

**VERMONT STATUTES ANNOTATED**

**TITLE 24**

**PART II**

**Municipalities**

**CHAPTER 53. INDEBTEDNESS**

**Subchapter V. Tax Increment Financing**

**§ 1891. Definitions**

When used in this subchapter:

- (1) "Municipality" means a city, town, or incorporated village.
- (2) "District" or "TIF" means a tax increment financing district.
- (3) "Legislative body" means the mayor and alderboard, the city council, the selectboard, and the president and trustees of an incorporated village, as appropriate.
- (4) "Improvements" means the installation, new construction, or reconstruction of streets, utilities, and other infrastructure needed for transportation, telecommunications, wastewater treatment, and water supply, parks, playgrounds, land acquisition, parking facilities, brownfield remediation, and other public improvements necessary for carrying out the objectives of this chapter.
- (5) "Original taxable property" means all taxable real property located within the district on the day the district was created under this subchapter.
- (6) "Related costs" means expenses, exclusive of the actual cost of constructing and financing improvements that are directly related to creation of the tax increment financing district and reimbursement of sums previously advanced by the municipality for those purposes, and attaining the purposes and goals for which the tax increment financing district was created, as approved by the Vermont economic progress council.
- (7) "Financing" means the following types of debt incurred or used by a municipality to pay for improvements in a tax increment financing district:
  - (A) Bonds.
  - (B) Housing and Urban Development Section 108 financing instruments.
  - (C) Interfund loans within a municipality.
  - (D) State of Vermont revolving loan funds.
  - (E) United States Department of Agriculture loans.

(Added 1985, No. 87; amended 2005, No. 184 (Adj. Sess.), § 2a; 2007, No. 190 (Adj. Sess.), § 54, eff. June 6 2008.)

### **§ 1892. Creation of district**

(a) Upon a finding that such action will serve the public purposes of this subchapter, the legislative body of any municipality may create within its jurisdiction, special district or districts to be known as tax increment financing districts. They shall describe the district by its boundaries and the properties therein and shall show the district boundary on a plan entitled "Proposed Tax Increment Financing District (municipal name), Vermont." The legislative body shall hold one or more public hearings, after public notice, on the proposed plan.

(b) When adopted by the act of the legislative body of that municipality, the plan shall be recorded with the municipal clerk and lister or assessor. (Added 1985, No. 87.)

### **§ 1893. Purpose**

The purpose of tax increment financing districts is to provide revenues for improvements that serve the district and related costs, which will stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region, or the state. (Added 1985, No. 87; amended 2005, No. 184 (Adj. Sess.), § 2b; 2007, No. 190 (Adj. Sess.), § 55, eff. June 6, 2008.)

### **§ 1894. Power and life of district**

(a) Incurring indebtedness.

(1) A municipality may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to 20 years following the creation of the district, if approved as required under subsection 5404a(h) of Title 32. The creation of the district shall occur at 12:01 a.m. on April 1 of the year so voted. Any indebtedness incurred during this 20-year period may be retired over any period authorized by the legislative body of the municipality under section 1898 of this title.

(2) If no indebtedness is incurred within the first five years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under subsection 5404a(h) of Title 32.

(3) The district shall continue until the date and hour the indebtedness is retired.

(b) Use of the education property tax increment. For any debt incurred within the first five years after creation of the district, or within the first five years after reapproval by the Vermont economic progress council, but for no other debt, the education tax increment may be retained for up to 20 years beginning with the initial date of the first debt incurred within the first five years.

(c) Prior to requesting municipal approval to secure financing, the municipality shall provide the council with all information related to the proposed financing necessary for approval and to assure its consistency with the plan approved pursuant to 32 V.S.A. § 5404a(h). The council shall also assure the viability and reasonableness of any proposed financing other than bonding and least-cost financing. (Added 1985, No. 87; amended 1987, No. 204 (Adj. Sess.), § 1; 2005, No. 184 (Adj. Sess.), § 2c; 2007, No. 190 (Adj. Sess.), § 56, eff. June 6, 2008.)

### **§ 1895. Original taxable value**

On or about 12:01 a.m., April 1, of the first year the lister or assessor for the municipality shall certify the assessed valuation of all taxable real property within the district as then most recently determined, which is referred to in this subchapter as the "original taxable value," and shall certify to the legislative body in each year thereafter during the life of the district the amount by which the original taxable value has increased or decreased, and the proportion which any such increase bears to the total assessed valuation of the real property for that year or the proportion which any such decrease bears to the original taxable value. (Added 1985, No. 87.)

### **§ 1896. Tax increments**

(a) In each subsequent year, the listers or assessor shall include no more than the original taxable value of the real property in the assessed valuation upon which the listers or assessor computes the rates of all taxes levied by the municipality, the school district, and every other taxing district in which the tax increment financing district is situated; but the listers or assessor shall extend all rates so determined against the entire assessed valuation of real property for that year. In each year for which the assessed valuation exceeds the original taxable value, the municipality treasurer shall hold apart, rather than remit to the taxing districts, that proportion of all taxes paid that year on the real property in the district which the excess valuation bears to the total assessed valuation. The amount held apart each year is the "tax increment" for that year. So much of the tax increments received with respect to the district and pledged for the payment for financing for improvements and related costs shall be segregated by the municipality in a special account on its official books and records until all capital indebtedness of the district has been fully paid. The final payment shall be reported to the lister or assessor, who shall thereafter include the entire assessed valuation of the district in the assessed valuations upon which tax rates are computed and extended and taxes are remitted to all taxing districts.

(b) Adjustment upon reappraisal. In the event of a reappraisal of 20 percent or more of all parcels in the municipality, the value of the original taxable property in the district shall be changed by a multiplier, the denominator of which is the municipality's education property grand list for the property within the district in the year prior to the reappraisal or partial reappraisal and the numerator of which shall be the municipality's reappraised or partially reappraised education property grand list for the property within the district. The state education property tax revenues for the district in the first year following a

townwide reappraisal or partial town-wide reappraisal shall not be less than the dollar amount of the state education property tax revenues in the prior year. (Added 1985, No. 87; amended 1987, No. 204 (Adj. Sess.), § 2; 2005, No. 184 (Adj. Sess.), § 2d; 2007, No. 66, § 24, eff. July 1, 2006; 2007, No. 190 (Adj. Sess.), § 57, eff. June 6, 2008.)

### **§ 1897. Tax increment financing**

(a) The legislative body may pledge and appropriate in equal proportion any part or all of the state and municipal tax increments received from properties contained within the tax increment financing district for the financing for improvements and for related costs in the same proportion by which the infrastructure or related costs directly serve the district at the time of approval of the project financing by the council, and in the case of infrastructure essential to the development of the district that does not reasonably lend itself to a proportionality formula, the council shall apply a rough proportionality and rational nexus test; provided, that if any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(f), no more than 75 percent of the state property tax increment and no less than an equal percent of the municipal tax increment may be used to service this debt. Bonds shall only be issued if the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, give authority to the legislative body to pledge the credit of the municipality for these purposes. Notwithstanding any provision of any municipal charter, the legal voters of a municipality, by a single vote, shall authorize the legislative body to pledge the credit of the municipality up to a specified maximum dollar amount for all debt obligations to be financed with state property tax increment pursuant to approval by the Vermont economic progress council and subject to the provisions of this section and 32 V.S.A. § 5404a.

(b) A municipality's pledge of credit for financing improvements under this subchapter and 32 V.S.A. § 5404a shall include notice that if the tax increment received by the municipality from any property tax source is insufficient to pay the principal and interest on the debt in any year, for whatever reason, including a decrease in property value or repeal of a state property tax source, unless determined otherwise at the time of such repeal, the municipality shall remain liable for full payment of the principal and interest for the term of indebtedness. (Added 1985, No. 87; amended 2005, No. 184 (Adj. Sess.), § 2e; 2007, No. 190 (Adj. Sess.), § 58, eff. June 6, 2008.)

### **§ 1898. Powers supplemental; construction**

(a) The powers conferred by this subchapter are supplemental and alternative to other powers conferred by law, and this subchapter is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth herein.

(b) A municipality shall have power to issue from time to time general obligation bonds, revenue bonds, or revenue bonds also backed by the municipality's full faith and credit in its discretion to finance the undertaking of any improvements wholly or partly within such district. If revenue bonds are issued, such bonds shall be made payable, as to both

principal and interest, solely from the income proceeds, revenues, tax increments and funds of the municipality derived from, or held in connection with its undertaking and carrying out of improvements under this chapter. So long as any such bonds of a municipality are outstanding the local governing body may deduct, in any one or more years from any net increase in the aggregate taxable valuation of land and improvements in all areas covered by their district the amount necessary to produce tax revenues equal to the current debt service on such bonds, assuming the previous year's total tax rate and full collection. Only the balance, if any, of such net increase shall be taken into account in computing the sums which may be appropriated for other purposes under applicable tax rate limits. But all the taxable property in all areas covered by the district, including the whole of such net increase, shall be subject to the same total tax rate as other taxable property, except as may be otherwise provided by law. Such net increase shall be computed each year by subtracting, from the current aggregate valuation of the land and improvements in all areas covered by the district, the sum of the aggregate valuations of land and improvements in each such area on the date the district was approved under this section. An area shall be deemed to be covered as a district until the date all the indebtedness incurred by the municipality to finance the applicable improvements have been paid. Notwithstanding any provisions in this chapter to the contrary, any provision of a municipal charter of any municipality which specifies a different debt limit, or which requires a greater vote to authorize bonds, or which prescribes a different computation of appropriations under tax rate limits, or which is otherwise inconsistent with this subsection, shall apply.

(c) Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose.

(d) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in registered form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium or payment, at such place or places, and be subject to such terms of redemption, such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(e) Prior to the resolution or ordinance of the local governing body authorizing financing under this section, the legislative body of the municipality shall hold one or more public hearings, after public notice, on a financial plan for the proposed improvements and related costs to be funded, including a statement of costs and sources of revenue, the estimates of assessed values within the district, the portion of those assessed values to be applied to the proposed improvements, the resulting tax increments in each year of the financial plan, the amount of bonded indebtedness or other financing to be incurred, other sources of financing and anticipated revenues, and the duration of the financial plan. A municipality that has approved the creation of a district under this chapter may designate a coordinating agency to administer the district to ensure compliance with this chapter and any other statutory or other requirements.

(f) Such bonds may be sold at not less than par at public or private sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality may determine or may be on the basis of par.

(g) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(h) In any suit, action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an improvement, as herein defined, shall be conclusively deemed to have been issued for such purpose and such improvement shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter.

(i) [Repealed.] (Added 1985, No. 87; amended 1987, No. 204 (Adj. Sess.), §§ 3-6; 2005, No. 184 (Adj. Sess.), § 2f; 2007, No. 190 (Adj. Sess.), § 59, eff. June 6, 2008.)

### **§ 1899. Bonds as legal investments**

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. (Added 1985, No. 87.)

### **§ 1900. Distribution**

In addition to all other provisions of this chapter, with respect to any tax increment financing district, of the municipal and education tax increments received in any tax year that exceed the amounts pledged for the payment of the financing for improvements and related costs in the district , an equal portion of each increment may be used for prepayment of principal and interest on the financing, placed in escrow for financing payment, or otherwise used for defeasance of the financing; and any remaining portion of the excess municipal tax increment shall be distributed to the city, town, or village

budget, in proportion that each budget bears to the combined total of the budgets unless otherwise negotiated by the city, town, or village; and any remaining portion of the excess education tax increment shall be distributed to the education fund. (Added 1987, No. 204 (Adj. Sess.), § 7; amended 2005, No. 184 (Adj. Sess.), § 2g; 2007, No. 190 (Adj. Sess.), § 60, eff. June 6, 2008.)

### **§ 1901. Information reporting**

Every municipality with an active tax increment financing district shall:

(1) On or before December 1 of each year, report to the Vermont economic progress council (VEPC) and the tax department all information described in subsection 5404a(i) of Title 32, in the form prescribed by VEPC.

(2) Report its tax increment financing actual investment, bond or other financing repayments, escrow status, and "related cost" accounting to the Vermont economic progress council according to the municipal audit cycle prescribed in section 1681 of this title.

## **TITLE 32**

### **Taxation and Finance**

#### **PART II**

#### **Property Taxation**

### **CHAPTER 135. EDUCATION PROPERTY TAX**

#### **§ 5404a. Tax stabilization agreements; tax increment financing districts**

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(f) A municipality that establishes a tax increment financing district under subchapter 5 of chapter 53 of Title 24 shall collect all property taxes on properties contained within the district and apply up to 75 percent of the tax increment as defined in 24 V.S.A. § 1896 to repayment of financing of the improvements and related costs for up to 20 years pursuant to 24 V.S.A. § 1894, if approved by the Vermont economic progress council pursuant to this section.

(g) Any utilization of tax increment approved under subsection (f) of this section shall be in addition to any other payments to the municipality under chapter 133 of Title 16. Tax increment utilizations approved pursuant to subsection (f) of this section shall affect the education property tax grand list and the municipal grand list of the municipality under this chapter beginning April 1 of the year following approval and shall remain available

to the municipality for the full period authorized under 24 V.S.A. § 1894, and restricted only to the extent that the real property development giving rise to the increased value to the grand list fails to occur within the authorized period.

(h) Criteria for approval. To approve utilization of incremental revenues pursuant to subsection (f) of this section, the Vermont economic progress council shall do all the following:

(1) Review each application to determine that the new real property development would not have occurred or would have occurred in a significantly different and less desirable manner but for the proposed utilization of the incremental tax revenues. A district created in a designated growth center under 24 V.S.A. § 2793c shall be deemed to have complied with this subdivision. The review shall take into account:

(A) The amount of additional time, if any, needed to complete the proposed development within the tax increment district and the amount of additional cost that might be incurred if the project were to proceed without education property tax increment financing.

(B) How the proposed development components and size would differ, if at all, without education property tax increment financing.

(C) The amount of additional revenue expected to be generated as a result of the proposed development; the percentage of that revenue that shall be paid to the education fund; the percentage that shall be paid to the municipality; and the percentage of the revenue paid to the municipality that shall be used to pay financing incurred for development of the tax increment financing district.

(2) Process requirements. Determine that each application meets all of the following four requirements:

(A) The municipality held public hearings and established a tax increment financing district in accordance with 24 V.S.A. §§ 1891-1900.

(B) The municipality has developed a tax increment financing district plan, including: a project description; a development financing plan; a pro forma projection of expected costs; a projection of revenues; a statement and demonstration that the project would not proceed without the allocation of a tax increment; evidence that the municipality is actively seeking or has obtained other sources of funding and investment; and a development schedule that includes a list, a cost estimate, and a schedule for public improvements and projected private development to occur as a result of the improvements.

(C) The municipality has approved or pledged the utilization of incremental municipal tax revenues for purposes of the district in the same proportion as the utilization of education property tax revenues approved by the Vermont economic progress council for the tax increment financing district.

(D) The proposed infrastructure improvements and the projected development or redevelopment are compatible with approved municipal and regional development plans, and the project has clear local and regional significance for employment, housing, and transportation improvements.

(3) Location criteria. Determine that each application meets one of the following criteria:

(A) The development or redevelopment is compact, high density, and located in or near existing industrial areas.

(B) The proposed district is within an approved growth center, designated downtown, designated village center, or new town center.

(C) The development will occur in an area that is economically distressed, which for the purposes of this subdivision means that the area has experienced patterns of increasing unemployment, a drop in average wages, or a decline in real property values.

Subdivision (h)(3)(D) repealed effective July 1, 2009.

(D) The development or redevelopment is compact, high density, and located in or near existing commercial or residential areas.

(4) Project criteria. Determine that the proposed development within a tax increment financing district will accomplish at least three of the following five criteria:

(A) The development within the tax increment financing district clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.

(B) The development includes new housing that is affordable to the majority of the residents living within the municipality and is developed at a higher density than at the time of application. "Affordable" has the same meaning as in 10 V.S.A. § 6001(29).

(C) The project will affect the remediation and redevelopment of a brownfield located within the district. For the purposes of this section,

"brownfield" means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.

(D) The development will include at least one entirely new business or business operation or expansion of an existing business within the district, and this business will provide new, quality, full-time jobs that meet or exceed the prevailing wage for the region as reported by the department of labor.

(E) The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems.

(i) The Vermont economic progress council and the department of taxes shall make an annual report to the senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and the house committee on ways and means of the general assembly on or before January 15. The report shall include, in regard to each existing tax increment financing district, the year of approval, the scope of the planned improvements and development, the equalized education grand list value of the district prior to the TIF approval, the original taxable property, the tax increment, and the annual amount of tax increments utilized.

(j) The municipality shall provide the council with all information related to the proposed financing necessary to assure its consistency with the plan approved pursuant to all other provisions of subsection (h) of this section. The council shall assure the viability and reasonableness of any proposed financing other than bonding and least-cost financing.

(k) The state auditor of accounts shall review and audit all active tax increment financing districts every three years.

(Added 1997, No. 60, § 45, eff. Jan. 1, 1998; amended 1997, No. 71 (Adj. Sess.), § 47, eff. March 11, 1998; 2003, No. 76 (Adj. Sess.), § 7, eff. Jan. 1, 2004; 2003, No. 163 (Adj. Sess.), § 33, eff. Jan. 1, 2004; 2005, No. 184 (Adj. Sess.), § 2h; 2007, No. 81, §§ 12, 13, eff. June 11, 2007; 2007, No. 190 (Adj. Sess.), §§ 61, 63, 64.)

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## **LIMITATION ON NUMBER OF TIF DISTRICTS THAT CAN BE APPROVED**

Notwithstanding any other provision of law, the Vermont economic progress council may not approve the use of education tax increment financing for more than six tax increment financing districts and no more than one newly created tax increment financing district in any municipality within the period of five state fiscal years beginning July 1, 2008.

Thereafter no tax increment financing districts may be approved without further authorization by the general assembly.

**NOTE: The following provisions of statute are cited above and are provided here for convenience:**

“Affordable Housing” (See 32 VSA §5404a(h)(4)(B)):

**TITLE 10**

**Conservation and Development**

**PART V**

**Land Use and Development**

**CHAPTER 151. STATE LAND USE AND DEVELOPMENT PLANS**

**Subchapter I. General Provisions**

**§ 6001. Definitions**

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29) "Affordable housing" means either of the following:

(A) Housing that is owned by its occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.

(B) Housing that is rented by the occupants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the gross annual household income.