# 19-100 DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Chapter 2: PULP AND PAPER TAX INCREMENT FINANCING AND ENVIRONMENTAL INVESTMENT PROGRAM RULE

SECTION 1. PURPOSE AND DEFINITIONS

A. PURPOSE

The pulp and paper tax increment finance program and the environmental investment program are designed to assist companies engaged in the pulp and paper industry in the financing of substantial capital investments in environmental improvement projects that are required by state and federal regulation of the pulp and paper industry. This chapter sets forth the provisions by which the pulp and paper industry may utilize these programs, and describes application requirements, state review procedures, state designation procedures, annual reporting requirements, calculation of valuation eligible for tax increment financing, and calculation of distributive shares for the pulp and paper environmental investment fund.

B. DEFINITIONS

All terms used but not defined in this Chapter shall have the meanings ascribed to those terms in Chapter 207-A of Title 30-A of the Maine Revised Statutes, as amended. The following terms shall have the definitions hereinafter set forth:

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

Certified Elements. "Certified Elements" means (1) those elements identified under the certification by rule provisions of the Maine Department of Environmental Protection Regulations to be adopted, as elements of an environmental improvement project, and/or (2) any element otherwise certified by the Commissioner of the Department of Environmental Protection pursuant to 30-A M.R.S.A. §5264(3)(B) and for which an applicant is eligible to apply for reimbursement of a portion of its costs pursuant to 30-A M.R.S.A. §5270.

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

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

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

(a) A financial plan;

(b) A complete list of public and private facilities to be constructed;

(c) The uses of private property within the development district;

(d) The environmental controls to be applied;

(e) An estimate of the number of jobs to be created, stabilized, retained or eliminated;

(f) The proposed operation of the development district after the planned capital improvements are completed;

(g) The duration of the program, which may not exceed twenty years from the date of designation of the development district;

(h) The district boundaries;

(i) Project costs to be financed through tax increment revenue; and

(j) The amount of indebtedness or other project costs to be financed through tax increment revenue.

Development program amendment. "Development program amendment" means any change to a state approved development program, including but not limited to any changes in items (a) through (j) of the definition of "Development Program".:

Development program fund. "Development program fund" means the account or accounts into which pulp and paper tax increment revenues are deposited. These accounts must be managed in accord with the provisions of 30-A M.R.S.A. §5265, sub-§3.

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

Evidences of indebtedness. "Evidences of indebtedness" as used in 30‑A M.R.S.A. §§265(3)(A)(1) means any notes, long-term or short-term, bonds, leases, contractual commitments for the payment of money over a pre-established term, or any other evidences of indebtedness whatsoever issued, established or otherwise entered into by the municipality or its designee in connection with an environmental improvement project.

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

(a) Cost estimates for the development program;

(b) The amount of any indebtedness to be incurred;

(c) Sources of anticipated revenues;

(d) Estimates of captured assessed values of the development district;

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

(f) A statement of the estimated impact of tax increment financing on all tax jurisdictions in which the development district is located.

Fiscal year. "Fiscal year" means the period of time from April 1 through March 31 of each year, which corresponds to the municipal tax year.

Governing body of the municipality. "Governing body of the municipality" means the legislative body of a municipality at any regular, special or other duly constituted meeting. For pulp and paper tax increment financing in an unorganized territory, the county commissioners shall act as the municipal legislative body.

Manufacturing facilities. "Manufacturing facilities" as used in 30-A M.R.S.A. §5263(5) includes all improvements of any nature whatsoever located within the boundaries of a development district and owned or used by any business engaged in the pulp and paper industry including, without limiting the generality of the foregoing, all transportation, staging, warehousing, preparation, processing and office facilities related to manufacturing facilities, even if located in separate structures.

Original assessed value. "Original assessed value" means the assessed value of the development district as of the March 31 immediately preceding the date of designation of the district.

Partner. "Partner" as used in 30-A M.R.S.A. §5263(3) means any company, business organization or other entity within the pulp and paper industry that has been selected by a municipality to participate in a pulp and paper tax increment financing district.

Physical description. "Physical description" means a description of the pulp and paper tax increment financing district, including:

(a) Tax maps delineating the property in the proposed tax increment financing district;

(b) A municipal map showing the site location of the proposed pulp and paper tax increment financing district relative to the municipal boundaries;

(c) Certification by the municipal tax assessor that this information is accurate, and

(d) The information required and as depicted in Table 1 in the Appendix.

Pulp and paper industry. "Pulp and paper industry" means any industrial activity currently described by the United States Office of Management and Budget under Standard Industrial Classification, 261, 262 or 263 or those activities classified under 2679 that press or mold wood pulp or recycled fiber to make products, including, without limitation, any related activity involving the treatment, recycling or disposal of wastewater, air emissions, solid residues or other related manufacturing by-products. This term does not include activity relating to, associated with or otherwise involving the growth, harvesting, transportation or preparation of timber, pulpwood or other wood products prior to the manufacture of pulp, paper or paperboard; provided, however, that all transportation and preparation of timber, pulpwood or other wood products shall be included in the term "pulp and paper industry" if such activity occurs within the boundaries of the development district.

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

Pulp and paper tax increment financing district. "Pulp and paper tax increment financing district" means a type of development district, or portion of a development district designated to use tax increment financing in accord with 30-A M.R.S.A. §5265.

Record of municipal approval. "Record of municipal approval" means the record of the local actions required pursuant to 30-A M.R.S.A. §5264 to designate a development district.

SECTION 2. APPLICATION REQUIREMENTS

A. GENERAL

Municipalities wishing to use pulp and paper tax increment financing to fund development programs must submit an application to the Department conforming in all material respects to the requirements of Section (B) below and providing any additional information the Department may request.

A county may act as a municipality for the unorganized territory within that county for purposes of pulp and paper tax increment financing utilizing the procedure specified in 30-A M.R.S.A. §5263.

B. PULP AND PAPER TAX INCREMENT FINANCING APPLICATION

An application for designation of a pulp and paper tax increment financing district must contain the following:

1. A Development Program, fulfilling the requirements specified in 30-A M.R.S.A. §5262(5), and including:

a. a program narrative;

b. a description of the district and the environmental improvement project to be financed, as depicted in Table I in the Appendix;

c. a description of the Certified Elements included in the environmental improvement project.

2. A Financial Plan, fulfilling the requirements specified in 30-A M.R.S.A. §5263(7) and including:

a. a description of estimated development costs;

b. a description of the financing structure;

c. development cost estimates and a description of the expected sources and uses of funds to finance the development costs, as depicted in Table 2 in the Appendix; and

d. the estimated portion of the captured assessed values to be applied to the development program and resulting tax increments estimated in each year of the development program.

3. Record of Municipal Approvals, including:

a. a certified copy of the notice of public hearing, published at least ten days prior to the hearing in a newspaper of general circulation within the municipality;

b. minutes of the public meeting at which the proposed pulp and paper tax increment financing district was discussed;

c. a copy of the pulp and paper tax increment financing resolution from the governing body of the municipality; and

d. the signature of the municipal officer attesting that all information is true and correct to the best of his or her knowledge.

SECTION 3. DEPARTMENT REVIEW PROCEDURES.

A. PULP AND PAPER TAX INCREMENT FINANCING DISTRICT

Applications for designation of a pulp and paper tax increment financing district will be reviewed by the Department, subject to the following provisions:

1. Completed applications will be reviewed in the order in which they are received.

2. Completed applications must contain current information regarding assessed values as of March 31 immediately preceding the date of receipt by the Department.

3. Prior to issuing a Certificate of Approval, the Commissioner must determine that the application is complete and that the revenues projected to be generated by the proposed district, together with such other sources of revenue as are identified in the application, appear to be sufficient to pay for the costs to be incurred in implementing the district, and that the application otherwise conforms to these regulations and the law. The Commissioner must either (a) confirm the Certified Elements included in the project under the certification by rule provisions of the Maine Department of Environmental Protection Regulations to be adopted, or (b) have received written notification from the Commissioner of Environmental Protection identifying those elements of a development program that constitute Certified Elements.

4. The Department will complete its review of completed applications within thirty working days of submission. Successful applicants will receive a Certificate of Approval in accord with Section 4. Unsuccessful applicants will receive written explanation of the reason for denial.

SECTION 4. DEPARTMENT DESIGNATION PROCEDURES AND LIMITATIONS

A. DESIGNATION PROCEDURES

Upon determining that an application for designation of a pulp and paper tax increment financing district meets all applicable requirements, the Commissioner shall issue a Certificate of Approval. The Certificate of Approval shall indicate the amount of captured assessed value that is necessary to retire the debt or pay for project costs as described in the applicant's development program. The amount of captured assessed value shall be determined as follows:

1. The Department shall first determine from the information presented in the financial plan the amount of tax increment revenue required in any one year to provide for adequate funding of (a) the development sinking fund account established pursuant to 30-A M.R.S.A. §5265(3) (A) (1) and (b) the project cost account established pursuant to 30-A M.R.S.A. §5265 (3) (A) (2) .

2. For the sinking fund, the amount of debt service shall then be divided by the mill rate anticipated in the year in which the amount of debt service is to be incurred. The resulting figure represents the amount of captured assessed value that is necessary to retire the debt incurred in implementing the development program.

3. For the project cost account, the amount of approved annual project costs shall then be divided by the mill rate anticipated in the year in which the amount of project costs are to be incurred, or the municipality may designate a percentage of total increased assessed value as the captured assessed value, in which case the captured assessed value is determined as set forth in the financial plan.

Unless amended and approved by the Commissioner, such designation shall remain in effect for the shorter of either twenty years or until revenues sufficient to fully fund the sinking fund account and project cost account requirements have been realized.

B. LIMITATIONS

The district may continue for a term of up to twenty years.

SECTION 5. ANNUAL REPORTING REQUIREMENTS

On or before June 30 of each year, a municipality in which a state approved pulp and paper tax increment financing district is located must report the following information to the Department:

1. The extent to which public improvements and project plans outlined in the development program have been completed.

2. The extent to which debt incurred in implementing the development program has been retired.

3. Any other information requested by the Department.

SECTION 6. CALCULATION OF A MILL'S VALUATION ELIGIBLE TO RECEIVE PULP AND PAPER TAX INCREMENT FINANCING

A. DETERMINATION OF INCREASES FROM ORIGINAL ASSESSED VALUE

Each year upon the anniversary of the formation of a pulp and paper tax increment financing district, the municipal assessor shall certify the amount by which the assessed value of property within the development district has increased from the original assessed value.

B. DETERMINATION OF ADJUSTMENTS TO INCREASES IN CAPTURED ASSESSED VALUE

Adjustments to annually determined increases in captured assessed values within a development district are governed by 30-A M.R.S.A. §5265(2). That subsection is intended to inhibit relocation of property from outside a development district into a development district in order to capture its assessed value.

SECTION 7. PROJECT COSTS

Project costs shall only be reduced by income, special assessments, subsidies, grants or other revenues available to the municipality, other than tax revenues, that have been received by the municipality or are actually committed to be paid to the municipality at the time of the approval of the development program.

SECTION 8. PAYMENTS FROM DEVELOPMENT PROGRAM FUND ACCOUNT

The development sinking fund account established pursuant to 30-A M.R.S.A. §5265(3)(A)(1) is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on notes, bonds or other evidences of indebtedness that were issued by the municipality or its designee to fund or refund the cost of the development program fund.

SECTION 9. DISTRIBUTIONS FROM THE PULP AND PAPER ENVIRONMENTAL INVESTMENT FUND

A. APPLICATION REQUIREMENTS

Applications for distributions from the pulp and paper environmental investment fund will be reviewed by the Department, subject to the following provisions:

1. Completed applications must be submitted to the Department on or before March 1st of each year in order to be considered for payment that calendar year;

2. Completed applications must contain an itemization of all Certified Elements acquired, installed or constructed together with a breakdown of all costs incurred in connection therewith during the immediately preceding calendar year; and

3. Prior to approving any application, the Commissioner must determine that the application is complete and that the itemized costs of Certified Elements were actually incurred during the previous calendar year. If the Commissioner rejects any costs, the applicant will receive a written explanation of the reasons for denial. The Commissioner may request further information from an applicant in order to make the required determination.

B. CALCULATION OF DISTRIBUTIVE SHARES

The Commissioner shall calculate the portion of each applicant's costs and expenses that are eligible for reimbursement as follows:

1. The total costs submitted by the applicant and approved by the Commissioner pursuant to subsection A above shall be multiplied by three percent (3 %). The product shall be the eligible portion of the expenses of each applicant.

2. The eligible portion for each applicant shall be added to any eligible portions carried forward from the previous year for such applicant. Then the totals for all applicants shall be added. If the sum is less than the available balance of the pulp and paper environmental investment fund, each applicant shall receive its eligible portion. If the sum is greater than the available balance of the pulp and paper environmental investment fund, each applicant shall receive its proportionate share of the available fund balance. Any unreimbursed portion of an applicant's portion of expenses eligible for reimbursement shall be carried over to the next year's calculation of the applicant's eligible portion through March 1, 2000.

C. PAYMENT OF DISTRIBUTIVE SHARES

The Commissioner shall make payment of each applicant's distributive share of the pulp and paper environmental investment fund on or before September 30 of each year.

D. EXAMPLES OF CALCULATIONS

The calculations described in subsection B above are illustrated by the following examples:

Example (1). X, operator of a paper mill, expends $10,000,000 on recycling facilities and related expenses during calendar year 1994. Y, also operator of a paper mill, expends $20,000,000 on solid waste disposal facilities during calendar year 1994. Z, operator of a paper mill, expends $40,000,000 in connection with a construction project expanding its mill. Before March 1, 1995, X, Y and Z submit the required itemization of Certified Elements and costs. The full amount of the costs is approved by the Commissioner. X, Y and Z are the only applicants for reimbursement from the pulp and paper environmental improvement fund for expenses incurred in 1994. Total funds available for distribution equal $2,000,000. Calculation of each entity's distributive share is as follows:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Entity** | **Total Approved Costs** | **Undistributed Eligible Portion Carried Forward** | **Total Eligible Portion of Costs** | **Proportionate Share of Eligible Portion** | **Distributive Share of Fund (Paid by 9/30/95)** | **Undistributed Eligible Portion Carried Forward to 1996** |
| X | 10,000,000 | 0 | 300,000  (10,000,000 x .03) | 14.29%  (300,000 ÷ $2.1M) | 285,000  (2,000,000 x .1429) | 14,200  (300,000-285,800) |
| Y | 20,000,000 | 0 | 600,000  (20,000,000 x .03) | 28.57%  (600,000 ÷ $2.1M) | 571,400  (2,000,000 x .2857) | 28,600  (600,000-571,400) |
| Z | 40,000,000 | 0 | 1,200,000  (40,000,000 x .03) | 57.14%  (1,200,000 ÷ $2.1M) | 1,142,800  (2,000,000 x .5714) | 57,200  (1,200,000-1,142,800) |
| Totals | 70,000,000 |  | 2,100,000 | 100% | 2,000,000 | 100,000 |

Example (2).

During calendar year 1995, X, Y and Z expend the same amounts as in 1994 on Certified Elements. Each applicant submits the required itemization to the Department on or before March 1, 1996, and the full amount of all costs is approved. The total funds available for distribution equal $6,000,000. The calculation of each applicant's distributive share is as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Entity** | **Total Approved Costs** | **Undistributed Eligible Portion Carried Forward from 1995** | **Eligible Portion of Costs** | **Total Eligible Portion of Costs** | **Distributive Share of Fund (Paid by 9/30/96)** |
| X | 10,000,000 | 14,200 | 300,000  (10,000,000 x .03) | 314,200  (300,000 ÷ 14,200) | 314,200 |
| Y | 20,000,000 | 28,600 | 600,000  (20,000,000 x .03) | 628,600  (600,000 ÷ 28,600) | 628,600 |
| Z | 40,000,000 | 57,200 | 1,200,000  (40,000,000 x .03) | 1,257,200  (1,200,000 ÷ 57,200) | 1,257,200 |
| Totals | 70,000,000 | 100,000 | 2,100,000 | 2,200,000 | 2,200,000 |

In the above example, all applicants receive their total eligible portion of costs because the Sum of such portions ($2,200,000) is less than the total available fund balance ($6,000,000).

STATUTORY AUTHORITY: 30-A M.R.S.A. §5264 (l) and §5670 (5).

EFFECTIVE DATE:

December 27, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 15, 1996

CONVERTED TO MS WORD:

July 9, 2003

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 15, 2025

APPENDIX

TABLE 1

|  |  |
| --- | --- |
| 1. Total acreage of municipality: |  |
| 2. Total acreage of proposed pulp and paper tax increment financing district: |  |
| 3. Total acreage of all real property in the proposed pulp and paper tax increment financing district that is owned by a company engaged in the pulp and paper industry: |  |
| 4. Line 4 divided by Line 2 (the resulting percentage must equal or exceed 75%) |  |
|  |  |

TABLE 2

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **DEVELOPMENT COSTS** | | | | | |
|  | **Municipal**  **TIF**  **Proceeds** | **Private Funds**  **Equity Bank(s)** | | **Other**  **(Specify)** | **Total** |
| 1. Land Acquisition |  |  |  |  |  |
| 2. Building Acquisition |  |  |  |  |  |
| 3. Relocation of Persons and  Businesses |  |  |  |  |  |
| 4. Clearance & Demolition |  |  |  |  |  |
| 5. Street & Site Improvements |  |  |  |  |  |
| 6. Water & Sewer Improvements |  |  |  |  |  |
| 7. Building Construction |  |  |  |  |  |
| 8. Parking Facilities |  |  |  |  |  |
| 9. Capital Equipment |  |  |  |  |  |
| 10. Preferred Fees |  |  |  |  |  |
| 11. Administrative Costs |  |  |  |  |  |
| 12. Discretionary Payments |  |  |  |  |  |
| 13. Training Costs |  |  |  |  |  |
| 14. Other Costs |  |  |  |  |  |