LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

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J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

CHAPTER 855

S.P. 969 - L.D. 2449

An Act Concerning the Maine Municipal and Rural Electrification Cooperative Agency

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

Sec. 1. PL 1991, c. 622, Pt. S, §36 is repealed.

Sec. 2. Retroactivity. This Act applies retroactively to December 23, 1991.

See title page for effective date.

CHAPTER 856

S.P. 974 - L.D. 2460

An Act to Encourage the Development of Business and Infrastructure through the Extension of State Tax Increment Financing

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

Sec. 1. 30-A MRSA §5252, sub-§1-A, as enacted by PL 1991, c. 606, Pt. A, §2 and affected by §4, is repealed.

Sec. 2. 30-A MRSA §5252, sub-§§1-B and 2-A are enacted to read:

1-B. 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 of Economic and Community Development by a municipality.

2-A. 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.

Sec. 3. 30-A MRSA §5252, sub-§8-A, as enacted by PL 1991, c. 606, Pt. A, §2 and affected by §4, is repealed.

Sec. 4. 30-A MRSA §5254, sub-§3, ¶B, as amended by PL 1991, c. 431, §8, is further amended to read:

B. Annually set aside all tax increment revenues on retained captured assessed values and all state tax increment revenues payable to the municipality for public purposes and deposit all ~~tax increment~~ such revenues to the appropriate development program fund account in the following priority:

(1) To the development sinking fund account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual debt service on bonds and notes issued under section 5257 and the financial plan; and

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

Sec. 5. 30-A MRSA §5254-A, as enacted by PL 1991, c. 606, Pt. A, §3 and affected by §4, is amended to read:

§5254-A. State tax increment financing

1. Eligibility. Any tax increment financing district, ~~created~~ designated by a municipality and ~~duly designated~~ approved by the ~~State, in which~~ Commissioner of Economic and Community Development under section 5253, subsection 1, paragraph F provided captured assessed value within the district is created after ~~the effective date of this section~~ July 30, 1991, is eligible to be approved as a state tax increment financing district. ~~Municipalities must demonstrate that without the approval as a state tax increment financing district the project will not go forward, and as a result will not generate new sales tax revenues or create new jobs that will result in new individual income taxes. Upon determination by the designating authority that these conditions have been met, the designating authority shall approve the municipal creation of the state tax increment financing district.~~

1-A. Procedure for establishing state tax increment financing district. A municipality desiring to establish a state tax increment financing district must apply to the Commissioner of Economic and Community Development for approval of the proposed state tax increment financing district. The procedure for application is as follows.

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

B. The municipal officers shall adopt for the proposed state tax increment financing district a de-

velopment program that identifies all designated businesses within the district and sets forth the amount of sales tax paid by designated businesses in connection with operations within the proposed district, the number of employees at designated businesses and the total state income taxes withheld by designated business for the base period. The development program may be combined with or integrated into the development program for the underlying municipal development district 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.

C. Prior to approval of the proposed state tax increment financing district, the Commissioner of Administrative and Financial Services shall estimate the annual amount to be deposited in the state tax increment contingent account for all existing state tax increment financing districts, including the proposed district, and that estimate must be used in determining compliance with the limitations imposed under subsection 4, paragraphs D and E.

D. The municipality, acting through its municipal officers or their designee, shall submit an application to the Commissioner of Economic and Community Development 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 without limitation certifications by the designated businesses as to the average annual number of persons employed by each designated business within the boundaries of the proposed district, the average total state income taxes withheld by designated businesses during the base period and the average annual amount of sales tax remittances paid by each designated business from operations within the boundaries of the proposed district during the base period.

E. Upon approval of the state tax increment financing district, the Commissioner of Economic and Community Development shall issue a certificate of approval.

1-B. Criteria for approval. Prior to issuing a certificate of approval for any state tax increment financing district, the Commissioner of Economic and Community Development must determine that:

A. The economic development described in the development program will not go forward without the approval of the state tax increment financing district. This requirement does not apply to the addition of state tax increment financing provisions to municipal development districts created prior to the effective date of this subsection;

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

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

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

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

The municipality has the burden of demonstrating that the proposed district will not result in a substantial detriment to existing businesses in accordance with the requirements of this paragraph, including rules adopted in accordance with this paragraph, except that when no interested parties object to the proposed district, the requirements of this paragraph are deemed satisfied. Interested parties must be given an opportunity, with or without a hearing at the discretion of the Commissioner of Economic and Community Development, to present their objections to the proposed district on grounds that the proposed district will result in a substantial detriment to existing businesses. If any interested party presents objections with reasonable specificity and persuasiveness, the commissioner may divulge any information concerning the economic development described in the development program that the commissioner considers necessary for a fair presentation by the objecting party and an evaluation of those objections. If the commissioner finds that the municipality has failed to meet its burden as specified in this paragraph, the application must be denied.

2. Retained state tax revenues. ~~On an annual basis, designated businesses within the district shall report the amount of new sales tax and number of new employees and their compensation levels, above the average level of the previous 3 years. The State Tax Assessor shall determine the net annual gain in state tax revenues through newly generated individual income and sales taxes. The municipality may receive up to 25% of the total of new sales tax revenues and up to 25% of the total of new individual income taxes generated by each designated business within the district, as determined by the State Tax Assessor subject to the further limitations in subsection 4. The municipality shall then place this state tax increment financing revenue in the development sinking fund established in accordance with section 5254, subsection 3.~~ The following provisions govern retained state tax revenues.

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

On or before June 30th of each year, the State Tax Assessor shall determine, based on a comparison of the current reports and the base-period reports contained in the application to the Commissioner of Economic and Community Development for approval of a state tax increment financing district, the net annual gain in sales tax paid in connection with operations within the district and the state income taxes withheld. The net annual gain is referred to as the state tax increment.

B. A municipality may receive up to 25% of the state tax increment generated by or at designated businesses within a state tax increment financing district as determined by the State Tax Assessor subject to the further limitations in subsection 4 and that amount is referred to as retained state tax increment revenues.

2-A. Calculation of state tax increment. The State Tax Assessor shall take the following into account when calculating state tax increments.

A. In determining the state tax increment for a particular district, the State Tax Assessor shall consider the following factors:

(1) The incremental change in sales tax revenues and income taxes withheld pursuant to Title 36, section 5250 attributable to each designated business within the district, taking into consideration tax revenues attributable to businesses affiliated with designated businesses. For purposes of this subsection, 2 businesses are affiliated if one owns 50% or more of the stock or controlling interest in the other or if 50% or more of the stock or controlling interest in each business is directly or indirectly owned by a common owner or owners;

(2) The growth in sales tax revenues and income taxes withheld pursuant to Title 36, section 5250 attributable to all businesses within the district; and

(3) The growth in sales tax revenues and income taxes withheld pursuant to Title 36, section 5250 in the State as a whole.

B. In calculating the state tax increment attributable to retail business operations within a state tax increment financing district, the State Tax Assessor shall make an annual calculation of the state tax increment that consists of sales tax revenues determined to be in addition to total state sales tax revenues that would have been collected in the absence of the state tax increment financing district. In determining the state tax increment attributable to retail business operations, the State Tax Assessor shall make calculations necessary to establish the sales tax incremental revenues attributable to the district and remove all retail sales that may have shifted from other locations. The base period for making projections of taxable retail sales is the last full calendar year preceding the initial capital improvements financed by the state tax increment financing revenue. The State Tax Assessor may consider the factors contained in paragraph A, except the individual income taxes withheld by retail businesses pursuant to Title 36, section 5250. In addition, the State Tax Assessor may consider any factors appropriate to the determination of the state tax increment attributable to retail business operations, including the following factors:

(1) The amount of taxable sales in the district during the base period and in all subsequent periods;

(2) The amount of taxable sales during the base period and in all subsequent periods in the geographic region in which the district is located;

(3) The amount of taxable sales in the State during the base period and in all subsequent periods; and

(4) The existence of more than one state tax increment financing district in the same geographic region, in which case any state

tax increment may be prorated among them based on their taxable sales.

C. The incremental sales and income tax revenues attributable to a particular designated business are equal to the margin, if any, by which the business's growth caused by the state tax increment financing investment exceeds the higher of the growth rate of the State as a whole and the growth rate of any affiliated businesses.

D. Designated businesses with a negative sales and income tax increment serve to offset those with a positive increment.

3. State tax increment contingent account created. ~~At the end of~~ On or before June 30th of each ~~fiscal~~ year, the Commissioner of ~~Finance~~ Administrative and Financial Services shall deposit ~~up to 25% of the net annual gain in sales and individual income tax revenues as determined by the State Tax Assessor~~ an amount equal to the total retained state tax increment revenues for the preceding calendar year for approved state tax increment financing districts in the state tax increment contingent account established, maintained and administered by the commissioner. ~~The State Controller shall pay the funds to municipalities as certified by the State Tax Assessor.~~ On or before July 31st of each year, the commissioner shall pay to each municipality an amount equal to the retained state tax increment revenues for the preceding calendar year from all state tax increment financing districts located within that municipality.

3-A. Application of payment to municipalities. All retained state tax increment revenues paid to a municipality must be deposited in the appropriate development program fund established in section 5254, subsection 3 and invested, used and applied in the manner described in the development program; except that:

A. The amount of retained state tax increment revenues paid to a municipality may not exceed the amount of tax increment revenues generated by the municipality pursuant to section 5254, subsection 3 and actually required to satisfy the estimated obligations of the development sinking fund account; and

B. All retained state tax increment revenues not actually required to satisfy the estimated obligations of the development sinking fund account revert to the State.

4. Limitations. The following limitations apply.

A. A state tax increment financing district may apply only to ~~benefitted~~ designated businesses involved in nonretail commercial activities, including but not limited to manufacturing, wholesaling, warehousing, distribution, office, administration and other service-related commercial activities. Notwithstanding this paragraph, a state tax increment financing district may apply to designated businesses involved in retail commercial activities pursuant to subsection 4-A. The state tax increment must be calculated pursuant to this section.

A-1. A development program for a state tax increment financing district must identify all designated businesses within the district and specify the direct financial benefits to be provided to the designated businesses, if any. A municipality may designate a business relocating from another location in this State, when that relocation involves moving the locus of employment and sales, only if the municipal officers find that the relocation will result in an increase in the amount of sales or the number of employees of the business above the average annual sales and employment levels at the prior location during the base period. When such a relocating business is designated, the sales tax, the number of employees and the state income taxes withheld for the base period must be those reported in the development program for that business at its prior location.

~~B. A business relocating from another location in this State, moving employment and sales, is not eligible for the state tax increment financing.~~

~~C. A business must demonstrate that the operation within a tax increment financing district will have no adverse effect on other businesses in the State nor will it create an unfair competitive advantage in relation to other businesses in the State.~~

D. ~~A state tax increment financing district may not designate an aggregate amount of~~ The retained state tax increment revenues ~~greater than~~ attributable to an individual state tax increment financing district may not exceed 10% of the aggregated total allowed within the state tax increment contingent account.

E. At no time may the aggregate annual ~~liability~~ retained state tax increment revenues for all state tax increment financing districts exceed $20,000,000.

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

G. State tax increment revenues received by a municipality pursuant to subsection 2 may not be used by the municipality to cover tax increment financing obligations arising under section 5254.

H. State tax increment revenues received by a municipality with respect to a particular state tax increment financing district pursuant to subsection 2 may not exceed the amount of estimated state tax increment revenues contained in the district's development program approved by the Commissioner of Economic and Community Development pursuant to subsection 1-A.

4-A. Districts containing retail business operations. The Commissioner of Economic and Community Development shall approve a state tax increment financing district in which a retail business operation is a designated business upon making a factual determination that the following conditions are satisfied:

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

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

The municipality making the application bears the burden of proving to the Commissioner of Economic and Community Development by a preponderance of the evidence that the district satisfies the criteria under paragraphs A and 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.

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

6. Program; administration. The Commissioner of Economic and Community Development shall administer ~~a~~ the state tax increment financing program. The commissioner shall adopt rules pursuant to the Maine Administrative Procedure Act for implementation of the program, including, but not limited to, rules for determining and certifying eligibility and, in 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.

7. Repeal of state tax increment financing districts. The designation of new state tax increment financing districts ceases ~~2 years after the effective date of this section~~ June 30, 1994, subject to review by the joint standing committees of the Legislature having jurisdiction over economic development and taxation matters. Designation of new state tax increment financing districts may only be resumed by act of the Legislature.

8. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by a municipality, the Commissioner of Economic and Community Development or the State Tax Assessor for designation or approval of a state tax increment financing district. After receipt by the municipality, the Commissioner of Economic and Community Development or the State Tax Assessor of the application or proposal, a record pertaining to the application or proposal is not considered confidential unless it meets the requirements of paragraphs B to F;

B. Any record obtained or developed by a municipality, the Commissioner of Economic and Community Development or the State Tax Assessor that meets one of the following:

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

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

C. Any record, including any financial statement or tax return, obtained or developed by the municipality, the Commissioner of Economic and Community Development or the State Tax Assessor, the disclosure of which would constitute an invasion of personal privacy, as determined by the governmental entity in possession of that record or information;

D. Any record, including any financial statement or tax return, obtained or developed by the municipality, the Commissioner of Economic and Community Development or the State Tax Assessor in connection with any monitoring or servicing activity by the municipality, the Commissioner of Economic and Community Development or the State Tax Assessor that pertains to a state tax increment financing district;

E. Any record obtained or developed by the municipality, the Commissioner of Economic and Community Development or the State Tax Assessor that contains an assessment by a person who is not employed by that municipality or the State of the creditworthiness or financial condition of any person or project; and

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

A person may not knowingly divulge or disclose records declared confidential by this subsection.

9. Audit process. Nothing in this section may be construed to limit the State Tax Assessor's authority to conduct an audit of any taxpayer included as a designated business in a development program pursuant to subsection 1-A, paragraph B. If distributions are made to a municipality with respect to a state tax increment financing district, the designated businesses within that district are subject to audit. When it is determined by the State Tax Assessor upon audit that a municipality has received a distribution larger than that to which it is entitled under this section, the overpayment must be applied against subsequent distributions. When there is no subsequent distribution, the designated business or businesses to which overpayments were made are liable for the amount of the overpayments and may be assessed pursuant to Title 36.

Sec. 6. 30-A MRSA §5261 is enacted to read:

§5261. Unorganized territory

For the purposes of this chapter, a county may act as a municipality for the unorganized territory within the county and may designate development districts within the unorganized territory. When a county acts under this section, the county commissioners act as the municipality and as the municipal legislative body, the State Tax Assessor acts as the municipal assessor and the unorganized territory fund receives the funds designated for the municipal general fund. A development district created under this section is not eligible for state tax increment financing under section 5254-A. For purposes of section 5255, the State acts as the municipal assessing authority.

Sec. 7. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1992-93
ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF	
Bureau of Taxation	
Positions	(1.0)
Personal Services	$36,785
All Other	3,555
Capital Expenditures	8,080
Provides funds for a Management Analyst II to administer the state tax increment financing district process.	
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES TOTAL	$48,420

See title page for effective date.

CHAPTER 857

S.P. 958 - L.D. 2462

An Act Concerning the Maine State Retirement System

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

Sec. 1. 5 MRSA §17154, sub-§9 is enacted to read:

9. Improper application of statutes. Notwithstanding the other provisions of this section, additional actuarial and administrative costs resulting from omissions or misrepresentations by an employer as to a member's earnings, service or service credits or from improper application of retirement system statutes or rules regarding earnings, service or service credits must be charged to and paid by the employer that omitted information, provided misinformation or improperly applied the statutes or rules, unless the omission, misrepresentation or improper application results from erroneous information provided by the retirement system. The employer is liable for amounts not recovered from the retiree and for costs incurred by the retirement system in resolving problems caused by the employer's actions. For purposes of this subsection, "employer" means any department of State Government, school administrative unit or participating local district.