

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1468

H.P. 1022

House of Representatives, April 30, 2009

An Act Regarding the Evaluation of Economic Development Programs

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SMITH of Monmouth.
Cosponsored by Senator SCHNEIDER of Penobscot and
Representatives: AUSTIN of Gray, CAIN of Orono, CLEARY of Houlton, COHEN of
Portland, GILES of Belfast, HUNT of Buxton, MacDONALD of Boothbay, MARTIN of
Orono, PRESCOTT of Topsham, WRIGHT of Berwick, Senators: RECTOR of Knox,
SULLIVAN of York.

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

2 Sec. 1. 5 MRSA §13056-B, as enacted by PL 2007, c. 434, §2, is amended to
3 read:

4 **§13056-B. Reporting requirements of recipients of economic development funding**

5 To assist the department in preparing the comprehensive economic development
6 evaluation pursuant to section 13056-A, a recipient of state economic development
7 funding, including General Fund appropriations, dedicated revenue, tax expenditures as
8 defined in section 1666 and general obligation bond proceeds for economic development,
9 shall, in addition to any other reporting requirements required by law, collect, maintain
10 and provide data as requested by the department.

11 Sec. 2. 5 MRSA §13056-C, sub-§3, as enacted by PL 2007, c. 434, §3, is
12 amended to read:

13 3. **Payments to fund.** Notwithstanding section 1585 or any other provision of law,
14 the department shall assess agencies or private entities that receive General Fund
15 appropriations or general obligation bonds for economic development an amount for
16 contribution to the fund that is not to exceed 0.08% of General Fund appropriations
17 received by or general obligation bonds issued to an agency or entity for economic
18 development efforts. Private entities that receive funds from general obligation bonds for
19 economic development efforts shall pay to the Treasurer of State in the fiscal year in
20 which the general obligation bond was issued an assessment amount determined by the
21 department that is not to exceed 0.08% of the proceeds from the bond issue in any fiscal
22 year, which payment must be made from available resources other than bond proceeds.
23 Only those programs that receive \$250,000 or more in economic development
24 appropriations in any fiscal year or those entities that receive funds from a general
25 obligation bond issue of \$250,000 or more for economic development efforts in any fiscal
26 year, as identified and certified by the department and the Office of Fiscal and Program
27 Review, may be assessed pursuant to this subsection. The department shall provide to
28 each agency or private entity an annual budget for the fund and a detailed account of each
29 institution's required assessment. Total payments made pursuant to this section may not
30 exceed ~~\$150,000~~ \$200,000 in any fiscal year.

31 Sec. 3. 5 MRSA §13058, sub-§5, as amended by PL 1999, c. 776, §§4 and 5, is
32 further amended to read:

33 5. **Review of program; report to Governor and Legislature.** The commissioner
34 shall review and evaluate the programs and functions of the department and the operation
35 of the economic delivery system using the information available from the economic
36 development evaluation pursuant to section 13056-A. ~~The Maine Small Business~~
37 ~~Commission, as established in section 13032, shall conduct the evaluation and review~~
38 ~~required by this section with respect to small business programs.~~ The commissioner shall
39 report the commissioner's findings and recommendations with respect to the issues
40 described in this subsection to the Governor and to the Legislature no later than February

1 1st of each first regular session of the Legislature. The commissioner shall conduct the
2 review and evaluation with respect to the following:

3 A. The purpose of these programs and the degree to which the purpose is being
4 met;

5 B. The degree of significance of the purpose of the programs and functions of the
6 department;

7 C. The extent of the coordination of programs and services as required in
8 subsection 4;

9 D. The needs, problems and opportunities that are not being met by the programs
10 and services of the department;

11 E. The types of programs and services necessary to meet the needs, problems and
12 opportunities as set out in paragraph D;

13 F. The problems and successes in the economic delivery system;

14 G. The state of small business in this State, including economic data, the
15 effectiveness of state programs to aid small business, problems of small business that
16 may be affected by state policies and such other information on small business as
17 desired by the commissioner;

18 H. Within available resources, the extent of business growth and change, including
19 business expansions, new businesses and business closings;

20 I. Within available resources, the status of investments in business in the State; and

21 J. The extent to which the purposes of the Maine Downtown Center are being met.

22 **Sec. 4. 5 MRSA §13063-O, sub-§1**, as enacted by PL 2003, c. 451, Pt. MMM,
23 §1, is amended to read:

24 **1. Accounting and reporting requirements.** The department shall:

25 A. Maintain an accurate accounting of the use of all program funds as required by
26 state procedures and program guidelines, including a detailed accounting of all
27 program funding sources and expenditures; and

28 ~~B. Undertake an ongoing process to evaluate the impact of the projects undertaken~~
29 ~~with program funds. The evaluation process must include benchmarks and criteria to~~
30 ~~evaluate the success of the fund. The benchmarks and criteria must be designed by~~
31 ~~the department to provide the following:~~

32 ~~(1) An assessment of the direct and indirect economic impact of the funded~~
33 ~~projects; and~~

34 ~~(2) An assessment of the contribution of the fund to the creation of new~~
35 ~~entrepreneurial opportunities; and~~

36 C. Each year, submit a report to the joint standing committee of the Legislature
37 having jurisdiction over business, research and economic development matters. The
38 report must include:

- 1 (1) An accounting of the use of all program funds received and expended since
2 the program's inception;
- 3 (2) A summary of the status of any approved projects;
- 4 (3) A summary of the results of any completed projects;
- 5 (4) Evaluation data and assessment consistent with section 13056-A; and
- 6 (5) Other information required to be submitted and evaluated by the joint
7 standing committee of the Legislature having jurisdiction over business, research
8 and economic development matters.

9 **Sec. 5. 5 MRSA §13070-J**, as amended by PL 2005, c. 519, Pt. TTT, §1, is further
10 amended to read:

11 **§13070-J. Business disclosure associated with eligibility for public subsidies and**
12 **incentives**

13 **1. Definitions.** As used in this article, unless the context otherwise indicates, the
14 following terms have the following meanings.

15 B. "Commissioner" means the Commissioner of Economic and Community
16 Development.

17 C. "Department" means the Department of Economic and Community Development.

18 D. "Economic development incentive" means federal and state statutorily defined
19 programs that receive state funds, dedicated revenue funds and tax expenditures as
20 defined by section 1666 whose purposes are to create, attract or retain business
21 entities related to business development in the State, including but not limited to:

- 22 (1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;
- 23 (2) The Governor's Training Initiative Program under Title 26, chapter 25,
24 subchapter 4;
- 25 (3) Municipal tax increment financing under Title 30-A, chapter 206;
- 26 (4) The jobs and investment tax credit under Title 36, section 5215;
- 27 (5) The research expense tax credit under Title 36, section 5219-K;
- 28 (6) Reimbursement for taxes paid on certain business property under Title 36,
29 chapter 915;
- 30 (7) Employment tax increment financing under Title 36, chapter 917;
- 31 (8) The shipbuilding facility credit under Title 36, chapter 919;
- 32 (9) The credit for seed capital investment under Title 36, section 5216-B; ~~or~~ and
- 33 (10) The credit for pollution-reducing boilers under Title 36, section 5219-Z.

34 E. "Economic development proposal" means proposed legislation that establishes a
35 new program or that expands an existing program that:

1 (1) Is intended to encourage significant business expansion or retention in the
2 State; and

3 (2) Contains a tax expenditure, as defined in section 1664, or a budget
4 expenditure with a cost that is estimated to exceed \$100,000 per year.

5 **2. Disclosure.** Each applicant for an economic development incentive described in
6 subsection 1, paragraph D, subparagraphs (1) to (4) and (7) shall at a minimum identify in
7 writing:

8 A. The public purpose that will be served by the business through use of the
9 economic development incentive and the specific uses to which the benefits will be
10 put; and

11 B. The goals of the business for the number, type and wage levels of jobs to be
12 created or retained as a result of the economic development incentive received.

13 Applications filed under this subsection are public records for purposes of Title 1, chapter
14 13.

15 ~~**3. Report.** Annually, a business receiving an economic development incentive
16 described in subsection 1, paragraph D, subparagraphs (1) to (8), the value of which
17 exceeds \$10,000 in one year, shall submit a written report to the commissioner no later
18 than August 1st of the following year containing but not limited to the following
19 information:~~

20 ~~A. The amount of assistance received by the business in the preceding year from
21 each economic development incentive and the uses to which that assistance has been
22 put;~~

23 ~~B. The total amount of assistance received from all economic assistance programs;~~

24 ~~C. The number, type and wage level of jobs created or retained as a result of an
25 economic development incentive;~~

26 ~~D. Current employment levels for the business for all operations within the State, the
27 number of employees in each job classification and the average wages and benefits
28 for each classification;~~

29 ~~E. Any changes in employment levels that have occurred over the preceding year;
30 and~~

31 ~~F. An assessment of how the business has performed with respect to the public
32 purpose identified in subsection 2, paragraph A, if applicable.~~

33 ~~The department shall mail report forms by May 15th of each year to every business
34 required to file a report under this subsection. Reports filed under this subsection are
35 public records for purposes of Title 1, chapter 13.~~

36 **4. Agency reports.** The following agencies shall submit the following reports.

37 A. The State Tax Assessor shall submit a report by October 1st annually to the
38 Legislature identifying the amount of public funds spent and the amount of revenues
39 foregone as the result of economic development incentives. The report must identify
40 the amount of the economic development incentives under the jurisdiction of the

1 Bureau of Revenue Services received by each business to the extent permitted under
2 Title 36, section 191 and other provisions of law concerning the confidentiality of
3 information.

4 B. The Commissioner of Labor shall report by October 1st annually to the
5 Legislature on the amount of public funds spent on workforce development and
6 training programs directly benefiting businesses in the State. The report must
7 identify the amount of economic development incentives under the jurisdiction of the
8 Department of Labor received by each business and the public benefit resulting from
9 those economic development incentives.

10 C. The Maine Community College System shall report by October 1st annually to
11 the Legislature on the amount of public funds spent on job training programs directly
12 benefiting businesses in the State. The report must identify the amount of economic
13 development incentives under the jurisdiction of the system received by each
14 business and the public benefit resulting from those economic development
15 incentives.

16 ~~D. The department shall report by October 1st annually to the Legislature the~~
17 ~~following:~~

18 ~~(1) The amount of public funds spent for the direct benefit of businesses in the~~
19 ~~State under municipal tax increment financing, employment tax increment~~
20 ~~financing and the Governor's training initiative. The report must identify the~~
21 ~~amount of economic development incentives under the jurisdiction of the~~
22 ~~department received by each employer and the public benefit resulting from those~~
23 ~~economic development incentives; and~~

24 ~~(2) The activities in the State, in the aggregate, of businesses receiving funds~~
25 ~~through the Maine Seed Capital Tax Credit program, including the following:~~

26 ~~(a) The total amount of tax credit certificates issued by the Finance~~
27 ~~Authority of Maine;~~

28 ~~(b) The total amount of private investment;~~

29 ~~(c) Total employment;~~

30 ~~(d) The total number of jobs created;~~

31 ~~(e) The total number of jobs retained;~~

32 ~~(f) Total payroll; and~~

33 ~~(g) Total annual sales.~~

34 ~~The Finance Authority of Maine shall provide the department with the information~~
35 ~~collected in accordance with Title 10, section 1100-T, subsection 6 and assist in the~~
36 ~~preparation of this report.~~

37 E. ~~The department shall report by October 1st annually to the State Tax Assessor a~~
38 ~~listing of businesses that have failed to submit reports required under subsection 3.~~
39 ~~The report must document that each business included in the report was provided~~
40 ~~with reasonable official notification of its noncompliance and that its failure to~~
41 ~~submit the required report within 30 days would result in the withholding and~~

1 potential forfeiture of reimbursements for which the business may be eligible under
2 Title 36, chapter 915. The notification must be in the form of a letter posted by
3 certified mail, before August 15th of the reporting year. If the department
4 subsequently receives a report from the business, the department shall so notify the
5 State Tax Assessor.

6 F. ~~Prior to any forfeiture of benefits under Title 36, section 6652, subsection 3, the~~
7 ~~department shall make a written determination that the report required by subsection~~
8 ~~3 either has not been received or is not in an acceptable form. A copy of that written~~
9 ~~determination, including the reasons for the determination, must be mailed to the~~
10 ~~claimant by certified mail. The determination made by the department constitutes~~
11 ~~final agency action that is subject to review by the Superior Court in accordance with~~
12 ~~the Maine Administrative Procedure Act, except that sections 11006 and 11007 do~~
13 ~~not apply. The Superior Court shall conduct a de novo hearing and make a de novo~~
14 ~~determination as to whether the claimant has filed a report in substantial compliance~~
15 ~~with this section. The Superior Court shall make its own determination as to all~~
16 ~~questions of fact and law. The Superior Court shall enter such orders and decrees as~~
17 ~~the case may require. In the event that the department's determination is appealed to~~
18 ~~Superior Court pursuant to this paragraph, forfeiture of the claimant's right to receive~~
19 ~~reimbursement of taxes under Title 36, chapter 915 may not occur unless the Superior~~
20 ~~Court, subject to any appeal to the Law Court, finds that the claimant had not~~
21 ~~substantially complied with the reporting requirements of this section.~~

22 **5. Rules.** Rules adopted by the commissioner under this section are routine technical
23 rules as defined in chapter 375, subchapter H-A 2-A.

24 **Sec. 6. 5 MRSA §13103, sub-§2, ¶G,** as amended by PL 2003, c. 50, Pt. B, §1
25 and affected by §2, is further amended to read:

26 G. Submit each biennium a report to the Governor, the joint standing committee of
27 the Legislature having jurisdiction over appropriations and financial affairs and the
28 joint standing committee of the Legislature having jurisdiction over business,
29 research and economic development matters. The report must include detailed
30 information on the status of the funds in the Maine Biomedical Research Fund; and a
31 listing and explanation of each specific source of funding from grant sources for
32 biomedical research and its use and the number of new jobs created in the State and
33 where these jobs are located.

34 **Sec. 7. 5 MRSA §13109, sub-§4,** as repealed and replaced by PL 2005, c. 425,
35 §7, is amended to read:

36 **4. Payments to fund.** Notwithstanding section 1585 or any other provision of law,
37 agencies or private entities that receive General Fund or general obligation bonds for
38 research and development shall contribute to the fund an amount not to exceed 0.8% of
39 General Fund appropriations received by and general obligation bonds issued to an
40 agency or entity for research and development efforts. Private entities that receive funds
41 from general obligation bonds for research and development efforts shall pay to the
42 Treasurer of State in the fiscal year in which the general obligation bond was issued an
43 amount not to exceed 0.8% of the proceeds from the bond issue in any fiscal year, which

1 payment must be made from available resources other than bond proceeds. Only those
2 programs that receive \$500,000 or more in research and development appropriations in
3 any fiscal year, or those entities that receive funds from a general obligation bond issue of
4 \$500,000 or more for research and development efforts in any fiscal year, as identified
5 and certified by the Office of Innovation and the Office of Fiscal and Program Review,
6 may be assessed. The Office of Innovation shall provide to each agency or private entity
7 an annual budget for the fund and a detailed account of each institution's required
8 assessment. Total payments made pursuant to this section may not exceed \$120,000
9 \$200,000 in any fiscal year.

10 **Sec. 8. 5 MRSA §15302, sub-§10**, as amended by PL 2001, c. 562, §1, is
11 repealed.

12 **Sec. 9. 7 MRSA §309**, as amended by PL 1999, c. 72, §6, is further amended to
13 read:

14 **§309. Annual review**

15 The commissioner and the Agriculture Development Committee shall, on an annual
16 basis, review the effectiveness of the programs operated under the provisions of this
17 chapter and provide a summary of the review to the Commissioner of Economic and
18 Community Development.

19 **Sec. 10. 36 MRSA §6652, sub-§3**, as enacted by PL 1999, c. 768, §6, is repealed.

20 **Sec. 11. 36 MRSA §6656, sub-§2**, as enacted by PL 2005, c. 618, §20 and
21 affected by §22, is amended to read:

22 **2. Pay certified amounts.** The assessor shall pay the certified amounts to each
23 approved applicant that qualifies for the benefit under this chapter by November 1st or
24 within 90 days after receipt of the claim, whichever is later. ~~For those claims for which~~
25 ~~payments are withheld pursuant to section 6652, subsection 3, and with respect to which~~
26 ~~the assessor receives notification under that subsection that the report has been received,~~
27 ~~reimbursement must be paid by November 1st or within 90 days after the assessor~~
28 ~~receives the notification, whichever is later.~~ Interest is not allowed on any payment made
29 to a claimant pursuant to this chapter.

30 **SUMMARY**

31 This bill implements the recommendations of the Department of Economic and
32 Community Development relating to streamlining and improving the comprehensive
33 economic development evaluation for the State's economic development programs and
34 incentives. It also reduces duplicative statutory reporting requirements that will be
35 included in the department's comprehensive evaluation process. The bill also amends the
36 definition of "economic development incentive." It also increases the maximum budget
37 amounts of contributing programs and organizations that can be assessed for economic
38 development evaluation and research and development evaluation. It repeals the
39 provision of law that allows the State Tax Assessor to withhold reimbursement for taxes

1 paid on certain business property from a claimant who has failed to provide certain
2 information to the Department of Economic and Community Development.