LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

Sec. 6. 36 MRSA §1760, sub-§65, as repealed and replaced by PL 1989, c. 502, Pt. B, §46, is amended to read:

65. Monasteries and convents. Sales of ~~items~~ tangible personal property to incorporated nonprofit monasteries and convents for use in ~~the~~ their operation and maintenance ~~of an incorporated nonprofit monastery or convent~~. For the purpose of this subsection, "~~monastery~~ monasteries" and "~~convent~~ convents" means the dwelling ~~place~~ places of ~~a community~~ communities of religious persons.

Sec. 7. 36 MRSA §3207, as amended by PL 1985, c. 127, §1, is further amended by adding at the end a new paragraph to read:

Notwithstanding any other provision of law, the interest and penalty provisions adopted under chapter 463-A also apply to this chapter effective January 1, 1995.

Sec. 8. 36 MRSA §5210, sub-§5, as enacted by PL 1981, c. 698, §187, is amended to read:

5. Sales. "Sales" means all gross receipts of the taxpayer ~~not allocated under section 5211, subsections 3 to 7~~.

Sec. 9. 36 MRSA §6201, sub-§1, as amended by PL 1989, c. 534, Pt. A, §2, is further amended to read:

1. Benefit base. "Benefit base" means property taxes accrued or rent constituting property taxes accrued~~, less the equivalent tax value of any benefit received or to be received through the program established in chapter 105, subchapter IV-A~~. In the case of a claimant paying both rent and property taxes for a homestead, benefit base means both property taxes accrued and rent constituting property taxes accrued.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 14, 1994.

CHAPTER 671

H.P. 1466 - L.D. 1993

An Act to Demonstrate the Value the State Places on a Strong, Competitive and Sustainable Paper Industry

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

Sec. 1. 10 MRSA §363, sub-§2-A, as enacted by PL 1987, c. 413, §4, is amended to read:

2-A. Recommendation of Governor and issuers. At any time action of the Legislature under subsection 1-A is necessary or desirable, the Governor shall recommend to the appropriate committee of the Legislature a proposed allocation or reallocation of all or part of the state ceiling. To assist the Governor in making a recommendation of proposed allocations of the federal ceiling on private activity bonds, the Finance Authority of Maine shall conduct an annual survey of the State's pulp and paper companies during the years 1994 through 2000 to determine what projects they are considering that are eligible for tax-exempt financing. The results of this survey must be taken into consideration in the Governor's recommendation. This recommendation ~~shall~~ must, including the results of the survey, be considered by the Legislature prior to taking any such action. In recommending any allocation or reallocation of the state ceiling to the Legislature, the Governor shall consider the requests and recommendations of those issuers of bonds within the State designated in this section and shall explain the basis of any recommendation ~~which~~ that varies from the requests and recommendation of those issuers.

Sec. 2. 30-A MRSA c. 207-A is enacted to read:

CHAPTER 207-A

PULP AND PAPER MANUFACTURING SECTOR STABILIZATION ASSISTANCE

§5262. Declaration of necessity

1. Legislative finding. The Legislature finds that there is a need to provide assistance in the financing of substantial capital investments in environmental improvement projects that will be required by state and federal regulation of the State's pulp and paper industry. These investments are necessary to improve the quality of the State's environment and to ensure a competitive and sustainable pulp and paper industry.

2. Declaration of public purpose. It is declared that the actions required to assist the implementation of these development programs are a public purpose and that the execution and financing of these programs are a public purpose.

§5263. Definitions

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

1. Captured assessed value. "Captured assessed value" means the valuation amount by which the current assessed value of a pulp and paper tax increment financing district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original, there is no captured assessed value.

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

3. Designee. "Designee" means a business engaged in the pulp and paper industry that is selected by a municipality as a partner in a development district.

4. Development district. "Development district" means a specified area within the corporate limits of a municipality that has been designated as provided under section 5264 and that is to be developed by the municipality or its designee under a development program.

5. Development program. "Development program" means a statement of means and objectives designed to improve and modernize the manufacturing facilities and related structures and equipment within the development district. The statement must include:

A. A financial plan;

B. A complete list of public and private facilities to be constructed;

C. The uses of private property within the development district;

D. The environmental controls to be applied;

E. An estimate of the number of jobs to be created, stabilized, retained or eliminated;

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

G. The duration of the program, which may not exceed 20 years from the date of designation of the development district.

6. Environmental improvement project. "Environmental improvement project" means a capital investment necessary to comply with the requirements of federal regulation finally adopted by the United States Environmental Protection Agency pursuant to its rulemaking initiated on December 17, 1993; Federal Register, Vol. 58, No. 241, pages 66078 to 66216; or otherwise required under the United States Clean Air Act or the United States Clean Water Act or under any state law or regulation enacted or adopted to implement the requirements of these federal laws and regulations.

7. Financial plan. "Financial plan" means a statement of the costs and sources of revenue required to accomplish the development program. The statement must include:

A. Cost estimates for the development program;

B. The amount of any indebtedness to be incurred;

C. Sources of anticipated revenues;

D. Estimates of captured assessed values of the development district;

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

F. A statement of the estimated impact of tax increment financing on all taxing jurisdictions in which the development district is located.

8. Original assessed value. "Original assessed value" means the assessed value of the development district as of March 31st of the preceding tax year.

9. Project costs. "Project costs" means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the municipality or, for environmental improvement projects, by its designee under the development program after July 1, 1994 that are listed in a project plan as costs of improvements, including public works, acquisition, construction or rehabilitation of land or improvements for sale or use by industrial users, within a development district plus costs incidental to those improvements, reduced by income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the municipality in connection with the implementation of this plan.

A. The term "project costs" does not include the cost of buildings, or portions of buildings, used predominantly for the general conduct of government. These buildings include, but are not limited to, city halls and other headquarters of government where the governing body meets regularly, courthouses, jails, police stations and other State Government and local government office buildings.

B. The term "project costs" includes, but is not limited to:

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

(a) The actual costs of the construction of public works or improvements, new buildings, structures and fixtures;

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

(c) The acquisition of equipment; and

(d) The clearing and grading of land;

(2) Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;

(3) Real property assembly costs, meaning a deficit incurred resulting from the sale or lease as lessor by the municipality of real or personal property within a development district for consideration that is less than its cost to the municipality;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering and legal advice and services;

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

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

(7) Organizational costs, including, but not limited to, the 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;

(8) Payments made, in the discretion of the local legislative body, that are found to be necessary or convenient to the creation of development districts or the implementation of project plans;

(9) That portion of the costs related to the construction or alteration of sewage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines or water lines, the rebuilding or expansion of which is required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development district;

(10) Training costs, including, but not limited to, those costs associated with providing skills development and training for employees of businesses within the development district. These costs may not exceed 20% of the total project costs and must be designated as training funds within 3 years of the designation of the development district;

(11) Improvements, meaning costs associated with developing new employment opportunities; establishing and maintaining administrative and management support; and such other services as are necessary or appropriate to carry out the development program; and

(12) Notwithstanding subparagraphs (1) to (11), the cost of acquisition, design, engineering, construction, building, alteration, enlargement, reconstruction, renovation, improvement, equipping, remodeling and installation of an environmental improvement project including the cost of all labor, materials, building systems, machinery and equipment; the cost of all lands, structures, real or personal property, rights, easements and franchises acquired; the cost of all utility extensions, access roads, site development, financing charges, premiums for insurance, interest prior to and during construction and for 6 months after construction; and the cost of working capital for the environmental improvement project, whether or not that environmental improvement project is owned by private parties engaged in the pulp and paper industry.

10. Pulp and paper industry. "Pulp and paper industry" means any industrial activity currently described by the United States Office of Management and Budget under Standard Industrial Classification 261, 262 or 263 or those activities classified under 2679 that press or mold wood pulp or recycled fiber to make products, including, without limitation, any activity regarding the treatment, recycling or disposal of wastewater, air emissions, solid residues or other related manufacturing by-products. This term does not include activity relating to, associated with or

otherwise involving the growth, harvesting, transportation or preparation of timber, pulpwood or other wood products prior to the manufacture of pulp, paper or paperboard.

11. Pulp and paper tax increment financing district. "Pulp and paper tax increment financing district" means a type of development district, or portion of a district, that uses tax increment financing under section 5265. For the purposes of this chapter, "tax increment financing district" means a pulp and paper tax increment financing district.

12. Tax increment. "Tax increment" means that portion of all real and personal property taxes assessed by a municipality in excess of any state, county or special district tax upon the captured assessed value of property in the development district.

§5264. Development districts; development programs and ordinances

1. Districts. The municipal legislative body may designate development districts within the boundaries of the municipality. Before designating a development district, the municipal legislative body or the municipal legislative body's designee 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 municipality. New development districts may not be established after January 1, 1998. The commissioner may establish, by rule, procedures governing the administration of this section.

A. At least 75% by area of the real property within a development district must be owned by a company engaged in the pulp and paper industry.

B. Subsequent changes in the boundaries of a development district must be adopted in the same manner as the original delegation under this subsection.

C. The development program must be completed within 5 years of the designation of the tax increment financing district by the commissioner.

D. Before final designation of a tax increment financing district, the commissioner shall review the proposal to ensure that the proposal complies with statutory requirements. In addition, the commissioner must have received notification from the Commissioner of Environmental Protection that those elements of a development program undertaken by parties other than the municipality are part of a certified environmental improvement project or projects. A designation under this subsection is effective upon approval by the municipal legislative body and, for tax increment financing districts, upon approval by the commissioner. If the municipality has a charter, the designation of a development district may not be in conflict with the provisions of the municipal charter.

2. Program. 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 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 subsection 1. Subsequent changes in the program must be adopted in the same manner as the original adoption under this subsection.

3. Certification of environmental improvement projects. Any pulp and paper industry applicant seeking to participate in a tax increment financing district designated under this chapter or participation in the pulp and paper environmental investment program shall submit to the Commissioner of Environmental Protection an application including a complete description of all proposed project elements and associated, estimated direct costs that comprise its environmental improvement project and any other relevant information as the Commissioner of Environmental Protection may require.

A. The Commissioner of Environmental Protection shall issue a certificate of approval for all or a portion of a proposed project if, in the commissioner's judgment, the proposed project or portions of the project satisfy the definition of an environmental improvement project.

B. For each project, the commissioner shall establish a list of certified elements of the project that are necessary to implement the certified project or portions of the project. This list may include any or all of those elements described under section 5263, subsection 10, paragraph B, subparagraph (12).

C. The commissioner shall issue a decision within 90 days of application and may contract for outside review of the application under Title 38, section 344-A.

4. Powers. Within development districts, and consistent with the development program, the municipality or the municipality's designee may acquire, construct, reconstruct, improve, preserve, alter, extend, operate, maintain 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 facilities constructed within the development district. The municipality may install public improvements.

§5265. Tax increment financing

1. Captured assessed value. The municipality may retain all or part of the tax increment of a tax increment financing district for the purpose of financing the development program. The amount of tax increment to be retained is determined by designating the amount of captured assessed value to be retained. When a development program for a tax increment financing district is adopted, the municipal legislative body shall adopt a statement of the percentage of captured assessed value to be retained in accordance with the development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage. The municipal assessor shall certify the amount of the captured assessed value to the municipality each year.

2. Original assessed value. On or after formation of a tax increment financing district, the assessor of the municipality in which it is located shall, on request of the municipal legislative body, certify the original assessed value of the taxable property within the boundaries of the tax increment financing district. Each year, after the formation of a tax increment financing district, the municipal assessor shall certify the amount by which the assessed value has increased or decreased from the original value. The amount of any increase in the captured assessed value must be reduced by the amount of any reduction in the most current total valuation of all properties that are within the municipality but outside the development district belonging to property owners with taxable property located within the development district as compared to the assessed valuation of the same properties on March 31st of the tax year immediately preceding the designation of the development district.

3. Development program fund; tax increment revenues. If a municipality has elected to retain all or a percentage of the retained captured assessed value under subsection 1, the municipality:

A. Shall establish a development program fund that consists of the following:

(1) A development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on notes, bonds or other evidences of indebtedness that were issued by the municipality or its designee to fund or refund the cost of the development program fund; and

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

B. Shall annually set aside all tax increment revenues on retained captured assessed values and deposit all such revenues to the appropriate development program fund account in the following order of 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 5267 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;

C. May make transfers between development program fund accounts as required, as long as the transfers do not result in a balance in the development sinking fund account that is insufficient to cover the annual obligations of that account; and

D. Shall annually return to the municipal general fund any tax increment revenues in excess of those estimated to be required to satisfy the obligations of the development sinking fund account. The corresponding amount of local valuation may not be included as part of the retained captured assessed value as specified by the municipality.

4. Limitations. The following limitations apply.

A. Nothing in this section allows or sanctions unequal apportionment or assessment of the taxes paid on real property in the State. Taxes on real property within the tax increment financing district must be apportioned equally with property taxes on real property elsewhere in the municipality.

B. The municipality shall expend the tax increments received for a development program

only in accordance with the financing plan. These revenues may not be used to circumvent existing tax laws.

§5266. Grants

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

§5267. Financing

The legislative body of a municipality may authorize, issue and sell bonds, including, but not limited to, general obligation or revenue bonds or notes, that mature within 20 years from the date of issue, or may enter into other types of financing transactions as it determines appropriate to finance all project costs needed to carry out the development program within the development district. The municipal officers authorized to issue the bonds or notes may borrow money in anticipation of the sale of the bonds for a period of up to 3 years by issuing temporary notes and notes in renewal of the bonds. All revenues derived under section 5265 or received by the municipality are pledged for the payment of the activities described in the development program and must be used to reduce or cancel the taxes that may otherwise be required to be expended for that purpose. The notes, bonds or other forms of financing may not be included when computing the municipality's net debt. Nothing in this section restricts the ability of the municipality to raise revenue for the payment of project costs in a manner otherwise authorized by law.

§5268. Administration

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

§5269. Advisory board

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

§5270. Pulp and paper environmental investment program

1. Eligibility. A business engaged in the pulp and paper industry undertaking a certified environmental improvement project is eligible to apply for reimbursement of certain costs under this program.

2. Pulp and Paper Environmental Investment Fund; established. The Pulp and Paper Environmental Investment Fund is established as a nonlapsing fund administered by the commissioner. All revenues appropriated to the fund under subsection 3 must be deposited with the Treasurer of State to be credited to the fund. Any interest earned on this money must be credited to the General Fund.

3. Recommended appropriation. Starting with the fiscal year beginning on July 1, 1995, the Governor shall include in the recommended budget described under Title 5, section 1664, an appropriation of $2,000,000 to the Pulp and Paper Environmental Investment Fund in that fiscal year and $6,000,000 annually for the fiscal years ending June 30, 1997, June 30, 1998 and June 30, 1999.

4. Distribution; procedure. An applicant who has undertaken an environmental improvement project or projects certified under section 5264, subsection 3 may apply annually to the commissioner to receive reimbursement for the eligible portion of expenses incurred.

A. On or before March 1st of each year, the applicant shall provide a detailed description of those elements of the applicant's environmental improvement project or projects that were undertaken in the previous calendar year.

B. The commissioner shall calculate, for each applicant under this section, the eligible portion of the applicant's expenses by multiplying the total of the applicant's properly documented expenses by 3%.

C. The commissioner shall sum the eligible portions of the expenses of all applicants under this section, including fractional portions carried forward from the previous year, in order to calculate each applicant's share of the available balance in the Pulp and Paper Environmental Investment Fund. If this sum is less than the available balance of the fund, each applicant shall receive 100% of its respective eligible portion. If this sum is greater than the available balance of the fund, each applicant shall receive reimbursement proportional to its share of the sum of all eligible portions.

D. On or before September 30th of each year, the commissioner shall send to each applicant

payment equivalent to that applicant's carried-forward reimbursement, if any, and the applicant's proportional share as calculated under this section, if any.

E. Through March 1, 2000, the commissioner shall carry forward any unreimbursed fraction of the eligible portion for each applicant.

5. Program; administration. The commissioner shall administer the pulp and paper environmental investment program. The commissioner may adopt rules pursuant to the Maine Administrative Procedure Act regarding the overall administration of this chapter. The commissioner may also establish by rule fees for administration of the program. The Commissioner of Environmental Protection may adopt rules pursuant to the Maine Administrative Procedure Act for determining and certifying proposed environmental improvement projects and for establishing application fees necessary to provide review of applications. All fees collected pursuant to this subsection must be deposited into the General Fund except that those fees collected pursuant to a certification application to the Commissioner of Environmental Protection must be deposited in the Maine Environmental Protection Fund.

6. Confidential information. The names of the recipients of reimbursements under this section and the amount of each reimbursement is a public record. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the applicant, the commissioner or the Commissioner of Environmental Protection for approval of a pulp and paper environmental improvement reimbursement. After receipt of the application by the commissioner or the Commissioner of Environmental Protection, a record pertaining to the application is not considered confidential unless it meets one or more of the requirements of paragraph B; and

B. A record obtained or developed by the applicant, the commissioner or the Commissioner of Environmental Protection if:

(1) A person, which may include a corporation, partnership, limited partnership or other business organization, to whom the record belongs or pertains has requested that the record be designated confidential; and

(2) The 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 access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment to a person to whom the record belongs or pertains.

A person may not knowingly divulge or disclose records declared confidential by this subsection except that a record or portion of a record may be disclosed when that record or portion of a record contains evidence of a violation of law.

7. Audit process. The commissioner is authorized to conduct an audit of any applicant under this section. If the commissioner determines upon audit that an applicant or its successors or assigns has received a reimbursement larger than that to which it is entitled under this section, the overpayment must be applied against subsequent reimbursements. If there is no subsequent reimbursement, the applicant to which overpayments were made is liable for the amount of overpayments and may be assessed pursuant to Title 36.

8. Repeal. This section is repealed on October 1, 2000. Any funds remaining in the Pulp and Paper Environmental Investment Fund at this time lapse to the General Fund.

Sec. 3. 36 MRSA §5219-E, sub-§3-A is enacted to read:

3-A. Exception. Notwithstanding subsection 3, for any tax year ending on or after March 1, 1994 but prior to March 1, 1995, the credit allowed by subsection 2 for the taxable year, plus any credit carry-forward or carry-back to the taxable year allowed by subsection 5, may not exceed so much of the tax liability of the taxpayer, or the total tax liability of all taxable corporations that are members of an affiliated group engaged in a unitary business, for the taxable year, as does not exceed $25,000 plus 60% of so much of the tax liability for the taxable year as exceeds $25,000. When the limitation provided in this subsection is exceeded, carry-forwards are applied first and credits under subsection 2 for the taxable year are applied 2nd. Carry-forwards from an earlier unused credit year are applied before carry-forwards from a later unused credit year.

See title page for effective date.