

**Virgin Islands
Economic Development Commission**

Tax Incremental Financing

TITLE TWENTY-NINE Public Planning and Development

Chapter 22. Tax Incremental Financing

*** Current through Act 8263 of the 2019 Regular and Special Session ***

Chapter 22. Tax Incremental Financing

As amended by Act 8263 passed by the Legislature of the Virgin Islands on December 30, 2019
and approved by the Governor on January 18, 2020

§ 1200. Short title

§ 1201. Definitions

§ 1202. Parameters of TIF Program

§ 1203. Powers of the Authority

§ 1203a. Powers of the PFA

§ 1204. Certification of TIF Project Eligibility

§ 1205. Public Hearing

§ 1206. Tax Increment Trust Fund; Mandatory Contributions

§ 1208. Tax Increment Development Plan; Preparation; Adoption; Filing; Modification

§ 1209. TIF Bond Authorization

§ 1210. Approval by the Legislature of the Virgin Islands

§ 1211. TIF Bond Security

§ 1212. Default

§ 1213. Limitation of Liability

§ 1200. Short title

§ 1201. Definitions

For the purposes of this chapter, the term:

- (a) "Assessor" means the Tax Assessor, or such other person or office responsible for assessing the value of real property.
- (b) "Authority" means the Virgin Islands Economic Development Authority established under chapter 21 of title 29 of the Virgin Islands Code.
- (c) "Available gross receipts tax revenue" means the proceeds of the gross receipts taxes paid to the Virgin Islands Bureau of Internal Revenue for deposit into the General Fund of the Government pursuant to 33 Virgin Islands Code chapter 3 section 43; excluding the first \$250,000 of the tax collected during each Fiscal Year which is required to be deposited into the

Moderate Income Housing Fund pursuant to title 33 Virgin Islands Chapter 111 section 3027(a)(3), including any penalties and interest charges, in excess of the amount of such revenues which is required to be remitted as security for the payment of bonds, issued pursuant to Act No. 6514, that are secured by such gross receipts taxes.

- (d) “Available real property tax revenues” means the revenues resulting from the imposition of the tax provided for in 33 Virgin Islands Code chapter 81 section 2302 and payments in lieu of real property taxes, exclusive of the portion required to be deposited in the St. John Capital Improvement Fund and the Housing Trust Fund under chapter 81 of Title 33.
- (e) “Capital improvement” means those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles.
- (f) “Current assessed value” means for any tax year, the assessed value of each lot of taxable real property within a Tax Increment Financing (hereinafter ‘TIF’) area as then recorded on the land records of the Government of the Virgin Islands as of the end of the preceding tax year.
- (g) “Designated gross receipts tax increment” means the amount of percentage and priority of available gross receipts tax revenues as determined by the Authority prior to the issuance of a series of TIF bonds.
- (h) “Development costs” means any actual or estimated cost for a project;
 - (1) Costs of studies, surveys, plans and specifications, including professional service costs for architectural, accounting, engineering, legal, marketing, financial and planning services;
 - (2) Property assembly costs, including acquisition or leasing of land and other property, real or personal, or rights or interests in property, demolition of buildings and other structures, remediation of environmental hazards, and the clearing and grading of land, in each case within the TIF area or as necessary for rights-of-way or other easement to or from the TIF area;
 - (3) Costs of construction, preservation, rehabilitation, reconstruction, repair or remodeling of new or existing public or private buildings, structures and fixtures, in each case within the TIF area, and costs of any public works or improvements undertaken by, or at the direction of the Government of the Virgin Islands or any other government unit.
 - (4) Costs of parking and transportation facilities, pedestrian walkways and parks that are owned by the Government of the Virgin Islands or any other government unit or are privately owned, in each case within the TIF area or as necessary for rights-of-way or other easements to or from the TIF area;
 - (5) Costs of construction of new public or privately owned low to moderate income housing units and community facilities within the a [sic] TIF area and costs of preservation, rehabilitation, reconstruction, repair or remodeling of public or private buildings for use as housing units and community facilities within a TIF area;
 - (6) Costs of maintaining and operating public works and improvements within the TIF area or as necessary for rights-of-way or other easements to or from the TIF area;

- (7) Financing costs, including but not limited to all expenses related to the issuance of TIF bonds, principal of and interest and any premium on TIF bonds, TIF bonds reserves, credit enhancements, and costs related to the performance by the PFA of its covenants agreements within the holders of its TIF bonds;
- (8) Working capital and working capital reserves directly related to the development of a TIF infrastructure project; and
- (9) Administrative costs of the PFA and the Authority in certification of the Project and issuance of TIF bonds pursuant to this subchapter; and
- (10) Costs of construction, maintenance and repair, upgrade, and operation of any improvement that generates electricity from any renewable sources including without limitation the following:
 - A. wind;
 - B. closed-loop biomass;
 - C. open-loop biomass;
 - D. geothermal energy;
 - E. solar energy;
 - F. municipal solid waste;
 - G. hydropower; and
 - H. marine and hydrokinetic renewable energy.

Provided however, that electricity from renewable sources shall only be used within the TIF area or sold directly to the United States Virgin Island Water and Power Authority. Sale to any other party other than the United States Virgin Island Water and Power Authority outside of the TIF area is prohibited.

- (i) "Development sponsor" means any organization or person that seeks to undertake, a TIF project.
- (j) "District" means any geographic area within the Virgin Islands, including but not limited to St. John, St. Thomas, St. Croix, and Water Island.
- (k) "Eligible project" means a project that has been certified by the Authority as complying with the requirements set forth in this chapter.
- (l) "Gross receipts tax increment revenues" means the portion of the available gross receipts tax revenues constituting a designated gross receipts tax increment and allocable to one or more tax increment trust funds pursuant to this chapter.
- (m) "Increment revenues" means gross receipts tax increment revenues and/or real property tax increment revenues, and, if applicable, Designated Casino Tax on Gross Revenues, Designated Hotel Room Occupancy Tax, and Economic Recovery Fees as those terms are defined in the Hotel Development Act, chapter 23, section 1303, subsections (c), (d), and (f) of this title.
- (n) "Initial assessed value" means the assessed value of each lot of taxable real property within a tax increment area on the date of [sic] determined by the Authority as set forth in this chapter.

- (o) "PFA" means the Virgin Islands Public Finance Authority authorized pursuant to Chapter 15 of title 29 of the Virgin Islands Code.
- (p) "Project" means any capital improvement undertaken within a TIF area or within rights-of-way or other easements that are individually or collectively contiguous with the TIF area to develop the infrastructure of the TIF development or low to moderate housing or a 'Project' as defined in chapter 23, section 1303(l) of this title.
- (q) "Real property tax increment revenues" means the portion of the available real property tax revenues levied and collected within a TIF area on the positive difference, if any, of current assessed value over the initial assessed value and allocable to one or more tax increment trust funds pursuant to this chapter.
- (r) "Tax increment development plan" means a land use and land development plan for a TIF area.
- (s) "Tax increment trust fund" means a trust fund established for a TIF area pursuant to this chapter.
- (t) "TIF area" means a specific geographic area designated within the District pursuant to this chapter for development using tax increment financing under this chapter.
- (u) "TIF bonds" means tax increment financing bonds, notes or other obligations issued by the PFA pursuant to this chapter.

HISTORY: --Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 127-130; amended June 19, 2012, No. 7369, June 19, 2012, No. 7369, § 6, Sess. L. 2012, pp. 109-110, Sess. L. 2012, p. 109-110; amended Apr. 4, 2018, No. 8031, § 1(1)-(3), Sess. L. 2018, p. 15, 16; amended Jan. 18, 2020, No. 8263, § 1(a)(1)-(6), Sess. L. 2019, p. -.

§ 1202. Parameters of TIF Program

(a) The TIF Program:

- (1) may use tax incremental financing for the financing of capital improvements in areas where a finding has been made by the Authority, and approved by the Legislature where the need for tax increment financing has been documented to be significant in enhancing the economic viability of the project, but may not be used to supplant existing private investment or government funds for such projects.
- (2) must, to the extent practicable, work in conjunction with existing programs and efforts such as Virgin Islands Enterprise Zone Act, historic preservation and other economic development efforts;
- (3) must address the need for residential and neighborhood treatment, capital improvements to neighborhood public schools, as well as commercial and industrial development;
- (4) must, to the maximum extent feasible, allow full, public knowledge and participation in the decision making under this chapter;

- (5) must promote conservation, preservation, environmental protection and rehabilitation while demolition, clearance and relocation must be minimized where possible; and
- (6) must develop and apply clear standards, criteria and threshold limits that are applicable to all similar property and areas.

(b) TIF may only be used under the parameters established in subsection (a).

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 130, 131; amended Jan. 18, 2020, No. 8263, § 1(b), Sess. L. 2019, p. -.

§ 1203. Powers of the Authority

(a) The Authority has the following powers with respect to tax increment financing:

- (1) To make and execute contracts, and all other instruments desirable, convenient or necessary for the exercise of its powers and functions under this chapter, including agreements with note holders, bondholders, guarantors, or other interested in any matters pertaining to TIF bonds, including limitations of the activities and indebtedness of the Authority;
- (2) To prepare or cause to be prepared a tax increment development plan for a TIF area and to modify such plan from time to time as the Authority considers necessary or appropriate following a hearing and certification of project eligibility and the tax increment development plan as set forth in § 1209 of this chapter;
- (3) To contract with any department, agency or instrumentalities of the Government of the Virgin Islands or with any person, firm, partnership, corporation, development company or other entity to monitor TIF projects' progress and compliance with their respective TIF Plans and TIF agreements;
- (4) Any agency, development company or other entity with which the Authority contracts under subparagraph (3) must have experience in land use planning, land development and management of developments similar to the project to be monitored in type and scope, and expertise in financial feasibility analysis;
- (5) To make recommendations to the Department of Public Works or Office of Highways and Motor Vehicles, as applicable, with respect to the planning, replanning, opening, dedicating, creation or closing of private or public streets, roads, roadways, alleys, sidewalks and other rights of way in compliance with applicable rules and regulations, and to provide and furnish, or contract with the Government of the Virgin Islands or any other department, agency or instrumentalities or others for the providing and furnishing of any public facilities or services, including local transportation facilities in connection with a development project, provided that where the Virgin Islands Water and Power Authority supplies utility service or services within the area comprising the project shall not provide or furnish or contract for the providing and furnishing of such service and services without the consent of the Virgin Islands Water and Power Authority;

- (6) To make recommendations to the Department of Planning and Natural Resources for the creation of land use restrictions, building restrictions and architectural and aesthetic controls by covenants, declarations, and regulations or otherwise on any real property comprising a project;
 - (7) To make available to the federal government, the Government of the Virgin Islands, or any appropriate department, agency or instrumentality, the recommendations of the Authority affecting any TIF area or property therein, which it may consider likely to promote the public health, morals, safety, or welfare;
 - (8) To exercise the power of eminent domain for the purpose of forwarding the objectives of a tax increment development plan, such power of eminent domain to be utilized whenever necessary to carry out the purposes of this chapter, except that eminent domain may not be exercised to take real property containing lawfully occupied dwelling units for any purpose, including any public purpose; and
 - (9) To grant tax benefits to the Project pursuant to chapter 12 or chapter 23 of this title, and to allow tax exemptions pursuant to chapter 12 that exclude Increment Revenues, but include tax exemptions for non-Increment Revenues, in order to permit such Increment Revenues to be used to secure TIF Bonds; and
 - (10) To do all things necessary or convenient to carry out the purpose of this chapter and exercise the powers given and granted in this chapter.
- (b)** The Authority shall make express findings by resolution that it believes that the activity in question and the benefits to be derived from the project will
- (1) promote significant opportunities for employment of its citizens;
 - (2) attract new business enterprises within the TIF areas;
 - (3) retain or expand an existing business enterprise in the TIF area;
 - (4) provide affordable housing in or near the TIF area;
 - (5) increase revenues to the Government through increased real property taxes and/or gross receipt taxes;
 - (6) be beneficial to the general economic development of the TIF area as set forth in such resolution;
 - (7) be less likely to be developed without TIF; and
 - (8) where applicable, a feasible method exists for the compensation of individuals, families and small businesses that may be displaced by the project and for their relocation to decent, safe, and sanitary dwelling accommodations within their means without undue hardship to the individuals, families and businesses.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 131-133; amended Jan. 18, 2020, No. 8263, § 1(c)(1)-(5), Sess. L. 2019, p. -.

§ 1203a. Powers of the PFA

The PFA have the following powers with respect to tax increment financing:

- (i) To make contracts, incur liabilities, borrow money at such rates of interest, maturities and on such other terms and conditions as the PFA, in consultation with the Authority, may determine, issue its notes, bonds and other obligations, as authorized by [Section 922, title 29, chapter 15 of the Virgin Islands Code](#) and secure any such obligations by mortgage, deed, of trust, security agreement or other pledge of all or any of its real or personal property or any interest therein, whether then owned or thereafter acquired, and to pledge the revenues and receipts from all or any of such real or personal property and to assign or pledge the income received by virtue of the lease or leases and, subject to the provisions of any contract with noteholders, bondholders, or guarantors, to consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest secured or any other term, of any mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the PFA is a party;
- (ii) In connection with any property on which it has made a mortgage loan or otherwise holds a lien or security interest, to foreclose on any such property or commence any action or protect or enforce any right conferred upon it by any law, mortgage, security agreement or other agreement and to bid for and purchase such property at any foreclosure or at any other sale or otherwise acquire or take possession of any such property; and in such event the PFA, may complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of and otherwise deal with such property in such manner as may be necessary or desirable to protect the interest of the PFA therein;
- (iii) To make available to the federal government, the Government of the Virgin Islands, or any appropriate department, agency or instrumentality, the recommendations of the PFA affecting any TIF area or property therein, which it may deem likely to promote the public health, morals, safety, or welfare; and
- (iv) To do all things necessary or convenient to carry out the purposes of this chapter and exercise the powers given and granted in this chapter.

HISTORY: --Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 133, 134.

§ 1204. Certification of TIF Project Eligibility

- (a) To be eligible for TIF, a development sponsor of any proposed project shall apply to the Authority for certification that the project complies with the requirements of this chapter. The application must contain a preliminary development plan for the project which consists of the following:
 - (i) A delineation of the proposed TIF area;
 - (ii) A description of the proposed land uses of the project;
 - (iii) The use of the financing proceeds made available pursuant to this chapter;
 - (iv) A pro forma projection of the revenues and the expenses of the project;
 - (v) An assessment of the financial feasibility of the project;
 - (vi) A description of the timing and phasing of the project;
 - (vii) A description of the project's compliance with all provisions and requirements of all applicable environmental, development and land use laws; and

(viii) An analysis of the projected tax revenue and benefits to be generated by the project as set forth in an independent financial assessment;

(b) The Authority shall establish reasonable administrative fees for processing applications.

(c) After the receipt of an application that meets the criteria set forth in subsection (a), the Authority shall certify or reject the project. In determining whether to certify the project, the Authority shall consider the following criteria:

- (i) Whether the project is financially feasible;
- (ii) Whether the project will likely result in a net increase in the taxes payable to the Government of the Virgin Islands taking into consideration income taxes, franchise taxes, real property taxes and other applicable taxes, without regard to the real property tax increment revenues from such taxes to be applied to payment of the TIF bonds and without regard to any exemptions granted by the Authority as to non-tax increment revenues under any other chapter of this title, and other taxes, if applicable, over the amount that would have been payable to the Government of the Virgin Islands in the absence of the project;
- (iii) Whether the project's total anticipated benefits to the Government of the Virgin Islands, including public benefits as well as financial benefits, exceed the total anticipated costs to the Government of the Virgin Islands; and
- (iv) Whether an allocation, dedication or contribution of increment revenues will compete with or supplant benefits from other sources or other means that are otherwise available for the project on reasonable terms and conditions, without regard to any tax exemptions granted by the Authority to non-tax increment revenues under any other chapter of this title.

(d)

(1) If, upon consideration of the criteria set forth in subsection (b) and following the public hearing required pursuant to section 1206, [sic] and incorporation of any recommendations from the hearing, the Authority decides to certify the project for approval by the Legislature, the Authority shall enter into negotiations with the development sponsors to determine the metes and bound boundaries of the TIF area, details of increment revenues to be allocated, the type of tax to be allocated, and the terms and conditions of any agreement between the Authority or the Government of the Virgin Islands and the development sponsor.

(2) If the project does not comply with the criteria, the Authority shall so notify the development sponsor in writing stating the areas the project fails to meet the criteria. The Authority shall allow the development sponsor up to 60 days to comply and cure any defects.

(e) Upon approving the project, the Authority may require the project sponsor to reimburse the Authority for all or any part of the costs of the independent financial assessment conducted in reviewing the application and any other related costs incurred.

(f) When a project is certified by the Authority pursuant to subsection (c), the Authority shall determine the date to be set for the initial property tax assessment in the TIF area. Thereafter, the Assessor shall, upon request of the Authority, promptly determine and certify the initial assessed value of each lot of taxable property within the TIF area.

- (g) The Chairman of the respective island, Virgin Islands Coastal Zone Management Committee; the Commissioner of the Department of Planning and Natural Resources; the Attorney General for the Virgin Islands; the Commissioner of the Virgin Islands Department of Housing, Parks and Recreation; the Virgin Islands Housing Finance Authority; the Virgin Islands Water and Power Authority; the Tax Assessor; and any other relevant department or instrumentality of the Government of the Virgin Islands shall furnish to the Authority information and certificates as may be required by the Authority to confirm a project's compliance with the criteria enumerated in subsection (c) of this section.
- (h) Subject to the consent of each development sponsor of a project within the affected TIF area and the rights of the holders of its TIF bonds, the TIF area, may be abolished or merged or have altered boundaries as provided by law.
- (i) The Authority, in conjunction with the PFA, shall impose reasonable fees in connection with the issuance of the TIF bonds to defray the costs incurred as a result of the determination of the tax increment allocation and the issuance of the TIF bonds.
- (j) The Authority may promulgate rules and regulations to implement the provisions of this section.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 134-137; amended Jan. 18, 2020, No. 8263, § 1(d)(1), (2), Sess. L. 2019, p. -.

§ 1205. Public Hearing

- (a) Following the submission to the Authority of an application for tax increment financing under section 1204(a), the Authority shall call a public hearing concerning the suitability of the proposed project for TIF area. The hearing must be held within the District in which the project is proposed to be located.
- (b) The Authority shall publish notice of the hearing in a newspaper of general circulation in the District in which the project is to be located at least 14 days before the day on which the hearing is to be held.
- (c) The notice must describe the time, date, place and purpose of the hearing, must generally identify the area covered by the plan, and must outline the general scope of the proposed project.
- (d) If at the hearing the Authority certifies the project, the Authority shall adopt a resolution setting forth its decision, and transmit a copy of the resolution to the Governor and the Legislature.
- (e) A certificate setting forth the findings by the Authority and designating an area a TIF area, including the metes and bounds of the area within which the project is to be located, must be signed by the Chairperson of the Authority and filed in the Office of the Recorder of Deeds for the district in which the property is located and there remain of record.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, p. 137.

§ 1206. Tax Increment Trust Fund; Mandatory Contributions

- (a) The Authority shall establish for each TIF area a tax increment trust fund. Funds allocated to and deposited into the fund must be made available to the Authority and the PFA, as security or otherwise, to finance or refinance any eligible project or TIF bond the Authority undertakes pursuant to the approved tax increment development plan.
- (b) Neither the Authority nor the PFA may expend, commit to expend, or pledge an interest in amounts held in the tax increment trust fund, or its respective right to receive any increment revenues pursuant to this section, unless:

 - (1) The Authority approves the tax increment development plan, as pursuant to Section 1208 which must specify the precise metes and bounds of the TIF area and the maximum principal amount of TIF bonds that the PFA may incur in connection with undertaking the project that is to be secured in whole or in part by increment revenues on deposit from time to time in the tax increment trust fund; and
 - (2) A projection of the amount of increment revenues that are reasonably expected to accrue from within the TIF area has been prepared by the Authority, showing that the increment revenues will be sufficient in amount to pay when due costs of or debt service on any TIF bonds issued by the PFA and to pay the development costs from the tax increment trust fund. The Authority shall engage an independent appraiser to certify that the appraisal practices constituting the basis for such projection comply with current prevailing appraisal standards and procedures.
- (c) The dedication and contribution of increment revenues may not impair existing obligations of the Government of the Virgin Islands or the Authority and may not include tax revenues the contribution of which would violate the Revised Organic Act of the Virgin Islands.
- (d) Upon the adoption of the resolution by the Authority pursuant to section 1205 and following the enactment of law approving the TIF project as provided in section 1210 of this chapter, the Tax Assessor and the Director of the Internal Revenue Bureau, as applicable, shall, transfer to the PFA, for deposit in the tax increment trust fund, or directly to the trustee of the TIF bonds for deposit into the funds and accounts held by the Trustee for the benefit of the bond holders, all increment revenues to such TIF bonds until the certification by the PFA or the trustee that all development costs to be paid from the tax increment trust fund, including the payment of TIF bonds, have been paid or provided.
- (e) While any TIF bonds remain outstanding the millage may not be reduced, if the reduction would materially impair the ability of the PFA to pay any development costs to which increment revenues have been pledged or otherwise committed by the Authority, including the timely payment of debt service on TIF bonds. Any reduction in millage must be conclusively determined to be immaterial if, in the written opinion of a financial or econometric expert or firm of financial or econometric experts nationally recognized as having experts nationally recognized as having expertise in matters of real property taxation

and finance, such reduction in millage will not result in the inability of the PFA to pay such development costs and timely debt service on TIF bonds than outstanding.

- (f)** TIF bonds of every issue may, by their terms, be payable solely out of the increment revenues pledged to and received in connection with an approved project and deposited to the tax increment trust fund. The lien created to secure the TIF bonds may not attach to any other assets of the PFA, the Authority, or the Government of the Virgin Islands and are special limited obligations of the PFA, payable solely from the pledged increment revenues, unless otherwise secured by the project sponsors. The lien may not attach to any moneys constituting increment revenues until such moneys are collected by the Director of IRB or the Tax Collector. The holders of TIF bonds have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such TIF bonds.
- (g)** TIF bonds issued by the PFA under this chapter may not be construed to constitute a debt, liability or obligation of the Government of the Virgin Islands or any instrumentality of the Government, and all such TIF bonds must contain on their face a statement to the effect that neither the full faith and credit nor the taxing power of the Government of the Virgin Islands or of any instrumentality of the Government, is pledged to the payment of the principal of, or the interest on any premium on such bonds.
- (h)** Moneys in the tax increment trust fund may be expended from time to time for the following purposes, when directly related to financing or refinancing of a project pursuant to an approved tax increment development plan:

 - (1) Administrative and overhead expenses necessary or incidental to the implementation of a tax increment development plan adopted by the Authority;
 - (2) Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the Authority for such expenses incurred before the tax increment plan was approved and adopted;
 - (3) The acquisition of real property in the TIF area;
 - (4) The clearance and preparation of the TIF area for redevelopment and relocation of site occupants;
 - (5) The payment of principal of and [sic] interest and any premium on the TIF bonds;
 - (6) All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of TIF Bonds, including funding of any reserve, redemption, or any other fund or account provided for in the PFA's resolution authorizing such TIF bonds.
- (i)** On the last day of each fiscal year of the Government of the Virgin Islands, any money that remains in the tax increment trust fund after payment of the expenses under subsection (h) must be to the extent permitted under the agreements with the holders of such TIF bonds,

- (1) applied to reduce the amount of any TIF bonds to which increment revenues are pledged or used to fund reserve accounts for such project or bonds; or
 - (2) except as otherwise provided in subsection (1) of this section, returned to the General Fund, but only if no TIF bonds remain outstanding and the PFA shall have certified that all development costs to be paid from the tax increment trust fund have been paid or provided for.
- (j) The trustee of each tax increment trust fund, or its collecting agent shall be a trust company having a place of business within the Virgin Islands.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 137-140; amended Apr. 4, 2018, No. 8031, § 1(4), (5), Sess. L. 2018, p. 16; amended Jan. 18, 2020, No. 8263, § 1(e)(1), (2), Sess. L. 2019, p. -.

§ 1208. Tax Increment Development Plan; Preparation; Adoption; Filing; Modification

- (a) After the filing of the certificate of the Chairperson of the Authority pursuant to section 1204, the Authority shall prepare or cause to be prepared a tax increment development plan for the TIF area after review of the proposed provisions of the plan by the agencies or departments as the Authority considers appropriate. After preparation of the tax increment development plan, the Authority shall submit the plan to the Governor.
- (b) The development plan must contain:
- (1) A statement of the relative amounts and proportions of proposed public, semi-public, private or community facilities or utilities including but not limited to major arterial street systems, parks, recreational facilities, shoreline development, water and drainage systems and health and educational facilities;
 - (2) If the plan authorizes the issuance of bonds to be repaid in whole or in part from the allocation of real property tax increment revenues the plan shall establish a limit on the amount of bonded indebtedness which can be outstanding at one time without an amendment of the plan;
 - (3) Such additional statements or documentation as the Authority may consider necessary or appropriate;
- (c) Every development or redevelopment plan must show by diagram and in general terms:
- (1) The approximate amount of open space to be provided and street layout.
 - (2) Any limitations on type, size, height, number, and proposed use of buildings;
 - (3) The approximate number of dwelling units; and
 - (4) The property to be devoted to public purposes and the nature of such purposes.

(d) Upon the adoption by the Authority of its resolution approving the tax increment development plan, the Authority shall file the resolution and the tax increment development plan as a public record in the Office of the Recorder of Deeds for the District in which the property is located and any conveyance, encumbrance or contract may incorporate provisions thereof by reference, which must afford notice thereto to all parties.

(e)

(1) Subject to paragraph (2), the Authority may modify a TIF development plan at any time before legislative approval, but any modification after sale or lease of real property for development in the TIF area or following the public hearing required in section 1205, is subject to any rights a lessee or purchaser may have acquired by virtue of such lease or purchase, and any material modification to the tax increment development plan requires a new public hearing as provided in paragraph (2)[.] No public hearing is required for any modification that is not a substantial modification under paragraph (2), but the Authority shall give notice as provided in section 1205(b) of any insubstantial modification.

(2) Modifications that (A) alter the exterior boundaries of TIF area, (B) substantially affect the general land uses established pursuant to the TIF development plan, (C) substantially change the nature of the economic development project, (D) substantially change the general description of any property to be located or improved within the TIF area, or (E) substantially change the description of the type, class and number of employees to be employed in the operation of the facilities to be developed or improved within the TIF project area, may be made only after notice and hearing pursuant to the procedures set forth in section 1205.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 140-142; amended Jan. 18, 2020, No. 8263, § 1(f)(1), (2), Sess. L. 2019, p. -.

§ 1209. TIF Bond Authorization

(a) The real property tax increment revenues and the gross receipts tax increment revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on TIF bonds, the provision and maintenance of reserves, and the payment of development costs constitute increment revenues as defined in section 1202 of this chapter.

(b) The PFA may issue TIF bonds to finance development costs of eligible projects approved pursuant to this chapter. TIF bonds may be issued to refund other TIF bonds issued pursuant to this chapter. TIF bonds may not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued.

(c) The PFA may execute such financing documents as may be necessary or appropriate for the issuance, security, and administration of TIF bonds, investment of proceeds and moneys in the accounts provided for in, or pursuant to this chapter, and the application of the proceeds of the TIF bonds and the moneys and investments in such accounts, and for the purposes set forth in section 1204 of this chapter, including financing documents with development sponsors.

(d)

- (1) To secure the full and timely payment of TIF bonds issued under this chapter in accordance with their respective terms, all such TIF bonds for a Project shall be secured upon issuance by a statutory lien on all Increment Revenues from such Project. The lien shall arise solely by force of this chapter specifically upon the issuance of any TIF bonds issued after the effective date of this chapter, and shall automatically attach without further action or authorization by the Government, the Authority, or the PFA. The lien shall be valid and binding from the time the Increment Revenues are received and the lien shall immediately attach to the Increment Revenues and be effective, binding and enforceable against the Government, the Authority or the PFA, as applicable, their respective successors, transferees, or creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. The statutory lien shall remain in effect so long as any TIF bond remains outstanding.
- (2) The Government, the Authority and the PFA are hereby authorized and directed to covenant and agree for the benefit of the holders of the TIF bonds outstanding from time to time that for so long as any TIF bonds remain unpaid, the Government, the Authority and the PFA shall defend, preserve and protect such statutory lien against all claims and demands of third parties, and not revoke, terminate or amend such statutory lien in any way that materially adversely affects the rights of any holder of TIF bonds.
- (3) In the event a development sponsor is financing a Project that could be financed with the proceeds of TIF bonds and the proceeds of bonds issued under the provisions of the Hotel Development Act (title 29, chapter 23 of the Virgin Islands Code), the PFA is hereby authorized, as the issuer of TIF bonds under this chapter, to additionally secure its TIF bonds with the Designated Casino Tax on Gross Revenue, the Designated Hotel Room Occupancy Tax and the Economic Recovery Fee that are authorized to be pledged to the payment of Hotel Development Notes thereunder as if the PFA was an authorized issuer of Hotel Development Notes under the Hotel Development Act. Conversely, any authorized issuer of Hotel Development Notes under the Hotel Development Act is hereby authorized to additionally secure its Hotel Development Notes with the real property tax increment revenues and the gross receipts tax increment revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on TIF bonds as if such issuer was the PFA hereunder.

(e) [Deleted.]

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 142, 143; amended Apr. 4, 2018, No. 8031, § 1(6), Sess. L. 2018, p. 16; amended June 14, 2018, No. 8056, § 17, Sess. L. 2018, p. 95; amended Jan. 18, 2020, No. 8263, § 1(g)(1), (2), Sess. L. 2019, p. -.

§ 1210. Approval by the Legislature of the Virgin Islands

- (a) Upon completion of negotiations with the development sponsor and holding of the required public hearing, the Authority shall submit the certified tax increment development plan to the Legislature of the Virgin Islands for its approval. The submission must include a description of the project, a listing of the public benefits to be derived from the project, the portion of real property tax increment or gross receipts tax increment to be allocated to the project, a

summary of the terms of the TIF bonds to be issued with respect to the project and a copy of the TIF development plan.

- (b) No TIF area or TIF project may be established or financed under this chapter unless the Legislature enacts legislation establishing the metes and bounds of the TIF area, approving the TIF project and establishing the maximum principal amount of the TIF bonds, the maximum interest rate, the date of maturity of the bonds, maximum duration of the TIF area and the scope of the development.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, p. 143.

§ 1211. TIF Bond Security

A series of TIF bonds may be secured by a trust agreement or trust indenture between PFA and a corporate trustee having trust powers, or by a secured loan agreement or other instrument giving power to the corporate trustee by means of which PFA may do the following:

- (a) Make and enter into any and all agreements and covenants with the trustee or the holders of the TIF bonds that PFA may determine to be necessary or desirable including, without limitation, covenants and agreement as to:
 - (1) the application, investment, deposit, use and disposition of the proceeds of TIF bonds and the other securities and property;
 - (2) the assignment by PFA of its rights in any agreement;
 - (3) terms and conditions upon which additional TIF bonds of the Authority may be issued by the PFA; but the term of any TIF bonds may not exceed 30 years from the date of issuance;
 - (4) providing for the appointment of a trustee to act on behalf of bondholders to appoint a trustee; and
 - (5) vesting in a trustee, for the benefit of the holders of TIF bonds, or in the bondholders directly, such rights and remedies as PFA determines.
- (b) Pledge, mortgage or assign monies agreements, property or other assets of the Authority or the Government of the Virgin Islands, either presently in hand or to be received in the future, or both.
- (c) Provide for bond issuance and letters of credit, or otherwise enhance the credit of and security for the payment of its TIF bonds; and
- (d) Provide for any other matters of like or different character that in any way affects the security for or payment of the TIF bonds.
 - (1) Pursuant to authority granted in section 8(b) of the Revised Organic Act of the Virgin Islands

the TIF bonds issued by the PFA under this chapter are exempt as to principal and interest from the taxation by the Government of the Virgin Islands.

(2)

(A) The Government of the Virgin Islands pledges to contract and agree with the holders of any TIF bonds issued pursuant to this chapter that, subject to the provisions of the financing documents, the Government of the Virgin Islands will not limit or alter the basis upon which available gross receipt taxes are received, allocated, applied and pledged pursuant to this chapter; will not impair the contractual obligations of the PFA to fulfill the terms of any agreement made with the holders of the TIF bonds, will not in any way impair the rights or remedies of the holders, and will not in any way impair the exemptions from taxation provided for in this chapter, until the TIF bonds and the interest on the TIF bonds, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged.

(B) The PFA shall [sic] include this pledge and agreement of the Government of the Virgin Islands as part of the contract with the holders of any of its bonds. This chapter constitutes a contract between the Government of the Virgin Islands and the holders of the TIF bonds authorized by this chapter.

(C) To the extent that any acts or resolutions of the Authority may be in conflict with this chapter, this chapter is controlling.

(e) Any pledge made by the PFA in respect of its TIF bonds is valid and binding from the time the pledge is made. The money or property so pledged and thereafter received is immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having any claim of any kind in tort, contract or otherwise against PFA irrespective of whether the parties have notice. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created is required to be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

(f) Not later than July 1 of each year that TIF bonds are outstanding, the Authority shall submit a report to the Board of the Authority and the Legislature of the Virgin Islands with respect to the operations, finances and achievement of the economic development objectives of the projects approved under this chapter. The Authority shall review and evaluate the progress of each eligible project and devise and employ techniques for forecasting and measuring relevant indices of accomplishment of its goals of economic development, including, but not limited to:

(1) the actual expenditures compared to original estimated costs;

(2) whether there have been significant cost increases over the original estimates;

(3) the number of jobs created, or to be created, by or as a result of the eligible project;

(4) the cost or estimated cost, to the Authority, involved in the creation of those jobs;

(5) the amount of private capital investment in, or stimulated by the project, in proportion to the public funds invested in such project;

(6) the number of additional businesses created and associated jobs; and

(7) any impact on tourism.

(g) Not later than July 1 of each year that TIF bonds are outstanding, the Authority shall obtain an independent financial status report on each project approved under this chapter. The independent financial analysis must include, but not be limited to, determinations as to whether the incremental real property taxes and gross receipts taxes actually generated by the project are equal to the estimates made at the time the eligible project was approved, whether the project employment statistics are equal to the projected estimates, whether the eligible project is economically viable and whether the TIF bonds issued are self-sustaining with the real property tax increment revenues actually collected and other financing sources dedicated to repayment of the TIF bonds. The Authority may require the development sponsor to reimburse the Authority for the costs of the annual analyses. The Authority shall make the results of the analyses available to the Legislature.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 143-146; amended Jan. 18, 2020, No. 8263, § 1(h)(1), (2), Sess. L. 2019, p. -.

§ 1212. Default

If there is a default in the payment of the principal of or interest on any TIF bonds of a series after the principal or interest becomes due and payable, whether at maturity or upon call for redemption, or if the PFA or the Government of the Virgin Islands fails or refuses to carry out and perform the terms of any agreement with the holders of any of the TIF bonds; then the holders of the TIF bonds, or the trustee appointed to act on behalf of the holders, may, subject to the provisions of the financing documents, do the following:

(a) By action, writ, or other proceeding enforce all rights of the holders of the TIF bonds, including the right to require the PFA to carry out and perform the terms of any agreement with the holders of the TIF bonds or its duties under this chapter;

(b) By action, petition to enjoin any acts (or things) that may be unlawful or in violation of the rights of the holders of the TIF bonds; and

(c) Declare all TIF bonds due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, pp. 146, 147.

§ 1213. Limitation of Liability

- (a) Neither the Directors of PFA nor any persons executing TIF bonds issued pursuant to this chapter are liable personally on the TIF bonds by reason of the issuance of the TIF bonds.
- (b) Notwithstanding any other provision of this chapter, TIF bonds issued pursuant to this chapter are not general obligations of PFA or the Government of the Virgin Islands and are not in any way a debt or liability of the Government of the Virgin Islands within the meaning of any debt or other limit prescribed by law. Neither the full faith and credit nor the taxing power of the Government of the Virgin Islands, other than increment revenues, may be pledged to secure the payment of any TIF bonds issued pursuant to this chapter.

HISTORY: -- Added June 10, 2008, No. 7004, § 1, Sess. L. 2008, p. 147; amended Apr. 4, 2018, No. 8031, § 1(7), Sess. L. 2018, p. 17.