

From: [Clark, Charity](#)
To: [Henry Epp](#)
Subject: Public Records Request
Date: Friday, March 12, 2021 5:32:12 PM
Attachments: [Epp PRA Responses Letter 3.12.21.pdf](#)

Please see attached.

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Via email to hepp@vpr.org

March 12, 2021

Henry Epp
Vermont Public Radio
hepp@vpr.org

Re: Vermont Public Records Act request, dated February 11, 2021

Dear Henry:

Attached please find the final record responsive to your request for public records, dated February 11, 2021. Previously, we provided responsive records to Nos. 1 and 2 of your request, as well as a partial response to No. 3.

Attached is an additional document responsive to your request. In addition to this and other documents already produced, there are two documents responsive to your request that are exempt from the Public Records Act under 1 V.S.A. §317(c)(3) (exempting records the production of which would cause the custodian of records to violate a rule of professional ethics) and §317(c)(4) (exempting records subject to the attorney-client privilege and work product doctrine).

To the extent you feel any records have been withheld in error, you may appeal to the Deputy Attorney General, Joshua Diamond at: Attorney General's Office, 109 State St. Montpelier VT 05609 or AGO.INFO@vermont.gov.

The total cost of complying with your request, pursuant to the Uniform Charges Schedule, was \$79.80. This is \$43.32 less than our cost estimate and the check you provided to us in the amount of \$123.12. As such, our business office will be issuing a refund check in the amount of \$43.32. Please let me know if you have any questions.

Sincerely,

/s/
Charity R. Clark
Chief of Staff

From: London, Sarah <Sarah.London@vermont.gov>
Sent: Tuesday, November 19, 2019 3:52 PM
To: Diamond, Joshua <Joshua.Diamond@vermont.gov>; Anderson, Michelle <Michelle.Anderson@vermont.gov>
Cc: Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: FW: Request for Comment

FYI, Josh and Michelle, I can chat with you tomorrow.

From: Sherman, Abbie <Abbie.Sherman@vermont.gov>
Sent: Tuesday, November 19, 2019 3:34 PM
To: London, Sarah <Sarah.London@vermont.gov>
Cc: Sullivan, Megan <Megan.Sullivan@vermont.gov>
Subject: Request for Comment

Good afternoon Sarah,

The Vermont Economic Progress Council is seeking your agency's input on the attached revised draft Tax Increment Financing (TIF) Rule. A memo from VEPC Executive Director Megan Sullivan is attached, providing additional details on this request.

Any comments should be submitted via email by close of business on **Thursday, December 5** to megan.sullivan@vermont.gov. If you have any questions about the draft rule, please reach out by email or phone (798-2221) at your convenience.

Best,
Abbie

Abbie Sherman | Grants Program Manager
Vermont Agency of Commerce & Community Development
Vermont Economic Progress Council
1 National Life Dr, Davis Bldg, 6th Floor | Montpelier, VT 05620-0501
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Written communications to and from state officials regarding state business are considered public records and, therefore, may be subject to public scrutiny.



Agency of Commerce & Community Development

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**WORKING DRAFT –
NOT FOR PUBLIC VIEWING**

TAX INCREMENT FINANCING DISTRICTS

ADOPTED RULE

Adopted May 6, 2015

Revised _____

This revised draft Rule is an attempt to:

- 1) Eliminate duplication of information that causes confusion or results in conflicting information;
- 2) Combines related areas so that there is less jumping around;
- 3) Adheres better to what is in Statute.

To accomplish this, there has been wordsmithing and simplification of information. The highlighted areas of this draft only represent informational changes and not linguistic changes.

Information that is derived directly from Statute is highlighted in **blue**.

New/Revised language differing from the 2015 Adopted TIF Rule is in **red text**.

**TAX INCREMENT FINANCE DISTRICTS
ADOPTED RULE**

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TIF Notes appear in boxes throughout the Rule to provide examples, history, or commentary.

**TAX INCREMENT FINANCE DISTRICTS
ADOPTED RULE**

100 Statutory Authority

Vermont statute¹ charges the Vermont Economic Progress Council with adopting rules for the purpose of providing clarification and detail for administering the provisions of law regarding the creation, implementation, administration, and operation of Tax Increment Financing Districts.²

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

200 Statement of Purpose of Rule

The purpose of this rule is to address issues relating to creating, implementing, administering, and operating Tax Increment Financing (TIF) Districts (herein referred to as “Districts”). Act 80 of the 2013 legislative session (as amended by Act 174 of 2014) clarified tax increment financing laws and specified a process for future oversight and enforcement. The Vermont Economic Progress Council (herein referred to as “Council”) was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act³ to provide further clarification of statutory construction and administrative detail.

201. Applicability of the Rule to District Cohort 1: Municipalities within District Cohort 1 must abide by this governing rule⁴ and any other provisions of the law in force. However, this rule also indicates which specific provisions are not applicable to those District Cohort 1 and specifies rule provisions that are applicable only to District Cohort 1.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

300 Definitions

All terms used in statute or this rule, but not defined herein, shall have the meanings ascribed to them in statute.⁵

“**Active District**” means a District that has been created pursuant to 24 V.S.A. §1892(a), has not been terminated pursuant to 24 V.S.A. §1894(a), and which has not retired all District financing.

“**Appraisal value**” has the same meaning as 32 V.S.A. §3481(1) as the property’s estimated fair market value.

“**Appropriated**” as used in 24 V.S.A. 1891(8) means approved by the municipal legislative body and dedicated to service eligible District expenditures.

“**Assessed valuation**” as used in 24 V.S.A. §1895 and §1896 is the appraisal value of each property within the District, less any statutory and municipally voted exemptions. Voted exemptions do not apply to the education fund.

“**Capital assets**” as used in this rule means tangible property used to advance the purposes of 24 V.S.A. Chapter 53, Subchapter 5, which is not easily converted into cash, and has an initial useful life extending beyond a single financial reporting period. Capital assets can be defined in terms of a minimum useful life and a minimum initial cost.

“**Coordinating agency**” as used in 24 V.S.A. § 1892(c) means any public or private entity from outside the municipality’s departments or offices and not employing the municipality’s staff, which has been designated by a municipality to administer and coordinate a District during creation, public hearing process, approval process, or administration and operation during the life of the District, including overseeing infrastructure development, real property development and redevelopment, assisting with reporting, and ensuring compliance with statute and rule.

“**Council**” means the Vermont Economic Progress Council, as established by 32 V.S.A. §5930a.

“**District Cohort**” means the group of TIF Districts approved under different iterations of the law, as follows:

- District Cohort 1: TIF Districts approved before 2006
- District Cohort 2: TIF District approved between 2006 to 2013
- District Cohort 3: TIF Districts approved beginning 2017

Unless otherwise specified, rules apply to all cohorts to the extent permitted by statute. Should material changes be made in the statute that would functionally create a new cohort and create

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

conflicts or ambiguities in the application of this TIF Rule, the Rule shall be interpreted and applied consistent with the statute.

“District Debt” means financing, as defined by 24 V.S.A. 1891(7) and this rule, which will be serviced or paid using tax increment.

“District Finance Plan” or **“TIF Financing Plan”** means a plan filed by municipalities within District Cohorts 2 or 3 either concurrently with, or subsequent to, a District Plan, which is considered and approved by the Council, and which includes District improvement financing details including anticipated finance instruments and tools, estimated timing for incurring District debt, finance structures and terms, estimated development and redevelopment schedules, and projections of revenue generation.

“District Plan” means the plan required by 24 V.S.A. § 1892(a), which was the subject of public hearings in accordance with 24 V.S.A. § 1892(a), adopted by the municipal legislative body and recorded by the municipal clerk or listers in accordance with 24 V.S.A. § 1892(b), and which, for District Cohorts 2 and 3, was considered and approved by the Council in accordance with 32 V.S.A. § 5404a (h). Such plans set the baseline for implementing Districts and against which performance will be measured, but may be amended pursuant to 24 V.S.A. §1901(2)(B) and these rules.

“District Reconciliation” means a document filed with the Council by District Cohort 1 to provide baseline information and data.

“Financing Plan,” “Financial Plan” or **“Finance Plan”** has the same meaning as District Finance Plan as defined in this section.

“Financing” means District debt incurred, including principal, interest, and any fees or charges directly related to that District debt, or other instruments or borrowing used by a municipality to pay for improvements and related costs⁶ in a tax increment financing district, only if authorized by the legal voters of the municipality in accordance with Statute. 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 Statute, and, if not included in the tax increment financing plan approved by Council, is also considered a substantial change and subject to the substantial change review process.⁷

“Improvements” means, in addition to the meaning provided by 24 V.S.A. § 1891(4), the installation, new construction or reconstruction of municipal capital assets. **Costs such as consulting, design, architects, engineering, accounting, legal, project management, other**

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

professional services, or products of those services related to the construction of eligible District improvements are also covered under this definition.

“Increment” there are two types of increment that TIFs address:

- Taxable Value Increment: Difference between current taxable value minus original taxable value.
- Tax Increment: Taxable value increment multiplied by the tax rate. This applies to both municipal and education property tax rates.

“Incur District Debt” or **“Incur District Indebtedness”** means the proper and appropriate execution, by an authorized official of a municipality, of a District debt instrument to finance District improvements and related costs, if such instrument is intended to be financed, or payment made, in whole or in part with tax increment and has been approved by the legal voters pursuant to 24 V.S.A. 24 § 1894(h). **The date upon which the District debt is incurred is the date of full execution of the District debt instrument.**

“Inter-fund loans” as used in 24 V.S.A. § 1891(7) means a method of paying for District improvements whereby loans are made from one fund to another within a municipality, with explicit terms of repayment determined by the municipality, which, in accordance with 24 V.S.A. § 1894(i), shall not include the payment of interest. Interfund loans used for District debt service or related costs may be repaid using TIF increment.

“New real property development” means the development or redevelopment of real property expected to occur through private or public investment caused by improvements financed with tax increment.

“Nexus” means the causal relationship that must exist between the improvements and the expected development and redevelopment in the District or the expected District outcomes.

“Non-TIF Revenue” means other revenue available to a municipality and identified in the District Financing Plan or District Authorization document that may be used to pay for District improvements, service District debt, or pay for related costs, that are not derived from the increase in taxable value of the properties within the District. Examples include municipal property tax, Federal and State grants, use fees, and parking revenue.

“Original Taxable Value” or **“OTV”** means, in addition to the meaning provided in 24 V.S.A. § 1891(5), the **Grand List** taxable value of such properties as of April 1 of the calendar year in which the District was created, or in accordance with the appropriate statute controlling the establishment of the OTV. Each District has a municipal OTV and an education OTV.

“Parcel” has the same meaning as 32 V.S.A. § 4152(a)(3); all contiguous land in the same ownership, together with all improvements thereon.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

“**Pledged**” as used in 24 V.S.A § 1891(8) means authorized by the legal voters of the municipality and appropriated to service eligible District expenditures.

“**Proportionality**” as used in 24 V.S.A. § 1894(e) refers to the percentage determined by the Council of the cost of an improvement that will serve the District based on nexus between the improvement and the expected real property development.

“**Related Costs**” means, in addition to the meaning provided in 24 V.S.A. § 1891(6), expenditures incurred and paid by a municipality, other than the actual cost of construction and financing of improvements, that are directly related to the creation, implementation, administration, and operation of a District.

“**Retention Period**” means the period during which the approved shares of tax increment may be set aside in a TIF District Fund. The retention period commences for the Grand List as of April 1 for that calendar year during which the municipality executes the first of any financing which has been approved by the voters. The retention period for education tax increment is limited to twenty consecutive years. The retention period for municipal tax increment is as authorized by the municipal legislative body or until all financing is retired. The retention period does not refer to or limit the number of years the tax increment so retained in the TIF District Fund may be used to service District debt and pay related costs, which may continue until all District financing is retired.

“**Secretary**” means the Secretary of Commerce and Community Development.

“**Serve the District**” refers to improvements that have nexus to the District.

“**Share**” means the percentage of tax increment that may be retained by the municipality each year a tax increment is generated.

“**Start Date**” means that a District is considered created and active at 12:01 a.m. on April 1 of the calendar year in which the municipal legislative body voted to create a district.⁸

“**Taxable value**” means the assessed value of real property within a District less any statutory exemptions.

“**TIF**” or “**TIF District**” or “**District**” means a Tax Increment Financing District.

“**TIF District Fund**” means the special fund created by a municipality in accordance with 24 V.S.A. §1896 (a) in which the District’s tax increment and District expenditures shall be segregated and tracked for accounting, recordkeeping, and reporting purposes.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

400 Purpose of Districts

The purpose of a TIF District is to provide revenues for improvements that serve the District and related costs, which will stimulate development or redevelopment within the District, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region, or the State⁹.



While this purpose assumes that the improvements will primarily be the construction of public infrastructure, the purpose does not assume that every improvement will be subject to 100% public use. Rather, the improvements should stimulate and cause public good outcomes.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

500 Authorization for Utilization of Education Tax Increment for District Financing

501. District Finance Plan: Municipalities filing new applications with the Council must file both a District Plan and a District Finance Plan. A municipality may seek approval of a District Finance Plan concurrently with consideration of a District Plan. In these cases, the Council will require a level of financial detail sufficient for the Council to make the viability and consistency determinations required by statute.¹⁰ Alternatively, a municipality may submit a District Finance Plan after approval of the District Plan. In either case, the District Finance Plan must be submitted to and approved by the Council before the municipality seeks a public vote to pledge the credit of the municipality. The District Finance Plan must be submitted to the Council on a form prescribed by the Council.

502. Performance Indicators: For Cohort District 1, performance indicators will be based on any statutory purposes or goals in place when the District was created and any other goals subsequently added to statute with specific reference to the District, plus the District Reconciliation submitted in accordance with this rule. For all other Cohort Districts, performance indicators will be based on the information and data provided in the District Plans and applications that address the approval criteria. The Council may add performance indicators to support the effective administration of the TIF Program.

Municipalities must include data and information as part of the Annual Report by municipalities required by statute¹¹ and Section 1004.2 of this Rule. The Council staff will monitor and oversee performance indicators for the purpose of compliance.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

600 Power and Life of Districts¹²

601. Creation of a District¹³: To create a District, a municipal legislative body must have determined that such a District will serve the statutory public purposes.¹⁴ The municipal body must describe the District in a District Plan and hold one or more public hearings, after providing public notice (see Section 1001), on the proposed plan. Following the public hearing(s), the municipal legislative body must adopt the District Plan. The Plan must be recorded with the municipal clerk and notification sent to the listers or assessor.

The District is considered created and active at 12:01 a.m. on April 1 of the calendar year in which the municipal legislative body voted to adopt the District Plan¹⁵. Even if the vote occurs between April 2 and December 31, the life of the District starts on April 1 of that same calendar year.

602. Identification of Properties Within the Boundary of the District: A District Plan shall include a listing of the properties contained within the District boundaries, with their assessed and taxable values, and describe and illustrate on a map the boundary of the District. The boundary must not divide or bisect a parcel; the parcel must be included wholly within the District or be wholly outside the District.¹⁶

603. Coordinating Agency: Municipalities with Districts may designate an entity from outside the municipality's departments or offices as a District coordinating agency. Such designees may include regional planning commissions, regional development corporations, consultants, or other entities. The municipality may claim the costs of the services paid to such an entity as related costs, if such costs are approved by the voters as part of the process to incur District debt¹⁷. The coordinating agency is meant as an administrative entity working on behalf of the municipality and cannot be authorized to enter into any agreements or make any covenants on behalf of the municipality or otherwise act to commit the municipality.

604. Improvements¹⁸: Eligible improvements include, but are not limited to:

- The installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of the District.
- Utilities, such as power transmission lines, telecommunications lines, telecommunications towers, and power or telecommunications equipment; wastewater, storm water, water dispersal, collection, and treatment facilities and treatment equipment including force mains, pump stations, sewers, lift stations, and related wastewater, storm water and water equipment.
- Transportation improvements such as public roads, streets, bridges, parking lots, facilities, garages, and structures, multimodal facilities, electric vehicle charging stations, public transit stop equipment and amenities, street and sidewalk lighting, sidewalks, streetscapes, way-finding signs and kiosks; traffic signals, medians, turn lanes, bicycle lanes, and property acquired or used for right of way.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

- Civic facilities and amenities such as hiking and biking trails, parks and green spaces, pathways to facilitate multimodal transportation, bicycle and pedestrian paths, and bridges, playgrounds, street furnishings, and civic structures such as libraries, town/city hall and offices, public safety facilities and recreation facilities.
- Land and property acquisition, property demolition, and property improvements.
- Site preparation, environmental remediation, or rehabilitation for development or redevelopment, including acquisition and demolition, of contaminated property or condemned property.
- Costs such as consulting, design, architects, engineering, accounting, legal, project management, or other professional services directly related to the construction of eligible District improvements.



Improvements must serve the District. This means that the improvements do not necessarily have to be located within the District, but must serve the District. For District Cohorts 2 and 3, the amount of the total improvement costs that can be paid with tax increment is limited by the proportionality set by the Council during the District application process.

Legal fees are allowed to be included as an improvement cost as long as they are directly related to the construction of eligible District improvements. Should legal fees become greater than anticipated, the increase has the potential of causing the project to meet the threshold of requiring a substantial change. This may be especially true in the event of a lawsuit or challenge during the course of design or construction of an eligible District improvement. In the event of a lawsuit or challenge after the completion of an eligible District improvement, the associated legal fees are not eligible as an improvement cost since they are not directly related to the construction of the eligible District improvement.

The following are not eligible to be financed or paid for with TIF Funds as improvements or related costs¹⁹: annual municipal operating costs; public transportation operating costs; annual maintenance or repair costs; the purchase of vehicles; interior furnishings; operating equipment or apparatus; the cost of the installation, new construction, or reconstruction of private capital assets a developer would reasonably incur to complete a private project; and other expenditures for non-capital assets.

605. Related Costs: Districts may assign certain costs, **other than the actual costs of constructing and financing infrastructure improvements**, to the District as related costs and pay for these costs with tax increment²⁰.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

Related costs may include, but are not limited to:

- Cost of plans, studies, or reports that are specific to preparing a District Plan, a District Finance Plan, application to the Council, or subsequent filing or reporting required to maintain the District.
- Costs of providing public notification about, and obtaining public approval for, a District Plan, a District Finance Plan and TIF District Debt, application or subsequent filing to the Council.
- Costs such as consulting, design, architects, engineering, accounting, legal, project management, or other professional services incurred during preparation or implementation of a District Plan, District Finance Plan, District application, District Reconciliation Plan, or amendments to those plans. or directly related to the implementation and construction of eligible District improvements.
- Municipal employee and staff costs directly related to the District; these costs may only be paid with municipal tax increment generated beyond the required municipal share to service District debt and related costs that are not municipal employee and staff costs (See Section 706).
- Administration fees paid to a coordinating agency designated by the municipality.
- Application fees charged by the Council for third party analysis of District Plans, District Financing Plans or subsequent filings.
- The cost of audits by the State Auditor of Accounts²¹ including costs billed back to the municipality by the State Auditor of Accounts **and any audit-related costs incurred by the municipality during or after those audits have been conducted.**
- The District-related costs of the independent annual municipal audit.²²

Related costs do **not** include:

- Municipal operating costs, public transportation operating costs, annual maintenance or repair costs, the purchase of vehicles, furnishings, equipment, or apparatus.
- Capitalized interest or underwriter's discounts.
- Time or services provided by employees of the municipality in the normal course of their municipal duties which are unrelated to the District creation or implementation.
- **Legal fees associated with a lawsuit or challenge after the completion of an eligible District improvement, except as provided for above and in association with audits by the State Auditor of Accounts.**

605.1 Paying for Related Costs. **Related costs may accrue starting with the process to establish the District and may continue to accrue until the life of District ends or the District is terminated.**

Related costs may be financed with District debt **or directly paid** if they have been approved by the voters.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE



For recordkeeping and voter approval obligations, see Sections 1002 and 704.

606. Restriction on Use of Education Tax Increment for Certain Related Costs²³: Education tax increment may not be used to pay for restricted related costs such as personnel time or other municipal costs. These costs may only be reimbursed using *municipal* tax increment that is above the municipal tax increment committed to service existing District financing.

The Burlington Waterfront and Winooski Districts are exceptions because they are authorized by statute to retain 100% of municipal tax increment for District debt and related costs and therefore, none of the related costs are restricted.



Example: If the District was approved to utilize 75% of the annual Education Property Tax incremental revenue, the municipality must utilize at least 75% of the annual municipal incremental revenue to service debt and pay non-restricted related costs. Only municipal incremental revenue generated beyond the 75% may be retained and used to pay restricted related costs, if approved by the municipal legislative body. If the municipality votes to allow the District to retain more than the minimally required level of municipal incremental revenue, the additional municipal may be used to pay for restricted related costs.

607. Requirement to Incur First District Debt: Each District approved by the Council must incur District debt before the fifth anniversary of the District creation date, or the municipality is required to obtain an extension of the District debt period by application to the Council; otherwise the District is terminated.²⁴ To qualify as a first instance of District debt incurred for the District the voters of the municipality must approve the use of tax increment to pay for all or any part of the District debt. Execution of the District debt instrument is required to constitute incurrence of District debt within five years. The public vote does not satisfy the requirement to incur District debt. **The execution of a bond anticipation note may be counted as a District's first incurrence of District debt.**



The following do not constitute incurring first District debt:

- *Accruing expenses which are considered related costs that will be reimbursed after voter approved financing;*
- *Borrowing to pay for District improvements that are not serviced by tax increment.*

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

608. Obtaining an Extension of the Five-Year Requirement to Incur First District Debt: If a District approved by the Council does not incur District debt by the fifth anniversary of the District creation date, to avoid termination the municipality may submit a five-year extension request to the Council.

An extension request is considered a substantial change. Therefore, prior to submitting the extension request to the Council, the municipality must follow the substantial change process in Section 900.

If the Council makes a positive determination to the substantial change request, the new District Finance Plan is approved, and the District is granted a five year extension in which to incur District debt. If application for approval was sought before the fifth anniversary of the District creation date, but approval occurs after, the approval is retroactive to that date and the extension is for no more than five years from the fifth anniversary of the date the District was created.

609. Termination of a District Due to Failure to Incur District Debt: If a District approved by the Council does not incur District debt by the fifth anniversary of the creation date, and no extension request is filed, the District is terminated and no longer has the powers conferred by Vermont statute.

610. Ten-year Limitation to Incur All District Debt²⁵: A District approved by the Council, which has incurred District debt for the first time within the five-year limitation, or which has been granted a five-year extension by the Council, must incur all District debt within ten years from the creation of the District. Any additional District debt incurred after the ten-year limitation may not be financed, serviced, or in any way paid for using required share tax increment. Execution of the District debt instrument is required to constitute incurrence of District debt within ten years. The public vote does not satisfy the requirement to incur District debt. Execution of a bond anticipation note may be used as last incurrence of debt. All bond anticipation notes must be subsumed into permanent financing within one year from the District's 10-year limitation to incur District debt.



Districts that have been approved by the Council or the legislature to contribute less than 100% share of the municipal tax increment, may use the remaining share of increment to incur debt beyond the 10-year limitation in accordance with statute, provided those revenues are not comingled with the TIF District Fund revenues. For example, a district that the Council has approved an 80% share of the municipal tax increment, may use the remaining 20%.

611. Equal Share of Tax Increment Required:²⁶ For the District Cohorts 2 and 3, during approval of the District Plan the Council set the maximum share of the education tax increment that may be retained each year to service District debt and pay related costs. The Council also set the minimum share of the municipal tax increment that must be retained. The shares are expressed

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

as a percentage of the total tax increment for each source and are based on the data provided in the District Finance Plan. The shares ensure the retention of tax increment sufficient to service the proportion of District improvement costs and related costs approved by the Council. The share of education tax increment that can be retained shall be no more than the amount prescribed by Statute²⁷. The share of municipal tax increment that can be retained shall be no less than the amount prescribed by Statute²⁸, but may be higher. These are the shares of the education and municipal tax increment that must be segregated in the TIF District Fund and committed to service District financing. Any tax increment generated due to increases in property values within the District continues to be paid in full to the State and municipality until the District's first instance of incurring District debt, triggering the tax increment retention period.

For District Cohort 1, the share was established by statute. See Section 612 for detail.

All municipal and sub-municipal property tax rates are subject to the tax increment calculation, even if the rate was approved for a special purpose and even if that purpose is included in the municipal charter.



Municipal tax or sub-municipal tax rates that may not be subject to the tax increment calculation include Local Agreement tax and Downtown Improvement District tax. The test for determining whether these types of tax should be included depends on whether the proceeds from these types of tax are used exclusively for operating expenses related to properties within the District. If those proceeds are exclusively for operating expenses related to properties within the District, then the tax is not subject to the tax increment calculation.

Water and sewer user fees are not subject to the tax increment calculation.

612. Retention Period for Tax Increment: For Districts approved by Council, the twenty-year education tax increment retention period commences on April 1 of the year in which the district incurs its first instance of voter-approved District debt, regardless of when that happens during the calendar year.

The twenty-year retention period commences even if the taxable value of the grand list for the first year in which District debt is incurred is not greater than the OTV and therefore creates a tax increment deficit. For all twenty consecutive years, the approved shares of tax increment



VEPC and Property Valuation & Review (PVR) have a process to administer the statute limiting retention of education tax increment to not more than the 20-year period. The process requires submittal to VEPC by the District of the executed debt instrument at the first incurrence of debt. Once accepted, VEPC notifies PVR of the District's first incurrence of debt. Only PVR can authorize the District's NEMRC Grand List module to start withholding the approved share of education tax increment.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

must be segregated into the TIF District Fund. For any years where there is an education tax increment deficit, that deficit amount must be paid to the Education Fund.

For District Cohort 1, the retention periods, District debt periods, and shares of the tax increment to be retained by the Districts were established by statute as follows: (Share refers to the share retained by the District)

Burlington Waterfront²⁹

District Debt Period: 1996 - 2019

Retention Period: 1999 - 2025

Share:

1996 – 2010: Education-100%; Municipal-100%

2010 – 2025: Education-75%³⁰; Municipal-100%

For the Burlington Waterfront District, subject to submitting to VEPC an executed contract with completion guarantee as outlined in Act 134 (2016), the period to retain municipal and education increment for only the three parcels described in Act 134 is authorized to June 30, 2035.³¹

Winooski Downtown³²

District Debt Period: 2000-2005

Retention Period: 2004-2024

Share:

1999-2008: Education-95%; Municipal-100%

2009-District Debt Paid Education-98%; Municipal-100%

613. Use of TIF District Fund Revenues: The amounts held apart in the TIF District Fund must be disbursed only for payment of District financing approved by a public vote until all financing is retired.

614: Adjustment of Increment Share:³³ During the tenth year anniversary for District Cohorts 2 and 3, by which time all District debt will have been incurred, the municipality must submit an updated District Finance Plan to the Council. The update shall include updated data and information sufficient for the Council to determine, based on actual District debt incurred and related costs incurred and planned, the real property development that has occurred or will occur, and the history of tax increment generated during the first ten years, whether the approved shares of tax increment to be retained each year should be continued or adjusted to a lower percentage for the remainder of the retention period. The Council will not reduce the increment share unless the reduced percentage would provide sufficient tax increment to service the District debt and related costs. In no case will the share be lowered if to do so would impair the municipality's ability to service District debt, pay related costs, or impair a covenant or agreement with a lender.

615. Proportionality:³⁴ The proportionality is determined by the Council for each planned improvement at the time of approval of the District Plan and/or District Finance Plan, or

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Substantial Change Request. Only that portion of the total improvement cost that is approved through the proportionality determination by the Council may be paid using tax increment. In 2008, statute was amended³⁵ effective retroactively to permit districts created after 2006 to **use financing for improvements made outside a District as long as the improvement serves the District and is limited to the proportion of the improvement cost that will serve the District.**

The designated proportionality may be met either by applying the proportion to each individual cost factor within the total cost of the improvement or related cost, or by grouping individual cost factors together to meet the approved proportion of the total cost. Tax increment may not be used to pay for more than the proportion of the total cost that was approved. If the total cost of an improvement increases, the proportionality remains the same; however a substantial change request may need to be filed with VEPC (see Section 900). The cost upon completion and application of the approved proportionality will be subject to annual reporting and monitored by VEPC.

For District Cohort 1, no proportionality requirements were included in statute. No improvements made by District Cohort 1 are subject to the proportionality rule.

616. Public Vote Required for All District Financing: ³⁶ **For all existing Districts, notwithstanding any provisions of any municipal charters, the municipal legislative body must obtain authorization from the voters to pledge the credit of the municipality, borrow, make a direct payment for, or to reimburse the municipality for or pay future related costs.** See Section 704 for the requirements for incurring District debt and the public vote.

617. Life of a District: **The District is active until the date all District debt and related costs are retired, or is terminated for failure to either incur first instance of District debt or request an extension by the District's fifth anniversary.**

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

700 Indebtedness

701. Incurring District Debt. Following the creation of the District and approval of a District Plan and a District Finance Plan by the Council, District Cohorts 2 and 3 may incur indebtedness for up to ten years from the creation date of the District, if the first such District debt is incurred before the fifth anniversary of the District creation, or an extension has been approved by the Council.

The municipality must obtain prior approval of its voters to incur District debt authorizing the municipality to pledge the credit of the municipality, borrow, or otherwise finance for the specific purposes that implement the District Plan. Short-term or interim financing incurred after the creation of the TIF District may subsequently be subsumed into a voter approved District debt instrument. Refer to Sections 607 and 610 for criteria on first and last incurrence of District debt.

The ballot question, or a separate question, may request additional funds to pay for related costs beyond those needed to pay for improvements. Short term debt may be used but voters must be notified by inclusion in the information provided to voters at the time of the public vote to incur debt.

701.1. Direct Payments. If the form of District financing proposed by the municipality is a direct payment to be approved by the Municipal Legislative Body after a public vote for VEPC approved improvements or related costs, the municipality must maintain detailed documentation of the transactions and provide information in the annual report. A direct payment can only be made if the balance of the TIF District Fund has sufficient and available revenues that are not committed to service previously incurred District debt.

Commented [SA1]: Needs legislative review

701.2. Interfund Loans. If the form of District debt proposed by the municipality to be approved by the voters is an inter-fund loan, the notice to the voters must include documentation of the terms and conditions of such loan. **Statute prohibits charging interest on inter-fund loans for District improvements.**³⁷

701.3. Refinancing. Refinancing of existing District debt to take advantage of improved rates or terms does not constitute incurring new District debt and therefore does not require a public vote or prior notification of the Council. Such refinancing must be reported to the Council in the Annual Report required by Section 1003.2 of this Rule.

702. Ineligible Financing: Any District debt incurred prior to the creation of the District (including any District debt incurred prior to the creation of the District that is then refinanced during the life of the District), or any District debt incurred after the ten-year anniversary of the District creation date, or after the statutorily limited District debt period, even if for improvements related to the District, is ineligible to be serviced with any tax increment.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

703. Duration of District Financing: The municipal legislative body controls the duration and terms of District financing, with the following exceptions:

- Imposing interest on interfund loans is prohibited³⁸;
- For the Winooski District, the duration of bonds issued to finance District improvements is limited to twenty years³⁹;
- For the Burlington Waterfront District, education tax increments may be used for no more than 20 years from the date the District debt was incurred for financing of any certificates of participation or HUD Section 108 District debt issued between April 1, 1996 and March 31, 2006⁴⁰;

705. Vote on District Financing: Prior to a public vote on District financing, the question must be approved by a vote or resolution of the municipal legislative body in accordance with the municipal charter. The municipality must provide public notice and provide at least one appropriately warned public hearing (See TIF Rule Section 1001) on the question. The form of the notification is the responsibility of the municipality and subject to the charter of the municipality. Information to the public, at a minimum, must include the following as required by statute⁴¹ as applicable to the proposed financing:

- Total amount of District debt to be voted upon and total cumulative District debt incurred (Statute⁴² also requires that this information be included in the actual ballot question.)
- Estimated amount and types of financing that will be serviced or paid using tax increment, including principal, and estimated interest, and fees, and terms of the District debt.
- Estimated amount and types of related costs that will be financed, paid or reimbursed with tax increment.
- Identification of source fund, terms, and conditions for interfund loans, including those loans that may be used to make District debt service payments when tax increment is insufficient.
- Estimates of interim financing, such as a Bond Anticipation Notes, developer-assisted financing, or other short-term financing instruments to be issued and refinanced with the proceeds of the District debt that is the subject of the vote.
- Improvements to be financed and the proportion of the total improvement cost that was approved for financing with tax increment.
- Estimated development and/or redevelopment and District outcomes expected to occur because of the improvement.
- Notice to the voters that if the tax increment received by the municipality from any property tax source (education or municipal) is insufficient to pay the principal and interest on the District debt, or other forms of District financing, in any year, for whatever reason, including a decrease in property value or repeal of the education property tax source, unless determined otherwise at the time of such repeal, the municipality shall

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remain liable for the full payment of the principal and interest for the term of indebtedness.

The municipality must include in the ballot question the amount of financing and related costs to be approved by the current vote. Following the voters' first approval of District financing, the municipality must include in the ballot question the amount of District financing and related costs to be approved by the current vote and a cumulative amount of outstanding District debt and related costs approved by the voters to date.

When the municipality seeks voter approval for District financing the ballot questions, or a separate ballot question, may include a request to allocate increment to pay for related costs previously advanced or for projected related costs.

The approval must be by a majority of all voters present and voting on the question at a special or annual municipal meeting properly and duly warned for the purpose.

706. Notification to VEPC: Within 60 days prior to a public vote to obligate the municipality for District financing, notify the Council of the pending vote and when available (but prior to the vote), provide the following electronically to the Council:

- A copy of the notice to the voters required by 24 V.S.A. §1894(i), including information on where and when the notice was published and posted;
- A copy of the notice of public hearing, including copies of the notice as it appeared in publications;
- A copy of draft or final agendas and minutes of the municipal legislative body indicating votes or resolutions involving the District financing.

Within 30 days after the public vote to authorize the use of District financing, electronically provide to the Council a copy of the ballot with a certification of the vote tally.

Within 30 days after District debt is executed, electronically provide the Council a copy of the document(s) executed by the municipality to incur District financing. The document(s) must include the date of execution of the financing.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

800 Original Taxable Value and Tax Increment

801. Original Taxable Value (OTV): Immediately following the creation of a District, the listers or assessor for the municipality must propose to the municipal legislative body the preliminary original taxable value of the District, which is the aggregated taxable value of all properties within the boundaries of the District as of April 1 of the calendar year in which the District was created. **The OTV will be certified based on the final Grand List values as of April 1 the year the District is created.** The certified OTV is the base value which remains unchanged and determines the amount of property taxes that at a minimum must continue to be paid annually to the municipal general fund, other municipal funds, and the Education Fund, based on the tax rates for each year. The OTV is the benchmark from which any future taxable value increment will be determined.

The OTV shall be accounted for as follows:

- (a) A municipal OTV consisting of the aggregated taxable values for municipal purposes;
- (b) An Education Fund OTV for consisting of the aggregated taxable values for all properties in the District.



Establishment of the original taxable value provides protection to the education fund so that there is no loss in tax revenue during the District's retention period. In the event that the taxable value of a property falls below the original taxable value, the municipality must make up that difference to the education fund, regardless of the reason. Examples of events that could cause this reduction include, but are not limited to: loss of property due to damage; demolition of property to allow for redevelopment, or transfer of ownership to a non-taxable entity.



For the Burlington Waterfront District, the OTV is as established upon creation in 1996 and expanded in 1997, except that the grand list as of April 1, 2010 for the area encompassing the Burlington Waterfront TIF District, but excluding two parcels at 25 Cherry Street and 41 Cherry Street, shall serve as the original taxable value to calculate the taxable value increment to be shared between the state Education Fund (25%) and the District (75%). The excluded parcels shall be subject to a share of 100% to the District.

For the Winooski District, the OTV is established on the April 1 immediately preceding the date of issuance of bonds (2004) and the properties and values to be included in the OTV shall be determined through an agreement between the municipality, the Council, and the Tax Department/PVR. A meeting shall occur no later than three (3) months after the promulgation of this rule to begin the process to determine the OTV and the OTV shall become effective as of the April 1 immediately following the agreement and will be applicable for the calculation of the tax increment for subsequent years.

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802. Increase/Decrease in Taxable Value: Annually following the year of creation of the District, the listers or assessor shall certify to the municipal legislative body the amount by which the total taxable value of the properties within the TIF District has increased or decreased compared to the municipal and education OTV. The Council will provide a form on which to provide this certification.

803. Tax Increment: In each year after the District is created, the municipality shall do the following:

- (a) Determine the total taxable value of all property in the District according to the provisions of statute;⁴³ and,
- (b) For the calculation of the municipal tax increment:
 - i. Calculate the municipal incremental taxable value by subtracting the municipal OTV taxable value from the municipal current taxable value.
 - ii. Compute the municipal tax increment by multiplying the municipal incremental taxable value by all municipal and sub-municipal tax rates and then dividing by 100.
- (c) The education tax increment is calculated by determining the tax increment attributable to homestead property and the tax increment attributable to non-homestead property separately, then aggregating the two amounts to determine the education tax increment. Education tax increment shall be determined by:
 - i. Calculate the homestead incremental taxable value by subtracting the homestead OTV taxable value from the homestead current taxable value.
 - ii. Compute the homestead tax increment by multiplying the homestead incremental taxable value by the homestead rate determined by the Commissioner of Taxes and then divide by 100.
 - iii. Calculate the non-homestead incremental taxable value by subtracting the non-homestead OTV taxable value from the non-homestead current taxable value.
 - iv. Compute the non-homestead tax increment by multiplying the non-homestead incremental taxable value by the non-homestead rate determined by the Commissioner of Taxes and then divide by 100.
 - v. Aggregate the homestead tax increment and non-homestead tax increment to determine the total amount of the education tax increment.
- (d) If the District has not triggered the retention period, any tax increment is paid over to the State and municipality. If the District has triggered the retention period, transfer to the TIF District Fund that portion of each of the municipal tax increment and the education tax increment as is allowed to be retained, determined by applying the share that the municipality is allowed to retain for each against each of the municipal tax increment and the education tax increment; and pay the balance over to the State and municipality to whom the remaining amounts are due.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE



Illustrated Calculation of Education Tax Increment:

$\begin{aligned} & \text{Homestead Current Taxable Value} \\ & \quad - \text{Homestead OTV} \\ = & \text{Homestead Taxable Value Increment} \\ & \quad \times \text{Homestead Tax Rate} \\ = & \text{Homestead Tax Increment} \end{aligned}$	$\begin{aligned} & \text{Non-homestead Current Taxable Value} \\ & \quad - \text{Non-homestead OTV} \\ = & \text{Non-homestead Taxable Value Increment} \\ & \quad \times \text{Non-homestead Tax Rate} \\ = & \text{Non-homestead Tax Increment} \end{aligned}$
$\begin{aligned} & \text{Homestead Tax Increment} \\ & + \text{Non-homestead Tax Increment} \\ = & \text{Total Education Tax Increment} \end{aligned}$	



Calculation of Tax Increment for the Burlington Waterfront TIF District varies from all other Districts. There are two subcategories for the Burlington Waterfront TIF District: (1) the two hotels (SPAN #'s 114-035-20755 and 114-035-52634); and (2) all other parcels. Calculations for the two hotels is based on the 1996 OTV at 100% retention. All other parcels have two points in time that tax increments are calculated: (1) the 2010 increment at 100% retention; and (2) the post-2010 increment at 75% retention.

804. Changes to the Grand List:

Listers/assessors must thoroughly examine Vermont statute and should confer with the Council and Vermont Department of Taxes/PVR regarding any questions regarding the taxation status of a property.

804.1. Parcel Status Change: A change in the parcel status within the boundaries of a District does not change the OTV.



Examples of Parcel Status Changes include: taxable to non-taxable, non-taxable to taxable, residential to non-homestead, non-homestead to residential, and active to inactive.

804.3. Separation of a Parcel into Two or More Parcels: When a parcel of land located entirely within the boundaries of a District is separated into two or more parcels, the OTV shall be assigned to the parent parcel which retains the original SPAN to which the OTV was assigned. Each of the child parcels shall have the OTV of \$0.

804.4. Combination of Parcels: When two or more parcels of land located entirely within the boundaries of a District are combined into a single parcel, the municipal assessing officials shall

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

identify one SPAN to continue as the active parcel in the grand list and the municipal assessing officials shall assign a new appraisal value for the combined parcel. The OTV will continue to apply to each of the parcels to which it was originally assigned. Any additional SPANs identifying the remaining properties combined should be marked as inactive in the grand list and must remain in the calculations related to OTV and taxable value increment.

804.5 Boundary Adjustments: The boundary of a TIF District does not change. Changes in property ownership affecting the boundary of parcels along the perimeter of a District shall be reported to Department of Taxes, Property Valuation and Review for proportional adjustment of the property's value.⁴⁴

Commented [SA2]: Question on adjustment – whether intent was to adjust for parcel changes along boundaries or increasing size to allow addition of projects

Commented [SA3R2]: Needs legislative review



TIF District boundary adjustments were previously allowed as a substantial change under the originally adopted TIF Rule because of the inability to track this type of change in parcels. The technology now exists for PVR to track these adjustments, and so TIF District boundary adjustments are no longer necessary.

805. Reporting Taxable Value Increment: Each year, municipalities shall report taxable values and taxable value increment for all properties in the District using the reporting process specified by the Director of Department of Taxes, Property Valuation and Review. Currently, this reporting occurs through the property management software provided to municipalities by the State of Vermont, Tax Division of Property Valuation and Review.

806. TIF District Fund: The approved share of tax increment and any non-TIF revenues required to be retained by the municipality shall be accounted for by the municipality in a designated TIF District Fund until all District debt and related costs are fully paid. The municipality shall maintain records and file such reports as required by statute⁴⁵ and these rules.

807. Limitations on use of education property tax increment: The education property tax increment generated by an approved District and retained in accordance with relevant statutory provisions and these rules, shall remain available to the municipality until the District debt and related costs are retired. The availability of the tax increment shall be restricted only to the extent that the real property development generating the tax increment fails to occur.⁴⁶ However, the availability of the tax increment may also be limited by the enforcement provisions of statute.⁴⁷ Further, statute⁴⁸ limits the use of any tax increment held in the designated TIF District Fund to pay District debt financing and related costs and prohibits loaning or utilization of the tax increment for any other purpose by the municipality.⁴⁹

808. Interest: Any interest earned by the TIF District Fund shall be kept in the TIF District Fund and not used for any other purposes. When any excess tax increment is distributed in accordance with statute⁵⁰ and this rule, the accumulated interest shall be distributed in the same manner.

Commented [SA4]: Additional guidance needed on calculating proportion to Ed Fund/Municipal General Fund

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809. Use of Non-TIF Revenue Generated by District Infrastructure: If the District Plan or District Finance Plan approved by the Council included the utilization of non-TIF revenue generated by infrastructure financed with tax increment to ensure the viability of the District (such as parking garage leases or fees), that non-TIF revenue must be utilized in accordance with the District authorization document issued by the Council.

810. Distribution: In any one year following the ten-year period during which District debt may be incurred, the balance of the TIF District Fund may not exceed the total amount committed⁵¹ by the municipality for the payment of financing for District improvements and related costs for all years. The municipality may utilize excess municipal and education tax increment in the Fund for the following permitted uses:

- Prepayment of principal and interest on District financing;
- Future payments of District financing and related costs; or
- Defeasance of TIF District financing.

If the municipality chooses not to retain any balance for these permitted uses or there is a balance remaining after the funds are committed for permitted uses, any balance remaining shall be distributed to the municipal general fund and the Education Fund in proportion to the rates that generated the tax increment or non-TIF revenue generated by District infrastructure.

811. Final District Debt Payment: The municipality shall report the final payment of District debt and related costs to the listers or assessor and the Council. Such notification terminates the District and for all years thereafter, all tax rates are applied against the entire assessed valuation of the properties in the District and the resulting tax revenues shall be remitted in full to the State and municipality.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

900 Substantial Changes to District Plan, Financing Plan, or Reconciliation Plan

Once approved, the District Reconciliation for Cohort 1, or the District Plan, District Finance Plan, and approved applications for Cohorts 2 and 3, serve as the foundational documents for each District's implementation, providing the intentions of the municipality regarding District debt and financing, improvements, and development/redevelopment. For Cohorts 2 and 3, these plans were presented at a public hearing, voted on by the municipal legislative body, and approved by the Council.

Title 24 in Statute makes reference to substantial change in the definition of financing⁵² and in information reporting⁵³ to VEPC staff on changes as they happen. Any of the following proposed changes or amendments to a TIF District Plan, TIF Financing Plan, or Reconciliation Plan require the Council's review and approval before proceeding:

- 1) An increase in the TIF financed cost of a project of 20%.
- 2) An increase in total TIF financed costs of all approved projects of 5%.
- 3) Adding, removing, or substituting a public infrastructure project in the TIF District Plan.
- 4) Failing to meet or requesting substitution of an approved Project Criteria.
- 5) A need to increase the approved TIF District debt ceiling.
- 6) An extension of the 5-Year requirement to incur District debt.
- 7) Any increase in the approved proportionality for an approved TIF Project.

Any of the above changes made without VEPC approval need to be reviewed through the issue-resolution process outlined in Section 1100.

901. Submitting an Amendment to VEPC for Review. Municipalities must hold a properly warned public hearing and subsequently obtain approval from the municipal legislative body for any amendment prior to submitting it to the Council for review. The request must be filed electronically by an application deadline for a monthly Council meeting. If the request is not received by the application deadline, the request may be added to the agenda for the following meeting, or a special meeting may be scheduled, at the discretion of the Council Executive Director and Chair.

Districts submitting an amendment to VEPC must include:

- A letter requesting consideration by the Council of the amendment(s). The letter must be signed by the chair of the municipal legislative body and the top non-elected official (i.e. city or town manager) and must indicate that the municipal legislative body has considered and approved the amendment(s).
- A copy of the municipal legislative body meeting agenda and minutes indicating that a hearing was held and that the municipal legislative body considered and approved the amendment(s).
- A narrative explanation of the amendment that fully explains the reason for such a change and includes the following:

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- o Impact of the change on the overall District Plan, Finance Plan, or District Reconciliation.
- o Whether the change impacts the District Plan approval determinations made by the Council.
- o Whether the change is consistent with the approved local plan and a communication from the regional planning commission commenting on whether the District remains consistent with the regional plan with the change.
- o Information and data showing the impact of the change on infrastructure costs, revenue generation and overall viability of the District.
- o A proposal and substantiation of proportionality, if the change involves a new infrastructure improvement project.

902. Council Review of Amendments. When making a determination to allow or deny the changes submitted by the TIF District, the Council will consider whether and the degree to which the amendment:

- Would cause the District Plan to violate any of the approval criteria including Location Criteria, Project Criteria, Purpose, Viability, Nexus or Proportionality.
- Would change the cost of infrastructure (increase the liability) or the generation of revenue (reduce revenue) to a degree that adversely impacts fiscal viability.
- Would require that additional education property tax revenue be utilized without offsetting development that would generate additional Education property tax revenue. What is the effect on the Education Property Tax Revenue?
- Would have an impact on the financial viability of the District.
- Would put at risk the long term economic benefit and the achievement of other District objectives.

The Council will provide a determination as soon as possible following consideration. The Council's intention is to provide a determination within 60 days after consideration at a regularly scheduled or special meeting of the Council.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

1000 Recordkeeping, Notifications, and Reporting

1001. Notifications and Public Hearings. Unless a municipal charter requires greater notice, the municipal legislative body shall hold a public informational hearing on the question by posting warnings at least 15 days in advance of the hearing in at least two public places within the municipality and in the town clerk's office. The warning must clearly indicate the purpose of the hearing and the question to be considered by the voters. The public hearing may be held in conjunction with, or after, a warned meeting at which the question is to be considered by the municipal legislative body, but must occur before the issue is submitted to VEPC or the public vote to incur District financing is held. Refer to statute⁵⁴ and Section 705 of this rule for details on the information required in the notice to the voters prior to a public vote to incur District financing.

1002. Recordkeeping. To enable the Council to determine progress on performance indicators, meeting the goals of District Plans, and meeting the purpose of Districts as stated in statute, municipalities are required to report certain information to the Council and the Department of Taxes on a form prescribed by the Council.

For the Burlington Waterfront and Winooski Districts, the level of recordkeeping and accounting expected for the years prior to this rule is dependent on statutory requirements for that period and extenuating circumstances impacting the ability of the municipality to comply with these new requirements.

Municipalities with Districts must maintain a separate fund for the District and segregated records to account for the District's tax increment and expenditures. This includes segregating the accounting and records of the District from other municipal designations, areas, or districts, even those that may overlap such as Designated Downtowns, Designated Growth Centers, New Town Centers, Designated Village Centers, New Neighborhoods, Historic Districts, Urban Centers, or Downtown Development Districts.

The District recordkeeping must include, at a minimum, an accounting of the following:

- 1) the real property within the District boundaries, the assessed and taxable value of each property, the original taxable value of the properties for municipal and education purposes, and the total municipal and education OTV of the District, any changes in value for those properties and the taxable value of each property for each year through the life of the District. Any lists of parcels or parcel values within the District must indicate whether a parcel is homestead or non-homestead and any aggregation of the parcels must include subtotals by homestead and non-homestead categories.
- 2) All municipal and education tax revenue generated.
- 3) The municipal and education tax increment generated each year following the District creation date, the amounts credited to the fund each year due to the appropriate share

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retained, debits to the fund for servicing District debt or making direct payments or paying related costs, and the balance of the fund.

- 4) Any interest generated by the tax increment held in the TIF District Fund and distribution of interest.
- 5) Any income generated by infrastructure financed with tax increment if the District Plan or District Finance Plan approved by the Council included the utilization of such income to ensure the viability of the District (such as parking garage leases or fees), and an accounting of the utilization of that income.
- 6) All District improvements, including total cost, and a breakdown of the cost factors (design, engineering studies, project management costs, actual construction costs, etc.), how the approved proportionality was applied to the improvement cost, and the amount of infrastructure work (including non-construction costs) that was performed by Vermont firms.
- 7) All related costs incurred, including itemized receipts, for the life of the District. The accounting must include a description of the cost, an amount, when it was incurred, an explanation to substantiate how the cost relates to the creation, implementation, operation, or administration of the District, whether and when the cost was reimbursed or paid with tax increment, and when the reimbursement or payment was included in a public vote.
- 8) All District debt incurred and any direct payments made for District improvements, including the District debt terms and duration.
- 9) Any other sources of revenue utilized for District improvements, such as grants, fees, municipal general fund revenue, or revenues gained from District improvements (i.e. parking garage revenues), regardless of whether or not these revenues were applied to the TIF or non-TIF proportion of the improvement cost.
- 10) The real property developments and redevelopments that happened because of the District improvements.
- 11) The public good outcomes that were factors in the determination that a District Plan met the Project Criteria approval requirements,⁵⁵ which are included in the performance indicators specific to each District, such as: new housing development and data to determine the affordability of such housing; the remediation and redevelopment of contaminated property; the addition of new businesses or business operations or expansion of an existing business(es), the new jobs created by these businesses, and the average wages for such jobs; enhancements to transportation due to improved traffic patterns and flows and/or improvements to public transportation systems; and other benefits and outcomes that accrue to the municipality, region or the state because of the improvements and development, including less measurable outcomes such as “walkability” and “connectedness.”
- 12) Any other performance indicators developed by the municipality and the general performance requirements mandated by statute,⁵⁶ including the number of jobs created in

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

the District each year following creation and the sectors experiencing job growth within the District.

1002.1 Records Retention. All records pertaining to the creation, implementation, administration, and operation of a District should be maintained by the municipality in accordance with the standards and best practices established by the Vermont Secretary of State's Office for records administration. However, the destruction of such documents and records from the period up to or between audits by the State Auditor of Accounts shall not occur until after the audit has taken place in accordance with the audit schedule required by statute.⁵⁷

1003. Reporting

1003.1. TIF District Fund in Municipal Audit Cycle: Municipalities with an active District must ensure that the entity undertaking the annual municipal audit required by statute⁵⁸ on behalf of the municipality is aware of the requirement to include the District Fund in the audit.⁵⁹ The audit procedures must include, at a minimum, verification of:

- The original taxable value and annual and total municipal and education tax increments generated;
- Expenditures for District debt and related costs; and
- The current balance of the TIF District Fund.

Because these requirements are not necessarily included in a normal municipal audit, the Council maintains Agreed Upon Procedures for these audit engagements.

1003.2. District Annual Reporting: Pursuant to statute,⁶⁰ a municipality with an active District must, on or before January 15 of each year, submit electronically on a form prescribed by the Council, an annual report to the Council covering the activity of previous year.



Through the 2013 reporting cycle, the annual reports were for the preceding calendar year. The report due January 15, 2015 covered a short year, January 1, 2014 - June 30, 2014. Starting with the reports due January 15, 2015, the report covers the previous municipal fiscal year.

The annual report must include:

- A copy of certification that the annual value and taxable value increment certification was submitted to the municipal legislative body (See Section 803).
- A summary of any public votes and District debt incurred and documentation of any public vote and District debt incurred that was not previously submitted during the year.
- Information regarding any deviation from the approved District Plan, District Financing Plan, or approved application, including correction and parcel survey adjustments.

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- Information regarding the refinancing of approved District debt.
- A copy of the municipal audit required by statute.⁶¹
- All information required by statute,⁶² including information and data regarding annual performance requirements, which must be reported by the Council and Department of Taxes to the Vermont General Assembly, which will be requested in the form prescribed and provided by the Council.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

1100 Oversight, **Compliance Review**, Non-compliance Enforcement, and Audits

1101. Oversight and Compliance Review. The Council will conduct oversight and compliance review of all active Districts to include on-going communication with municipal officials and semi-annual staff tours of the Districts and visits with municipal officials. Such visits will include inspection of recordkeeping, evaluation of municipal documentation of the District implementation, compliance with approved District Applications, Plans, and Reconciliations, verification of information included in notifications and annual reports, and documentation of progress made to implement the Districts.

Council staff will also provide an efficient system for municipal communications regarding District statute, rules and compliance questions. The system will require the designation of a single point of contact in each municipality with an active District. The District single point of contact must be included on all communications with Council staff regarding District issues. All communication must be documented in writing.

1102. Issue Resolution and Non-Compliance Enforcement.⁶³ *If an issue is identified, Council staff will work with the District to come to a resolution, or if needed, initiate the formal non-compliance enforcement process below to issue decisions pursuant to statute.*

(1) Council staff will review the issue with the municipality and the municipality will have a reasonable opportunity to submit documentation in support of its position. The documentation must be provided in the format requested by Council staff and must be provided by the date requested, which will allow for staff review and summary for the Council at the next regularly scheduled meeting, or a special meeting called by the Chair, if required. The due date for such information will be no later than the first Friday of the month in order to be included on the Council agenda on the regularly scheduled monthly meeting of the Council (usually the fourth Thursday of the month).

(2) Council staff will consult with Agency of Commerce and Community Development staff and counsel, and **may consult the Commissioner of Taxes, Attorney General, and State Treasurer, as appropriate.**

(3) Council staff will prepare a summary of the issue, including an opinion regarding the presence and degree of possible malfeasance on the part of the municipality and the level of impact on the Education Fund, if any, and prepare a recommendation for the Council to consider along with any evidence provide by the municipality.

(4) The Council will deliberate at a regularly scheduled meeting, or a special meeting, if required and called by the Chair, and may include oral testimony by the municipality. After which, the **Council will vote on a recommendation to the Secretary of Commerce on the question, issue, or non-compliance.**

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

(5) On behalf of the Council, Council staff will transmit the recommendation from the Council to the Secretary of Commerce, in writing, which will include a summary of the evidence and a full copy of the information provided by the municipality.

(6) The Secretary of Commerce, after reasonable notice to the municipality and the opportunity for a hearing, will issue a final written decision on the question, issue, or non-compliance within 60 days of receiving the recommendation from the Council. A decision by the Secretary that clarifies a question or resolves an issue shall serve as a declarative statement on the issue or question.

(7) If a hearing is held, the hearing is subject to the provisions of 3 V.S.A., Chapter 25 related to contested cases and must be conducted by the Secretary or a hearing officer appointed by the Secretary. If the hearing is conducted by a hearing officer, the hearing officer has the authority to conduct the hearing as provided for in the contested case provisions, including issuing findings of fact, hearing evidence, and compelling, by subpoena, the attendance and testimony of witnesses.

(8) If the decision issued by the Secretary includes a finding of non-compliance which has resulted in the improper reduction in the amount due the Education Fund from the municipality, the Secretary must request that the State Treasurer bill the municipality for the total identified underpayment, unless the Secretary is satisfied that the non-compliance is resolved, including a reversal of the improper reduction in the amount due the Education Fund.

(9) The State Treasurer will issue a bill for the underpayment to the Education Fund and the bill is due upon receipt. If the bill is not paid within 60 days of receipt, 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, unless the decision is appealed.

(10) The Secretary or the Treasurer may, in lieu of or in addition to billing the municipality for underpayments to the Education Fund, refer the matter to the Office of the Attorney General with a recommendation that an appropriate civil action be initiated.

(11) At any time after the issuance of a decision by the Secretary, any party in the decision may appeal the decision to a Superior Court for determination of questions of law. An appeal will stay the 60 days to pay any underpayment to the Education Fund. If the decision is upheld, the municipality will have 60 days from the Superior Court decision to pay the bill from the Treasurer to avoid withholding of funds to the municipality or school district.

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

ENDNOTES

¹ 32 V.S.A. Chapter § 5404a (j).

² 24 V.S.A. Chapter 53, Subchapter 5 (§§ 1891-1901) and 32 V.S.A. Chapter 135.

³ 3 V.S.A. Chapter 25

⁴ 32 V.S.A. §5404a (j)

⁵ 24 V.S.A. Chapter 53, Subchapter 5 and 32 V.S.A. Chapter 135.

⁶ Memo from Bill Griffin, Chief Assistant Attorney General of the State Office of the Attorney General to Tanya Morehouse, Chief Auditor of the State Auditor's Office, dated August 9, 2018, RE: Tax Increment Financing Districts – financing “related costs”: “...although the statutes are ambiguous, my opinion is that the statewide TIF statutes – like the municipal TIF statutes – should be read to mean that TIF debt may be used to pay “related costs” as defined by 24 V.S.A. § 1891(6).”

⁷ 24 V.S.A. § 1891(7).

⁸ 24 V.S.A. § 1892(b)

⁹ 24 V.S.A. § 1893

¹⁰ 24 V.S.A. §1894(d)

¹¹ 24 V.S.A. §1901.

¹² 24 V.S.A. §1894

¹³ 24 V.S.A. §1892

¹⁴ See 24 V.S.A. § 1893

¹⁵ 24 V.S.A. §1892(b)

¹⁶ 24 V.S.A. §1891(5).

¹⁷ 24 V.S.A. §1892(c)

¹⁸ 24 V.S.A. § 1891(4)

¹⁹ 24 V.S.A. § 1891(4)

²⁰ 24 V.S.A. § 1891(6)

²¹ 32 V.S.A. §5404a (l).

²² 24 V.S.A. § 1901(3) (A).

²³ 24 V.S.A. 1894(i)

²⁴ 24 V.S.A. §1894 (a).

²⁵ 24 V.S.A. §1894(a)(1).

²⁶ 24 V.S.A. §1894(f).

²⁷ 32 V.S.A. §5404a(f).

²⁸ 32 V.S.A. §5404a(f).

²⁹ Original debt period was ten years, ending in 2006. §83 of Act 54 (2009) extended borrowing period for five years beginning 2010 to 2015 and §18 of Act 80 (2013) extended the debt period five years to December 31, 2019. The retention period was originally set at 20 years by §72 of Act 190 (2008) and was extended to 2025 by §16 of Act 45 (2011). The District retained 100% of both municipal and education incremental revenue until amended to 75/25% split of education incremental revenue §16 of Act 45 (2011).

TAX INCREMENT FINANCE DISTRICTS ADOPTED RULE

³⁰ In accordance with Section 16 of Act 45 (2011), beginning in the year in which new TIF debt is incurred (which occurred in 2011), the grand list of April 1, 2010 shall be the baseline and any increment is to be divided 75% to the District and 25% to the Education Fund. This provision included an exception of two parcels (25 and 41 Cherry Street) for which 100% of the increment shall go to the District.

³¹ Act 134 (2016), Section 18. Burlington Waterfront TIF

³² The debt period is 5 years from the effective date of Act 159 (1999), therefore 2000 to 2005. The retention period is 20 years from the incurrence of debt as set by §38 of Act 159 (1999), as amended by §40 of Act 68 (2003) and is therefore 2004-2024. The share was originally set at 100% municipal and 95% education incremental revenue by §38 of Act 159 (1999) but was amended to 98% of the education increment by §71 of Act 190 (2008).

³³ 24 V.S.A. §1894(g).

³⁴ 24 V.S.A. 1894(e).

³⁵ See Sections 55 and 58 of Act 190 (2008). In the same Act (Section 68), the Milton North South District was exempted from the proportionality rule for any debt incurred prior to April 1, 2009.

³⁶ 24 V.S.A. §1894(h).

³⁷ 24 V.S.A. §1894(i).

³⁸ 24 V.S.A. §1891(7).

³⁹ § 38(1) of Act 159 (1999).

⁴⁰ §72 of Act 190 (2008).

⁴¹ 24 V.S.A. §1894(i)

⁴² 24 V.S.A. §1894(h)

⁴³ 32 V.S.A. Chap. 129.

⁴⁴ 24 V.S.A. § 1891(5).

⁴⁵ 24 V.S.A. § 1901.

⁴⁶ 32 V.S.A. § 5404a(g)

⁴⁷ 32 V.S.A. § 5404a(j)

⁴⁸ 24 V.S.A. § 1896(d)

⁴⁹ 24 V.S.A. § 1894(b) and (c) and 24 V.S.A. § 1896(a)

⁵⁰ 24 V.S.A. § 1900

⁵¹ Defined by 24 V.S.A. §1891(8) as “pledged and appropriated for the purpose of the current and future payment of tax increment financing...”

⁵² 24 V.S.A. §1891(7).

⁵³ 24 V.S.A. §1901(B).

⁵⁴ 24 V.S.A. §1894 (i).

⁵⁵ 32 V.S.A. 5404a (h) (4).

⁵⁶ 32 V.S.A. §5404a (i).

⁵⁷ 32 V.S.A. §5404a(l)

⁵⁸ 24 V.S.A. §1681 and 24 V.S.A. §1690.

⁵⁹ 24 V.S.A. §1901(3) (A).

⁶⁰ 24 V.S.A. §1901(3) (B).

⁶¹ 24 V.S.A. §1681 and 24 V.S.A. §1690.

⁶² 32 V.S.A. §5404a (i).

⁶³ 32 V.S.A. §5404a (j) (2).

Agency of Commerce and Community Development

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TO: Department of Tax
Attorney General's Office
Office of the Vermont State Auditor
Joint Fiscal Office
Office of the State Treasurer

FROM: Megan Sullivan, Executive Director, Vermont Economic Progress Council

SUBJECT: Revised TIF Rule

DATE: November 19, 2019

The Vermont Economic Progress Council (VEPC) has undertaken the process of drafting revisions to the Tax Increment Financing (TIF) Rule stemming from changes to the TIF program in the 2017 legislative session authorizing VEPC to approve up to six new TIF Districts.

Prior to submitting a draft for the formal rule making process we are seeking review and feedback from the State entities addressed in this memo. Each of these agencies either has a specific role in the TIF program or is listed as providing consultation to the Council when issuing decisions.

The goal of these revisions to ensure that all parties involved with TIF have the same understanding of expectations and responsibilities of processes detailed within the Rule. In order to achieve this outcome, we have sought feedback from a variety of stakeholders.

To date VEPC has received input from ACCD General Counsel, PVR, TIF District representatives, and members of House Commerce & Economic Development; House Ways & Means; Senate Economic Development, Housing and General Affairs; and Senate Finance.

We anticipate from the meeting held with Legislative members that there will be some changes addressed statutorily during the upcoming session for clarity, therefore those are not addressed in this draft rule.

Expected topics to be addressed on the legislative level include:

Direct Payments

It is currently unclear whether direct payments can be used to pay for related costs, and whether direct payments can be made after year 10.



Boundary Adjustments

The 2015 TIF Rule did not preclude Districts from submitting a substantial change request for a larger boundary adjustment (not just in the case of bisected parcels) in which parcels to their District could be added later if a new project needing TIF became known outside of the approved boundary. Legislative intent for that allowance is unclear.

Debt Service Reserve Funds

The allowance of debt service reserve funds to be used in financing district debts in years during the retention period when increment is insufficient.

Tax Stabilization

Statute does not presently provide any guidance for whether tax stabilization agreements can be used in TIF Districts, or whether there are any restrictions for their use.

There are still several steps left before the final draft of the TIF Rule is ready to be submitted for the rule making process including: review and input from state agencies, as willing, that are consulted in the program; a second meeting with TIF Districts; and final review by the Council.

Please provide your agency's written input on this draft TIF Rule by close of business on **Thursday, December 5** by emailing me at megan.sullivan@vermont.gov. If you have any questions about the draft rule please reach out by email or phone at your convenience.

