

H.873

An act relating to making technical amendments to tax increment financing laws

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

Sec. 1. 2011 Acts and Resolves No. 45, Sec. 16 is amended to read:

Sec. 16. BURLINGTON TAX INCREMENT FINANCING

(a) Pursuant to ~~Sec. 83 of No. 54 of the Acts of the 2009 Adj. Sess. (2010)~~ 2010 Acts and Resolves No. 54, Sec. 83, the joint fiscal committee Joint Fiscal Committee approved a formula for the implementation of a payment to the ~~education fund~~ Education Fund in lieu of tax increment payments.

(b) The terms of the formula approved by the ~~joint fiscal committee~~ Joint Fiscal Committee are as follows:

(1) Beginning in the fiscal year in which there is the incurrence of new TIF debt, the ~~city~~ City will calculate and make an annual payment on December 10th to the ~~education fund~~ Education Fund each year until 2025. The April 1, 2010 grand list for the area encompassing the existing Waterfront TIF – excluding two parcels at 25 Cherry Street or the Marriott Hotel (SPAN#114-035-20755) and 41 Cherry Street – is the baseline to be used as the starting point for calculating the tax increment that will be divided 25 percent to the ~~state education fund~~ State Education Fund and 75 percent to the ~~city~~ City of Burlington. At the conclusion of the TIF in FY2025, any

surplus tax increment funds will be returned to the ~~city~~ City of Burlington and ~~state education fund~~ State Education Fund in proportion to the relative municipal and education tax rates as clarified in a letter from Mayor Bob Kiss to the ~~chair of the joint fiscal committee~~ Chair of the Joint Fiscal Committee dated September 9, 2009.

(2) The formula for calculating the payment in lieu of tax increment is as follows: first, the difference between the grand list for the Waterfront TIF excluding the two hotel parcels from the fiscal year in which the payment is due and the April 1, 2010 grand list is calculated. Next, that amount is multiplied by the current education property tax rates to determine the increment subject to payment. Finally, this new increment is multiplied by 25 percent to derive the payment amount.

(3) ~~The city of Burlington will prepare a report annually, beginning July 1, 2010, for both the joint fiscal committee and the department of taxes, which will contain:~~

~~(A) the calculation set out in subdivision (2) of this subsection;~~

~~(B) a listing of each parcel within the Waterfront TIF District and the 1996 original taxable value, 2010 extended base value, and the most recent values for all homestead and nonresidential property;~~

~~(C) a history of all of the TIF revenue and debt service payments; and~~

~~(D) details of new debt authorized, including repayment schedules.~~

[Repealed.]

Sec. 2. 24 V.S.A. § 1894(b) and (c) are amended to read:

(b) Use of the education property tax increment. For only debt ~~and related costs~~ incurred within the period permitted under subdivision (a)(1) of this section after creation of the district, and related costs, up to 75 percent of the education tax increment may be retained for up to 20 years, beginning with the education tax increment generated the year in which the first debt incurred for improvements financed in whole or in part with incremental education property tax revenue. Upon incurring the first debt, a municipality shall notify the Department of Taxes and the Vermont Economic Progress Council of the beginning of the 20-year retention period of education tax increment.

(c) Use of the municipal property tax increment. For only debt ~~and related costs~~ incurred within the period permitted under subdivision (a)(1) of this section after creation of the district, and related costs, not less than an equal share of the municipal tax increment pursuant to subsection (f) of this section shall be retained to service the debt, beginning the first year in which debt is incurred, pursuant to subsection (b) of this section.

Sec. 3. 24 V.S.A. § 1894(e) is amended to read:

(e) Proportionality. The municipal legislative body may ~~pledge and appropriate~~ commit the State education and municipal tax increments received

from properties contained within the tax increment financing district for the financing of improvements and for related costs only in the same proportion by which the improvement or related costs serve the district, as determined by the Council when approved in accordance with 32 V.S.A. § 5404a(h), and in the case of an improvement that does not reasonably lend itself to a proportionality formula, the Council shall apply a rough proportionality and rational nexus test.

Sec. 4. 24 V.S.A. § 1895 is amended to read:

§ 1895. ORIGINAL TAXABLE VALUE

As of the date the district is created, the lister or assessor for the municipality shall certify 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~~ total valuation as determined in accordance with 32 V.S.A. chapter 129 of all taxable real property located within the tax increment financing district has increased or decreased relative to the original taxable value.

Sec. 5. 24 V.S.A. § 1896(a) is amended to read:

(a) In each year following the creation of the district, 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~~ treasurer 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~~ treasurer 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 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. No more than the percentages established pursuant to section 1894 of this subchapter of the municipal and ~~state~~ State education tax increments received with respect to the district and committed for the payment for financing for improvements and related costs shall be segregated by the municipality in a special tax increment financing account and in its official books and records until all capital indebtedness of the district has been fully paid. The final payment shall be reported to the ~~listers or assessor~~ treasurer, who shall thereafter include the entire assessed valuation of the district in the assessed valuations upon which municipal and other tax rates

are computed and extended and ~~taxes are remitted to all taxing districts~~  
thereafter no taxes from the district shall be deposited in the district's tax  
increment financing account.

Sec. 6. 24 V.S.A. § 1901(3) is amended to read:

(3) Annually:

(A) ~~include in the municipal audit cycle prescribed in section 1681 of~~  
~~this title a report of finances of~~ ensure that the tax increment financing district,  
~~including~~ account required by section 1896 of this subchapter is subject to the  
annual audit prescribed in section 1681 of this title. Procedures must include  
verification of the original taxable value and annual and total municipal and  
education tax increments generated, ~~annual and total expenditures on~~  
~~improvements and related costs, all indebtedness of the district, including the~~  
~~initial debt, interest rate, terms, and annual and total principal and interest~~  
~~payments, an accounting of revenue sources other than property tax revenue by~~  
~~type and dollar amount, and an accounting of the special account required by~~  
~~section 1896 of this subchapter, including revenue, expenditures for debt and~~  
related costs, and current balance;

(B) on or before January 15 of each year, on a form prescribed by the  
Council, submit an annual report to the Vermont Economic Progress Council  
and the Department of Taxes, including the information required by  
subdivision (2) of this section if not already submitted during the year, all

information required by subdivision (A) of this subdivision (3), and the information required by 32 V.S.A. § 5404a(i), including performance indicators and any other information required by the Council or the Department of Taxes.

Sec. 7. 32 V.S.A. § 5404a(j) is amended to read:

(j) Tax increment financing district rulemaking, oversight, and enforcement.

\* \* \*

(2) Authority to issue decisions.

(A) The Secretary of Commerce and Community Development, after reasonable notice to a municipality and an opportunity for a hearing, is authorized to issue decisions to a municipality ~~regarding on~~ regarding on questions and inquiries ~~about~~ concerning the administration of tax increment financing districts, statutes, rules, noncompliance with 24 V.S.A. chapter 53, subchapter 5, and any instances of noncompliance identified in audit reports conducted pursuant to subsection (l) of this section.

(B) The Vermont Economic Progress Council shall prepare recommendations for the Secretary prior to the issuance of a decision. As appropriate, the Council may prepare such recommendations in consultation with the Commissioner of Taxes, the Attorney General, and the State Treasurer. In preparing recommendations, the Council shall provide a

municipality with a reasonable opportunity to submit written information in support of its position. The Secretary shall review the recommendations of the Council and issue a final written decision on each matter within 60 days of the ~~recommendation~~ receipt of the recommendations. However, pursuant to subdivision (5) of this subsection (j), the Secretary may permit an appeal to be taken by any party to a Superior Court for determination of questions of law in the same manner as the Supreme Court may by rule provide for appeals before final judgment from a Superior Court before issuing a final decision.

\* \* \*

Sec. 8. 32 V.S.A. § 5404a(1) is amended to read:

(1) The State Auditor of Accounts shall conduct performance audits of all tax increment financing districts according to a schedule, which will be arrived at in consultation with the Vermont Economic Progress Council. The cost of conducting each audit shall be considered a “related cost” as defined in 24 V.S.A. § 1891(6) and shall be billed back to the municipality. Audits conducted pursuant to this subsection shall include a review of a municipality’s adherence to relevant statutes and rules adopted by the Vermont Economic Progress Council pursuant to subsection (j) of this section, an assessment of record keeping related to revenues and expenditures, and a validation of the portion of the tax increment retained by the municipality and used for debt repayment and the portion directed to the Education Fund.

(1) For municipalities with a district created prior to January 1, 2006 and a debt repayment schedule that anticipates retention of education increment beyond fiscal year 2016, an audit shall be conducted when approximately three-quarters of the period for retention of education increment has elapsed, and at the end of that same period, an audit shall be conducted for the final one-quarter period for retention of education increment, except that for the Milton Catamount/Husky district and the Burlington Waterfront district only a final audit shall be conducted to cover the period from the effective date of the rules pursuant to subdivision (j)(1) of this section to the end of the retention period.

(2) For municipalities with a district created after January 1, 2006 and approved by the Vermont Economic Progress Council, an audit shall be conducted ~~at the end of the 10-year period in which debt can be incurred and again approximately halfway through the 20-year period for retention of education increment; provided, however, that an audit shall occur no more than one time in a five-year period~~ five years after the first debt is incurred and a second audit seven years after completion of the first audit. A final audit will be conducted at the end of the period for retention of education increment.

#### Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.