

1 Sec. 21. 24 V.S.A. chapter 53, subchapter 7 is added to read:

2 Subchapter 7. Community and Housing Infrastructure Program

3 § 1906. DEFINITIONS

4 As used in this subchapter:

5 (1) “Brownfield” means a property on which the presence or potential
6 presence of a hazardous material, pollutant, or contaminant complicates the
7 expansion, development, redevelopment, or reuse of the property.

8 (2) “Committed” means pledged and appropriated for the purpose of the
9 current and future payment of financing and related costs.

10 (3) “Developer” means the person undertaking to construct a housing
11 development.

12 (4) “Financing” means debt, including principal, interest, and any fees
13 or charges directly related to that debt, incurred by a sponsor, or other
14 instruments or borrowing used by a sponsor, to pay for a housing infrastructure
15 project and, in the case of a sponsor that is a municipality, authorized by the
16 municipality pursuant to section 1910a of this subchapter.

17 (5) “Housing development” means the construction, rehabilitation, or
18 renovation of any building on a housing development site approved under this
19 subchapter.

20 (6) “Housing development site” means the parcel or parcels
21 encompassing a housing development as authorized by a municipality pursuant
22 to section 1908 of this subchapter.

1 (7) “Housing infrastructure agreement” means a legally binding
2 agreement to finance and develop a housing infrastructure project and to
3 construct a housing development among a municipality, a developer, and, if
4 applicable, a third-party sponsor.

5 (8) “Housing infrastructure project” means one or more improvements
6 authorized by a municipality pursuant to section 1908 of this subchapter.

7 (9) “Improvements” means:

8 (A) the installation, construction, or rehabilitation of infrastructure
9 that will serve a public good and fulfill the purpose of housing infrastructure
10 tax increment financing as stated in section 1907 of this subchapter, including
11 utilities, digital infrastructure, roads, bridges, sidewalks, parking, public
12 facilities and amenities, public recreation, land and property acquisition and
13 demolition, brownfield remediation, site preparation, and flood remediation
14 and mitigation; and

15 (B) the funding of debt service interest payments for a period of up to
16 four years, beginning on the date on which the debt is first incurred.

17 (10) “Legislative body” means the mayor and alderboard, the city
18 council, the selectboard, and the president and trustees of an incorporated
19 village, as appropriate.

20 (11) “Municipality” means a city, town, or incorporated village.

21 (12) “Original taxable value” means the total valuation as determined in
22 accordance with 32 V.S.A. chapter 129 of all taxable real property located

1 within a housing development site as of its creation date, provided that no
2 parcel within the housing development site shall be divided or bisected.

3 (13) “Related costs” means expenses incurred and paid by a
4 municipality, exclusive of the actual cost of constructing and financing
5 improvements, that are directly related to the creation and implementation of
6 the municipality’s housing infrastructure project, including reimbursement of
7 sums previously advanced by the municipality for those purposes. Related
8 costs may include direct municipal expenses such as departmental or personnel
9 costs related to creating or administering the housing infrastructure project to
10 the extent they are paid from the tax increment realized from municipal and not
11 education taxes and using only that portion of the municipal increment above
12 the percentage required for serving debt as determined in accordance with
13 subsection 1910c(c) of this subchapter.

14 (14) “Sponsor” means the person undertaking to finance a housing
15 infrastructure project. Any of a municipality, a developer, or an independent
16 agency that meets State lending standards may serve as a sponsor for a housing
17 infrastructure project.

18 § 1907. PURPOSE

19 The purpose of housing infrastructure tax increment financing is to provide
20 revenues for improvements and related costs to encourage the development of
21 primary residences for households of low or moderate income.

1 § 1908. CREATION OF HOUSING INFRASTRUCTURE PROJECT AND
2 HOUSING DEVELOPMENT SITE

3 (a) The legislative body of a municipality may create within its jurisdiction
4 a housing infrastructure project, which shall consist of improvements that
5 stimulate the development of housing, and a housing development site, which
6 shall consist of the parcel or parcels on which a housing development is
7 installed or constructed and any immediately contiguous parcels.

8 (b) To create a housing infrastructure project and housing development
9 site, a municipality, in coordination with stakeholders, shall:

10 (1) develop a housing development plan, including:

11 (A) a description of the proposed housing infrastructure project, the
12 proposed housing development, and the proposed housing development site;

13 (B) identification of a sponsor;

14 (C) a tax increment financing plan meeting the standards of
15 subsection 1910(f) of this subchapter;

16 (D) a pro forma projection of expected costs of the proposed housing
17 infrastructure project;

18 (E) a projection of the tax increment to be generated by the proposed
19 housing development;

20 (F) a development schedule that includes a list, a cost estimate, and a
21 schedule for the proposed housing infrastructure project and the proposed
22 housing development; and

1 (G) a determination that the proposed housing development furthers
2 the purposes of section 1907 of this subchapter;

3 (2) develop a plan describing the housing development site by its
4 boundaries and the properties therein, entitled “Proposed Housing
5 Development Site (municipal name), Vermont”;

6 (3) hold one or more public hearings, after public notice, on the
7 proposed housing infrastructure project, including the plans developed
8 pursuant to this subsection; and

9 (4) adopt by act of the legislative body of the municipality the plan
10 developed under subdivision (2) of this subsection, which shall be recorded
11 with the municipal clerk and lister or assessor.

12 (c) The creation of a housing development site shall occur at 12:01 a.m. on
13 April 1 of the calendar year in which the Vermont Economic Progress Council
14 approves the use of tax increment financing for the housing infrastructure
15 project pursuant to section 1910 of this subchapter.

16 § 1909. HOUSING INFRASTRUCTURE AGREEMENT

17 (a) The housing infrastructure agreement for a housing infrastructure
18 project shall:

19 (1) clearly identify the sponsor for the housing infrastructure project;

20 (2) clearly identify the developer and the housing development for the
21 housing development site;

1 (3) obligate the tax increments retained pursuant to section 1910c of this
2 subchapter for not more than the financing and related costs for the housing
3 infrastructure project;

4 (4) provide terms to ensure that any housing unit within the housing
5 development be offered exclusively as a primary residence in perpetuity; and

6 (5) provide for performance assurances to reasonably secure the
7 obligations of all parties under the housing infrastructure agreement.

8 (b) A municipality shall provide notice of the terms of the housing
9 infrastructure agreement for the municipality’s housing infrastructure project
10 to the legal voters of the municipality and shall provide the same information
11 as set forth in subsection 1910a(e) of this subchapter.

12 § 1910. HOUSING INFRASTRUCTURE PROJECT APPLICATION;

13 VERMONT ECONOMIC PROGRESS COUNCIL

14 (a) Application. A municipality, upon approval of its legislative body, may
15 apply to the Vermont Economic Progress Council to use tax increment
16 financing for a housing infrastructure project.

17 (b) Review. The Vermont Economic Progress Council may approve only
18 applications that:

19 (1) meet the process requirements, either of the project criteria, and the
20 location **crit**erion of this section; and

21 (2) are submitted on or before December 31, 2035.

1 (c) Process requirements. The Vermont Economic Progress Council shall
2 review a municipality’s housing infrastructure project application to determine
3 whether the municipality has:

4 (1) created a housing infrastructure project and housing development
5 site pursuant to section 1908 of this subchapter;

6 (2) executed a housing infrastructure agreement for the housing
7 infrastructure project adhering to the standards of section 1909 of this
8 subchapter with a developer and, if the municipality is not financing the
9 housing infrastructure project itself, a sponsor; and

10 (3) approved or pledged to use incremental municipal tax revenues for
11 the housing infrastructure project in the proportion provided for municipal tax
12 revenues in section 1910c of this subchapter.

13 (d) Project criteria.

14 (1) The Vermont Economic Progress Council shall review a
15 municipality’s housing infrastructure project application to determine whether:

16 (A) at least 60 percent of the gross floor area of the projected housing
17 development is dedicated to housing; and

18 (B) the proposed housing development furthers the purposes of
19 section 1907 of this title.

20 (2) If the Vermont Economic Progress Council determines that a
21 municipality’s housing infrastructure project application satisfies the process
22 requirements and the location **crit**erion of this section but does not satisfy the

1 project criterion under subdivision (1) of this subsection, the Council shall
2 request the Community and Housing Infrastructure Program Board to
3 determine whether the projected housing development will meaningfully
4 address the housing needs of the community, and the Board’s affirmative
5 determination will satisfy this project criterion.

6 (e) Location criterion. The Vermont Economic Progress Council shall
7 review a municipality’s housing infrastructure project application to determine
8 whether the housing development site is located within an area designated Tier
9 1A or Tier 1B pursuant to 10 V.S.A. chapter 151 (State land use and
10 development plans) or an area exempt from the provisions of that chapter
11 pursuant to 10 V.S.A. § 6081(dd) (interim housing exemptions).

12 (f) Tax increment financing plan. The Vermont Economic Progress
13 Council shall approve a municipality’s tax increment financing plan prior to a
14 sponsor’s incurrence of debt for the housing infrastructure project, including, if
15 the sponsor is a municipality, prior to a public vote to pledge the credit of the
16 municipality under section 1910a of this subchapter. The tax increment
17 financing plan shall include:

18 (1) a statement of costs and sources of revenue;

19 (2) estimates of assessed values within the housing development site;

20 (3) the portion of those assessed values to be applied to the housing
21 infrastructure project;

22 (4) the resulting tax increments in each year of the financial plan;

- 1 (5) the amount of bonded indebtedness or other financing to be incurred;
- 2 (6) other sources of financing and anticipated revenues; and
- 3 (7) the duration of the financial plan.

4 § 1910a. INDEBTEDNESS

5 (a) A municipality approved for tax increment financing under section
6 1910 of this subchapter may incur indebtedness against revenues of the
7 housing development site at any time during a period of up to five years
8 following the creation of the housing development site. The Vermont
9 Economic Progress Council may extend this debt incursion period by up to
10 three years. If no debt is incurred for the housing infrastructure project during
11 the debt incursion period, whether by the municipality or sponsor, the housing
12 development site shall terminate.

13 (b) Notwithstanding any provision of any municipal charter, each instance
14 of borrowing by a municipality to finance or otherwise pay for a housing
15 infrastructure project shall occur only after the legal voters of the municipality,
16 by a majority vote of all voters present and voting on the question at a special
17 or annual municipal meeting duly warned for the purpose, authorize the
18 legislative body to pledge the credit of the municipality, borrow, or otherwise
19 secure the debt for the specific purposes so warned.

20 (c) Any indebtedness incurred under this section may be retired over any
21 period authorized by the legislative body of the municipality.

1 (d) The housing development site shall continue until the date and hour the
2 indebtedness is retired or, if no debt is incurred, five years following the
3 creation of the housing development site.

4 (e) A municipal legislative body shall provide information to the public
5 prior to the public vote required under subsection (b) of this section. This
6 information shall include the amount and types of debt and related costs to be
7 incurred, including principal, interest, and fees; terms of the debt; the housing
8 infrastructure project to be financed; the housing development projected to
9 occur because of the housing infrastructure project; and notice to the voters
10 that if the tax increment received by the municipality from any property tax
11 source is insufficient to pay the principal and interest on the debt in any year,
12 the municipality shall remain liable for the full payment of the principal and
13 interest for the term of the indebtedness. If interfund loans within the
14 municipality are used, the information must also include documentation of the
15 terms and conditions of the loan.

16 (f) If interfund loans within the municipality are used as the method of
17 financing, no interest shall be charged.

18 (g) The use of a bond anticipation note shall not be considered a first
19 incurrence of debt pursuant to subsection (a) of this section.

20 § 1910b. ORIGINAL TAXABLE VALUE; TAX INCREMENT

21 (a) As of the date the housing development site is created, the lister or
22 assessor for the municipality shall certify the original taxable value and shall

1 certify to the legislative body in each year thereafter during the life of the
2 housing development site the amount by which the total valuation as
3 determined in accordance with 32 V.S.A. chapter 129 of all taxable real
4 property within the housing development site has increased or decreased
5 relative to the original taxable value.

6 (b) Annually throughout the life of the housing development site, the lister
7 or assessor shall include not more than the original taxable value of the real
8 property in the assessed valuation upon which the treasurer computes the rates
9 of all taxes levied by the municipality and every other taxing district in which
10 the housing development site is situated, but the treasurer shall extend all rates
11 so determined against the entire assessed valuation of real property for that
12 year.

13 (c) Annually throughout the life of the housing development site, a
14 municipality shall remit not less than the aggregate education property tax due
15 on the original taxable value to the Education Fund.

16 (d) Annually throughout the life of the housing development site, the
17 municipality shall hold apart, rather than remit to the taxing districts, that
18 proportion of all taxes paid that year on the real property within the housing
19 development site that the excess valuation bears to the total assessed valuation.
20 The amount held apart each year is the “tax increment” for that year. The tax
21 increment shall only be used for financing and related costs.

1 (e) Not more than the percentages established pursuant to section 1910c of
2 this subchapter of the municipal and State education tax increments received
3 with respect to the housing development site and committed for the payment
4 for financing for improvements and related costs shall be segregated by the
5 municipality in a special tax increment financing account and in its official
6 books and records until all capital indebtedness incurred for the housing
7 infrastructure project has been fully paid. The final payment shall be reported
8 to the treasurer, who shall thereafter include the entire assessed valuation of the
9 housing development site in the assessed valuations upon which the municipal
10 and other tax rates are computed and extended, and thereafter no taxes from
11 the housing development site shall be deposited in the special tax increment
12 financing account.

13 (f) Notwithstanding any charter provision or other provision, all property
14 taxes assessed within a housing development site shall be subject to the
15 provisions of this section. Special assessments levied under chapter 76A or 87
16 of this title or under a municipal charter shall not be considered property taxes
17 for the purpose of this section if the proceeds are used exclusively for
18 operating expenses related to properties within the housing development site
19 and not for improvements within the housing development site.

20 § 1910c. USE OF TAX INCREMENT; RETENTION PERIOD

21 (a) Uses of tax increments. A municipality may apply tax increments
22 retained pursuant to this subchapter to debt incurred within the period

1 permitted under section 1910a of this subchapter, to related costs, and to the
2 direct payment of the cost of a housing infrastructure project. A municipality
3 may provide tax increment to a sponsor only upon receipt of an invoice for
4 payment of the financing, and the sponsor shall confirm to the municipality
5 once the tax increment has been applied to the financing. Any direct payment
6 shall be subject to the same public vote provisions of section 1910a of this
7 subchapter as apply to debt.

8 (b) Education property tax increment. Up to 70 percent of the education
9 property tax increment may be retained for up to 20 years, beginning the first
10 year in which debt is incurred for the housing infrastructure project. Upon
11 incurring the first debt, a municipality shall notify the Department of Taxes
12 and the Vermont Economic Progress Council of the beginning of the retention
13 period of the education property tax increment.

14 (c) Municipal property tax increment. Not less than 85 percent of the
15 municipal property tax increment may be retained, beginning the first year in
16 which debt is incurred for the housing infrastructure project.

17 (d) Excess tax increment.

18 (1) Of the municipal and education property tax increments received in
19 any tax year that exceed the amounts committed for the payment of the
20 financing and related costs for a housing infrastructure project, equal portions
21 of each increment may be retained for the following purposes:

22 (A) to prepay principal and interest on the financing;

1 (B) to place in a special tax increment financing account required
2 pursuant to subsection 1910b(e) of this subchapter and use for future financing
3 payments; or

4 (C) to use for defeasance of the financing.

5 (2) Any remaining portion of the excess education property tax
6 increment shall be distributed to the Education Fund. Any remaining portion
7 of the excess municipal property tax increment shall be distributed to the city,
8 town, or village budget in the proportion that each budget bears to the
9 combined total of the budgets unless otherwise negotiated by the city, town, or
10 village.

11 (e) Adjustment of percentage. During the tenth year following the creation
12 of a housing development site, the municipality shall submit an updated tax
13 increment financing plan to the Vermont Economic Progress Council which
14 shall include adjustments and updates of appropriate data and information
15 sufficient for the Vermont Economic Progress Council to determine, based on
16 tax increment financing debt actually incurred and the history of increment
17 generated during the first ten years, whether the percentages approved under
18 this section should be continued or adjusted to a lower percentage to be
19 retained for the remaining duration of the retention period and still provide
20 sufficient municipal and education increment to service the remaining debt.

21 § 1910d. INFORMATION REPORTING

22 (a) A municipality with an active housing infrastructure project shall:

1 (1) develop a system, segregated for the housing infrastructure project,
2 to identify, collect, and maintain all data and information necessary to fulfill
3 the reporting requirements of this section;

4 (2) provide timely notification to the Department of Taxes and the
5 Vermont Economic Progress Council of any housing infrastructure project
6 debt, public vote, or vote by the municipal legislative body immediately
7 following the debt incurrence or public vote on a form prescribed by the
8 Council, including copies of public notices, agendas, minutes, vote tally, and a
9 copy of the information provided to the public pursuant to subsection 1910a(e)
10 of this subchapter;

11 (3) annually on or before February 15, submit on a form prescribed by
12 the Vermont Economic Progress Council an annual report to the Council and
13 the Department of Taxes, including the information required by subdivision (2)
14 of this subsection if not previously submitted, the information required for
15 annual audit under section 1910e of this subchapter, and any information
16 required by the Council or the Department of Taxes for the report required
17 pursuant to subsection (b) of this section.

18 (b) Annually on or before April 1, the Vermont Economic Progress Council
19 and the Department of Taxes shall submit a report to the Senate Committees on
20 Economic Development, Housing and General Affairs and on Finance and the
21 House Committees on Commerce and Economic Development and on Ways

1 and Means on housing infrastructure projects approved pursuant to this

2 subchapter, including for each:

3 (1) the date of approval;

4 (2) a description of the housing infrastructure project;

5 (3) the original taxable value of the housing development site;

6 (4) the scope and value of projected and actual improvements and
7 developments in the housing development site, including the number of
8 housing units created;

9 (5) the expected or actual sale and rental prices of any housing units;

10 (6) the number of housing units known to be occupied on a basis other
11 than as primary residence;

12 (7) the number and types of housing units for which a permit is being
13 pursued under 10 V.S.A. chapter 151 (State land use and development plans)
14 and, for each applicable housing development, the current stage of the
15 permitting process;

16 (8) projected and actual incremental revenue amounts;

17 (9) the allocation of incremental revenue, including the amount
18 allocated to related costs; and

19 (10) projected and actual financing.

20 (c) On or before January 15, 2030, the Vermont Economic Progress
21 Council shall submit a report to the Senate Committees on Economic
22 Development, Housing and General Affairs and on Finance and the House

1 Committees on Commerce and Economic Development and on Ways and

2 Means that:

3 (1) describes for each housing development site the change in assessed
4 valuation and the municipal grand list across the life of the housing

5 infrastructure project;

6 (2) describes barriers municipalities, developers, and sponsors encounter
7 in using the Community and Housing Infrastructure Program; and

8 (3) provides considerations for updating the Community and Housing
9 Infrastructure Program to address any barriers identified under subdivision (2).

10 (d) On or before January 15, 2035, the Vermont Economic Progress

11 Council shall submit a report to the Senate Committees on Economic

12 Development, Housing and General Affairs and on Finance and the House

13 Committees on Commerce and Economic Development and on Ways and

14 Means evaluating the success of the Community and Housing Infrastructure

15 Program in achieving its purpose, as stated in section 1907 of this chapter,

16 including by identifying the amount and kinds of housing produced through

17 the Program and by determining whether housing development pursued

18 through the Program meets the project criterion and the location criterion of

19 section 1910 of this chapter.

20 § 1910e. AUDITING

21 Annually on or before April 1 until the year following the end of the period

22 for retention of education property tax increment, a municipality with a

1 housing infrastructure project approved under this subchapter shall ensure that
2 the special tax increment financing account required by section 1910b of this
3 subchapter is subject to the annual audit prescribed in section 1681 or 1690 of
4 this title and submit a copy to the Vermont Economic Progress Council. If an
5 account is subject only to the audit under section 1681 of this title, the Council
6 shall ensure a process is in place to subject the account to an independent audit.
7 Procedures for the audit must include verification of the original taxable value
8 and annual and total municipal and education property tax increments
9 generated, expenditures for financing and related costs, and current balance.

10 § 1910f. GUIDANCE

11 (a) The Secretary of Commerce and Community Development, after
12 reasonable notice to a municipality and an opportunity for a hearing, may issue
13 decisions to a municipality on questions and inquiries concerning the
14 administration of housing infrastructure projects, statutes, rules,
15 noncompliance with this subchapter, and any instances of noncompliance
16 identified in audit reports conducted pursuant to section 1910e of this
17 subchapter.

18 (b) The Vermont Economic Progress Council shall prepare
19 recommendations for the Secretary of Commerce and Community
20 Development prior to any decision issued pursuant to subsection (a) of this
21 section. The Council may prepare recommendations in consultation with the
22 Commissioner of Taxes, the Attorney General, and the State Treasurer. In

1 preparing recommendations, the Council shall provide a municipality with a
2 reasonable opportunity to submit written information in support of its position.

3 (c) The Secretary of Commerce and Community Development shall review
4 the recommendations of the Council and issue a final written decision on each
5 matter within 60 days following receipt of the recommendations. The
6 Secretary may permit an appeal to be taken by any party to a Superior Court
7 for determination of questions of law in the same manner as the Supreme Court
8 may by rule provide for appeals before final judgment from a Superior Court
9 before issuing a final decision.

10 (d) The Vermont Economic Progress Council may adopt rules that are
11 reasonably necessary to implement this subchapter.

12 § 1910g. COMMUNITY AND HOUSING INFRASTRUCTURE PROGRAM

13 BOARD

14 (a) Creation. There is created the Community and Housing Infrastructure
15 Program Board to assist the Vermont Economic Progress Council with
16 evaluating a municipality’s housing infrastructure project application pursuant
17 to subsection 1910(d) of this subchapter.

18 (b) Membership. The Board shall be composed of the following members:

19 (1) the State Treasurer, who shall serve as chair of the Board;

20 (2) the Executive Director of the Vermont Housing Finance Agency;

21 (3) the Chief Executive Officer of the Vermont Economic Development

22 Authority;

1 (4) the Executive Director of the Vermont Bond Bank; and

2 (5) the Executive Director of the Vermont League of Cities and Towns.

3 (c) Duties. Upon request of the Vermont Economic Progress Council, the
4 Board shall evaluate the housing development plan component of a
5 municipality’s housing infrastructure project application to determine whether
6 the proposed housing development will meaningfully serve the housing needs
7 of the community. The Board shall respond with its determination no later
8 than 30 days following receipt of the request from the Vermont Economic
9 Progress Council.

10 (d) Assistance. The Board shall have the administrative and technical
11 assistance of the Office of the State Treasurer.

12 (e) Meetings. The Board shall meet upon request of the Vermont
13 Economic Progress Council.

14 (f) Compensation and reimbursement. Members of the Board shall be
15 entitled to per diem compensation and reimbursement of expenses as permitted
16 under section 1010 of this title.

17 (g) Decisions not subject to review. A decision of the Board under
18 subsection (c) of this section is an administrative decision that is not subject to
19 the contested case hearing requirements under 3 V.S.A. chapter 25 and is not
20 subject to judicial review.