

1

H.480

2

Introduced by Representatives Bissonnette of Winooski, Cole of Burlington,

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Cross of Winooski, Donovan of Burlington, Hubert of Milton,

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Johnson of South Hero, Keenan of St. Albans City, Krowinski

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of Burlington, McCormack of Burlington, O'Sullivan of

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Burlington, Pearson of Burlington, Poirier of Barre City,

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Savage of Swanton, and Wright of Burlington

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Referred to Committee on

9

Date:

10

Subject: Taxation; tax increment financing

11

Statement of purpose of bill as introduced: This bill proposes to clarify the

12

provisions relating to tax increment financing districts.

13

An act relating to tax increment financing districts

14

It is hereby enacted by the General Assembly of the State of Vermont:

15

Sec. 1. 24 V.S.A. § 1891 is amended to read:

16

§ 1891. DEFINITIONS

17

~~When~~ As used in this subchapter:

18

(1) "Municipality" means a city, town, or incorporated village.

19

(2) "District" or "TIF" means a tax increment financing district.

1 (3) “Legislative body” means the mayor and alderboard, the city
2 council, the selectboard, and the president and trustees of an incorporated
3 village, as appropriate.

4 (4) “Improvements” means the installation, new construction, or
5 reconstruction of streets, utilities, and other infrastructure needed for
6 transportation, telecommunications, wastewater treatment, and water supply,
7 parks, playgrounds, land acquisition, parking facilities, brownfield
8 remediation, and other public improvements necessary for carrying out the
9 objectives of this chapter. Improvements shall also have the same meaning
10 that “improvement” has in subdivision 1751(3) of this title.

11 (5) “Original taxable property” means all taxable real property located
12 within the district on the day the district was created under this subchapter.

13 (6) “Related costs” means expenses, exclusive of the actual cost of
14 constructing and financing improvements that are directly related to creation,
15 administration, and management of the tax increment financing district and
16 reimbursement of sums previously advanced by the municipality for those
17 purposes, and attaining the purposes and goals for which the tax increment
18 financing district was created, as approved by the Vermont ~~economic progress~~
19 ~~council~~ Economic Progress Council. Related costs may include municipal
20 expenses related to administering and managing the district.

1 (7) “Financing” means ~~the following types of debt incurred or used by a~~
2 ~~municipality~~ any contractual undertaking of a municipality to pay for
3 improvements in or related to a tax increment financing district:

4 ~~(A) Bonds.~~

5 ~~(B) Housing and Urban Development Section 108 financing~~
6 ~~instruments.~~

7 ~~(C) Interfund loans within a municipality.~~

8 ~~(D) State of Vermont revolving loan funds.~~

9 ~~(E) United States Department of Agriculture loans in any form~~
10 permitted under chapter 53 of this title.

11 (8) “Creation date” means the date and time a district is created. A
12 district may be created at 12:01 a.m. on the April 1 of the year so voted or on
13 the April 1 that follows the vote by the legislative body of the municipality to
14 create the district. A municipality shall have sole discretion to make this
15 determination.

16 (9) “Legally accessible municipal tax increment” shall comprise all
17 taxes, except those taxes and assessments specifically limited by law or statute
18 to other purposes, that are levied by the municipality at the time the district is
19 created.

1 Sec. 2. 24 V.S.A. § 1894 is amended to read:

2 § 1894. POWER AND ~~LIFE~~ DURATION OF DISTRICT

3 (a) Incurring indebtedness.

4 (1) A municipality may incur indebtedness against revenues of the tax
5 increment financing district at any time during a period of up to 20 years
6 following the creation date of the district, if approved as required under
7 32 V.S.A. § 5404a(h). ~~The creation of the district shall occur at 12:01 a.m. on~~
8 ~~the April 1 of the year so voted.~~ Any indebtedness incurred during this 20-year
9 period may be retired over any period authorized by the legislative body of the
10 municipality under section 1898 of this title.

11 (2) If no indebtedness is incurred within the first ~~five~~ ten years after
12 creation of the district, no indebtedness may be incurred unless the
13 municipality obtains reapproval from the Vermont ~~economic progress council~~
14 Economic Progress Council under 32 V.S.A. § 5404a(h). When considering
15 reapproval, the Vermont ~~economic progress council~~ Economic Progress
16 Council shall consider only material changes in the application under
17 32 V.S.A. § 5404a(h). The Vermont ~~economic progress council~~ Economic
18 Progress Council shall presume that an applicant qualifies for reapproval upon
19 a showing that the inability of the district to incur indebtedness was the result
20 of the macro-economic conditions in the first ~~five~~ ten years after the creation of
21 the district. Upon reapproval, the Vermont ~~economic progress council~~

1 Economic Progress Council shall grant a ~~five-year~~ ten-year extension of the
2 period to incur indebtedness.

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

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

11 (c) Prior to requesting municipal approval to secure financing, the
12 municipality shall provide the ~~council~~ Council with all information related to
13 the proposed financing necessary for approval and to assure its consistency
14 with the plan approved pursuant to 32 V.S.A. § 5404a(h). ~~The council shall~~
15 ~~also assure the viability and reasonableness of any proposed financing other~~
16 ~~than bonding and least cost financing.~~

17 Sec. 3. 24 V.S.A. § 1895 is amended to read:

18 § 1895. ORIGINAL TAXABLE VALUE

19 On or about 12:01 a.m., ~~April 1, of the first year~~ on the creation date of the
20 district, the lister or assessor for the municipality shall certify the assessed
21 valuation of all taxable real property within the district as then most recently

1 determined, which is referred to in this subchapter as the “original taxable
2 value,” and shall certify to the legislative body in each year thereafter during
3 the life of the district the amount by which the original taxable value has
4 increased or decreased, and the proportion which any such increase bears to the
5 total assessed valuation of the real property for that year or the proportion
6 which any such decrease bears to the original taxable value.

7 Sec. 4. 24 V.S.A. § 1896 is amended to read:

8 § 1896. TAX INCREMENTS

9 (a) In each subsequent year, the listers or assessor shall include no more
10 than the original taxable value of the real property in the assessed valuation
11 upon which the listers or assessor computes the rates of all taxes levied by the
12 municipality, ~~the school district~~ except those specifically limited by statute or
13 charter to other purposes, and every other taxing district in which the tax
14 increment financing district is situated; but the listers or assessor shall extend
15 all rates so determined against the entire assessed valuation of real property for
16 that year. In each year for which the assessed valuation exceeds the original
17 taxable value, the municipality treasurer shall hold apart, rather than remit to
18 the taxing districts, that proportion of all taxes paid that year on the real
19 property in the district which the excess valuation bears to the total assessed
20 valuation. The amount held apart each year is the “tax increment” for that
21 year. So much of the tax increments received with respect to the district and

1 pledged for the payment for financing for improvements and related costs shall
2 be segregated by the municipality in a special account on its official books and
3 records until all capital indebtedness of the district has been fully paid. The
4 final payment shall be reported to the lister or assessor, who shall thereafter
5 include the entire assessed valuation of the district in the assessed valuations
6 upon which tax rates are computed and extended and taxes are remitted to all
7 taxing districts.

8 * * *

9 Sec. 5. 24 V.S.A. § 1897 is amended to read:

10 § 1897. TAX INCREMENT FINANCING

11 (a)(1) The legislative body may pledge and appropriate in equal proportion
12 any part or all of the ~~state~~ education and municipal tax increments received
13 from properties contained within the tax increment financing district for the
14 financing for improvements and for related costs in the same proportion by
15 which the infrastructure or related costs directly serve the district at the time of
16 approval of the project financing by the ~~council~~ Council, and in the case of
17 infrastructure essential to the development of the district that does not
18 reasonably lend itself to a proportionality formula, the ~~council~~ Council shall
19 apply a rough proportionality and rational nexus test; provided, that if any tax
20 increment utilization is approved pursuant to 32 V.S.A. § 5404a(f), no more
21 than 75 percent of the ~~state~~ education property tax increment and ~~no less than~~

1 at least an equal percent of the legally accessible municipal tax increment may
2 be used to service this debt.

3 (2) Bonds shall only be issued if the legal voters of the municipality, by
4 a majority vote of all voters present and voting on the question at a special or
5 annual municipal meeting duly warned for the purpose, give authority to the
6 legislative body to pledge the credit of the municipality for these purposes.

7 (3) Notwithstanding any provision of any municipal charter, the legal
8 voters of a municipality, by a single vote, shall authorize the legislative body to
9 pledge the credit of the municipality up to a specified maximum dollar amount
10 for all debt obligations to be financed with ~~state property~~ education tax
11 increment pursuant to approval by the Vermont ~~economic progress council~~
12 Economic Progress Council and subject to the provisions of this section and
13 32 V.S.A. § 5404a. Only a subsequent vote of the legal voters of the
14 municipality shall provide authorization to exceed the maximum amount for all
15 financing to be supported by the tax increment.

16 (b) A ~~municipality's pledge of credit for~~ local legislative body shall
17 provide information to the public regarding financing improvements and
18 related costs under this subchapter and 32 V.S.A. § 5404a. This information
19 shall include notice that if the tax increment received by the municipality from
20 any property tax source is insufficient to pay the principal and interest on the
21 debt in any year, for whatever reason, including a decrease in property value or

1 repeal of a state property tax source, unless determined otherwise at the time of
2 such repeal, the municipality shall remain liable for full payment of the
3 principal and interest for the term of indebtedness.

4 Sec. 6. 24 V.S.A. § 1898 is amended to read:

5 § 1898. POWERS SUPPLEMENTAL; CONSTRUCTION

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

10 (b) A municipality shall have power to issue ~~from time to time general~~
11 ~~obligation bonds, revenue bonds, or revenue bonds also~~ debt obligations
12 backed by the municipality's full faith and credit ~~in its discretion to finance the~~
13 ~~undertaking of any improvements wholly or partly within such district. If~~
14 ~~revenue bonds are issued, such bonds~~ and obligations secured by and payable
15 from the net revenues of a municipal enterprise for tax increment financing
16 within a district. Any debt obligation secured by a pledge of the municipality's
17 full faith and credit shall be made payable, as to both principal and interest,
18 solely from the income proceeds, revenues, tax increments and funds of the
19 municipality derived from, or held in connection with its undertaking and
20 carrying out of improvements under this chapter. ~~So long as any such bonds~~ If
21 any debt obligation of a municipality ~~are~~ is outstanding, the local governing

1 body may deduct, in any one or more years from any net increase in the
2 aggregate taxable valuation of land and improvements in all areas covered by
3 their district the amount necessary to produce tax revenues equal to the current
4 debt service ~~on such bonds~~ and the payment of related costs, assuming the
5 previous year's total tax rate and full collection. Only the balance, if any, of
6 such net increase shall be taken into account in computing the sums which may
7 be appropriated for other purposes under applicable tax rate limits. But all the
8 taxable property in all areas covered by the district, including the whole of
9 such net increase, shall be subject to the same total tax rate as other taxable
10 property, except ~~as may be otherwise provided by law~~ those specifically
11 limited by law or charter to other purposes. Such net increase shall be
12 computed each year by subtracting, from the current aggregate valuation of the
13 land and improvements in all areas covered by the district, the sum of the
14 aggregate valuations of land and improvements in each such area on the
15 creation date of the district ~~was approved under this section~~. An area shall be
16 deemed to be covered as a district until the date all the indebtedness incurred
17 by the municipality to finance the applicable improvements have been paid.
18 Notwithstanding any provisions in this chapter to the contrary, any provision
19 of a municipal charter of any municipality which specifies a different debt
20 limit, or which requires a greater vote to authorize bonds, or which prescribes a

1 different computation of appropriations under tax rate limits, or which is
2 otherwise inconsistent with this subsection, shall apply.

3 * * *

4 (h) ~~h~~ If any suit, action, or proceeding involving the validity or
5 enforceability of any bond means of financing, or the security thereof, that is
6 available to a municipality and issued under this chapter or the security
7 therefor any such bond reciting in substance that it has is brought against the
8 municipality, it shall be conclusively deemed that the financing and security
9 therefor have been issued and pledged by the municipality in connection with
10 an improvement, as herein defined, shall be conclusively deemed to have been
11 issued for such purpose and such improvement and that it shall be conclusively
12 deemed to have been planned, located, and carried out in accordance with the
13 provisions of this chapter.

14 (i) [Repealed.]

15 Sec. 7. 24 V.S.A. § 1902 is added to read:

16 § 1902. TAX INCREMENT FINANCING DISTRICTS; CAP

17 Notwithstanding any other provision of law, the Vermont Economic
18 Progress Council shall only approve the use of education tax increment
19 financing for ten tax increment financing districts and shall not approve more
20 than one newly created tax increment financing district in any municipality
21 within the period of ten state fiscal years beginning July 1, 2009. For purposes

1 of this section, a reapproval of a tax increment financing district shall not be
2 counted against the cap of ten tax increment financing districts.

3 Sec. 8. 32 V.S.A. § 3802 is amended to read:

4 § 3802. PROPERTY TAX

5 The following property shall be exempt from taxation:

6 * * *

7 (18) Municipally owned parking garages.

8 Sec. 9. 32 V.S.A. § 5404a is amended to read:

9 § 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT
10 FINANCING DISTRICTS

11 * * *

12 (f) A municipality that establishes a tax increment financing district under
13 24 V.S.A. chapter 53, subchapter 5 shall collect all property taxes on properties
14 contained within the district and may apply up to 75 percent of the tax
15 increment as defined and authorized in 24 V.S.A. ~~§ 1896~~ chapter 53,
16 subchapter 5 to repayment of financing of the improvements and related costs
17 as defined in 24 V.S.A. § 1891 for up to 20 years pursuant to 24 V.S.A.
18 § 1894, if approved by the Vermont ~~economic progress council~~ Economic
19 Progress Council pursuant to this section.

20 (g) Any utilization of tax increment approved under subsection (f) of this
21 section shall be in addition to any other payments to the municipality under

1 16 V.S.A. chapter 133. Tax increment utilizations approved pursuant to
2 subsection (f) of this section shall affect the education property tax grand list
3 and the municipal grand list of the municipality under this chapter beginning
4 ~~April 1 of the year following approval~~ on the creation date of the district as
5 defined in 24 V.S.A. § 1891 and shall remain available to the municipality for
6 the full period authorized under 24 V.S.A. § 1894, and restricted only to the
7 extent that the real property development giving rise to the increased value to
8 the grand list fails to occur within the authorized period.

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

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

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

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

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

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

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

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

1 (C) The municipality has approved or pledged the utilization of
2 ~~incremental municipal tax~~ legally accessible municipal tax increment revenues
3 as defined in 24 V.S.A. § 1891 for purposes of the district in ~~the same a~~
4 proportion ~~as~~ not less than the utilization of education property tax revenues
5 approved by the Vermont ~~economic progress council~~ Economic Progress
6 Council for the tax increment financing district.

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

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

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

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

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

21 (D) [Repealed.]

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

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

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

11 (C) The project will affect the remediation and redevelopment of a
12 brownfield located within the district. For the purposes of this section,
13 “brownfield” means an area in which a hazardous substance, pollutant, or
14 contaminant is or may be present, and that situation is likely to complicate the
15 expansion, development, redevelopment, or reuse of the property.

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

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

4 (i) The Vermont ~~economic progress council~~ Economic Progress Council
5 and the ~~department of taxes~~ Department of Taxes shall make an annual report
6 to the ~~senate committee on economic development, housing and general affairs~~
7 Senate Committee on Economic Development, Housing and General Affairs,
8 the ~~senate committee on finance~~ Senate Committee on Finance, the ~~house~~
9 ~~committee on commerce~~ House Committee on Commerce, and the ~~house~~
10 ~~committee on ways and means~~ House Committee on Ways and Means of the
11 ~~general assembly~~ General Assembly on or before ~~January 15~~ April 30. The
12 report shall include, in regard to each existing tax increment financing district,
13 the year of approval, the scope of the planned improvements and development,
14 ~~the equalized education grand list value of the district prior to the TIF~~
15 ~~approval,~~ the original taxable ~~property~~ value, the annual municipal and
16 education property tax increment generated as well as the cumulative
17 municipal and education property tax increment generated on the creation date
18 of the district, the tax increment actual improvements and developments that
19 have occurred, and ~~the annual amount of tax increments utilized~~ any material
20 or substantive amendments to previously approved tax increment financing
21 districts.

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

6 (k) The Vermont ~~economic incentive review board~~ Economic Incentive
7 Review Board may require a third-party financial and technical analysis as part
8 of the application of a municipality applying for approval of a tax increment
9 financing district pursuant to this section. The applicant municipality shall pay
10 a fee to cover the actual cost of the analysis to be deposited in a special fund
11 which shall be managed pursuant to subchapter 5 of chapter 7 of this title and
12 be available to the board to pay the actual cost of the analysis.

13 (l) The ~~state auditor of accounts~~ municipality shall ~~review and annually~~
14 ~~conduct an audit of all active tax increment financing districts every four years~~
15 ~~and bill back to the municipality the charge for the audit.~~ The amount paid by
16 the municipality for the audit shall be considered a “related cost” as defined in
17 24 V.S.A. § 1891(6). Any audit conducted by the ~~state auditor of accounts~~
18 municipality under this subsection shall include a validation of the portion of
19 the tax increment retained by the municipality and the portion directed to the
20 education fund.

1 (m) Each tax increment district shall be governed by statutes in effect at the
2 time the district is approved by the Council without regard to any subsequent
3 amendment or repeal. Subsequent supplemental or amendatory acts shall not
4 cancel or otherwise affect a municipality's rights as a party or beneficiary to
5 any contract, covenant, financing instrument, or debt obligation.

6 Sec. 10. REPEALS

7 The following are repealed:

8 (1) 24 V.S.A. § 1896(b) (adjustment upon reappraisal).

9 (2) 2005 Acts and Resolves No. 184, Sec. 2i as amended by 2007 Acts
10 and Resolves No. 190, Sec. 67 (tax increment financing districts; cap).

11 Sec. 11. EFFECTIVE DATE

12 This act shall take effect on passage.