

1 S.83

2 Introduced by Senators Ram Hinsdale and Clarkson

3 Referred to Committee on

4 Date:

5 Subject: Taxation; economic development; tax increment financing

6 Statement of purpose of bill as introduced: This bill proposes to establish a tax  
7 increment financing project development program, administered by the  
8 Vermont Economic Progress Council, to allow a municipality to apply to use  
9 statewide education property tax and municipal property tax increment to pay  
10 for infrastructure projects.

11 An act relating to the creation of a project-based tax increment financing  
12 program

13 It is hereby enacted by the General Assembly of the State of Vermont:

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

15 Subchapter 7. Project-Based Tax Increment Financing

16 § 1906. TAX INCREMENT FINANCING PROJECT DEVELOPMENT

17 (a) Definitions. As used in this section:

1           (1) “Committed” means pledged and appropriated for the purpose of the  
2           current and future payment of tax increment financing and related costs as  
3           defined in this section.

4           (2) “Coordinating agency” means any public or private entity from  
5           outside the municipality’s departments or offices and not employing the  
6           municipality’s staff, which has been designated by a municipality to administer  
7           and coordinate a project during creation, public hearing process, approval  
8           process, or administration and operation during the life of the project,  
9           including overseeing infrastructure development, real property development  
10           and redevelopment, assisting with reporting, and ensuring compliance with  
11           statute and rule.

12           (3) “Financing” means debt incurred, including principal, interest, and  
13           any fees or charges directly related to that debt, or other instruments or  
14           borrowing used by a municipality to pay for improvements and related costs  
15           for the approved project, only if authorized by the legal voters of the  
16           municipality. Payment for eligible related costs may also include direct  
17           payment by the municipality using the tax increment. If interfund loans within  
18           the municipality are used as the method of financing, no interest shall be  
19           charged.

20           (4) “Improvements” means the installation, new construction, or  
21           reconstruction of infrastructure that will serve a public purpose, including

1 utilities, transportation, public facilities and amenities, land and property  
2 acquisition and demolition, brownfield remediation, and site preparation. For  
3 remediation of a brownfield, this shall include the cost of the site preparation  
4 needed to stimulate development or redevelopment in the TIF Project Zone as  
5 identified in clean-up documentation approved by the Vermont Agency of  
6 Natural Resources. “Improvements” also means the funding of debt service  
7 interest payments.

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

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

12 (7) “Original taxable value” means the total valuation as determined in  
13 accordance with 32 V.S.A. chapter 129 of all taxable real property located  
14 within the TIF project zone as of the creation date, provided that no parcel  
15 within the project shall be divided or bisected.

16 (8) “Project” means a public improvement, as defined in subdivision (4)  
17 of this subsection (a). A project must meet one of the following four criteria:

18 (A) The development includes new or rehabilitated affordable  
19 housing, as defined in 24 V.S.A. § 4303.

20 (B) The project will affect the remediation and redevelopment of a  
21 Brownfield. As used in this section, “brownfield” means an area in which a

1 hazardous substance, pollutant, or contaminant is or may be present, and that  
2 situation is likely to complicate the expansion, development, redevelopment, or  
3 reuse of the property.

4 (C) The development will include at least one entirely new business  
5 or business operation or expansion of an existing business within the project,  
6 and this business will provide new, quality, full-time jobs that meet or exceed  
7 the prevailing wage for the region as reported by the Department of Labor.

8 (D) The development will enhance transportation by creating  
9 improved traffic patterns and flow or creating or improving public  
10 transportation systems.

11 (9) “Related costs” means expenses incurred and paid by the  
12 municipality, exclusive of the actual cost of constructing and financing  
13 improvements, that are directly related to the creation and implementation of  
14 the project, including reimbursement of sums previously advanced by the  
15 municipality for those purposes and use of a coordinating agency. Related  
16 costs may not include direct municipal expenses such as departmental or  
17 personnel costs.

18 (10) “TIF project zone” means an area where approved development or  
19 redevelopment is occurring.

1       (b) Program. The Vermont Economic Progress Council is authorized to  
2       approve tax increment financing projects, provided, however, that there shall  
3       not be more than one project per municipality.

4       (c) General authority. Under the program established in subsection (b) of  
5       this section, a municipality, upon approval of its legislative body, may apply to  
6       the Vermont Economic Progress Council pursuant to the process set forth in  
7       subsection (e) of this section to use tax increment financing for a project.

8       (d) Eligibility.

9       (1) A municipality is only authorized to apply for a project under this  
10       section if:

11               (A) the municipality needs to make infrastructure improvements to  
12       incentivize community development; and

13               (B) the municipality demonstrates:

14                       (i) the proposed infrastructure improvements and the projected  
15       development or redevelopment are compatible with confirmed municipal and  
16       regional development plans and the project has clear local and regional  
17       significance for employment, housing, brownfield remediation, or  
18       transportation improvements;

19                       (ii) leveraging of sources of revenue from local, State, or federal  
20       programs and that additional funding is needed to complete the project; and

1                   (iii) an ability to manage the project with requisite experience and  
2                   a plan for fiscal viability.

3                   (2) A municipality with an approved tax increment financing district is  
4                   not authorized to apply for a project under this section.

5                   (e) Approval process. The Vermont Economic Progress Council shall do  
6                   all of the following to approve an application submitted pursuant to subsection  
7                   (c) of this section:

8                   (1) Application review.

9                   (A) Review each application to determine that the infrastructure  
10                  improvements proposed to serve the project and the proposed development in  
11                  the project would not have occurred as proposed in the application, or would  
12                  have occurred in a significantly different and less desirable manner than as  
13                  proposed in the application, but for the proposed utilization of the incremental  
14                  tax revenues.

15                  (B) The review shall take into account:

16                  (i) the amount of additional time, if any, needed to complete the  
17                  proposed development for the project and the amount of additional cost that  
18                  might be incurred if the project were to proceed without education property tax  
19                  increment financing;

20                  (ii) how the proposed project components and size would differ, if  
21                  at all, including, if applicable to the project, the number of units of affordable

1 housing, as defined in 24 V.S.A. § 4303, without education property tax  
2 increment;

3 (iii) the lack of new construction in the municipality, indicated by  
4 a stagnant or declining grand list value as determined by the Department of  
5 Taxes, considering both the total full listed value and the equalized education  
6 grand list value; and

7 (iv)(I) the amount of additional tax revenue expected to be  
8 generated as a result of the proposed project;

9 (II) the percentage of that revenue that shall be paid to the  
10 Education Fund;

11 (III) the percentage that shall be paid to the municipality; and

12 (IV) the percentage of the revenue paid to the municipality that  
13 shall be used to pay financing incurred for development of the project and  
14 related costs.

15 (2) Process requirements. Determine that each application meets all of  
16 the following requirements:

17 (A) The municipality held public hearings and established a project.

18 (B) The municipality has developed a tax increment financing project  
19 plan, including a project description; a development financing plan; a pro  
20 forma projection of expected costs; a projection of revenues; a statement and  
21 demonstration that the project would not proceed without the allocation of a

1 tax increment; evidence that the municipality is actively seeking or has  
2 obtained other sources of funding and investment; and a development schedule  
3 that includes a list, a cost estimate, and a schedule for public improvements  
4 and projected private development to occur as a result of the improvements.  
5 The creation of the project shall occur at 12:01 a.m. on April 1 of the calendar  
6 year the municipal legislative body votes to approve the tax increment  
7 financing project plan.

8 (C) The municipality has approved or pledged the utilization of  
9 incremental municipal tax revenues for the purposes of the project in the  
10 proportion set for in subsection (i)(2) of this section.

11 (3) Relationship requirement. Determine there is a relationship between  
12 the improvement and the expected development and redevelopment for the  
13 project and expected outcomes in the TIF Project Zone.

14 (f) Incurring indebtedness.

15 (1) A municipality approved under the process set forth in subsection (e)  
16 of this section may incur indebtedness against revenues to provide funding to  
17 pay for improvements and related costs for the project development.

18 (2) Notwithstanding any provision of any municipal charter, the  
19 municipality shall only require one authorizing vote to incur debt through one  
20 instance of borrowing to finance or otherwise pay for the tax increment  
21 financing project improvements and related costs; provided, however, that a



1 municipality may present one or more subsequent authorization votes in the  
2 event a vote fails. The municipality shall be authorized to incur indebtedness  
3 only after the legal voters of the municipality, by a majority vote of all voters  
4 present and voting on the question at a special or annual municipal meeting  
5 duly warned for the purpose, authorize the legislative body to pledge the credit  
6 of the municipality, borrow, or otherwise secure the debt for the specific  
7 purposes so warned.

8 (3) Any indebtedness shall be incurred within five years following the  
9 date of approval by the Vermont Economic Progress Council.

10 (g) Original taxable value. As of the date the project is approved by the  
11 legislative body of the municipality, the lister or assessor for the municipality  
12 shall certify the original taxable value and shall certify to the legislative body  
13 in each year thereafter during the life of the project the amount by which the  
14 total valuation as determined in accordance with 32 V.S.A. chapter 129 of all  
15 taxable real property located within the project has increased or decreased  
16 relative to the original taxable value.

17 (h) Tax increments.

18 (1) In each year following the approval of the project, the lister or  
19 assessor shall include not more than the original taxable value of the real  
20 property in the assessed valuation upon which the treasurer computes the rates  
21 of all taxes levied by the municipality and every other taxing district in which

1 the project is situated, but the treasurer shall extend all rates so determined  
2 against the entire assessed valuation of real property for that year. In each  
3 year, the municipality shall hold apart, rather than remit to the taxing districts,  
4 that proportion of all taxes paid that year on the real property within the project  
5 that the excess valuation bears to the total assessed valuation. The amount  
6 held apart each year is the “tax increment” for that year. Not more than the  
7 percentages established pursuant to subsection (i) of this section of the  
8 municipal and State education tax increments received with respect to the  
9 project and committed for the payment for financing for improvements and  
10 related costs shall be segregated by the municipality in a special tax increment  
11 financing project account and in its official books and records until all capital  
12 indebtedness of the project has been fully paid. The final payment shall be  
13 reported to the treasurer, who shall thereafter include the entire assessed  
14 valuation of the project in the assessed valuations upon which municipal and  
15 other tax rates are computed and extended, and thereafter no taxes from the  
16 project shall be deposited in the project’s tax increment financing account.

17 (2) In each year, a municipality shall remit not less than the aggregate  
18 original taxable value to the Education Fund.

19 (3) Notwithstanding any charter provision or other provision, all  
20 property taxes assessed within a project shall be subject to the provision of  
21 subdivision (1) of this subsection. Special assessments levied under 24 V.S.A.

1 chapter 76A or 87 or under a municipal charter shall not be considered  
2 property taxes for the purpose of this section if the proceeds are used  
3 exclusively for operating expenses related to properties within the project and  
4 not for improvements within the district, as defined in subdivision (a)(3) of this  
5 section.

6 (4) Amounts held apart under subdivision (1) of this subsection shall  
7 only be used for financing and related costs as defined in subsection (a) of this  
8 section.

9 (i) Use of tax increment.

10 (1) Education property tax increment. For only debt incurred within the  
11 period permitted under subdivision (e)(3) of this section after approval of the  
12 project, up to 80 percent of the education tax increment may be retained to  
13 service the debt and related costs, beginning with the first year in which debt is  
14 incurred for the project. Upon incurring the first debt, a municipality shall  
15 notify the Department of Taxes and the Vermont Economic Progress Council  
16 of the beginning of the retention period of the education tax increment.

17 (2) Use of the municipal property tax increment. For only debt  
18 incurred within the period permitted under subdivision (e)(3) of this section  
19 after approval of the project, not less than 100 percent of the municipal tax  
20 increment shall be retained to service the debt and related costs, beginning the  
21 first year in which debt is incurred for the project.

1           (3) Duration. Retention of tax increment shall continue until all debt is  
2 retired.

3           (j) Distribution.

4           (1) Of the municipal and education tax increments received in any tax  
5 year that exceed the amounts committed for the payment of the financing for  
6 improvements and related costs for the project, equal portions of each  
7 increment may be retained for the following purposes:

8                   (A) prepayment of principal and interest on the financing;

9                   (B) placed in a special account required by subdivision (g)(1) of this  
10 section and used for future financing payments; or

11                   (C) used for defeasance of the financing.

12           (2) Any remaining portion of the excess municipal tax increment shall  
13 be distributed to the city, town, or village budget, in the proportion that each  
14 budget bears to the combined total of the budgets, unless otherwise negotiated  
15 by the city, town, or village, and any remaining portion of the excess education  
16 tax increment shall be distributed to the Education Fund.

17           (k) Information reporting. Every municipality with an approved project  
18 pursuant to this section shall:

19                   (1) Develop a system, segregated for the project, to identify, collect,  
20 and maintain all data and information necessary to fulfill the reporting  
21 requirements of this section, including performance measures.

1           (2) Provide, as required by events, notification to the Vermont  
2           Economic Progress Council and the Department of Taxes regarding any tax  
3           increment financing development project debt obligations, public votes, or  
4           votes by the municipal legislative body immediately following such obligation  
5           or vote on a form prescribed by the Council, including copies of public notices,  
6           agendas, minutes, vote tally, and a copy of the information provided to the  
7           public in accordance with 24 V.S.A. § 1894(i).

8           (3) Annually:

9           (A) Ensure that the tax increment financing project account required  
10          by subdivision (h)(1) is subject to the annual audit prescribed in subsection (m)  
11          of this section. Procedures must include verification of the original taxable  
12          value and annual and total municipal and education tax increments generated,  
13          expenditures for debt and related costs, and current balance.

14          (B) On or before October 15 of each year, on a form prescribed by  
15          the Council, submit an annual report to the Vermont Economic Progress  
16          Council and the Department of Taxes, including the information required by  
17          subdivision (2) of this section if not already submitted during the year, all  
18          information required by subdivision (A) of this subdivision (3), and the  
19          information required by 32 V.S.A. § 5404a(i), including performance measures  
20          and any other information required by the Council or the Department of Taxes.

1       (l) Annual report. The Vermont Economic Progress Council and the  
2       Department of Taxes shall submit an annual report to the Senate Committees  
3       on Economic Development, Housing and General Affairs and on Finance and  
4       the House Committees on Commerce and Economic Development and on  
5       Ways and Means on or before April January 1 each year. The report shall  
6       include the date of approval; a description of the project; the original taxable  
7       value of the property subject to the project development; the scope and value  
8       of projected and actual improvements and developments in the TIF Project  
9       Zone; projected and actual incremental revenue amounts, and division of the  
10       increment revenue between project debt, the Education Fund, the special  
11       account required by subdivision (h)(1) and the municipal General Fund;  
12       projected and actual financing; and a set of performance measures developed  
13       by the Vermont Economic Progress Council, which may include outcomes  
14       related to the criteria for which the municipality applied and the amount of  
15       infrastructure work performed by Vermont firms.

16       (m) Audit; financial reports. Annually, until the year following the end of  
17       the period for retention of education tax increment, a municipality with an  
18       approved project under this section shall, on or before April 1, ensure that the  
19       project is subject to the annual audit prescribed in 24 V.S.A. § 1681 or 1690  
20       and submit a copy to the Vermont Economic Progress Council. In the event  
21       that the project is only subject to the audit under 24 V.S.A. § 1681, the

1 Vermont Economic Progress Council shall ensure a process is in place to  
2 subject the project to an independent audit. Procedures for the audit must  
3 include verification of the original taxable value and annual and total  
4 municipal and education tax increments generated, expenditures for debt and  
5 related costs, and current balance.

6 (n) Authority to issue decisions.

7 (1) The Secretary of Commerce and Community Development, after  
8 reasonable notice to a municipality and an opportunity for a hearing, is  
9 authorized to issue decisions to a municipality on questions and inquiries  
10 concerning the administration of projects, statutes, rules, noncompliance with  
11 this section, and any instances of noncompliance identified in audit reports  
12 conducted pursuant to subsection (m) of this section.

13 (2) The Vermont Economic Progress Council shall prepare  
14 recommendations for the Secretary prior to the issuance of a decision. As  
15 appropriate, the Council may prepare such recommendations in consultation  
16 with the Commissioner of Taxes, the Attorney General, and the State  
17 Treasurer. In preparing recommendations, the Council shall provide a  
18 municipality with a reasonable opportunity to submit written information in  
19 support of its position. The Secretary shall review the recommendations of the  
20 Council and issue a final written decision on each matter within 60 days after  
21 the receipt of the recommendations. The Secretary may permit an appeal to be

1 taken by any party to a Superior Court for determination of questions of law in  
2 the same manner as the Supreme Court may by rule provide for appeals before  
3 final judgment from a Superior Court before issuing a final decision.

4 (o) The Vermont Economic Progress Council is authorized to adopt  
5 policies that are consistent with the 2015 TIF Rule, as may be modified by  
6 subsequent rule, to implement this section.

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on July 1, 2023.