

**TAX INCREMENT FINANCE DISTRICTS  
ADOPTED RULE**

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**TAX INCREMENT FINANCING DISTRICTS**

**ADOPTED RULE**

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### 100 Statutory Authority

Vermont statute<sup>1</sup> 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.<sup>2</sup>

### 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 Act<sup>3</sup> to provide further clarification of statutory construction and administrative detail.

Act 80 also required the Council to identify issues that require corrective action on the part of the municipalities with Districts that were created prior to January 2006 and were audited by the State Auditor of Accounts in 2011 and 2012. From the date of adoption of this rule, municipalities with Districts in existence prior to 2006 must abide by this governing rule and any other provisions of the law in force. However, this rule also indicates which specific provisions are not applicable to those Districts in existence prior to January 2006 and specifies rule provisions applicable to only those Districts or only to individual Districts created prior to 2006. Any issues identified in the Auditor’s reports that remain unresolved and continue to result in disputed underpayments to the Education Fund shall cause an accumulation of underpayments commencing only upon adoption of this rule and shall be subject to the non-compliance provisions contained in statute<sup>4</sup> and this rule.

### 300 Definitions

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

“**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 or related costs.

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

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**“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 listed value of each property within the District, less any statutory and voted exemptions.

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

**“District Finance Plan”** or **“TIF Financing Plan”** means a plan filed by municipality with a District created after 2006 either concurrently with, or subsequent to, a District Plan, which is considered and approved by the Council, and which includes District improvement details including finance instruments and tools, timing for incurring debt, finance structures and terms, development and redevelopment schedules, and projections of revenue generation.

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

**“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 Districts created after 2006, 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 and these rules.

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**“District Reconciliation”** means a document filed with the Council by municipalities with Districts created prior to 2006 to provide baseline information and data.

**“Education Property Tax Increment”** or **“Education Tax Increment”** means the amount of additional revenue resulting from the application of tax rates when the education taxable value of all the properties within a District for a given year is greater than the education original taxable value of all the properties within a District.

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

**“Financing”** means, in addition to the meaning provided by 24 V.S.A. § 1891(7), debt instruments, leasing, lease-purchase, other borrowing arrangements, and direct payments, undertaken for improvements in or serving a District, that will be repaid in part or in whole using District increment, only after being authorized by the legal voters of the municipality in accordance with 24 V.S.A. § 1894(h) and (i).

**“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.

**“Incur District debt”** or **“Incur District indebtedness”** means the proper and appropriate execution, by an authorized official of a municipality, of a debt instrument to finance District improvements, or to make a direct payment for District improvements, if such instrument is intended to be financed, or payment made, in whole or in part with District incremental revenue and has been approved by the legal voters pursuant to 24 V.S.A. 24 § 1894(h).

**“Inter-fund loans”** as used in 24 V.S.A. § 1891(7) means a method of financing District improvements whereby loans are made from one fund to another within a municipality, with explicit terms of repayment, which, in accordance with 24 V.S.A. §1894(i), shall not include the payment of interest.

**“Listed value”** has the same meaning as 32 V.S.A. §3481(2) as 100% of the appraisal value.

**“Municipal Property Tax Increment”** or **“Municipal Tax Increment”** means the amount of additional revenue resulting from the application of all tax rates when the municipal taxable value of all the properties within a District for a given year is greater than the municipal original taxable value of all the properties within a District.

**“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 District increment.

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**“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-increment” or “Non-TIF” revenue** means any revenue available to a municipality 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. These revenues are often used to help pay the proportion of District improvement costs that do not serve the District, as determined by the Council.

**“Original Taxable Value” or “OTV”** means, in addition to the meaning provided in 24 V.S.A. § 1891(5), the value of all real property within a District as determined under V.S.A. 32, Chapter 129, calculated by aggregating the 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.

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

**“Proportion”** as used in 24 V.S.A. § 1894(e) means the percentage, as determined by the Council at the time of approval of a District Plan, of the total improvement cost that is eligible for financing with District increment, based on the ratio by which the improvement will serve the District.

**“Proportionality”** as used in 24 V.S.A. § 1894(e) means the relational process used by the Council at the time of approval of a District Plan to determine the percentage of total improvement costs that are eligible for financing with District increment.

**“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 share of incremental municipal property tax revenue and incremental education property tax revenue may be set aside in a District fund. The retention period commences the calendar year during which the municipality executes the first of any financing or direct payments for District improvements which have been approved by the voters. The retention period for incremental education property tax revenue is

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limited to twenty consecutive years. The retention period for incremental municipal property tax revenue is as authorized by the municipal legislative body or until all financing and related costs are retired. The retention period does not refer to the number of years the increment so retained in the District fund may be used to service District debt and pay related costs, which may continue until all District financing and related costs are 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 municipal property tax increment and education property tax increment that may be retained each year an increment is generated.

“**Substantial change**” means an amendment to an approved District Plan or District Finance Plan which may result in a significant impact with respect to any of the criteria for approval by the Council specified in 32 V.S.A §5404a (h) and 24 V.S.A. Subchapter 5, or a request for an extension of the five-year period to incur indebtedness, and, in the case of Districts created prior to 2006, an amendment to the District Reconciliation filed in accordance with this rule which may result in a significant adverse impact with respect to the District Reconciliation.

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

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

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### **400 Purpose of Districts**

The purpose of a TIF District, as stated in statute<sup>6</sup>, 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 State.

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.

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### 500 Resolution of Outstanding Issues from Audits

**501. Applicability of the rule to Districts created prior to January 2006:** This rule identifies issues that require corrective action on the part of the municipalities with Districts that were created prior to January 2006 and were the subject of performance audits conducted by the State Auditor of Accounts in 2011 and 2012. From the date of adoption of this rule, municipalities with Districts in existence prior to 2006 must abide by this governing rule and any other provisions of the law in force. However, this rule also indicates which specific provisions are not applicable to those Districts in existence prior to January 2006 and specifies rule provisions that are applicable to only those Districts or only to individual Districts created prior to 2006. Any issues identified in the Auditor's reports that remain unresolved and continue to result in disputed underpayments to the Education Fund shall cause an accumulation of underpayments commencing only upon adoption of this rule and shall be subject to all of the provisions contained in statute.<sup>7</sup>

**502. Submission of payments and transfers by municipalities required by law<sup>8</sup>:** The Council will prescribe a process for municipalities to notify Council staff that the required payments and transfers have been approved by the municipal legislative body, for submitting the payments electronically, and for certifying and providing notification of the payments and transfers. The process will require certification that the payments and transfers are from the funds prescribed by law. Council staff will monitor the timeliness of the submission of approvals, payments, and transfers and report on the status of compliance with these requirements in writing to the General Assembly.

**503. Failure to submit evidence of approval of payments or failure to submit payments or make transfers:** If a municipal legislative body fails to approve the payments or a municipality fails to make a payment or transfer within 60 days of the dates prescribed, the Council will notify the General Assembly, in writing, through the Joint Fiscal Office. The General Assembly will consider any amounts identified as owed to the Education Fund and may withhold such amounts from any funds otherwise payable by the state to the municipality or a school district in the municipality or a school district of which the municipality is a member.<sup>9</sup>

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### 600 Authorization for Utilization of Education Property Tax Increment for District Financing

**601. Districts authorized:** The following eleven Districts in Vermont have been approved, either by direct legislation or legislation authorizing the Council to give such approval, to utilize incremental education property tax revenue to finance District improvements:

<u>District:</u>	<u>Municipality:</u>	<u>Authority:</u>
Burlington Waterfront	City of Burlington	Section 45 of Act 60 (1997)
Newport Industrial Park	City of Newport	Section 45 of Act 60 (1997)
Milton North/South	Town of Milton	Sections 47 and 58 of Act 71 (1998)
Winooski Downtown	City of Winooski	Sections 37-38 of Act 159 (1999)
Milton Town Core	Town of Milton	Sections 2a-2i of Act 184 (2006)
Severance Corners	Town of Colchester	Sections 2a-2i of Act 184 (2006)
Burlington Downtown	City of Burlington	Sections 2a-2i of Act 184 (2006)
WRJ Downtown	Town of Hartford	Sections 2a-2i of Act 184 (2006)
St. Albans Downtown	City of St. Albans	Sections 2a-2i of Act 184 (2006)
Barre Downtown	City of Barre	Sections 2a-2i of Act 184 (2006)
So. Burlington City Center	City of So. Burlington	Sections 2a-2i of Act 184 (2006) and Section 17 of Act 80 (2013)

**602. Limitation on authorizations:** In accordance with statute,<sup>10</sup> the Council is not authorized to approve any additional Districts to utilize incremental education property tax revenue to finance District improvements. If any District is terminated in accordance with statute,<sup>11</sup> the Council does not have the authority to approve any additional Districts in place of terminated Districts.<sup>12</sup>

**603. District Finance Plan:** Municipalities filing applications with the Council after 2006 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.<sup>13</sup> 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 and the District Finance Plan must be submitted to the Council on a form prescribed by the Council.

**604. Requirement to file revised District Finance Plans:** The District Plans and District Finance Plans approved by the Council after 2006, but before 2013, were all based on the statute in place at the time, which limited the period to incur debt to five years. In 2013, the limit on the period to incur debt was extended to ten years. In order to more accurately reflect the new ten-

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year period allowed to incur District debt, any District that had a five-year District Finance Plan approved by the Council after 2006 must, within six months of the adoption of this rule, submit an updated ten-year District Finance Plan using the Substantial Change process. This requirement only applies if the municipality will extend its plan to a ten-year debt period and will therefore incur debt beyond the five-year period previously approved. The Milton Town Core District is exempt from this requirement.<sup>14</sup>

Any District which has had a District Plan approved by the Council but which has not yet submitted a District Finance Plan for approval, shall submit a ten-year District Finance Plan to the Council for consideration on a schedule that takes into account the application due dates incorporated into the Council's monthly meeting calendar.

**605. Requirement to file a District Reconciliation:** Unless a waiver is granted from this provision, any District in existence prior to 2006 must, within six months of the adoption of this rule submit to the Council a District Reconciliation, which includes the following information:

- After an analysis of the boundary and parcels by the Department of Taxes/PVR, a listing of properties within the District upon creation and including the municipal original taxable value and the education original taxable value indicated by homestead and non-residential;
- A detailed map of the District, including shape files;
- Data and information regarding debt incurred and anticipated, including information on debt instruments, interest rates, terms, payments of principal and interest, payment schedule, and balances;
- An accounting of the District fund to date;
- Information and data regarding infrastructure improvements completed and anticipated;
- Information and data on non-TIF revenue utilized and anticipated to pay for or finance improvements.
- Information and data regarding development and redevelopment that has occurred and that is anticipated;
- Information regarding the benefits accrued to the municipality, the region, and the state due to the creation of and improvements within the District.

The District Reconciliation shall be approved and certified by the municipal legislative body before being submitted to the Council and will serve as the basis for performance indicators and potential Substantial Change requests for the Districts created prior to 2006.

**606. Performance Indicators:** After 2006, when approving Districts to utilize incremental education property tax revenue to finance District improvements, the Council determined that certain criteria for approval were met by the municipality, the application, and the District Plan/District Finance Plan. Other criteria were approved based on actions or activities that were proposed and projected to be carried out during implementation of the District. The information

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and data provided in the District Plans and applications that address these criteria, and any statutory purposes or goals, will be utilized as performance indicators for each District.

For Districts in existence prior to 2006, 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, will be the basis for performance indicators.

The Council will develop a set of performance indicators for each District for which the municipalities must include data and information as part of the Annual Report by municipalities required by statute<sup>15</sup> and Section 1004.2 of this Rule. The indicators will be subject to the monitoring and oversight activities of Council staff.

**607. Departures from and Substantial Changes to approved District Plans/District Finance Plans or District Reconciliations:** For Districts created after 2006, the information and data contained in the District Plan/District Finance Plan were presented at a public hearing and approved by the municipal legislative body and the Council and serves as the basis for implementing the District. For Districts in existence *prior* to 2006, the District Reconciliation will serve this role.

Municipalities must include corrections or minor changes to the approved District Plan/District Finance Plan or District Reconciliation in the Annual Report required by statute<sup>16</sup> and Section 1004.2 of this Rule. Departures from the approved District Plan/District Finance Plan or District Reconciliation that meet the definition of a “substantial change” must be presented at a public hearing prior to approval by the municipal legislative body and then be submitted to the Council for consideration and approval. Any substantial change request must be filed in the format required by the Council. See Section 1003 of this Rule for further detail.

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### 700 Power and Life of Districts

**701. Creation of a District:** To create a District, a municipal legislative body must have determined that such a District will serve the statutory public purposes.<sup>17</sup> The municipal body must describe the District in a District Plan and hold one or more public hearings, after providing public notice, on the proposed plan. Following the public hearing(s), the municipal legislative body must adopt the District Plan and the Plan must be recorded with the municipal clerk and 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 Plan. Even if the vote occurs between April 2 and December 31, the life of the District starts on April 1 of that calendar year. The creation date of each of the existing Districts is as follows:

Burlington Waterfront	City of Burlington	April 1, 1996 <sup>18</sup>
Newport Industrial Park	City of Newport	April 1, 1998
Milton North/South	Town of Milton	April 1, 1998 <sup>19</sup>
Winooski Downtown	City of Winooski	April 1, 2000
Milton Town Core	Town of Milton	April 1, 2008
Severance Corners	Town of Colchester	April 1, 2010
Burlington Downtown	City of Burlington	April 1, 2011
WRJ Downtown	Town of Hartford	April 1, 2011
St. Albans Downtown	City of St. Albans	April 1, 2012
Barre Downtown	City of Barre	April 1, 2012
So. Burlington City Center	City of South Burlington	April 1, 2012

**702. Properties within the boundary of the District:** For Districts created after 2006, the District Plan includes a listing of the properties contained within the District boundaries, with their assessed and taxable values, and describes and illustrates on a map the boundary of the District. In accordance with statute,<sup>20</sup> the boundary must not divide or bisect a parcel; the parcel must be included wholly within the District or be wholly outside the District. After approval of the District Plan by the Council, any proposed change to the District boundary must be considered as a substantial change request.

For Districts in existence prior to 2006, this information must be included in the District Reconciliation due no more than six months after the adoption of this rule. That document will serve as the basis for any substantial change request.

**703. 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

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costs, if such costs are approved by the voters. 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.

**704. Improvements:** Statute<sup>21</sup> provides a specific definition of improvements that may be paid for or financed using incremental District revenue. Eligible improvements generally are the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of the District. Eligible improvements may include, but are not limited to the following:

- 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, public transit stop equipment and amenities, street and sidewalk lighting, sidewalks, streetscapes, way-finding signs and kiosks; traffic signals, medians, turn lanes, and property acquired or used for right of way.
- Civic facilities and amenities such as hiking and biking trails, parks and green spaces, pathways to facilitate multimodal transportation, bicycle and pedestrian lanes, 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 for development or redevelopment including acquisition, demolition, and environmental remediation of contaminated property.

Statute<sup>22</sup> and this Rule (Section 400) are clear that the 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 Districts created after 2006, the amount of the total improvement costs that can be paid with District incremental revenue is limited by the proportionality set during the District application process.

The meaning of “improvements” as provided by statute<sup>23</sup> and this rule does not mean annual municipal operating costs, public transportation operating costs, annual maintenance or repair costs, nor the purchase of vehicles, interior furnishings, operating equipment or apparatus, nor other expenditures for non-capital assets.

**705. Related Costs:** As of 2006, statute authorized municipalities with Districts to 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 District incremental revenue.

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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, 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 of a District Plan, District Finance Plan, District application, or Substantial Change Request.
- Soft costs such as consulting, design, architects, engineering, accounting, legal, project management, or other professional services directly related to the implementation and construction of eligible District improvements.
- Municipal employee and staff costs directly related to the District; however, these costs may only be paid with municipal increment generated beyond the required municipal share to service 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 Accounts required by statute,<sup>24</sup> including costs billed back to the municipality by the State Auditor of Accounts and any audit-related costs incurred by the municipality during the conduct of those audits.
- The District-related costs of the independent annual municipal audit required by statute.<sup>25</sup>

Related costs do *not* include:

- The direct costs of improvements such as construction costs, financing or debt costs or costs related to financing (If eligible, these costs can be paid with District incremental revenue, but are not related costs).
- Any costs incurred by private entities undertaking development or redevelopment within a District.
- Municipal operating costs, public transportation operating costs, annual maintenance or repair costs, the purchase of vehicles, furnishings, equipment, or apparatus.
- Capitalized interest, underwriter's discounts, or funding of reserves.
- 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.
- Expenditures for annual independent audits performed in accordance with statute,<sup>26</sup> except for the specific costs incurred due to the District-related requirements in statute.<sup>27</sup>

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Related costs may be incurred starting with the process to establish the District and may continue to be incurred until the life of District ends or the District is terminated. Related costs may only be reimbursed to the municipality or directly paid if they have been approved by the voters. In each year, the priority of the application of incremental revenue shall be first to service debt and other improvement financing, then to pay related costs.

The municipality must retain receipts for and maintain an accounting of all related costs. The accounting must include a description of the cost; the amount; the date(s) it was incurred; an explanation of how the cost relates directly to the creation, implementation, administration, or operation of the District; the date(s) cost was reimbursed or paid with District increment; and the date(s) the related cost was approved by the voters.

When the municipality seeks voter approval for District financing and a portion of the proceeds will be used to reimburse the municipality for related costs previously advanced or for projected related costs, the notice to voters required by statute<sup>28</sup> must include the amount of the related costs and types to be reimbursed, and an estimate of the amount and type of related costs to be paid in the future with the financing proceeds under consideration by the voters.

**706. Restriction on use of education increment for certain related costs:** In accordance with statute,<sup>29</sup> costs incurred by the municipality to create, operate, administer, or implement a District, which are normally considered internal municipal operating costs, such as departmental or personnel costs, may be accounted for and reimbursed or paid from District increment as related costs with the following restrictions:

- The personnel time or other departmental costs meet the definition of related costs;
- The costs may only be reimbursed using incremental *municipal* property tax revenue; and,
- The municipal increment that may be used for these restricted related costs must be above and beyond the municipal increment committed to service the District's financing and unrestricted related costs.

For 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.

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

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**707. Requirement to incur first District debt within five years after creation of District:**

Each District approved by the Council after 2006 must incur District debt that has been approved by the voters at least once before the fifth anniversary of the District creation date, or the municipality is required to obtain an extension of the debt period by application to the Council; otherwise the District is terminated.<sup>30</sup> To qualify as a first instance of debt incurred for the District, the municipality must intend to use District increment to finance all or any part of the debt or use the approval to make a direct payment for improvements. The financing or direct payment must also have been approved by the voters. However, such public vote and subsequent notification of the Council of the vote, do not satisfy the requirement to incur debt. The debt instrument or direct payment must be executed to satisfy the requirement to incur debt within five years.

Incurring expenses which are considered related costs that will be reimbursed by future voter-approved financing, or incurring pre-development costs or short-term debt (i.e. BAN) that will be subsumed in future voter-approved financing, or incurring debt that will not be financed in any part with District increment, even if the debt is for District improvements, does not constitute incurring debt under this requirement.

**708. Procedure for Obtaining an Extension of the Five-Year Requirement to Incur First District Debt:**

If a District approved by the Council after 2006 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:

- Prepare an updated Executive Summary of the approved District Plan and update the District Finance Plan;
- If a District Finance Plan had not been previously filed, the updated District Plan shall include a pro-forma District Finance Plan;
- Properly notice and hold a public hearing on these updates;
- Receive approval by the municipal legislative body for the substantial change;
- File the updated District Plan and updated District Finance Plan with the municipal clerk; and
- File the extension request with the Council.

The extension request must be received in accordance with the Council's monthly meeting application deadline schedule so that the request can be considered prior to the fifth anniversary of the District creation date. However, if consideration and approval by the Council cannot be completed prior to the fifth anniversary of the District creation date, the submission shall serve as a stay of termination of the District until the Council has approved or denied the extension.

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The Council will review the updated District Plan executive summary and the District Finance Plan and determine if the plan has continued viability and remains consistent with the approved District Plan. If the Council makes such a determination, the new District Finance Plan is approved and the District is granted a five year extension in which to incur District debt. If the approval occurs after the fifth anniversary of the District creation date, 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.

**709. Termination of a District due to failure to incur District debt:** If a District approved by the Council after 2006 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.

**710. Ten-year limitation to incur all District debt:** A District approved by the Council after 2006, 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 debt incurred after the ten-year limitation may not be financed, serviced, or in any way paid for using District incremental revenues.

**711. Equal Share of incremental revenue required:**<sup>31</sup> For the Districts created after 2006, during approval of the District Plan the Council set the maximum share of the education property tax incremental revenue that may be retained each year to service District debt and pay related costs, which also sets the minimum share of the municipal property tax incremental revenue that must be retained. The share is expressed as a percentage of the total increment and will be based on the financial data provided in the District Finance Plan. The share will ensure the retention of incremental education and municipal property tax revenue sufficient to service the proportion of District improvement costs and related costs approved by the Council. The share of education property tax incremental revenue that can be retained shall be no more than 75 percent. The share of municipal property tax incremental revenue that can be retained shall be no less than an equal percent, but may be higher. These are the shares of the education and municipal incremental revenues that are to be segregated in the District fund and committed to service District improvement financing and related costs. Until the first instance of District debt is incurred, triggering the increment retention period, any incremental revenue generated due to increases in property values within the District continues to be paid in full to the taxing authorities.

For Districts created prior to 2006, the share was established by statute. See Section 716 for detail.

In accordance with statute,<sup>32</sup> the incremental revenues generated by applying all municipal tax rates against the increase in value when compared to the OTV must be shared between the District and the taxing entities. This applies to all municipal tax rates, even if the rate was approved for a special purpose and even if that purpose is included in the municipal charter.

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**712. Twenty-year retention period for incremental education property tax revenue:** When a municipality with a District approved by the Council after 2006 incurs the first District financing that has been approved by a public vote, a twenty-year education property tax incremental revenue retention period is triggered. The first education property tax increment to be retained will be calculated using the education taxable value as of April 1 of the calendar year in which the first District debt is incurred, regardless of when during the calendar year the first District debt is incurred. If the education taxable value of the grand list for the first year in which District debt is incurred is not greater than the education OTV and therefore does not generate an increment, the twenty-year retention period is still triggered. For that year and for twenty consecutive years, the approved share of education property tax incremental revenue must be segregated into the District fund.

**713. Retention period for incremental municipal property tax revenue:** When a municipality with a District approved by the Council after 2006 incurs the first District financing that has been approved by a public vote, the retention of incremental municipal property tax revenue is also triggered. The first municipal property tax increment to be retained will be calculated using the municipal taxable value as of April 1 of the calendar year in which the first District debt is incurred, regardless of when during the calendar year the first District debt is incurred. If the municipal taxable value of the grand list for the first year in which District debt is incurred is not greater than the municipal OTV and therefore does not generate an increment, the retention period is still triggered. For that year and until all debt and related costs are retired, the approved share of municipal property tax incremental revenue must be segregated into the District fund.

**714. Use of incremental municipal and education property tax revenue:** The amounts held apart in the District fund must be disbursed only for payment of District financing approved by a public vote and incurred during the ten-year period following the creation of the District and for the reimbursement or payment of related costs approved by the voters. Once in the District fund, the increment may be disbursed for these purposes until all financing and related costs are retired.

**715: Adjustment of equal share percentage:**<sup>33</sup> During the tenth year anniversary of any District created after 2006, 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 increment generated during the first ten years, whether the approved shares of incremental revenue 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 adjust to a lower percentage unless the lower percentage continues to provide sufficient municipal and education incremental revenue to service the remaining debt and related costs. In no case will the share be lowered if to do so would impair the municipality's ability to service debt, pay related costs, or impair a covenant or agreement with a lender.

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**716. Statutory retention periods, debt periods, and share for Pre-2006 Districts:** The retention periods, debt periods, and shares of the incremental revenues to be retained by the Districts created prior to 2006 vary and were established by statute as follows: (Share refers to the share retained by the District)

### Burlington Waterfront<sup>34</sup>

Debt Period:	1996 - 2019
Retention Period:	1999 - 2025
Share:	
1996 – 2010:	Education-100%; Municipal-100%
2010 – 2025:	Education-75% <sup>35</sup> ; Municipal-100%

### Newport Industrial Park

Debt Period:	1997-2007
Retention Period:	Until all debt paid
Share:	Education-100%; Municipal-100%

### Milton North/South<sup>36</sup>

Debt Period:	1999 - 2019
Retention Period:	1999 - 2019
Share:	
1999 - 2009:	Education-100%; Municipal-At discretion of municipality.
2010 – 2019:	Education-No more than 75%; Municipal-equal percentage

### Winooski Downtown<sup>37</sup>

Debt Period:	2000-2005
Retention Period:	2004-2024
Share:	
1999-2008:	Education-95%; Municipal-100%
2009-Debt Paid	Education-98%; Municipal-100%

**717. Proportionality:**<sup>38</sup> Proportionality refers to the portion of the cost of an improvement that will serve the District because a determination has been made that there is nexus between the improvement and the expected real property development. Only that portion of the total improvement cost that is approved through the proportionality determination by the Council may be paid using municipal and education incremental revenue.

For the Districts created prior to 2006, no proportionality requirements were included in statute because only improvements located wholly or partly within the District could be financed with

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District increment. No improvements made by the Districts created prior to 2006 are subject to the proportionality rule.

In 2008, statute was amended<sup>39</sup> effective retroactively to Districts approved after 2006, to allow financing of an improvement made outside a District as long as the improvement *serves* the District and limited to the proportion of the improvement cost that will serve the development within the District. This proportion is determined by the Council for each planned improvement at the time of approval of the District Plan and/or District Finance Plan, or Substantial Change request.

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. 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. The actual cost and application of the approved proportionality will be monitored through annual reporting.

**718. Public Vote Required for All District Financing:**<sup>40</sup> 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. Prior to a public vote on District financing, the municipality must provide a detailed informational notice to the voters.<sup>41</sup> The vote must also be preceded by an appropriately warned public hearing at which the detailed information is presented to the voters by the municipality, followed by a vote or resolution of the municipal legislative body to approve the ballot item. The public vote 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.

The ballot question must include the amount of financing and related costs to be approved by the current vote and, after the first instance of District financing is approved, any subsequent vote 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.

**719. Life of a District:** 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. The District life continues and the District is active until the date and hour that all District debt and related costs are retired, or (only for Districts created after 2006) five years following the District creation date if no District debt is incurred by the fifth anniversary of the District creation date and no extension of the period to incur debt is requested or granted.

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### 800 Indebtedness

**801. Incurring District Debt.** For Districts created after 2006, following the creation of the District and approval of a District Plan and a District Finance Plan by the Council, a municipality may incur indebtedness against revenues of the District for up to ten years from the creation date of the District, if the first such debt is incurred before the fifth anniversary of the District creation, or an extension has been approved by the Council.

The municipality must seek the approval of the legal voters to incur any form of District debt included in the definition of “financing”<sup>42</sup> and as further defined in Section 300 of this Rule.

Regardless of when the District was created or the type of financing to be utilized, including a direct payment for infrastructure improvements, the incurrence of debt or direct payment must be preceded by a public vote. The public vote provides the municipality with the authority to pledge the credit of the municipality, borrow, make direct payment for improvements, or otherwise secure the debt for the specific purposes that implement the District Plan, as warned to the voters.

The public vote does not incur District debt for the purposes of satisfying the five-year deadline to incur first debt, nor does it trigger the twenty-year increment retention period. Debt is incurred for these purposes when a municipality executes the actual financing or payment mechanism.

The financing vote may include sufficient funds, in addition to those needed for improvement costs, to reimburse the municipality for related costs that have already been incurred and related costs that will be incurred after the financing is approved and executed. The financing may also assume pre-development costs and short-term debt incurred after the creation of the District, but these costs must be included in the information provided to the voters at the time of the public vote to incur debt.

If the form of District debt proposed by the municipality to be approved by the voters is a direct payment for an improvement rather than the execution of a debt instrument, the municipality must diligently and completely document the transactions. For Districts created after 2006, use of a direct payment from the increment accumulated in a District fund as the first occurrence of incurring District debt is not possible as no increment will accumulate until after the first debt is incurred. Making a direct payment from the TIF increment in subsequent years is possible, but the municipality must document that the incremental revenues to be used for the payment are sufficient and available in the District fund and are not committed to service other District debt previously incurred.

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.<sup>43</sup>

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If the municipality intends to utilize interim or short-term financing (such as bond anticipation notes), or borrow against proceeds anticipated from the debt instrument that is the subject of the public vote, that information should be included in the information provided to the voters.

Refinancing of existing District debt to take advantage of improved rates or terms does not constitute incurring new debt and therefore does not require a public vote or prior notification of the Council. Such refinancing should be reported to the Council in the Annual Report required by Section 1004.2 of this Rule.

**802. Triggering Ten-Year Debt Period and Twenty-Year Retention Period:** A District is created as of April 1 of the calendar year during which the municipal legislative body voted to create the District.

For Districts created after 2006, the creation of the District triggers the five-year period during which the first TIF debt must be incurred or a request for a five-year extension must be filed. If first debt is incurred before the five-year anniversary of the District creation date or an extension is approved, only District debt incurred prior to the tenth-year anniversary of the District creation date may be financed or paid with District incremental revenues. The debt incurred during this ten-year debt period may be serviced until paid from the incremental revenues held apart in the District fund.

The date on which the first District debt is actually executed, after being authorized by a public vote, is the date the first District debt is incurred. The first-year education and municipal property tax increments to be retained will be calculated using the taxable value filed as of April 1 of the calendar year in which the first District debt is incurred; regardless of when during the calendar year the first District debt is incurred. For that year and for twenty consecutive years, the approved share of education property tax incremental revenues must be retained and segregated in a District fund. For that year and for the period approved by the municipal legislative body, the approved share of municipal property tax incremental revenues must be retained and segregated in a District fund.

**803. Ineligible financing:** For all Districts, any debt incurred prior to the creation of the District (including any debt incurred prior to the creation of the District that is then refinanced during the life of the District), or any debt incurred after the ten-year anniversary of the District creation date, or after the statutorily limited debt period, even if for improvements related to the District, is not eligible to be serviced with any District incremental revenues.

Additionally, any financing (for District improvements) which has not been approved by the voters, is ineligible to be serviced using District increment, the exception being short-term or interim financing incurred after the creation of the TIF District which is then subsumed into a debt instrument approved by the voters.

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**804. Duration of District indebtedness:** The duration and terms of District financing may be authorized by the municipal legislative body, except that interest on inter-fund loans is prohibited.<sup>44</sup>

For the Winooski District, the duration of bonds issued to finance District improvements is limited to twenty years.<sup>45</sup>

For the Burlington Waterfront District, education property tax increments may be used for no more than 20 years from the date the debt was incurred for financing of any certificates of participation or HUD Section 108 debt issued between April 1, 1996 and March 31, 2006.<sup>46</sup>

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### 900 Original Taxable Value and Tax Increment

**901. Original Taxable Value (OTV):** Immediately following the creation of a District, the listers or assessor for the municipality must certify to the municipal legislative body the 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. This is the base value which determines the amount of property taxes that will continue to be paid to the municipal general fund, other municipal funds, and the Education Fund each year, based on the tax rates for each year. The value used to determine the amount of tax collected when the appropriate tax rate is applied stays the same regardless of the status of the parcel in a future year (see exceptions in Section 905). It is also the base value of the District from which any future increment will be determined by comparing any annual changes in value to the OTV.

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 homestead properties consisting of the aggregated taxable values for all properties in the District classified as homestead properties for Education Fund tax purposes; and
- (c) An Education Fund OTV for non-residential properties consisting of the aggregated taxable values for all properties in the District classified as non-residential properties for Education Fund tax purposes.

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 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.<sup>47</sup>

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.

For the Milton North/South TIF District, due to the repeal of the “adjustment to the OTV due to reappraisal,”<sup>48</sup> as of the April 1 immediately following the promulgation of this rule, the OTV will revert back to the original taxable value established at the time of the District creation and shall be applicable for the calculation of the tax increment for subsequent years.

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**902. Documentation of OTV:** For Districts created after 2006, municipalities included estimated OTV listings in the TIF District Plan and application, but such listings may not have detailed the OTV into the three required categories. For Districts created prior to 2006, no documentation of the OTV was ever required. Therefore, for all TIF Districts, the Council will prescribe administrative steps to obtain the municipal and education OTV listings from each District in accordance with Section 901 of this Rule and have the OTV, including a parcel listing, values, and acreage, certified by the municipality, the Council, and PVR within three months of adoption of this rule.

Municipalities may file a substantial change request to amend the OTV only if the event or error causing the change occurred within the same grand list year in which the District was created and results in a change to the grand list on which the OTV is based (i.e., the successful appeal of a property value by the property owner in the year in which the TIF District was created). Parcel survey adjustments are considered administrative and do not require a substantial change, but must be reported in the Annual Report required by Section 1004.2 of this Rule.

**903. Increase/Decrease in Assessed Valuation:** Each year following the year of creation, the listers or assessor shall certify to the municipal legislative body the amount by which the total assessed valuation of taxable properties within the TIF District has increased or decreased compared to the municipal and education OTV. Prior to providing the certification to the municipal legislative body, the listers or assessor shall have the calculation of the increase or decrease, including an examination of the disposition and tax status of each parcel within the District, verified by a second party. Selection of the second party is up to the municipality and may be an individual within or outside of the municipal government. However, the individual should be familiar with parcel listings and valuation, property tax status, and the concepts of OTV and District increment. A copy of the certification of the value and the increase or decrease must be included in the Annual Report required by Section 1004.2 of this Rule along with a certification that a second party reviewed the information. The Council will provide a form on which to provide this certification.

**904. Tax Increment:** In each year after the district is created, the municipal officials shall do the following:

- (a) Determine the total assessed value of all property in the District according to the provisions of statute,<sup>49</sup> and,
- (b) For the calculation of the municipal incremental revenue:
  - i. Collect the municipal taxes for the current tax year, determined by applying against the value calculated in (a) all of the tax rates in effect in the municipality for tax year including (1) the municipal tax rate and (2) all other municipal tax rates in effect in the district, including tax rates to generate revenue for specific municipal purposes even if included in a municipal charter provision.<sup>50</sup>

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- ii. Compute the total amount of the municipal taxes that would have been due, including all municipal taxes and taxes assessed to generate revenue for specific purposes, if the grand list used to compute such taxes had included only the OTV.
  - iii. Subtract the amount of the taxes computed in “ii” from the amount of the taxes computed in “i” to calculate the municipal incremental revenue.
- (c) The Education Tax incremental revenue is calculated by determining the incremental revenue attributable to homestead property and the incremental revenue attributable to non-residential property separately, then aggregating the two amounts to determine the Education Tax incremental revenue. Education Tax incremental revenue shall be determined by:
- i. Using the homestead or nonresidential rate determined by the Commissioner of Taxes, multiplied by the education property tax grand list value of the property in the District, classifying the property as homestead or nonresidential property and without regard to any other tax classification of such property, the municipality shall collect the education property taxes for all properties in the District.
  - ii. Using the homestead or nonresidential rate determined by the Commissioner of Taxes, multiplied by the education property tax grand list value of the property in the District, classifying the property as homestead or nonresidential property and without regard to any other tax classification of the property, compute the total amount of the education property taxes that would have been due if the education property tax grand list used to compute such taxes had included only the OTV.
  - iii. With respect to the properties classified as homestead in the District, subtract the amount of taxes computed in “ii” using the applicable homestead tax rate from the amount of the taxes computed in “i” using the homestead tax rate to determine the education homestead tax incremental revenue.
  - iv. With respect to the properties classified as non-residential in the District, subtract the amount of taxes computed in “ii” using the applicable non-residential tax rate from the amount of the taxes computed in “i” using the non-residential tax rate to determine the education non-residential tax incremental revenue.
  - v. Aggregate the education homestead tax rate incremental revenue and education non-residential tax incremental revenue to determine the amount of the education tax incremental revenue.
- (d) If the District has not triggered the retention period, any increment is paid over to the taxing authorities. If the District has triggered the retention period, retain in the District Fund that portion of each of the municipal tax incremental revenue and the education tax incremental revenue determined by applying the share that the municipality is allowed to retain against each of the municipal tax incremental revenue and the education tax incremental revenue; and pay the balance over to the taxing authorities to whom the remaining amounts are due.

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### **905. Special Situations Applicable to All Districts:**

**905.1. Taxable to non-taxable:** When a taxable parcel of land located within the boundaries of a District is transferred to an entity that is exempt from municipal taxes or education fund taxes or both, there is no change to the OTV as a result of the transfer. For as long as the exemption continues to be effective the listed value of the exempt property shall be included in the grand list at zero.

**905.2. Non-taxable to taxable:** When a non-taxable parcel of land located within the boundaries of a District is transferred to an entity that is not exempt from municipal taxes or education fund taxes or both, there is no change to the OTV as a result of the transfer. For the purposes of calculating the increment, the listed value of the property shall be included in the grand list at its fair market value.

**905.3. 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 assigned to the parcel of land on the grand list immediately preceding the separation shall be assigned to the resulting parcel which retains the SPAN to which the OTV was assigned. Each resulting parcel shall be classified as homestead or non-residential property according to applicable law.

**905.4. 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 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 should remain active in the calculations related to OTV and increment.

**905.5. Separation of a Parcel or Combination of two Parcels not located wholly within the District.** The separation of a parcel into two or more parcels or the combination of two parcels into a single parcel that would result in a change in the boundary of the District is considered a Substantial Change. The municipality must file a Substantial Change Request in accordance with Section 1003.3.3 of this Rule and the Council's action will determine the effect of the separation or combination on the District.

**905.6. Property changes use from Homestead to Non-residential:** When a parcel of land located within the boundaries of a District is re-classified from homestead to non-residential or non-residential to homestead, the OTV assigned to the parcel shall remain with the parcel.

**905.7. Boundary Adjustments:** A boundary adjustment affecting one or more parcels wholly within a District, which also affects the boundaries of a District is considered a Substantial

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Change. The municipality must file a Substantial Change Request in accordance with Section 1003.3.3 of this Rule. Any adjustment to OTV resulting from the change in the size of the District shall be resolved during the processing of the application for the substantial change. A boundary adjustment involving parcels wholly within the boundaries of a District which does not affect the boundaries of a district is not a substantial change. The OTV assigned to the parcels in their original configuration shall remain the OTV for such parcels.

**906. Taxation status of a parcel:** Whether or not a parcel is subject to the education property tax for purposes of the OTV listing or annual calculation of the increment depends on the Vermont property taxation statute in force at the time of creation of the District for the establishment of the original taxable value and each year thereafter for the valuation of the property in order to calculate the increment. Properties built by the municipality, financed with District increment, or owned by a non-profit may be subject to taxation due to the use of the property or other reasons. 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.

**907. Reporting Increment:** Each year, municipalities shall report assessed values, changes in assessed valuation, and education property tax increment for all properties in the District to the Property Valuation and Review Division of the Department of Taxes using the reporting process specified by the Director of the Property Valuation and Review. Currently, this reporting occurs through the software provided to municipalities by a State of Vermont contract with the New England Municipal Resource Center (NEMRC).

**908. District Fund:** The municipal and education property tax incremental revenue retained by the municipality, limited by the required share and the amounts committed to debt and related costs, shall be accounted for by the municipality in a designated District Fund until all District debt and related costs are fully paid. The municipality shall maintain records and file such reports as required by statute<sup>51</sup> and Section 1000 of these rules.

**909. Limitations on use of education property tax increment:** The incremental education property tax revenue 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 incremental revenue shall be restricted only to the extent that the real property development generating the incremental revenue fails to occur.<sup>52</sup> However, the availability of the incremental revenue may also be limited by the enforcement provisions of statute.<sup>53</sup> Further, statute<sup>54</sup> limits the use of any incremental revenue held in the designated District Fund to pay District debt financing and related costs and prohibits loaning or utilization of the incremental revenues for any other purpose by the municipality.

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**910. Interest:** Any interest earned by a municipality due to incremental municipal or education property tax revenue retained in municipal accounts for the District Fund shall be kept in the District Fund and not used for any other purposes. When any excess increment is distributed in accordance with statute<sup>55</sup> and Section 912 of this rule, the accumulated interest shall be distributed in the same manner.

**911. Use of Income Generated by District Infrastructure:** If the District Plan or District Finance Plan approved by the Council included the utilization of income generated by infrastructure financed with District increment to ensure the viability of the District (such as parking garage leases or fees), that income must be utilized in accordance with the District authorization document issued by the Council.

**912. Distribution:** In any one year following the ten-year period during which debt may be incurred, the balance of the District Fund may not exceed the total amount committed<sup>56</sup> by the municipality for the payment or financing of District improvements and related costs for that year and any future years. The municipality may utilize excess municipal and education property 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 increment.

**913. Final 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 taxing entities.

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### 1000 Recordkeeping, Notifications, and Reporting

**1001. District Plan Approval:** After 2006, authorizing a municipality to utilize incremental education property tax revenue to finance District improvements became one of the Council's central responsibilities.<sup>57</sup> The Council is also charged with oversight and monitoring of all Districts, regardless of the date of creation and, together with the Department of Taxes (Property Valuation and Review), is responsible for providing an annual report to the General Assembly regarding all existing Districts. 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.

The Secretary of Commerce, based on recommendations from the Council, has the authority to issue decisions in regard to compliance with statute and these rules.<sup>58</sup> To ensure a foundation of information regarding each District upon which progress can be measured and compliance decisions can be made, this rule requires that each existing District submit an updated or original District Finance Plan or a District Reconciliation.

For the Burlington Waterfront, Winooski, Newport, and Milton North/South 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.

For the Town of Milton, for purposes of accounting and reporting, the two Districts known as the Husky (or North) District and the Catamount (or South) District will be treated as a single district.<sup>59</sup>

**1002. Recordkeeping.** Municipalities with Districts must maintain a separate fund for the District and segregated records to account for the District's incremental revenue 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 Fund recordkeeping must include, at a minimum, the following:

- An accounting of 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 ownership or 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

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must indicate whether a parcel is homestead or non-residential and any aggregation of the parcels must include subtotals by homestead and non-residential categories.

- An accounting of all municipal and education tax revenue generated when all tax rates are extended against the assessed valuation, the resulting increment, and all the rates that were applied.
- An accounting of the municipal and education property tax increment generated each year following the District creation date, the amounts credited to the fund each year due to the appropriate share retained, debits to the fund for servicing District debt or making direct payments or paying related costs, and the balance of the fund.
- An accounting of any interest earned due to increment held in the District Fund, the utilization of the interest and distribution of interest in accordance to the established share.
- An accounting of any income generated by infrastructure financed with District 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.
- An accounting of 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.
- An accounting of all related costs incurred, including 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 TIF increment, and when the reimbursement or payment was included in a public vote.
- An accounting of all District debt incurred and any direct payments made for District improvements, including the debt terms and duration.
- An accounting of 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.
- An accounting and description of the real property developments and redevelopments that occur because of the District improvements, and a description of 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.”
- An accounting of the public good outcomes that were factors in the determination that a District Plan met the Project Criteria approval requirements,<sup>60</sup> 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

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of an existing business(es), the new jobs created by these businesses, and the average wages for such jobs; and enhancements to transportation due to improved traffic patterns and flows and/or improvements to public transportation systems.

- An accounting of any other performance indicators developed by the municipality and the general performance requirements mandated by statute,<sup>61</sup> including the number of jobs created in 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. 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.<sup>62</sup>

### **1003. Notifications**

**1003.1. Public Hearings.** Whether for the creation of a District and approval of a District Plan, making substantial changes to an approved District Plan or District Finance Plan, or obtaining voter approval for District financing, municipalities must take appropriate steps to inform the voters by providing adequate notice and adequate opportunity for public comment. For the creation of a District and approval of a TIF Plan by the municipal legislative body, statute<sup>63</sup> requires that the legislative body hold one or more public hearings, after public notice, on the proposed plan.

The same level of notice and public hearing is required for substantial change requests, and to obtain approval by the voters to incur District financing. 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 statute<sup>64</sup> and Section 1003.2.2 of this rule for details on the information required in the notice to the voters prior to a public vote to incur District financing.

### **1003.2. Notifications to Voters**

**1003.2.1. Substantial change requests:** Prior to submitting a substantial change request to the Council for consideration, notify the voters of the change through a properly warned public hearing before obtaining approval by the municipal legislative body.

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**1003.2.2. 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, and the municipality must provide an informational notice to the voters.<sup>65</sup> Such public notice must be provided as part of at least one public hearing on the matter. The public notice must include a minimum of the following information, as known:

- Total amount of debt to be voted upon and total cumulative District debt incurred (Statute<sup>66</sup> 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 District increment, including principal, and estimated interest, and fees, and terms of the debt.
- Estimated amount of related costs that will be financed, paid or reimbursed with increment.
- Identification of the loaning fund and documentation of the terms and conditions for inter-fund loans, if utilized.
- If utilized, 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 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 District 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 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 remain liable for the full payment of the principal and interest for the term of indebtedness.

The format of such notification is the responsibility of the municipality and subject to the charter of the municipality but the content is required by statute<sup>67</sup>.

**1003.3. Notifications to Council and Tax Department:** Unless specifically required by statute or this rule, for the notifications and reports required throughout Section 1000, the Council will serve as the single point of contact and will be responsible for establishing submittal forms and for sharing information reported by the municipalities to the Department of Taxes.

**1003.3.1. Public Vote on District financing:** 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;

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- A copy of the notice of public hearing, including copies of the notice as it appeared in publications;
- A copy of agendas and minutes of the municipal legislative body indicating votes or resolutions involving the District financing.

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

**1003.3.2. Incurring debt:** Within 30 days after it 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.

**1003.3.3. Corrections and Substantial Changes to District Plans:** Once approved, the District Reconciliation and, for the post-2006 Districts, the District Plan, District Finance Plan, and approved applications, serve as the foundational documents for each District's implementation, providing the intentions of the municipality regarding debt and financing, improvements, and development/redevelopment. For Districts approved after 2006, these plans were presented at a public hearing, voted on by the municipal legislative body, and approved by the Council.

Municipalities must include in the Annual Report required by statute<sup>68</sup> and detailed in Section 1004.2 of this rule, information regarding any deviation from the approved District Plan, District Finance Plan, or District reconciliation. Minor corrections to a District Plan or reconciliation, which do not meet the definition of a Substantial Change, may be submitted electronically to Council staff at any time, but must be included in the Annual Report.

Municipalities must, pursuant to statute<sup>69</sup> and this rule, after holding a properly warned public hearing, obtain approval from the municipal legislative body for any substantial change request prior to submitting it to the Council for review. The request must be filed electronically, in the format required by the Council, 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.

A substantial change request must include:

- A letter requesting consideration by the Council of a substantial change. 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 substantial change.
- 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 substantial change.

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- A narrative explanation of the substantial change that fully explains the reason for such a change and includes the following:
  - Impact of the change on the overall District Plan, Finance Plan, or District Reconciliation.
  - Whether the change impacts the District Plan approval determinations made by the Council.
  - 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.
  - Information and data showing the impact of the change on infrastructure costs, revenue generation and overall viability of the District.
  - A proposal and substantiation of proportionality, if the change involves a new infrastructure improvement project.

When making a determination to allow or deny the substantial change, the Council will consider whether and the degree to which the substantial change:

- 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.
- Would cause the education property tax revenue to increase.
- 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.

### **1004. Annual Reporting**

**1004.1. District Fund in Municipal Audit Cycle:** Municipalities with an active District must ensure that the entity undertaking the annual municipal audit required by statute<sup>70</sup> on behalf of the municipality is aware of the requirement to include the District fund in the audit.<sup>71</sup> The audit procedures must include, at a minimum, verification of:

- The original taxable value and annual and total municipal and education tax increments generated;

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- Expenditures for District debt and related costs; and
- The current balance of the District fund.

Because these requirements are not necessarily included in a normal municipal audit, the Council will develop and publish, in cooperation with representative municipal officials and accountants familiar with municipal audits, “agreed-upon procedures” for these audit engagements.

**1004.2. District Annual Reporting:** Pursuant to statute,<sup>72</sup> 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. Starting with the reports due January 15, 2015, the report will be for the previous municipal fiscal year. Therefore, the report due January 15, 2015 will cover a short year, January 1, 2014 - June 30, 2014. Subsequent annual reports will cover the entire previous fiscal year.

The annual report must include:

- A copy of the annual value and increment certification and a certification that it was reviewed by a second party before submittal to the municipal legislative body (See Section 903).
- A summary of any public votes and debt incurred and documentation of any public vote and 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.
- Information regarding the refinancing of approved District debt.
- A copy of the municipal audit required by statute.<sup>73</sup>
- All information required by statute,<sup>74</sup> 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.

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### 1100 Oversight, Monitoring, Non-compliance Enforcement, and Audits

**1101. Oversight and Monitoring.** The Council will conduct oversight and monitoring 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. Prior to initiating oversight and monitoring, every effort will be made by Council staff to work with municipal officials to ensure an understanding by the municipalities of the statute, the rules, and compliance requirements and assist the municipality to set up recordkeeping and information systems that function efficiently and effectively for all parties.

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. Only the District single point of contact may communicate with Council staff regarding District issues and Council staff will communicate with only the single point of contact. All communication must be conducted in writing (including email).

**1102. Issue Resolution and Non-Compliance Enforcement.** Inquiries and questions must be posed in writing by the municipal Single Point of Contact to Council staff, who may confer with Agency of Commerce and/or Department of Tax counsel, the Council Chair, and others as appropriate, prior to issuing a written response to the municipal Single Point of Contact.

However, if District oversight, monitoring, or annual reporting identifies non-compliance with District statute or rule, or inconsistencies with an approved District plan or District Reconciliation, or if after receiving a written response from Council staff a municipality files a formal inquiry with the Council because the municipality chooses to dispute the staff response, staff will initiate the formal process to issue decisions pursuant to statute.<sup>75</sup>

Examples of non-compliance, include, but are not limited to:

- Municipality fails to provide required notifications to the voters or the Council.
- Municipality incurs District debt without a public vote.
- Municipality uses increment to fund improvements not included in approved District Plan or a TIF Reconciliation without appropriate approvals.
- The District, as implemented, does not carry out the approved TIF Plan or TIF Reconciliation.
- Absent a substantial change request and approval, the District, due to actions taken by the municipality, does not meet the required approval criteria outcomes as set in the Council's approval of the District.

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- The municipality retains more than the approved percentage of education or municipal property tax increment.
- The municipality exceeds the approved proportionality to an improvement cost.
- The municipality uses incremental revenue improperly or for purposes not allowed by statute or this rule.
- The municipality fails to maintain the recordkeeping required by this rule.
- The municipality fails to create and maintain the District fund required by statute.

### **1103. Process for issue resolution and non-compliance enforcement:**

(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.

(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

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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.

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### ENDNOTES

<sup>1</sup> 32 V.S.A. Chapter § 5404a (j).

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

<sup>3</sup> 3 V.S.A. Chapter 25

<sup>4</sup> 32 V.S.A. § 5404a (j).

<sup>5</sup> 24 V.S.A. Chapter 53, Subchapter 5 and 32 V.S.A. Chapter 135.

<sup>6</sup> 24 V.S.A. § 1893

<sup>7</sup> 32 V.S.A. §5404a (j).

<sup>8</sup> §1 of Act 80 (2013)

<sup>9</sup> V.S.A. 32 §5404a(j)(3)

<sup>10</sup> 24 V.S.A. §1892(d)

<sup>11</sup> 24 V.S.A. §1894(a)

<sup>12</sup> See V.S.A. §1892(d).

<sup>13</sup> 24 V.S.A. §1894(d)

<sup>14</sup> Section 82 of Act 54 (2009), as amended by §10 of Act 3 (2009 Special Session) gave the Milton Town Core District a ten-year period to incur debt. Provision was retroactive to July 1, 2008.

<sup>15</sup> 24 V.S.A. §1901.

<sup>16</sup> 24 V.S.A. §1901(3) (B).

<sup>17</sup> See 24 V.S.A. § 1893

<sup>18</sup> The City voted to expand the original District on June 23, 1997 as authorized by Act 60 (1997).

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<sup>19</sup> Also known as Milton Husky and Milton Catamount TIF Districts. Districts were approved by the Council as one District in 1999 and authorized April 1, 1999 as the effective start date of the retention period. Further, Section 15b of Act 45 (2001) retroactively allowed the Milton Husky and Catamount Districts to be treated as a single district for accounting purposes. Section 2j of Act 184 (2006), amended by Section 68 of Act 190 (2008) authorized the extension of the District for an additional ten-year period.

<sup>20</sup> 24 V.S.A. §1891(5).

<sup>21</sup> 24 V.S.A. § 1891(4)

<sup>22</sup> 24 V.S.A. § 1893

<sup>23</sup> 24 V.S.A. § 1891(4)

<sup>24</sup> 32 V.S.A. §5404a (l).

<sup>25</sup> 24 V.S.A. § 1901(3) (A).

<sup>26</sup> 24 V.S.A. §1681

<sup>27</sup> 24 V.S.A. § 1901(3) (A).

<sup>28</sup> 24 V.S.A. 1894(i)

<sup>29</sup> 24 V.S.A. §1891(6).

<sup>30</sup> 24 V.S.A. §1894 (a).

<sup>31</sup> 24 V.S.A. §1894(f).

<sup>32</sup> 24 V.S.A. §1896(c).

<sup>33</sup> 24 V.S.A. §1894(g).

<sup>34</sup> 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).

<sup>35</sup> 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.

<sup>36</sup> The original debt period and retention period was ten years, ending in 2009. §2j of Act 184 (2006) as amended by §68 of Act 190 (2008) extended both another ten years to 2019. The original share was left to the discretion of the municipality, but was amended to no more than a 75/25% split of the education incremental revenue and an equal share of the municipal incremental revenue by Section 2j of Act 184, as amended by Section 68 of Act 190 (2008). Further, the new 75/25% split also applies to any debt obligations incurred prior to April 1, 2009, without regard to the proportionality rule.

<sup>37</sup> 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).

<sup>38</sup> 24 V.S.A. 1894(e).

<sup>39</sup> 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.

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<sup>40</sup> 24 V.S.A. §1894(h).

<sup>41</sup> 24 V.S.A. §1894(i).

<sup>42</sup> 24 V.S.A. § 1891(7).

<sup>43</sup> 24 V.S.A. §1894(i).

<sup>44</sup> 24 V.S.A. §1891(7).

<sup>45</sup> § 38(1) of Act 159 (1999).

<sup>46</sup> §72 of Act 190 (2008).

<sup>47</sup> §16 of Act 45 (2011).

<sup>48</sup> §6 of Act 80 (2013)

<sup>49</sup> 32 V.S.A. Chap. 129.

<sup>50</sup> 24 V.S.A. §1896(c). Note that the requirement to apply all municipal tax rates against the aggregated value went into effect on July 1, 2013. Therefore, any special rates in place prior to July 1, 2013 and any created after July 1, 2013, are subject to this change. The incremental revenues generated by the grand list filed April 1, 2014 and for all subsequent years during the life of the District must be split when these special municipal rates are applied. This requirement applies to any and all special municipal rates, even if they are approved by the municipal charter for a special purpose.

<sup>51</sup> 24 V.S.A. § 1901.

<sup>52</sup> 32 V.S.A. 5404a (g).

<sup>53</sup> 32 V.S.A. §5404a (j).

<sup>54</sup> 24 V.S.A. §1896 (d).

<sup>55</sup> 24 V.S.A. § 1900

<sup>56</sup> 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...”

<sup>57</sup> 32 V.S.A. § 5930a (h).

<sup>58</sup> 32 V.S.A. §5404a (j).

<sup>59</sup> Section 15b of Act 45.

<sup>60</sup> 32 V.S.A. 5404a (h) (4).

<sup>61</sup> 32 V.S.A. §5404a (i).

<sup>62</sup> 32 V.S.A. §5404a(l))

<sup>63</sup> 24 V.S.A. §1892(a).

<sup>64</sup> 24 V.S.A. §1894 (i).

<sup>65</sup> 24 V.S.A. §1894 (i).

<sup>66</sup> 24 V.S.A. §1894(h)

<sup>67</sup> 24 V.S.A. §1894(i)

<sup>68</sup>24 V.S.A. §1901(3)(B)

<sup>69</sup> 24 V.S.A. §1901(2)(B)

<sup>70</sup> 24 V.S.A. §1681 and 24 V.S.A. §1690.

<sup>71</sup> 24 V.S.A. §1901(3) (A).

<sup>72</sup> 24 V.S.A. §1901(3) (B).

<sup>73</sup> 24 V.S.A. §1681 and 24 V.S.A. §1690.

<sup>74</sup> 32 V.S.A. §5404a (i).

<sup>75</sup> 32 V.S.A. §5404a (j) (2).

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