

S.37

An act relating to tax increment financing districts

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

Sec. 1. RESOLUTION OF TAX INCREMENT FINANCING DISTRICT

AUDIT REPORT ISSUES

(a) In 2011 and 2012, the State Auditor of Accounts performed and reported on required reviews and audits of all active tax increment financing districts. However, the tax increment financing laws currently lack a specific remedy to recover amounts identified in the Auditor's Reports or an enforcement mechanism to address issues identified in the Reports. The General Assembly seeks to address issues identified in the 2011 and 2012 Auditor's Reports by clarifying tax increment financing laws and specifying a process for future oversight and enforcement. Accordingly, it is the intent of the General Assembly not to address ongoing issues identified in the 2011 and 2012 Auditor's Reports but to leave those issues to be addressed through the rulemaking process, as described in Sec. 14 of this act. If the rule identifies issues that require corrective action on the part of one or more municipalities, then any identified underpayments to the Education Fund resulting from issues shall begin to accumulate upon the adoption date of the rule and be subject to the enforcement provisions in Sec. 14 of this act.

(b) In order to resolve any disputes over the amounts identified in the Auditor's Reports as owed to the Education Fund, the City of Burlington, the

Town of Milton, and the City of Winooski shall, subject to the approval of their respective legislative bodies, pay the State according to the schedule set out in subsection (c) of this section. The General Assembly considers these payments as final settlement of outstanding sums identified as owed to the Education Fund during the period covered by the 2012 Auditor's Reports.

(c) The municipalities with active tax increment financing districts that were audited by the State Auditor in 2012 have entered into the following agreements with the State:

(1) The City of Burlington shall remit the amount of \$200,000.00 to the Education Fund in equal installments over a five-year period beginning December 15, 2013 from incremental tax revenues not otherwise dedicated to the repayment of the district's debt obligations.

(2) The Town of Milton shall remit funds as follows:

(A) \$22,000.00 to the Education Fund in equal installments over a two-year period beginning December 15, 2013 from municipal revenues other than municipal tax increment dedicated to the repayment of tax increment financing debt;

(B) \$160,000.00 to the Catamount Husky Tax Increment Fund in equal installments over a five-year period beginning December 15, 2013 from municipal nonincrement revenues; and

(C) \$17,000.00 to the Catamount Husky Tax Increment Fund for the repayment of debt from the Town Core Tax Increment Financing Fund by no later than December 15, 2013.

(3) The City of Winooski shall remit funds as follows:

(A) the amount of \$1,300.00 to the Education Fund from municipal nonincrement revenues by July 1, 2013; and

(B) \$62,000.00 to the Tax Increment Financing Fund from municipal nonincremental revenues in equal installments over a five-year period beginning December 15, 2013.

(d) If the legislative body of a municipality with an active tax increment financing district that was audited by the State Auditor in 2012 does not approve the payments described in subsection (c) of this section, then the General Assembly shall consider any amounts identified as owed to the Education Fund during the period covered by the 2012 Auditor's Reports to remain outstanding.

(e) If a municipality does not begin payment of the amounts identified in subsection (c) of this section within 60 days of the scheduled payment date or owes outstanding amounts to the Education Fund, as described in subsection (d) of this section, amounts identified as owed to the State may be withheld from any funds otherwise payable by the State to the municipality or a school district in the municipality or of which the municipality is a member.

Sec. 2. 24 V.S.A. § 1891 is amended to read:

§ 1891. DEFINITIONS

When used in this subchapter:

* * *

(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~~ infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts as stated in section 1893 of this subchapter, including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation.

(5) “Original taxable ~~property value~~” means the 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 on the day the district was created under as of the creation date as set forth in section 1892 of this subchapter, provided that no parcel within the district shall be divided or bisected by the district boundary.

(6) “Related costs” means expenses incurred and paid by the municipality, exclusive of the actual cost of constructing and financing

improvements, that are directly related to the creation and implementation of the tax increment financing district ~~and, including~~ 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.~~ Related costs may include direct municipal expenses such as departmental or personnel costs related to creating or administering the district to the extent they are paid from the tax increment realized from municipal and not education taxes and using only that portion of the municipal increment above the required percentage in servicing the debt as determined in accordance with subsection 1894(f) of this subchapter.

(7) “Financing” means ~~the following types of debt incurred,~~ including principal, interest, and any fees or charges directly related to that debt, or other instruments or borrowing 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~~

only if authorized by the legal voters of the municipality in accordance with section 1894 of this subchapter. Payment for the cost of district improvements may also include direct payment by the municipality using the district increment. However, such payment is also subject to a vote by the legal voters of the municipality in accordance with section 1894 of this subchapter and, if not included in the tax increment financing plan approved under subsection 1894(d) of this subchapter, is also considered a substantial change and subject to the review process provided by subdivision 1901(3) of this subchapter. If interfund loans within the municipality are used as the method of financing, no interest shall be charged.

(8) "Committed" means pledged and appropriated for the purpose of the current and future payment of tax increment financing incurred in accordance with section 1894 of this subchapter and related costs as defined in this section.

Sec. 3. 24 V.S.A. § 1892 is amended to read:

§ 1892. CREATION OF DISTRICT

(a) Upon a finding that such action will serve the public purposes of this subchapter and subject to subsection (d) of this section, the legislative body of any municipality may create within its jurisdiction; a special district or districts to be known as a tax increment financing districts district. They shall describe the ~~the~~ The district shall be described by its boundaries and the properties therein and ~~shall show~~ the district boundary shall be shown 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, and the creation of the district shall occur at 12:01 a.m. on April 1 of the calendar year so voted by the municipal legislative body.

(c) A municipality that has approved the creation of a district under this section may designate a coordinating agency from outside the municipality’s departments or offices to administer the district to ensure compliance with this subchapter and any statutory or other requirements and may claim this expense as a related cost. However, the coordinating agency shall not be authorized to enter into any agreement or make any covenant on behalf of the municipality.

(d) The following municipalities have been authorized to use education tax increment financing for a tax increment financing district, and the Vermont Economic Progress Council is not authorized to approve any additional tax increment financing districts even if one of the districts named in this subsection is terminated pursuant to subsection 1894(a) of this subchapter:

- (1) the City of Burlington, Downtown;
- (2) the City of Burlington, Waterfront;
- (3) the Town of Milton, North and South;

- (4) the City of Newport;
- (5) the City of Winooski;
- (6) the Town of Colchester;
- (7) the Town of Hartford;
- (8) the City of St. Albans;
- (9) the City of Barre; and
- (10) the Town of Milton, Town Core.

Sec. 4. 24 V.S.A. § 1894 is amended to read:

§ 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 32 V.S.A. § 5404a(h). 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 32 V.S.A. § 5404a(h). When considering reapproval, the Vermont economic progress~~

~~council shall consider only material changes in the application under 32 V.S.A. § 5404a(h). The Vermont economic progress council shall presume that an applicant qualifies for reapproval upon a showing that the inability of the district to incur indebtedness was the result of the macro-economic conditions in the first five years after the creation of the district. Upon reapproval, the Vermont economic progress council shall grant a five year extension of the period to incur indebtedness.~~

~~(3) The district shall continue until the date and hour the indebtedness is retired.~~ approved under 32 V.S.A. § 5404a(h) may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to five years following the creation of the district. If no debt is incurred during this five-year period, the district shall terminate, unless the Vermont Economic Progress Council grants an extension to a municipality pursuant to subsection (d) of this section. However, if any indebtedness is incurred within the first five years after the creation of the district, then the district has a total of ten years after the creation of the district to incur any additional debt.

(2) Any indebtedness incurred under subdivision (1) of this subsection may be retired over any period authorized by the legislative body of the municipality.

(3) The district shall continue until the date and hour the indebtedness is retired or, if no debt is incurred, five years following the creation of the district.

(b) Use of the education property tax increment. For ~~any~~ only debt and related costs incurred within the ~~first five years~~ period permitted under subdivision (a)(1) of this section after creation of the district, ~~or within the first five years after reapproval by the Vermont economic progress council, but for no other debt,~~ up to 75 percent of 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 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) ~~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~~ 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, 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.

(d) Approval of tax increment financing plan. The Vermont Economic Progress Council shall approve a municipality's tax increment financing plan prior to a public vote to pledge the credit of that municipality under subsection (h) of this section. The tax increment financing plan shall include all information related to the proposed financing necessary for approval by the Council and to assure its viability and consistency with the tax increment financing district plan approved by the Council pursuant to 32 V.S.A. § 5404a(h). The tax increment financing plan may be submitted to and approved by the Council concurrently with the tax increment financing district plan. If no indebtedness is incurred within five years after the creation of the district, the municipality may submit an updated executive summary of the tax increment financing district plan and an updated tax increment financing plan to the Council to obtain approval for a five-year extension of the period to incur indebtedness; provided, however, that the updated plan is submitted prior to the five-year termination date of the district. The Council shall review the updated tax increment financing plan to determine whether the plan has

continued viability and consistency with the approved tax increment financing plan. Upon approval of the updated tax increment financing plan, the Council shall grant an extension of the period to incur indebtedness of no more than five years. The submission of an updated tax increment financing plan as provided in this subsection shall operate as a stay of the termination of the district until the Council has determined whether to approve the plan.

(e) Proportionality. The municipal legislative body may pledge and appropriate 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.

(f) Equal share required. If any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(h), 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 approved by the Council or used by the municipality to service this debt.

(g) Adjustment of percentage. During the tenth year following the creation of the tax increment financing district, the municipality shall submit an updated tax increment financing plan to the Council which shall include adjustments and updates of appropriate data and information sufficient for the Council to determine, based on tax increment financing debt actually incurred and the history of increment generated during the first ten years, whether the percentages approved under subsection (f) of this section should be continued or adjusted to a lower percentage to be retained for the remaining duration of the retention period and still provide sufficient municipal and education increment to service the remaining debt.

(h) Vote required on each instance of debt. Notwithstanding any provision of any municipal charter, each instance of borrowing to finance or otherwise pay for tax increment financing district improvements shall occur only after 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, authorize the legislative body to pledge the credit of the municipality, borrow, or otherwise secure the debt for the specific purposes so warned; provided that each request to pledge the credit of the municipality for the purposes of financing tax increment financing district improvements shall include the new amount of debt proposed to be incurred and the total outstanding tax increment financing debt approved to date.

(i) Notice to voters. A municipal legislative body shall provide information to the public prior to the public vote required under subsection (h) of this section. This information shall include the amount and types of debt and related costs to be incurred, including principal, interest, and fees, terms of the debt, the improvements to be financed, the expected development to occur because of the improvements, and notice to the voters 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 the full payment of the principal and interest for the term of indebtedness. If interfund loans within the municipality are used, the information must also include documentation of the terms and conditions of such loan. If interfund loans within the municipality are used as the method of financing, no interest shall be charged.

Sec. 5. 24 V.S.A. § 1895 is amended to read:

§ 1895. ORIGINAL TAXABLE VALUE

~~On or about 12:01 a.m., April 1, of the first year~~ As of the date the district is created, 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,~~²² 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.

Sec. 6. 24 V.S.A. § 1896 is amended to read:

§ 1896. TAX INCREMENTS

(a) In each ~~subsequent~~ 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 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~~ No more than the percentages established pursuant to section 1894 of this subchapter of the municipal and state education tax increments received with respect to the

district and ~~pledged~~ committed for the payment for financing for improvements and related costs shall be segregated by the municipality in a special tax increment financing account ~~on~~ 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 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. [Repealed.]~~

(c) Notwithstanding any charter provision or other provision, all property taxes assessed within a district shall be subject to the provision of subsection (a) of this section.

(d) Amounts held apart under subsection (a) of this section shall only be used for financing and related costs as defined in section 1891 of this subchapter.

Sec. 7. REPEAL

24 V.S.A. § 1897 (tax increment financing) is repealed.

Sec. 8. 24 V.S.A. § 1898 is amended to read:

§ 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. [Repealed.]~~

(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 in the~~ municipality.

(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.]

Sec. 9. 24 V.S.A. § 1900 is amended to read:

§ 1900. DISTRIBUTION

In addition to all other provisions of this ~~chapter~~ subchapter, 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~~ committed for the payment of the financing for improvements and related costs in the district, ~~an equal portion~~ portions of each increment may be ~~used for~~ retained for the following purposes: prepayment of principal and interest on the financing, ~~placed in escrow~~ placed in a special account required by section 1896 of this subchapter and used for future financing ~~payment payments~~, or ~~otherwise~~ used for defeasance of the financing; ~~and any~~. 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~~ Education Fund.

Sec. 10. 24 V.S.A. § 1901 is amended to read:

§ 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 32 V.S.A. § 5404a(i), 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: Develop a system, segregated for the tax increment financing district, to identify, collect, and maintain all data and information necessary to fulfill the reporting requirements of this section, including performance indicators.~~

(2) Throughout the year, as required by events:

(A) provide notification to the Vermont Economic Progress Council and the Department of Taxes regarding any tax increment financing debt obligations, public votes, or votes by the municipal legislative body immediately following such obligation or vote on a form prescribed by the Council, including copies of public notices, agendas, minutes, vote tally, and a copy of the information provided to the public in accordance with subsection 1894(i) of this subchapter;

(B) submit any proposed substantial changes to be made to the approved tax increment district plan and approved financing plan to the Council for review, only after receiving approval for the substantial change through a vote of the municipal legislative body;

(3) Annually:

(A) include in the municipal audit cycle prescribed in section 1681 of this title a report of finances of the tax increment financing district, including 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. 11. 32 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this chapter:

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(10) “Nonresidential property” means all property except:

* * *

(E) The excess valuation of property subject to tax increment financing in a tax increment financing district established under 24 V.S.A. chapter 53, subchapter 5 to the extent that the taxes generated on ~~the excess property valuation are pledged and appropriated for interest and principal repayment on bonded debt or prefunding future~~ such excess valuation of property are committed under 24 V.S.A. § 1894 to finance tax increment financing district debt and to the extent approved for this purpose by the Vermont economic progress council upon application by the district under procedures established for approval of tax stabilization agreements under section 5404a of this title, and that any such action shall be included in the annual authorization limits provided in subdivision 5930a(d)(1) of this title; provided that any increment in excess of the amounts committed shall be distributed in accordance with 24 V.S.A. § 1900.

* * *

Sec. 12. 32 V.S.A. § 5404a(g) is amended to read:

(g) Any ~~utilization~~ use of education property tax increment approved under subsection (f) of this section shall be in addition to any other payments to the municipality under 16 V.S.A. chapter 133. ~~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 shall be 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 or by the enforcement provided by subsection (j) of this section.~~

Sec. 12a. 32 V.S.A. § 5404a is amended to read:

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

* * *

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

* * *

Sec. 13. 32 V.S.A. § 5404a(i) is amended to read:

(i) ~~The Vermont economic progress council~~ Economic Progress Council and the ~~department of taxes~~ 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~~ Senate Committees on Economic Development, Housing and General Affairs and on Finance and the House Committees on Commerce and Economic Development and on Ways and Means of the ~~general assembly~~ General Assembly on or before ~~January 15~~ April 1. 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~~ date of creation, a profile of the district, a map of the district, the original taxable value, the scope and value of projected and actual improvements and developments, projected and actual

incremental revenue amounts and division of the increment revenue between district debt, the Education Fund, the special account required by 24 V.S.A. § 1896 and the municipal general fund, projected and actual financing, and a set of performance indicators developed by the Vermont Economic Progress Council, which shall include the number of jobs created in the district, what sectors experienced job growth, and the amount of infrastructure work performed by Vermont firms.

Sec. 14. 32 V.S.A. § 5404a(j) is amended to read:

(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~~ Tax increment financing district rulemaking, oversight, and enforcement.

(1) Authority to adopt rules. The Vermont Economic Progress Council is hereby granted authority to adopt rules in accordance with 3 V.S.A. chapter 25 for the purpose of providing clarification and detail for administering the provisions of 24 V.S.A. chapter 53, subchapter 5 and the tax increment financing district provisions of this section. A single rule shall be adopted for all tax increment financing districts that will provide further clarification for statutory construction and include a process whereby a

municipality may distribute excess increment to the Education Fund as allowed under 24 V.S.A. § 1900. From the date the rules are adopted, the municipalities with districts in existence prior to 2006 are required to abide by the governing rule and any other provisions of the law in force; provided, however, that the rule shall indicate which specific provisions are not applicable to those districts in existence prior to January 2006.

(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 questions and inquiries about 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 (1) 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 decision on each matter within 60 days of the recommendation. 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.

(3) Remedy for noncompliance. If the Secretary issues a decision under subdivision (2) of this subsection that includes a finding of noncompliance and that noncompliance has resulted in the improper reduction in the amount due the Education Fund, the Secretary, unless and until he or she is satisfied that there is no longer any such failure to comply, shall request that the State Treasurer bill the municipality for the total identified underpayment. The amount of the underpayment shall be due from the municipality upon receipt of the bill. If the municipality does not pay the underpayment amount within 60 days, the amount may be withheld from any funds otherwise payable by the State to the municipality or a school district in the municipality or of which the municipality is a member.

(4) Referral; Attorney General. In lieu of or in addition to any action authorized in subdivision (3) of this subsection, the Secretary of Commerce and Community Development or the State Treasurer may refer the matter to

the Office of the Attorney General with a recommendation that an appropriate civil action be initiated.

(5) Appeal; hearing officer. A hearing that is held pursuant to this subsection shall be subject to the provisions of 3 V.S.A. chapter 25 relating to contested cases. The hearing shall be conducted by the Secretary or by a hearing officer appointed by the Secretary. If a hearing is conducted by a hearing officer, the hearing officer shall have all authority to conduct the hearing that is provided for in the applicable contested case provisions of 3 V.S.A. chapter 25, including issuing findings of fact, hearing evidence, and compelling, by subpoena, the attendance and testimony of witnesses.

Sec. 15. 32 V.S.A. § 5404a(k) is amended to read:

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

Sec. 16. 32 V.S.A. § 5404a(l) is amended to read:

(l) The ~~state auditor of accounts~~ State Auditor of Accounts shall ~~review and~~ conduct ~~an audit~~ performance audits of all ~~active~~ tax increment financing

~~districts every four years and bill back to the municipality the charge for the audit. The amount paid by the municipality for the audit shall be considered a “related cost” as defined in 24 V.S.A. § 1891(6). Any audit conducted by the state auditor of accounts under this subsection shall include a validation of the portion of the tax increment retained by the municipality and the portion directed to the education fund 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.

(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. A final audit will be conducted at the end of the period for retention of education increment.

Sec. 17. TAX INCREMENT FINANCING DISTRICT APPROVAL; CITY
OF SOUTH BURLINGTON

Notwithstanding 24 V.S.A. § 1892(d) and any other provision of law, the Vermont Economic Progress Council is authorized to approve a tax increment financing district in the City of South Burlington if approval is granted by December 31, 2013.

Sec. 18. BURLINGTON WATERFRONT TIF

The authority of the City of Burlington to incur indebtedness for its waterfront tax increment financing district is hereby extended for five years beginning January 1, 2015. This extension does not extend any period that municipal or education tax increment may be retained.

Sec. 19. REPEAL

Pursuant to Sec. 3 of this act, the 2006 Acts and Resolves No. 184, Sec. 2i, as amended by 2008 Acts and Resolves No. 190, Sec. 67 (tax increment

financing districts, cap), is repealed to clarify that the Vermont Economic Progress Council shall not approve any additional tax increment financing districts.

Sec. 20. EFFECTIVE DATES

(a) Secs. 1, 6(b), 10, 12a–19, and this section shall take effect on passage.

Sec. 6(b) (repeal of adjustment upon reappraisal) shall be effective retroactive to July 2006.

(b) Secs. 2 through 9 (except Sec. 6(b)), 11, and 12 (clarification of ambiguous statutes) of this act shall apply to any tax increment retained for all taxes assessed on the April 1, 2013 grand list.

(c) Sec. 6(c) (creation of taxes for special purposes) shall take effect on July 1, 2013.