Study of Economic Development Incentives in the Unorganized Territory

Submitted to the Joint Standing Committee on Taxation of the 124th Legislature on January 15, 2009 by

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Member List

1. Department of Economic & Community Development, co-chair
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   State of Maine, Department of Economic & Community Development

2. State Tax Assessor, co-chair
   Robert Doiron, Supervisor, Unorganized Territory, robert.v.doiron@maine.gov
   State of Maine, Maine Revenue Services

3. Fiscal administrator of the Unorganized Territory
   unassigned - (formerly Doreen Shieve)
   State of Maine, Department of Audit

4. Property owner in the unorganized territory (large)
   Steve Schley, President, sschley@sevenislands.com
   Pingree Associates, Inc

5. Property owner in the unorganized territory (small)
   Bill Gilmore, towncvbg@roadrunner.com
   Freeman Township, Franklin county

6. Regional economic development organization covering unorganized territories
   Robert Clark, Executive Director, rclark@nmdc.org
   Northern Maine Development Commission

7. Representative of counties with unorganized territories
   Chris Gardner, chairman, director@portofeastport.org
   Washington County Commissioners

8. Representative of counties with unorganized territories
   George Jabar, President, george@jbrlegal.com
   Maine County Commissioners Association

9. Businesses with development interests in the unorganized territories
   Chad Clark, Business Manager chad.clark@fpl.com
   Florida Power & Light / NextEra Energy

10. Businesses with development interests in the unorganized territories
    Jeremy Payne, Executive Director jpayne@iepm.org
    Independent Energy Producers of Maine

11. Organizations interested in natural resources development
    Peter Didisheim, Advocacy Director, pete@nrcm.org
    Natural Resources Council of Maine

12. Organizations interested in natural resources development
    Alan Stearns, Deputy Director, alan.stearns@maine.gov
    State of Maine, Department of Conservation, Bureau of Parks & Lands

EXECUTIVE SUMMARY

1. Consider the process of promoting and approving economic development incentives in the Unorganized Territory and recommend the appropriate role of state, county and regional organizations in the decision-making process;

While not unanimous, most of the Study Group ("Group") agreed that the current Tax Increment Financing ("TIF") process in the Unorganized Territories ("UT") functions well, and participation by the Maine Legislature in approving or administering UT TIF agreements was not necessary. The members were satisfied with the amount of statutory oversight handled by Department of Economic and Community Development ("DECD") for the approval process. Those with hesitation clarified that their concerns rested with the concept of a tax shift to taxpayers in non-TIF UT counties. No changes to the current law related to the role of County Commissioners in the creation of TIF Districts within the counties were recommended.

2. Review the legal issues surrounding tax increment financing in the Unorganized Territory and the legally acceptable methods of identifying special benefits from property tax incentives in that jurisdiction;

The group suggested and discussed many ways to address the constitutional problem of expending UT TIF tax dollars outside the jurisdiction without providing a clear "special benefit." Following extensive discussion, the Group was unable to recommend a definition of "special benefit" that would withstand a constitutional challenge. Ultimately, the Group lacked consensus to recommend any "legally acceptable methods of identifying special benefits from property tax incentives."

3. Consider the role of tax increment financing in shifting the property tax burden throughout the unorganized territory and evaluate the potential for alternative tax mechanisms, such as a wind power excise tax, to provide support for economic development infrastructure; and

When there is a TIF District approved in the UT, the sheltered valuation causes a shift of the tax burden in the UT assessing jurisdiction to taxpayers in all other UT counties. This tax shift means that under current law, the shared State Services mill rate component of all UT County mill rates is greater than it would otherwise be if the TIF'd assets were built but not TIF'd. Some members emphasized that a tax shift also occurs through State Valuation for all municipalities and the UT when a TIF district is approved. Because the UT is one large assessing jurisdiction, this burden shift within that jurisdiction is an added tax shift beyond what happens between taxing jurisdictions due to the sheltering of value from the State Valuation process.

Following a broad discussion on alternate taxing methods, including an excise tax on energy production, the Group did not reach a recommendation on this question due in part to unsuccessful attempts by other groups and resistance by the wind power industry.

I. Introduction

The Joint Standing Committee on Taxation of the 124th Legislature requested by Resolve[1], appended to this report, that the Department of Economic and Community Development ("DECD") and the Department of Administrative and Financial Services, Bureau of Revenue Services ("Maine Revenue Services" or "MRS") convene a study group to conduct a study of the role of economic development incentives in the unorganized territory. DECD and MRS invited Group members to four meetings held on September 16th, October 14th, November 19th, and December 16, 2009. Brian Hodges, DECD, and Robert Doiron, MRS, co-chaired the Group meetings and the Group was composed of representatives as outlined in the Resolve. The Group was required to report back on its findings to the Committee by January 15, 2010.

The Resolve identified three areas of focus for the Group. First, the Resolve directed that the Group "consider the process of promoting and approving economic development incentives in the unorganized territory and recommend the appropriate role of state, county and regional organizations in the decision-making process." Second, the Group must "review the legal issues surrounding tax increment financing in the unorganized territory and the legally acceptable methods of identifying special benefits from property tax incentives in that jurisdiction." Third, the Resolve ordered the Group to "consider the role of tax increment financing in shifting the property tax burden throughout the unorganized territory and evaluate the potential for alternative tax mechanisms, such as wind power excise tax, to provide support for economic

[1] **2009 Resolves, Ch. 71, § 1.**

development infrastructure." This report separately addresses each of these interrelated but distinct areas.

<u>II. Promotion and approval of economic development incentives in the UT</u>

The Group found limited consensus on the current process of creation and approval of TIF Districts. While not unanimous, most of the Group agreed that the current UT Tax Increment Financing process functions well and participation by the Maine Legislature in approving or administering UT TIF agreements was not necessary. The Group signaled satisfaction with the amount of oversight provided by DECD during the approval process. No changes to the current law related to the role of County Commissioners in the creation of TIF Districts within the counties were recommended.

<u>III. Legal issues surrounding TIFs in the UT</u>

In response to a proposed law on the topic and at the request of the Joint Standing Committee on Taxation of the 123rd Maine Legislature, Attorney General G. Steven Rowe opined in a letter dated March 24, 2008, that a court may well conclude any legislation permitting property taxes from the unorganized territory to be spent without providing a special benefit to the unorganized territory violates Article IX, Section 8 of the Maine Constitution. No definition of what is meant by the term "special benefit" is provided in the Maine Constitution. Following extensive discussion, the Group was unable to recommend a definition.

Limitation on spending UT TIF revenues outside of the UT creates a special challenge due to the small UT population and historically little economic development.

The Group considered but did not thoroughly explore or come to agreement on certain ideas to address this tension. These concepts include:

- Grant the County Commissioners authority to approve all TIFs in their county (including municipal TIF's) and spending of the TIF revenue anywhere within the county.
- Create a mechanism for multi-county TIFs to allow the disbursement of TIF revenue across county borders.
- Authorize TIF revenue, based on the size of the development project, to be returned to the developer for the developer to expend on county wide economic development projects.
- Exempt wind turbines from property tax and impose a production-based tax.
- Allow the local governing body decision-making authority to impose a property tax or enter into a Payment in Lieu of Taxes (PILOT) agreement with the wind company.
- Define "other" in the current TIF statute to include out-of-district expenditures.
- Change the method of calculating the UT mill rate, avoiding a shift in tax burden for residents in the UT who do not reside in the county where a TIF project is located.

Ultimately, the Group lacked consensus to recommend any "legally acceptable methods of identifying special benefits from property tax incentives."

IV. Property tax burden throughout the UT

The Group encountered more division during the discussion of the restrictions on revenue disbursement. Annually, each State agency and County that provides services to the residents in the UT must submit a budget to the joint standing committee of the Legislature having jurisdiction over taxation matters for its approval. These legislatively approved budgets are then the basis for the State Services mill rate component as well as the County Services mill rate component in the UT mill rate. MRS assesses and collects excise and property taxes in the UT. Pursuant to 36 MRSA §§ 1603 and 1606, MRS is currently only authorized to raise and disburse revenue generated from a UT TIF District approved by DECD prior to July 1, 2008. Six of the ten Group members in attendance recommended amending those sections to allow MRS to raise and pay revenues from UT TIF districts approved after July 1, 2008. Certain Group members expressed reservations that simply allowing MRS to raise and disburse revenue for all UT TIF Districts fails to address concerns that prompted the law's imposition, and so opposed the removal of the language.

The mill rate for the UT in each county is comprised of three component mill rates that, when combined, formulate a different mill rate for each county. Two mill rate components, County Taxes and UT County Services, are unique to each UT county and do not impact other UT counties. County Taxes represent the UT proportionate share of actual County Taxes as assessed by the County Commissioners against all municipalities of that county and are based on State Valuation. UT County Services represents local services, such as road maintenance and garbage collection, which are provided by the County but which are specifically for the UT of that county. The third mill rate component, State Services, is a mill rate component shared by all UT counties and causes the unique UT TIF tax burden shift. The total cost incurred by various state agencies for providing services to the UT comprises the State Services component. The State Services mill rate component typically equals around 50% of the total UT county mill rate.

Because UT County Tax and County Services mill rate components are specific to each county, a TIF in one county will not impact mill rates for other UT counties via these mill rate components. However, because the State Services mill rate is aggregated over all twelve UT counties with taxable value, a TIF in one UT County will impact other UT county mill rates via the State Services mill rate and will therefore impact the amount of tax for State Services that all UT taxpayers pay.

The Group generally agreed that the specific allocation of State Services costs to the UT counties based upon the actual use of services would result in a resolution of the current UT mill rate driven TIF tax shift. Modifications to the calculation of the UT mill rate however, would likely cause significant changes in the UT mill rate for some counties.

Eight of the Group members agreed that the economic development benefit generated by a UT TIF and the burden of the resulting tax shift should be contained to the county in which the TIF is located and not shifted to other UT County taxpayers. One member spoke in opposition to this conclusion and one member abstained from voting.

In addition to the internal tax shift within the UT, all TIF districts (municipal and in the UT) cause a tax shift in because of the sheltering of TIF property value from State Valuation. The State uses State Valuation to determine the municipality's school subsidy and revenue sharing, and counties assess county taxes according to State Valuation. For the UT, State Valuation is used only for purposes of revenue sharing and the county tax since the UT does not receive school subsidy payments from the State of Maine.

Three members of the Group wanted to apply recommendations the Group makes regarding UT TIF administration to municipal TIF Districts as well. Seven members opposed this view because it was outside the Resolve's directive and no data was available to identify the level of shift that takes place as a result of sheltering value from state valuation when a municipal TIF is adopted.

V. Conclusion

The Resolve presented significant tasks to this Group, composed of parties with disparate interests, and resulted in several areas of consensus. Generally, the Group agreed that local approval and administration of a UT TIF, including the statutory compliance oversight by DECD, was most beneficial to the taxpayers. The Group members support a remedy for the tax burden imposed on the taxpayers in the UT resulting from the tax shift from a TIF located in the UT.

The Group meetings provided a valuable opportunity for discussion between DECD and MRS and the Group members on the topics of TIF approval and administration process, as well as the formulation of the UT mill rate and the impact of TIF Districts on the taxation of UT residents. Even though the roles of economic growth and tax administration appear disparate, it was clear, by way of the Resolve and corresponding efforts to coordinate the Group, that these two agencies do understand the need for collaboration and demonstrate such accordingly.

ATTACHMENT

LD 1154, Resolve, To Require a Study of Economic Development Incentives in the Unorganized Territory'

Amend the resolve by striking out everything after the title and before the summary and inserting the following:

'Sec. 1 Study. Resolved: That the Department of Economic and Community Development and the State Tax Assessor shall convene a study group to conduct a study of the role of economic development incentives, including tax increment financing, in the unorganized territory. The department and the assessor shall invite participation in the study by the fiscal administrator of the unorganized territory, property owners in the unorganized territories and representatives of counties with unorganized territories, regional economic development organizations whose territory covers unorganized territories, businesses with development interests in the unorganized territories and organizations interested in natural resources development. The study group shall:

1. Consider the process of promoting and approving economic development incentives in the unorganized territory and recommend the appropriate role of state, county and regional organizations in the decision-making process;

2. Review the legal issues surrounding tax increment financing in the unorganized territory and the legally acceptable methods of identifying special benefits from property tax incentives in that jurisdiction;

3. Consider the role of tax increment financing in shifting the property tax burden throughout the unorganized territory and evaluate the potential for alternative tax mechanisms, such as a wind power excise tax, to provide support for economic development infrastructure; and

4. Report the findings and recommendations of the study to the Joint Standing Committee on Taxation by January 15, 2010. The joint standing committee may submit legislation to the Second Regular Session of the 124th Legislature regarding the study.'

SUMMARY

This amendment removes the emergency preamble and clause and changes the study from a legislative study to an agency study, expands the scope of the study to economic development incentives other than tax increment financing and requires a report to the Joint Standing Committee on Taxation by January 15, 2010.