TECHNICAL AMENDMENTS TO TAX INCREMENT FINANCING DISTRICTS

Sec. 1. Repeal

§16(b) (3) of 2011 Acts and Resolves No. 45 is repealed

WHY: This provision in session law requires an annual report from the City of Burlington regarding the Waterfront TIF District to be filed with the JFO and Department of Taxes. Act 80 (2013) amended statute to require that all TIF Districts file annual reports with VEPC and the Department of Taxes, making this reporting requirement redundant and unnecessary.

Sec 2. 24 V.S.A. §1894 (b) is 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.

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

(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.

WHY: The amendment removes related costs from the restriction on use of increment to pay for debt incurred during the 10 year debt period, while retaining the restriction on the use of increment to only debt and related costs. The change makes these provision consistent with the actual timing of when related costs are incurred and ensures consistency with other provisions in law which allow related costs to be incurred outside of the ten-year debt period.

Section 2 of Act 80 (2013) defines related costs to include the "reimbursement of sums ***previously advanced by the municipality***" to pay for costs involved in the creation and implementation of the TIF District (emphasis added). By definition, these related costs are incurred prior to the creation of the District. Also, Section 16 of Act 80 requires a schedule of audits of TIF Districts by the SAO. These audits also occur outside the ten-year limitation contained in §1894 (b) and (c) and the costs of the audits are paid for by the municipalities as a "related cost." The amendment recognizes that some related costs will be incurred outside of the ten-year debt period and therefore allows for payment of those related costs using TIF increment. 24 VSA § 1891(6) defines related costs and the TIF rule will further clarify what can and cannot be paid for as a related cost using TIF increment.

Sec. 4. 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.

WHY: Section 2 of Act 80 (2013) defined "committed" as "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." The term "pledged and appropriated" was replaced with the defined term "committed" except this instance was overlooked.

Sec 5. 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~~ 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 ~~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(a) is amended to read:

§ 1896. Tax increments

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

WHY: The language in Sections 1895 and 1896 of Title 24 was never updated to reflect the use of education property taxes for TIF Districts. These changes clarify how to calculate the increment, how the increment is to be handled, and by whom.

Sec. 7. 24 V.S.A. §1901 is amended to read:

§ 1901. Information reporting

Every municipality with an active tax increment financing district shall:

(1) 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 account required by section 1896 of this subchapter, 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.

WHY: This reporting requirement was intended to ensure that the TIF District fund or account is treated like all other funds of the municipality and is included in the annual municipal audit cycle. The items that are struck are already included in the required annual report to VEPC and Tax. The audit of the TIF District fund should be consistent with normal audit procedures for municipal funds. Requiring the deleted items in the municipal audit will make the audits complicated and add unnecessary expense. These items are already included in the annual report requirement.

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

(j) 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~~ 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 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.

(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~~ may, in the discretion of the Secretary, be held ~~subject to~~ in accordance with the provisions of 3 V.S.A. chapter 25 relating to contested cases~~. The hearing shall be~~ and 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.

WHY: Secretary of Commerce prefers to have the flexibility to hold a hearing only if one is necessary.

Sec. 9. Sec. 32 V.S.A. § 5404a(l) is amended to read:

(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 32 V.S.A. § 5404(j)(1) to the end of the retention period.

WHY: In accordance with Act 80, VEPC and the SAO consulted on the dates that audits should occur after Act 80 passed. There is uncertainty regarding when the next audits of the Burlington Waterfront and the Milton Husky/Catamount TIF Districts should occur in relation to the period covered by the previous audits and the adoption of the rules. This provision clarifies the timing of those audits.