

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 12, 2009

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

Augusta, Maine
2009

Sec. 3. Fish passage rules. The Department of Environmental Protection shall amend its rules, Chapter 305, Permit By Rule to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings. These rule changes apply only to water courses containing fish. The amendments must establish standards that ensure:

1. Adequate flow during high water conditions;
2. Upstream and downstream movement for aquatic organisms and downstream and lateral movement of materials;
3. Vertical gradient that matches up and down stream; and
4. Horizontal alignment that matches up and down stream.

Sec. 4. Rules. Rules adopted pursuant to or to implement the provisions of this Act are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 1, 2011 for review by the joint standing committee of the Legislature having jurisdiction over natural resources matters.

Sec. 5. Road construction; maintenance. The provisions of this Act do not affect forestry management activities, including associated road construction or maintenance.

See title page for effective date.

CHAPTER 461

H.P. 1024 - L.D. 1473

An Act To Reaffirm Maine's Commitment to Business by Amending the Pine Tree Development Zone Laws

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

Sec. 1. 5 MRSA §1710-F, sub-§2, as amended by PL 1997, c. 157, §1, is further amended to read:

2. Biennial revenue projections. The committee shall submit recommendations for state revenue projections for the next 2 fiscal biennia and analyze revenue projections for the current fiscal biennium, which must be approved by a majority of the committee members. No later than December 1st of each even-numbered year, the committee shall submit to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the State Budget Officer a report that presents the analyses, findings and recommendations for General Fund and

Highway Fund revenue projections for the next 2 fiscal biennia. In its report the committee shall fully describe the methodology employed in reaching its recommendations. Revenue projections for other funds of the State may be included in the report at the discretion of the committee. Revenue projections for the General Fund may not include revenue that accrues pursuant to Title 30-A, section 5250-I, subsection 14 and is deposited into the Pine Tree Development Zone Reserve Fund pursuant to Title 30-A, section 5250-J, subsection 4-B that would not have accrued to the State but for the availability of Pine Tree Development Zone benefits as stated in Title 30-A, section 5250-I, subsection 17, paragraph A.

Sec. 2. 30-A MRSA §5250-I, sub-§2, as enacted by PL 2003, c. 688, Pt. D, §2, is repealed.

Sec. 3. 30-A MRSA §5250-I, sub-§4, as amended by PL 2009, c. 21, §1, is further amended to read:

4. Base level of employment. "Base level of employment" means the greater of either the total employment in the State of a business as of March 31st, June 30th, September 30th and December 31st of the calendar year immediately preceding the year of the business's application to become a certified Pine Tree Development Zone business divided by 4 or its average employment during the base period. Pursuant to section 5250-J, subsection 4-A, "base level of employment" may be adjusted to mean 25% of the average number of employees of that business over the 3 months immediately preceding the catastrophic occurrence.

Pursuant to section 5250-J, subsection 4-C, "base level of employment" must be adjusted for a qualified business that has more than one location in the State and creates 250 or more jobs at one of these locations, so that the base level of employment is calculated from the location of the significant employment expansion of 250 jobs or more on the basis of that specific location.

Sec. 4. 30-A MRSA §5250-I, sub-§9, as enacted by PL 2003, c. 688, Pt. D, §2, is amended to read:

9. Labor market average weekly wage. "Labor market average weekly wage" means the average weekly wage as published by the Department of Labor for the labor market or markets in which potential qualified Pine Tree Development Zone employees are located for the 12 most recently reported months preceding the date of application ~~for zone designation.~~

Sec. 5. 30-A MRSA §5250-I, sub-§10, as enacted by PL 2003, c. 688, Pt. D, §2, is amended to read:

10. Labor market unemployment rate. "Labor market unemployment rate" means the average unem-

ployment rate as published by the Department of Labor for the labor market or markets in which potential qualified Pine Tree Development Zone employees are located for the 12 most recently reported months preceding the date of application ~~for zone designation.~~

Sec. 6. 30-A MRSA §5250-I, sub-§11, as enacted by PL 2003, c. 688, Pt. D, §2, is repealed and the following enacted in its place:

11. Manufacturing. "Manufacturing" means:

A. The production of tangible personal property intended to be sold or leased ultimately for final use or consumption;

B. The production of tangible personal property pursuant to a contract with the Federal Government or any agency thereof; or

C. To make, process, convert or transform raw materials, components or parts into finished goods or products for final use or consumption to meet customer expectations or specifications.

Sec. 7. 30-A MRSA §5250-I, sub-§11-A, as enacted by PL 2005, c. 650, §1, is amended to read:

11-A. Military redevelopment zone. "Military redevelopment zone" means a specified area within a municipality that is contained within a labor market that includes a military facility that sustained a loss of 400 or more employed workers, if the loss was caused by a federal military facility closure or downsizing, during the 5-year period immediately preceding the time of application for designation as a military redevelopment zone, or is projected to sustain a loss of 400 or more employed workers during the 5-year period immediately following the time of application, and has been designated by the commissioner as a military redevelopment zone under section 5250-J, subsection ~~2-A~~ 3-A.

Sec. 8. 30-A MRSA §5250-I, sub-§13, as enacted by PL 2003, c. 688, Pt. D, §2, is amended to read:

13. Pine Tree Development Zone. "Pine Tree Development Zone" or "zone" means a specified area within the boundaries of ~~a unit of local government, or within the boundaries of cooperating units of local government in a multijurisdictional application, the~~ State that has been designated by the commissioner as a Pine Tree Development Zone in accordance with section 5250-J, subsection ~~3-A~~ 3-B.

Sec. 9. 30-A MRSA §5250-I, sub-§19, as enacted by PL 2003, c. 688, Pt. D, §2, is amended to read:

19. State average weekly wage. "State average weekly wage" means the average weekly wage as published by the Department of Labor for the State as a whole for the 12 most recently reported months preceding the date of application ~~for zone designation.~~

Sec. 10. 30-A MRSA §5250-I, sub-§20, as enacted by PL 2003, c. 688, Pt. D, §2, is amended to read:

20. State unemployment rate. "State unemployment rate" means the average unemployment rate published by the Department of Labor for the State as a whole for the 12 most recently reported months preceding the date of application ~~for zone designation.~~

Sec. 11. 30-A MRSA §5250-I, sub-§21-A is enacted to read:

21-A. Tier 1 location. "Tier 1 location" means a location designated by the department to be eligible for Pine Tree Development Zone benefits for a period of 10 years.

Sec. 12. 30-A MRSA §5250-I, sub-§21-B is enacted to read:

21-B. Tier 2 location. "Tier 2 location" means a location designated by the department to be eligible for Pine Tree Development Zone benefits for a period of 5 years. After the 5 years, all Pine Tree Development Zone benefits expire, except for the expanded employment tax increment financing benefits under Title 36, chapter 917, which must be recalculated at that time to reflect the standard rates under that chapter.

Sec. 13. 30-A MRSA §5250-J, sub-§1, as amended by PL 2007, c. 466, Pt. A, §53, is repealed.

Sec. 14. 30-A MRSA §5250-J, sub-§2, as enacted by PL 2003, c. 688, Pt. D, §2, is amended to read:

2. Requirements for designation. The commissioner shall adopt rules establishing the minimum requirements for the designation of Pine Tree Development Zones pursuant to subsections 3-A and 3-B. ~~Additionally, each participating unit of local government must agree to maintain at least one prepermitted construction or development site available within the zone on a continual basis throughout the term of the zone.~~

Sec. 15. 30-A MRSA §5250-J, sub-§2-A, as enacted by PL 2005, c. 650, §5, is repealed.

Sec. 16. 30-A MRSA §5250-J, sub-§3, as amended by PL 2005, c. 650, §6 and c. 669, §1, is further amended to read:

3. Limitations. The designation of Pine Tree Development Zones is subject to the following limitations:

~~A. The total area of a zone may not exceed 5,000 acres, which need not be contiguous. In calculating the 5,000 acre limit, only developable acres may be counted;~~

~~B. A zone located in Aroostook County as described in subsection 1, paragraph A may include~~

~~property that is also included within the Aroostook County Empowerment Zone as designated by the federal Community Renewal Tax Relief Act of 2000, Public Law 106-554;~~

C. Pine Tree Development Zone benefits may not be used to encourage or facilitate the transfer of existing positions or property of a qualified business or affiliated businesses to a qualified business activity from a nonqualified activity elsewhere in the State;

D. Pine Tree Development Zone benefits may not be provided based upon any property, employees or positions transferred by the business or affiliated businesses to a qualified business activity from a nonqualified activity; and

F. One or more qualified Pine Tree Development Zone business activities must be a permissible activity in the Pine Tree Development Zone;

~~G. Except for a military redevelopment zone established pursuant to subsection 1, paragraph F, all property included within a Pine Tree Development Zone must meet one of the following:~~

~~(1) The property is located within a market area for which the labor market unemployment rate is greater than the state unemployment rate at the time of the application; or~~

~~(2) The property is included within a county in which the average weekly wage is below the state average weekly wage at the time of the application.~~

~~In the case of a multijurisdictional or joint application, the requirements of this paragraph are met if the combined unemployment rate of the cooperating units of local government meets the requirements of subparagraph (1) or the average weekly wage of the cooperating units of local government, on a per employed worker basis, meets the requirements of subparagraph (2); and~~

~~H. The restrictions contained in paragraph G may be waived for:~~

~~(1) Property that is contained within a labor market area that has sustained a greater than 5% loss of population or employed workers during the 3 year period immediately preceding the time of application if the loss was caused by business closings; or~~

~~(2) Property that is contained within an industrial site with appropriate infrastructure and zoning or other land use regulations in place that has sustained a minimum loss of 500 employed workers during the 5 year period immediately preceding the time of application, as long as an application for a waiver under this subparagraph is received by Au-~~

~~gust 1, 2010. Only a qualified business with a base level of employment equal to zero is eligible to receive Pine Tree Development Zone benefits under this subparagraph.~~

Sec. 17. 30-A MRSA §5250-J, sub-§3-A is enacted to read:

3-A. Pine Tree Development Zone classification; tier 1 locations. Beginning January 1, 2009, the department shall classify the following units of local government on an annual basis as tier 1 locations:

A. From January 1, 2009 to December 31, 2009, all units of local government; and

B. Beginning January 1, 2010, a unit of local government that is contained in a county other than Cumberland County or York County, as well as a unit of local government that is contained in Cumberland County or York County with a municipal unemployment rate that is 15% higher than its labor market unemployment rate, based upon data published by the Department of Labor from the last completed calendar year.

A unit of local government that has been designated by the department as a participating municipality in the Pine Tree Development Zone program as of December 31, 2008 will be classified as a tier 1 location.

Property within a military redevelopment zone as long as the property is classified by the department no later than December 31, 2018.

Sec. 18. 30-A MRSA §5250-J, sub-§3-B is enacted to read:

3-B. Pine Tree Development Zone classification; tier 2 locations. Beginning January 1, 2010, the department shall classify the following units of local government on an annual basis as tier 2 locations:

A. All units of local government contained in Cumberland County or York County that are not classified as tier 1 locations pursuant to subsection 3-A.

Sec. 19. 30-A MRSA §5250-J, sub-§4, as enacted by PL 2003, c. 688, Pt. D, §2, is repealed.

Sec. 20. 30-A MRSA §5250-J, sub-§4-B is enacted to read:

4-B. Pine Tree Development Zone Reserve Fund established. The Pine Tree Development Zone Reserve Fund, referred to in this subsection as "the fund," is established as a nonlapsing fund to capture all net positive revenues pursuant to section 5250-I, subsection 14 that accrue to the State and that would not have accrued to the State but for the availability of Pine Tree Development Zone benefits as stated in section 5250-I, subsection 17, paragraph A. The Office of the State Controller shall administer the fund, which notwithstanding Title 5, section 1666 is not subject to

legislative allocation. The fund must be established and held separate from any other fund and used and administered exclusively for the purposes of this section. The fund consists of all revenues received pursuant to section 5250-I, subsection 14.

The State Tax Assessor shall identify all revenues that accrue to the State pursuant to section 5250-I, subsection 14 and deposit them into the fund. The State Controller shall transfer or authorize the transfer of funds from the fund in accordance with Title 36, sections 2016 and 6758 and any other relevant provisions. Any excess revenues not transferred pursuant to this section must be deposited by the State Controller into the General Fund.

Sec. 21. 30-A MRSA §5250-J, sub-§4-C is enacted to read:

4-C. Significant employment expansion; Pine Tree Development Zone benefits. A qualified Pine Tree Development Zone business that expands its employment at one of its locations in the State may apply for an adjustment of the base level of employment if it:

- A. Has more than one location in the State;
- B. Creates 250 or more jobs at one location;
- C. Maintains its total employment in the State above 50% of its growth at the location of the employment expansion; and
- D. Has appropriate infrastructure and zoning or other land use regulations in place.

For purposes of this section and calculation of Pine Tree Development Zone benefits in section 5250-I, subsection 14, the base level of employment must be calculated from the location where the business produces significant employment expansion of 250 jobs or more. The department shall determine on an annual basis if the business has produced significant employment expansion. If the department determines that the business does not meet the requirements of this section and its total employment in the State falls below 50% of its growth at this location of expansion, the business may not receive the adjustment pursuant to this section and the department shall calculate the base level of employment pursuant to section 5250-I, subsection 4.

Sec. 22. 30-A MRSA §5250-J, sub-§5, as enacted by PL 2003, c. 688, Pt. D, §2, is repealed and the following enacted in its place:

5. Termination. A qualified Pine Tree Development Zone business located in a tier 1 location may not be certified under this subchapter after December 31, 2018, and a qualified Pine Tree Development Zone business located in a tier 2 location may not be certified under this subchapter after December 31, 2013. All Pine Tree Development Zone benefits provided under this subchapter are terminated on December 31, 2028.

Sec. 23. 30-A MRSA §5250-K, as amended by PL 2005, c. 351, §6 and affected by §26, is repealed.

Sec. 24. 30-A MRSA §5250-L, as enacted by PL 2003, c. 688, Pt. D, §2, is repealed.

Sec. 25. 36 MRSA §2016, sub-§6, as enacted by PL 2005, c. 351, §9 and affected by §26, is amended to read:

6. Payment of claims. The State Tax Assessor shall determine the benefit for each claimant under this section and certify to the State Controller the amount to be transferred from the Pine Tree Development Zone Reserve Fund, established pursuant to Title 30-A, section 5250-J, subsection 4-B, to the Pine Tree Development Zone reimbursement reserve account established, maintained and administered by the State Controller from General Fund undedicated revenue within the sales tax category. The assessor shall pay the certified amounts to each approved applicant qualifying for the benefit under this section within 30 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section.

Sec. 26. 36 MRSA §6753, sub-§4, as amended by PL 2009, c. 21, §6, is repealed and the following enacted in its place:

4. Base level of employment. "Base level of employment" means the greater of either the total employment of a business as of the March 31st, June 30th, September 30th and December 31st of the calendar year immediately preceding the application for approval of the employment tax increment financing development program divided by 4 or its average employment during the base period.

A. Pursuant to Title 30-A, section 5250-J, subsection 4-A, "base level of employment" may be adjusted to mean 25% of the average number of employees of that business over the 3 months immediately preceding the catastrophic occurrence.

B. Pursuant to Title 30-A, section 5250-J, subsection 4-C, "base level of employment" must be adjusted to be calculated from the location where the business produced the significant employment expansion of 250 jobs or more.

Sec. 27. 36 MRSA §6754, sub-§1, ¶D, as amended by PL 2003, c. 688, Pt. D, §6, is further amended to read:

D. For qualified Pine Tree Development Zone employees, as defined in Title 30-A, section 5250-I, subsection 18, employed directly in the qualified business activity of a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5250-I, subsection 17, for whom a certificate of qualification has been issued in accordance with Title 30-A, section 5250-O, the re-

imbursement under this subsection is equal to 80% of the withholding taxes withheld each year for which reimbursement is requested and attributed to those qualified employees for a period of no more than 10 years for tier 1 locations and no more than 5 years for tier 2 locations. In no event may reimbursement under this subsection be paid for years beginning after December 31, ~~2018~~ 2028.

Sec. 28. 36 MRSA §6758, sub-§3, as enacted by PL 1995, c. 669, §5, is amended to read:

3. Deposit and payment of revenue. On or before June 30th of each year, the Commissioner of Administrative and Financial Services shall deposit from the Pine Tree Development Zone Reserve Fund, established pursuant to Title 30-A, section 5250-J, subsection 4-B, an amount equal to the total retained employment tax increment revenues for the preceding calendar year for approved employment tax increment financing programs in the state employment tax increment contingent account established, maintained and administered by the Commissioner of Administrative and Financial Services. On or before July 31st of each year, the Commissioner of Administrative and Financial Services shall pay to each approved qualified business an amount equal to the retained employment tax increment revenues for the preceding calendar year.

See title page for effective date.
