LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

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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
2002

ciation representing owners of oxen who participate in pulling events and one member appointed by an association representing owners of ponies who participate in pulling events;

(2) An agricultural fair coordinator from the department;

(3) One Fair Superintendent appointed by the Maine Association of Agricultural Fairs;

(4) ~~Two representatives~~ One representative appointed by state humane organizations;

(5) The commissioner or a designated representative;

(6) One member, appointed by the commissioner, representing the general public; ~~and~~

(7) One member, appointed by the commissioner, representing the animal pulling industry~~.~~; and

(8) One member appointed by the Animal Welfare Advisory Council.

Sec. 4. 7 MRSA §75-A, sub-§§7 and 10, as enacted by PL 2001, c. 421, Pt. B, §4 and affected by Pt. C, §1, are amended to read:

7. Enforcement. The superintendent shall enforce the laws and rules governing pull events and shall report participants who are disqualified, violations of the law and other matters, as appropriate, to the Pull Events Commission. The commission shall send a copy of any such report to the sponsor whose name appears on the application for the pulling event and to the person whose conduct has been reported to the commission.

~~Humane agents shall promptly report to the pull superintendent any pulling event actions that violate this chapter, any of the animal welfare laws in this Title or any rule enacted by the department. If the superintendent fails or refuses to take corrective action, the humane agent shall take action to enforce the animal welfare laws and make a written report to the commission concerning all violations.~~

Upon receipt of a written report alleging that a teamster has violated the laws or rules governing pulling events, the commission may after a hearing disqualify a teamster from participation in pull events. Upon receipt of a written report alleging that a superintendent or assistant superintendent has violated the laws or rules governing pulling events or has failed to take appropriate action to enforce the laws and rules governing pulling events, the commission may after a hearing suspend or revoke that person's certification to act as a pull superintendent.

10. Permit revocation. A person, firm, corporation or unincorporated association or society required to obtain a permit under this section to conduct a pulling event may not allow, after having received notice from the Department of Agriculture, Food and Rural Resources, a person, firm, corporation or unincorporated association or society that has been convicted within 5 years of violation of Title 17, section 1031, or that has been adjudicated within 5 years to have committed a civil violation of section 4011 to participate as an owner or handler or in any other capacity, directly or indirectly, in a pulling event. A violation of this provision is grounds, upon compliance with appropriate provisions of Title 5, chapter 375, for revocation or nonrenewal of a permit issued under this section.

The commissioner may, in accordance with Title 5, chapter 375, revoke a permit when the commissioner has received written notification from the commission of violations of laws or rules at a pulling event conducted under a permit held by that sponsor. The commissioner may decline to issue a permit to a sponsor when the commissioner has received written notification from the commission of violations of laws or rules at a pulling event conducted under a permit held by that sponsor.

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

Effective April 11, 2002.

CHAPTER 669

S.P. 725 - L.D. 1966

An Act to Amend the Laws Relating to Development Districts

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

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

CHAPTER 206

DEVELOPMENT DISTRICTS

SUBCHAPTER I

MUNICIPAL DEVELOPMENT DISTRICTS

§5221. Findings and declaration of necessity

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

A. Provide new employment opportunities;

B. Improve and broaden the tax base; and

C. Improve the general economy of the State.

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

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

B. To increase employment; and

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

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

§5222. Definitions

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

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

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

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

4. Current assessed value. "Current assessed value" means the assessed value of the district certified by the municipal assessor as of April 1st of each year that the development district remains in effect.

5. Department. "Department" means the Department of Economic and Community Development.

6. Development district. "Development district" means a specified area within the corporate limits of a municipality that has been designated as provided under sections 5223 and 5226 and that is to be developed under a development program.

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

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

9. Downtown tax increment financing district. "Downtown tax increment financing district" means a tax increment financing district described in a downtown redevelopment plan that is consistent with the downtown criteria established pursuant to rules of the department.

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

11. Increased assessed value. "Increased assessed value" means the valuation amount by which the current assessed value of a 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 increased assessed value.

12. Maintenance and operation. "Maintenance and operation" means all activities necessary to maintain facilities after they have been developed and all activities necessary to operate the facilities, including, but not limited to, informational, promotional and educational programs and safety and surveillance activities.

13. Original assessed value. "Original assessed value" means the assessed value of a development district as of March 31st of the tax year preceding the year in which it was designated.

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

15. Tax increment. "Tax increment" means real and personal property taxes assessed by a

municipality, in excess of any state, county or special district tax, upon the increased assessed value of property in the development district.

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

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

18. Tax year. "Tax year" means the period of time beginning on April 1st and ending on the succeeding March 31st.

§5223. Development districts

1. Creation. A municipal legislative body may designate a development district within the boundaries of the municipality in accordance with the requirements of this chapter. 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. Considerations for approval. Before designating a development district within the boundaries of a municipality, or before establishing a development program for a designated development district, the legislative body of a municipality must consider whether the proposed district or program will contribute to the economic growth or well-being of the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality. Interested parties must be given a reasonable opportunity to present testimony concerning the proposed district or program at the hearing provided for in section 5226, subsection 1. If an interested party claims at the public hearing that the proposed district or program will result in a substantial detriment to that party's existing business in the municipality and produces substantial evidence to that effect, the legislative body must consider that evidence. When considering that evidence, the legislative body also shall consider whether any adverse economic effect of the proposed district or program on that interested party's existing business in the municipality is outweighed by the contribution made by the district or program to the economic growth or well-being of the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality.

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

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

(1) Must be a blighted area;

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

(3) Must be suitable for commercial uses.

B. The total area of a single development district may not exceed 2% of the total acreage of the municipality. The total area of all development districts may not exceed 5% of the total acreage of the municipality.

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

Excluded from the calculation in this paragraph is any district excluded from the calculation under former section 5253, subsection 1, paragraph C and any district designated on or after the effective date of this chapter that meets the following criteria:

(1) The development program contains project costs, authorized by section 5225, subsection 1, paragraph A, that exceed $10,000,000;

(2) The geographic area consists entirely of contiguous property owned by a single taxpayer;

(3) The assessed value exceeds 10% of the total value of taxable property within the municipality; and

(4) The development program does not contain project costs authorized by section 5225, subsection 1, paragraph C.

For the purpose of this paragraph, "contiguous property" includes a parcel or parcels of land divided by a road, power line or right-of-way.

D. The aggregate value of municipal general obligation indebtedness financed by the proceeds from tax increment financing districts within any county may not exceed $50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Con-

sumer Price Index, United States City Average from January 1, 1996 to the date of calculation.

(1) The commissioner may adopt rules necessary to allocate or apportion the designation of captured assessed value of property within proposed tax increment financing districts to permit compliance with the condition in this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

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

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

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

§5224. Development programs

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

2. Requirements. The development program must include:

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

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

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

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

E. The proposed regulations and facilities to improve transportation;

F. The environmental controls to be applied;

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

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

I. All documentation submitted to or prepared by the municipality under section 5223, subsection 2.

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

A. Cost estimates for the development program;

B. The amount of public indebtedness to be incurred;

C. Sources of anticipated revenues; and

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

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

A. Estimates of increased assessed values of the district;

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

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

5. Limitation. For tax increment financing districts, the municipality may expend the tax increments

received for any development program only in accordance with the financial plan.

§5225. Project costs

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

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

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

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

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

(c) Site preparation and finishing work; and

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

(2) Financing costs, including, but not limited to, closing costs, issuance costs and 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;

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

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

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

(7) Organizational costs relating to the establishment of the district, 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;

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

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

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

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

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

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

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

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

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

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

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

(5) Quality child care costs, including finance costs and construction, staffing, training, certification and accreditation costs related to child care; and

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

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

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

§5226. Procedure

1. Notice and hearing. Before designating a development district or adopting a development program, the municipal legislative body or the municipal legislative body's designee must 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.

2. Review by commissioner. 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 the case of a downtown tax increment financing district, the State Planning Office and the Department of Transportation shall review the proposal and provide advice to assist the commissioner in making a decision under this subsection.

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

4. Administration of district. 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.

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

§5227. Tax increment financing

1. Designation of captured assessed value. A municipality may retain all or part of the tax increment revenues generated from the increased assessed value of a tax increment financing district for the purpose of financing the development program. The amount of tax increment revenues to be retained is determined by designating the captured assessed value. When a development program for a tax increment financing district is adopted, the municipal legislative body shall adopt a statement of the percentage of increased assessed value to be retained as captured assessed value 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. Certification of assessed value. On or after formation of a tax increment financing district, the assessor of the municipality in which it is located shall certify the original assessed value of the taxable property within the boundaries of the tax increment financing district. Each year after the designation 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.

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

3. Development program fund; tax increment revenues. If a municipality has designated captured

assessed value under subsection 1, the municipality shall:

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

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

(2) In instances of municipal indebtedness, 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 any notes, bonds or other evidences of indebtedness that were issued to fund or refund the cost of the development program fund;

B. Annually set aside all tax increment revenues on captured assessed values and deposit all such revenues to the appropriate development program fund account established under paragraph A 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 5231 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. Make transfers between development program fund accounts established under paragraph A as required, provided that 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. Annually return to the municipal general fund any tax increment revenues remaining in the development sinking fund account established under paragraph A in excess of those estimated to be required to satisfy the obligations of the development sinking fund account after taking into account any transfers made under paragraph C. The municipality, at any time during the term of the district, by vote of the municipal officers, may return to the municipal general fund any tax increment revenues remaining in the project cost account established under paragraph A in excess of those estimated to be required to satisfy the obligations of the development project cost account after taking into account any transfer made under paragraph C. In either case, the corresponding amount of local valuation may not be included as part of the captured assessed value as specified by the municipality.

§5228. Assessments

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

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

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

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

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

A. The date, time and place of hearing;

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

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

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

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

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

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

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

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

§5229. Rules

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

§5230. Grants

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

§5231. Bond 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 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 5227 or under section 5228, subsection 1 received by the municipality are pledged for the payment of the activities described in the development program and 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 any manner otherwise authorized by law.

§5232. Tax exemption

All publicly owned parking structures and pedestrian skyway systems are exempt from taxation by the municipality, county and State. This section does not exempt any lessee or person in possession from taxes or assessments payable under Title 36, section 551.

§5233. 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 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 district after the program has been completed.

§5234. Special provisions

Notwithstanding the provisions of section 5223, subsection 1 and any other provision of law, in the case of investments exceeding $100,000,000 in shipyard facilities in districts authorized prior to June 30, 1999, revenues must be set aside and deposited by the municipality to the appropriate development program fund account established under section 5227, subsection 3 and expended to satisfy the obligations of the accounts without the need for further action by the municipality by appropriation or otherwise. Unless otherwise provided by the municipality in connection with its approval of the district, tax increment revenues on all captured assessed value may not be taken into account for purposes of calculating any

limitation on the municipality's annual expenditures or appropriations, and the payment of tax increment revenues on captured assessed value is not subject to any limitation or restriction on the municipality's authority or power to enter into contracts with respect to making payments for a term equal to the term of the district.

§5235. 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. For purposes of section 5228, the State acts as the municipal assessing authority.

SUBCHAPTER II

STATE TAX INCREMENT FINANCING DISTRICTS

§5241. Definitions

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

1. Base period. "Base period" means the 3 calendar years preceding the calendar year in which an application for approval of a state tax increment financing district is submitted to the commissioner by a municipality.

2. Affiliated business. "Affiliated business" means 2 businesses exhibiting either of the following relationships:

A. One business owns 50% or more of the stock of the other business or owns a controlling interest in the other; or

B. Fifty percent of the stock or a controlling interest is directly or indirectly owned by a common owner or owners.

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

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

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

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

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

8. Designated business. "Designated business" means a business located within the boundaries of a development district and designated by the municipality as a "designated business" for purposes of state tax increment financing.

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

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

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

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

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

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

15. State tax increment. "State tax increment" means the net annual gain, if any, in sales tax paid as a result of taxable events occurring within a state tax increment financing district and the net annual gain, if

any, in state income taxes withheld as a result of wages paid for labor performed within the district.

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

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

§5242. State tax increment financing

1. Eligibility. Any tax increment financing district designated by a municipality and approved by the commissioner under section 5226, subsection 2 is eligible to be approved as a state tax increment financing district if captured assessed value within the district is created after July 30, 1991, except that, in accordance with subsection 12, no new state tax increment financing district may be created after June 30, 1996.

2. Procedure for establishing state tax increment financing district. A municipality desiring to establish a state tax increment financing district must apply to the commissioner 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 must 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 development 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 businesses for the base period. The development program may be combined with or integrated into the development program for the underlying municipal development district pursuant to subchapter 1 or may be separately stated, maintained and implemented. The development program may specify the allocable shares of the municipality and each designated business for liability for refund of the state tax increment revenues resulting from an audit. That allocation may be made by any means determined by the municipal officers to reasonably reflect the economic benefit derived from operation of the district.

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

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

3. Approval. Prior to issuing a certificate of approval for any state tax increment financing district, the commissioner 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 that are created prior to June 30, 1992;

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 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.

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

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 pursuant to 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, 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.

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

4. Retained state tax revenues. 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 within the district, the state income taxes withheld from employees within the district 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 the state tax increment of a district for the preceding calendar year.

B. A municipality may receive up to 25% of the state tax increment revenues 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 8, and that amount is referred to in this section as "retained state tax increment revenues."

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

A. Determining the gross state tax increment as applicable to the particular district;

B. Determining the state tax increment as applicable to the particular district by removing from the gross state tax increment:

(1) Revenues attributed to business activity shifted from affiliated businesses to the state tax increment financing district. This adjustment is calculated by comparing the current year's sales and income tax revenues for each designated business that is a member of an affiliated group with revenues for the group as a whole. If the growth in sales and income tax revenue for the entire group exceeds the growth of sales and income tax revenue generated by the designated business, the gross state tax increment does not have to be adjusted to remove business activity shifted from affiliated businesses. If the growth in sales and income tax revenue for the affiliated group is less than the growth in sales and income tax revenue for the designated business, the difference is presumed to have been shifted from affiliated businesses to the designated business and the gross state tax increment for the district is reduced by the difference; and

(2) Revenues attributed to normal growth. This adjustment is calculated by subtracting from the gross state tax increment a figure obtained by multiplying the previous year's total amount of sales taxes reported and income taxes withheld by designated businesses within the district by the percentage change in sales tax receipts and withholding taxes for all businesses within the State as a whole;

C. Offsetting designated businesses with negative tax increments with those with positive increments in determining the state tax increment for the district as a whole; and

D. Excluding all income tax revenue in calculating the state tax increment attributable to retail business operations.

6. State tax increment contingent account created. The Commissioner of Administrative and Financial Services shall establish, maintain and administer the state tax increment contingent account. On or before June 30th of each year, the Commissioner of Administrative and Financial Services shall deposit 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. On or before July 31st of each year, the Commissioner of Administrative and Financial Services 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.

7. 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 5227, 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 5227, subsection 3 and required to be deposited in a development program fund account; and

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

8. Limitations. The following limitations apply.

A. A state tax increment financing district may apply only to 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 9. The state tax increment must be calculated pursuant to this section.

B. 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.

C. The retained state tax increment revenues 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.

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

E. A transfer of ownership 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.

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

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

9. Districts containing retail business operations. The commissioner 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 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.

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

11. Program; administration. The commissioner shall administer this subchapter. 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

12. Designation of new state tax increment financing districts prohibited. The designation of new state tax increment financing districts is prohibited, 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 be resumed only by act of the Legislature.

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

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

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

(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 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 or the State Tax Assessor in connection with any monitoring or servicing activity by the municipality, the commissioner 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 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 determined confidential by this subsection.

14. 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 2, 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 not a 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.

§5243. Development program fund; state tax increment revenues

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

1. Development sinking fund account. To the development sinking fund account established pursuant to section 5227, subsection 3, 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 5231 and the financial plan; and

2. Project cost account. To the project cost account established pursuant to section 5227, subsection 3, 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.

§5244. Previously designated districts

Development districts and development programs designated before the effective date of this chapter remain in effect as authorized by law at the time of their designation and are governed by former chapter 207 as it existed immediately before its repeal except to the extent of any amendments to such development districts and development programs that are made in accordance with this chapter.

Sec. 2. 30-A MRSA c. 207, as amended, is repealed.

Sec. 3. 30-A MRSA §5301, sub-§§1 and 2, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, are further amended to read:

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

2. Development plan. "Development plan" means an urban renewal plan, community development program or municipal development district plan as defined and described in chapters 203, 205 and ~~207~~ 206.

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

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

See title page for effective date.

CHAPTER 670

H.P. 1447 - L.D. 1944

An Act to Restrict the Availability of Products with Excessive Levels of Arsenic

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, rules authorized in this bill pertaining to the regulation of fertilizers containing deleterious or harmful substances must be in effect as soon as practicable; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 7 MRSA §743, first ¶, as amended by PL 1997, c. 454, §2, is further amended to read: