

**§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.

[PL 2001, c. 669, §1 (NEW).]

**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. [PL 2001, c. 669, §1 (NEW).]

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 I 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. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**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; [PL 2001, c. 669, §1 (NEW).]

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 [PL 2001, c. 669, §1 (NEW).]

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 2, those factors the commissioner determines necessary to measure and evaluate the effect of the proposed district on existing businesses, including:

- (1) Whether a proposed district should be approved if, as a result of the benefits to designated businesses, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing businesses; and
- (2) Whether any adverse economic effect of the proposed district on existing businesses is outweighed by the contribution described in paragraph B.

The municipality has the burden of demonstrating that the proposed district will not result in a substantial detriment to existing businesses in accordance with the requirements of this paragraph, including rules adopted 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 2-A.

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

[RR 2001, c. 2, Pt. A, §40 (COR).]

**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. [PL 2001, c. 669, §1 (NEW).]

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." [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**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; [PL 2001, c. 669, §1 (NEW).]

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; [PL 2001, c. 669, §1 (NEW).]

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 [PL 2001, c. 669, §1 (NEW).]

D. Excluding all income tax revenue in calculating the state tax increment attributable to retail business operations. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**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. [PL 2001, c. 669, §1 (NEW).]

**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 [PL 2001, c. 669, §1 (NEW).]

B. All retained state tax increment revenues not required to satisfy the estimated obligations of the development program fund account revert to the State. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**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. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

D. At no time may the aggregate annual retained state tax increment revenues for all state tax increment financing districts exceed \$20,000,000. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

[PL 2001, c. 669, §1 (NEW).]

**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 [PL 2001, c. 669, §1 (NEW).]

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. [PL 2001, c. 669, §1 (NEW).]

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.

[PL 2001, c. 669, §1 (NEW).]

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

[PL 2001, c. 669, §1 (NEW).]

**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.

[PL 2001, c. 669, §1 (NEW).]

**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.

[PL 2001, c. 669, §1 (NEW).]

**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; [PL 2001, c. 669, §1 (NEW).]

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; [PL 2001, c. 669, §1 (NEW).]

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; [PL 2001, c. 669, §1 (NEW).]

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; [PL 2001, c. 669, §1 (NEW).]

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 [PL 2001, c. 669, §1 (NEW).]

F. Any financial statement if a person to whom the statement belongs or pertains has requested that the record be designated confidential. [PL 2001, c. 669, §1 (NEW).]

A person may not knowingly divulge or disclose records determined confidential by this subsection. [PL 2001, c. 669, §1 (NEW).]

**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.

[PL 2001, c. 669, §1 (NEW).]

#### SECTION HISTORY

RR 2001, c. 2, §A40 (COR). PL 2001, c. 669, §1 (NEW).

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