed by the seller to the purchaser, without any deduction
34 on account of the cost of the property sold, the cost of the materials used, labor or
35 service cost, interest paid, losses or any other expenses.

36 When a taxable service is provided for a fee that is contingent on an ultimate award,
37 settlement or similar financial result and the fee is a certain percentage of that

1 ultimate award or settlement, the fee is deemed to include both the sale price and the
2 applicable tax.

3 B. "Sale price" does not include:

- 4 (1) Discounts allowed and taken on sales;
- 5 (2) Allowances in cash or by credit made upon the return of merchandise
6 pursuant to warranty;
- 7 (3) The price of property returned by customers, when the full price is refunded
8 either in cash or by credit;
- 9 (4) The price received for labor or services used in installing or applying or
10 repairing the property sold, if separately charged or stated;
- 11 (5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically
12 stated service charge, when that amount is to be disbursed by a hotel, motel,
13 restaurant or other eating establishment to its employees as wages;
- 14 (6) The amount of any tax imposed by the United States on or with respect to
15 retail sales, whether imposed upon the retailer or the consumer, except any
16 manufacturers', importers', alcohol or tobacco excise tax;
- 17 (7) The cost of transportation from the retailer's place of business or other point
18 from which shipment is made directly to the purchaser, ~~provided that~~ as long as
19 those charges are separately stated and the transportation occurs by means of
20 common carrier, contract carrier or the United States mail;
- 21 (8) The fee imposed by Title 10, section 1169, subsection 11;
- 22 (9) The fee imposed by section 4832, subsection 1;
- 23 (10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection
24 2-B; ~~or~~
- 25 (11) Any amount charged or collected by a person engaged in the rental of
26 living quarters as a forfeited room deposit or cancellation fee if the prospective
27 occupant of the living quarters cancels the reservation on or before the scheduled
28 date of arrival; or
- 29 (12) With respect to any fee for a taxable service, any portion of that fee
30 representing direct reimbursement charged to the recipient of the taxable service
31 for commodities or services previously paid by the person providing the service,
32 as long as any tax on those commodities or services, if any tax applies, has been
33 previously paid.

34 **Sec. A-8. 36 MRSA §1752, sub-§17-B,** as enacted by PL 2003, c. 673, Pt. V,
35 §19 and affected by §29, is amended to read:

36 **17-B. Taxable service.** "Taxable service" means the rental of living quarters in a
37 hotel, rooming house; or tourist or trailer camp; the transmission and distribution of
38 electricity; the rental or lease of an automobile; amusement and recreational services;
39 consumer purchases of memberships in social organizations; personal services;
40 transportation services purchased by consumers; and the sale of prepaid calling service.

1 **Sec. A-9. 36 MRSA §1752, sub-§20-B** is enacted to read:

2 **20-B. Transportation services purchased by consumers.** "Transportation services
3 purchased by consumers" includes, but is not limited to, consumer purchases of services
4 such as airline, passenger railroad, taxicab, limousine, ferry and toll-road services.

5 **Sec. A-10. 36 MRSA §1760, sub-§14** is repealed.

6 **Sec. A-11. 36 MRSA §1760, sub-§16**, as repealed and replaced by PL 2005, c.
7 622, §6, is amended to read:

8 **16. Hospitals, educational television or radio stations and dyslexia assistance**
9 **organizations.** Sales to:

- 10 A. Incorporated hospitals;
- 11 B. Incorporated nonprofit nursing homes licensed by the Department of Health and
12 Human Services;
- 13 C. Incorporated nonprofit residential care facilities licensed by the Department of
14 Health and Human Services;
- 15 D. Incorporated nonprofit assisted housing programs for the elderly licensed by the
16 Department of Health and Human Services;
- 17 E. Incorporated nonprofit home health agencies certified under the United States
18 Social Security Act of 1965, Title XVIII, as amended;
- 19 F. Incorporated nonprofit rural community health centers;
- 20 G. Incorporated nonprofit dental health centers;
- 21 ~~H. Incorporated nonprofit organizations organized for the sole purpose of~~
22 ~~conducting medical research;~~
- 23 ~~I. Incorporated nonprofit organizations organized for the purpose of establishing~~
24 ~~and maintaining laboratories for scientific study and investigation in the field of~~
25 ~~biology or ecology;~~
- 26 J. Institutions incorporated as nonprofit corporations for the purpose of operating
27 educational television or radio stations; and
- 28 ~~K. Schools;~~
- 29 L. Incorporated nonprofit organizations or their affiliates whose purpose is to
30 provide literacy assistance or free clinical assistance to children with dyslexia; and.
- 31 ~~M. Regularly organized churches or houses of religious worship.~~

32 **Sec. A-12. 36 MRSA §1760, sub-§17** is repealed.

33 **Sec. A-13. 36 MRSA §1760, sub-§19**, as amended by PL 2003, c. 588, §7, is
34 further amended to read:

1 **§1678. Transfers from sales tax revenue**

2 Notwithstanding any provision of law to the contrary, beginning July 15, 2008 and by
3 the 15th of each month thereafter, the State Tax Assessor shall certify to the State
4 Controller the amount of revenue collected as determined pursuant to Title 36, section
5 1966. The State Controller, within 10 days of the assessor's certification, shall monthly
6 transfer from the General Fund the following amounts for the following uses:

7 **1. County jails.** Fifty percent of the revenue must be transferred to the County Jail
8 Prisoner Support and Community Corrections Fund in the Department of Corrections
9 established in Title 34-A, section 1210-A;

10 **2. Education.** Forty percent of the revenue must be transferred to the Public
11 Education Fund established in Title 20-A, section 15696; and

12 **3. Capital improvements.** Ten percent of the revenue must be transferred to the
13 Regional Capital Improvement Fund established in Title 30-A, section 6251.

14 **Sec. B-2. 20-A MRSA §15696** is enacted to read:

15 **§15696. Public Education Fund**

16 The Public Education Fund, referred to in this section as "the fund," is established in
17 the department as a nonlapsing fund. The fund receives revenue from the transfers made
18 pursuant to Title 5, section 1678. The State Controller shall monthly transfer the money
19 in the fund to the General Fund. The amount transferred must be considered in
20 calculating the requirement of the State to fund 55% of essential programs and services as
21 required by section 15671.

22 **Sec. B-3. 30-A MRSA c. 233** is enacted to read:

23 **CHAPTER 233**

24 **REGIONAL CAPITAL IMPROVEMENT FUND**

25 **§6251. Regional Capital Improvement Fund**

26 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
27 following terms have the following meanings.

28 **A.** "Commissioner" means the Commissioner of Administrative and Financial
29 Services.

30 **B.** "Department" means the Department of Administrative and Financial Services.

31 **C.** "Fund" means the Regional Capital Improvement Fund established in subsection
32 2.

33 **D.** "Qualifying project" means a capital construction or renovation project, or the
34 planning of such a project, designed to achieve significant and sustainable savings in
35 the cost of delivering local and regional governmental services that reduces the

1 demand for property tax revenues through collaborative approaches to service
2 delivery, enhanced regional delivery systems, consolidated administrative services,
3 broad-based purchasing alliances and interlocal agreements.

4 **2. Fund established.** The Regional Capital Improvement Fund is established as a
5 nonlapsing fund in the department. The fund is administered by the department and must
6 be held separate and apart from all other money, funds and accounts.

7 **3. Fund source.** The fund consists of revenues transferred pursuant to Title 5,
8 section 1678 and any funds received as contributions from private and public sources.
9 Eligible investment earnings credited to the assets of the fund become part of the assets of
10 the fund. Any balance remaining in the fund at the end of any fiscal year must be carried
11 forward to the next fiscal year. The fund is a dedicated, special revenue account.

12 **4. Uses of fund.** Except as otherwise provided by this subsection, the fund is
13 available solely for grants for qualifying projects as described in subsection 5. The
14 department may use the fund to cover its costs of administration, including contracting
15 for services to administer the grants.

16 Grant funds may not be used for reimbursement of costs or expenses incurred prior to an
17 award from the fund.

18 **5. Qualifying projects.** The commissioner shall develop by rulemaking a
19 competitive grant program to provide grants to qualifying projects of cooperating county
20 and municipal governments. Rules adopted pursuant to this subsection are major
21 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **Sec. B-4. 36 MRSA §1966** is enacted to read:

23 **§1966. Determination of revenue; rules**

24 The assessor shall adopt rules to determine the amount of revenue generated and
25 attributable to the application of the sales tax to amusement and recreational services,
26 consumer purchases of memberships in social organizations, personal services and
27 transportation services purchased by consumers pursuant to section 1752 and to the repeal
28 of the sales tax exemptions established in section 1760, former subsection 14; former
29 subsection 16, paragraphs H, I, K and M; and former subsections 17, 34, 43, 49, 64, 65,
30 71, 75 and 76. Forms or reports required for the purpose of this section must be supplied
31 by the assessor. Rules adopted pursuant to this section are routine technical rules as
32 defined in Title 5, chapter 375, subchapter 2-A.

33 **SUMMARY**

34 Part A affects the imposition of sales tax in the following ways:

35 1. It expands the definition of "taxable service" for purposes of the imposition of
36 sales tax to include amusement, recreational and personal services and consumer
37 purchases of transportation services and professional, club or fraternal memberships.
38 Under this Part, the provision of those services is subject to the 5% sales tax. The term

1 "construction services" is also defined for the purpose of distinguishing nontaxable
2 construction services from taxable personal services; and

3 2. It eliminates the sales tax exemption on: sales of short-term publications; sales to
4 institutions conducting medical research or scientific study of biology or ecology; private
5 schools, churches, monasteries and convents; camp rentals; vending machine sales; sales
6 to day-care centers, nursery schools, community action agencies, child abuse councils and
7 child advocacy organizations; sales by schools and school-sponsored organizations; sales
8 to state-chartered credit unions; meals and lodging provided to employees; and certain
9 aircraft parts.

10 Part B dedicates the revenue generated by Part A to reduce property taxes by
11 providing funding in the following ways:

12 1. Forty percent of the revenue is transferred to the Public Education Fund to assist
13 the State in achieving the goal of funding 55% of essential programs and services;

14 2. Fifty percent of the revenue is transferred to the County Jail Prisoner Support and
15 Community Corrections Fund in the Department of Corrections to be used for county jail
16 operation costs; and

17 3. Ten percent is transferred to the Regional Capital Improvement Fund, which is
18 established in the Department of Administrative and Financial Services. The department
19 is directed to establish a competitive grant program for capital construction or renovation
20 projects, or the planning of such projects, designed to achieve significant and sustainable
21 savings in the cost of delivering local and regional governmental services that reduces the
22 demand for property tax revenues through collaborative approaches to service delivery,
23 enhanced regional delivery systems, consolidated administrative services, broad-based
24 purchasing alliances and interlocal agreements.