

1 H.129

2 Introduced by Representatives Marcotte of Coventry, Jerome of Brandon,
3 Kimbell of Woodstock, Kitzmiller of Montpelier, Martin of
4 Franklin, Nicoll of Ludlow, Seymour of Sutton, and White of
5 Bethel

6 Referred to Committee on

7 Date:

8 Subject: Taxation; economic development; tax increment financing; project-
9 based tax increment financing

10 Statement of purpose of bill as introduced: This bill proposes to authorize the
11 Vermont Economic Progress Council to establish a project-based tax increment
12 financing pilot program.

13 An act relating to project-based tax increment financing districts

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

15 Sec. 1. 24 V.S.A. 1892(d) is amended to read:

16 (d) The following municipalities have been authorized to use education tax
17 increment financing for a tax increment financing district:

18 (1) the City of Burlington, Downtown;

19 (2) the City of Burlington, Waterfront;

20 (3) ~~the Town of Milton, North and South~~ Town of Bennington;

1 (4) the ~~City of Newport~~ City of Montpelier;

2 (5) the City of Winooski;

3 (6) the ~~Town of Colchester~~;

4 ~~(7)~~ the Town of Hartford;

5 ~~(8)~~(7) the City of St. Albans;

6 ~~(9)~~(8) the City of Barre;

7 ~~(10)~~(9) the Town of Milton, Town Core; and

8 ~~(11)~~(10) the City of South Burlington.

9 Sec. 2. TAX INCREMENT FINANCING PROJECT DEVELOPMENT;

10 PILOT PROGRAM

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

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

15 (2) “Financing” means debt incurred, including principal, interest, and
16 any fees or charges directly related to that debt, or other instruments or
17 borrowing used by a municipality to pay for improvements and related costs
18 for the approved project, only if authorized by the legal voters of the
19 municipality in accordance with 24 V.S.A. § 1894. Payment for eligible
20 related costs may also include direct payment by the municipality using the
21 district increment. However, such anticipated payments shall be included

1 in the vote by the legal voters of the municipality in accordance with
2 subsection (e) of this section. If interfund loans within the municipality are
3 used as the method of financing, no interest shall be charged. Bond
4 anticipation notes may be used as a method of financing and may qualify as a
5 municipality's first incurrence of debt. A municipality that uses a bond
6 anticipation note during the third or sixth year that a municipality may incur
7 debt pursuant to subsection (e) of this section shall incur all permanent
8 financing not more than one year after issuing the bond anticipation note.

9 (3) "Improvements" means the installation, new construction, or
10 reconstruction of infrastructure that will serve a public purpose, including
11 utilities, transportation, public facilities and amenities, land and property
12 acquisition and demolition, and site preparation. "Improvements" also means
13 the funding of debt service interest payments for a period of up to five years,
14 beginning on the date on which the first debt is incurred.

15 (4) "Legislative body" means the mayor and alderboard, the city
16 council, the selectboard, and the president and trustees of an incorporated
17 village, as appropriate.

18 (5) "Municipality" means a city, town, or incorporated village.

19 (6) "Original taxable value" means the total valuation as determined in
20 accordance with 32 V.S.A. chapter 129 of all taxable real property located

1 within the project as of the creation date, provided that no parcel within the
2 project shall be divided or bisected.

3 (7) “Project” means public improvements, as defined in subdivision (3)
4 of this subsection (a), that meet the criteria set forth in subdivision (h)(2) of
5 this section, with a total debt ceiling, including related costs, and principal and
6 interest payments, of not more than \$1,500,000.00.

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

13 (b) Pilot program. Beginning on January 1, 2021 and ending on
14 December 31, 2023, the Vermont Economic Progress Council is authorized to
15 approve not more than six tax increment financing projects, provided that there
16 shall be not more than one project per municipality.

17 (c) General authority. Under the pilot program established in
18 subsection (b) of this section, a municipality, upon approval of its
19 legislative body, may apply to the Vermont Economic Progress Council
20 pursuant to the approval process set forth in subsection (h) of this section to
21 use tax increment financing for an individual project located within or serving

1 one or more active designations approved by the Vermont Downtown Board
2 under 24 V.S.A. chapter 76A or located within an industrial park as defined in
3 10 V.S.A. § 212(7).

4 (d) Eligibility.

5 (1) A municipality is only authorized to apply for a project under this
6 section if the project will serve one or more active designations approved by
7 the Vermont Downtown Development Board under 24 V.S.A. chapter 76A or
8 located within an industrial park as defined in 10 V.S.A. § 212(7).

9 (2) A municipality with an approved tax increment financing district as
10 set forth in 24 V.S.A. 1892(d) is not authorized to apply for a project under this
11 section.

12 (e) Incurring indebtedness.

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

17 (2) Notwithstanding any provision of any municipal charter, the
18 municipality shall only have one authorizing vote to incur debt through one
19 instance of borrowing to finance or otherwise pay for the tax increment
20 financing project improvements and related costs. The municipality shall be
21 authorized to incur indebtedness only after the legal voters of the municipality,

1 by a majority vote of all voters present and voting on the question at a special
2 or annual municipal meeting duly warned for the purpose, authorize the
3 legislative body to pledge the credit of the municipality, borrow, or otherwise
4 secure the debt for the specific purposes so warned.

5 (3) Any indebtedness shall be incurred within three years from the date
6 of approval by the Vermont Economic Progress Council, unless the Vermont
7 Economic Progress Council grants an extension of an additional three years
8 pursuant to the substantial change process set forth in the 2015 TIF Rule;
9 provided, however, that an updated plan is submitted prior to the three-year
10 termination date of the project.

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

18 (g) Tax increments.

19 (1) In each year following the approval of the project, the lister or
20 assessor shall include no more than the original taxable value of the real
21 property in the assessed valuation upon which the treasurer computes the rates

1 of all taxes levied by the municipality and every other taxing district in which
2 the project is situated, but the treasurer shall extend all rates so determined
3 against the entire assessed valuation of real property for that year. In each year
4 for which the assessed valuation exceeds the original taxable value, the
5 municipality shall hold apart, rather than remit to the taxing districts, that
6 proportion of all taxes paid that year on the real property within the project that
7 the excess valuation bears to the total assessed valuation. The amount held
8 apart each year is the “tax increment” for that year. No more than the
9 percentages established pursuant to subsection (i) of this section of the
10 municipal and State education tax increments received with respect to the
11 project and committed for the payment for financing for improvements and
12 related costs shall be segregated by the municipality in a special tax increment
13 financing project account and in its official books and records until all capital
14 indebtedness of the project has been fully paid. The final payment shall be
15 reported to the treasurer, who shall thereafter include the entire assessed
16 valuation of the project in the assessed valuations upon which municipal and
17 other tax rates are computed and extended, and thereafter no taxes from the
18 project shall be deposited in the project’s tax increment financing account.

19 (2) 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 chapters 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 (3) 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 (h) Approval process. The Vermont Economic Progress Council shall only
10 approve a municipality's application for a tax increment financing project
11 development if:

12 (1) the proposed infrastructure improvements and the projected
13 development or redevelopment are compatible with confirmed municipal and
14 regional development plans; the project has clear local and regional
15 significance for employment, housing, or transportation improvements; and

16 (2) the development clearly requires substantial public investment over
17 and above the normal municipal operating or bonded debt expenditures and the
18 application meets one of the following four criteria:

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

1 (B) The project will affect the remediation and redevelopment of a
2 brownfield located within the district. As used in this section, “brownfield”
3 means an area in which a hazardous substance, pollutant, or contaminant is or
4 may be present, and that situation is likely to complicate the expansion,
5 development, redevelopment, or reuse of the property.

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

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

13 (i) Use of tax increment.

14 (1) Education property tax increment. For only debt incurred within the
15 period permitted under subdivision (e)(3) of this section after approval of the
16 project, up to 70 percent of the education tax increment may be retained for up
17 to 20 years, beginning with the education tax increment generated the year in
18 which the first debt incurred for the project financed in whole or in part with
19 incremental education property tax revenue. Upon incurring the first debt, a
20 municipality shall notify the Department of Taxes and the Vermont Economic

1 Progress Council of the beginning of the 20-year retention period of the
2 education tax increment.

3 (2) Use of the municipal property tax increment. For only debt incurred
4 within the period permitted under subdivision (e)(3) of this section after
5 approval of the project, not less than 85 percent of the municipal tax increment
6 shall be retained to service the debt, beginning the first year in which debt is
7 incurred, pursuant to subdivision (1) of this subsection.

8 (3) The Vermont Economic Progress Council shall determine there is a
9 nexus between the improvement and the expected development and
10 redevelopment for the project and expected outcomes.

11 (j) Distribution. Of the municipal and education tax increments received in
12 any tax year that exceed the amounts committed for the payment of the
13 financing for improvements and related costs for the project, equal portions of
14 each increment may be retained for the following purposes: prepayment of
15 principal and interest on the financing, placed in a special account required by
16 subdivision (g)(1) of this section and used for future financing payments, or
17 used for defeasance of the financing. Any remaining portion of the excess
18 municipal tax increment shall be distributed to the city, town, or village
19 budget, in the proportion that each budget bears to the combined total of the
20 budgets, unless otherwise negotiated by the city, town, or village, and any

1 remaining portion of the excess education tax increment shall be distributed to
2 the Education Fund.

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

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

8 (2) Throughout the year, as required by events, provide notification to
9 the Vermont Economic Progress Council and the Department of Taxes
10 regarding any tax increment financing development project debt obligations,
11 public votes, or votes by the municipal legislative body immediately following
12 such obligation or vote on a form prescribed by the Council, including copies
13 of public notices, agendas, minutes, vote tally, and a copy of the information
14 provided to the public in accordance with 24 V.S.A. § 1894(i).

15 (3) Annually:

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

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

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

1 (m) Audit; financial reports. Annually, until the year following the end of
2 the period for retention of education tax increment, a municipality with an
3 approved project under this section shall:

4 (1) On or before January 1, submit an annual report to the Vermont
5 Economic Progress Council, which shall provide sufficient information for the
6 Vermont Economic Progress Council to prepare its report required by
7 subsection (i) of this section.

8 (2) On or before April 1, ensure that the project is subject to the annual
9 audit prescribed in 24 V.S.A. § 1681 or 1690. In the event that the audit is
10 only subject to the audit under 24 V.S.A. § 1681, the Vermont Economic
11 Progress Council shall ensure a process is in place to subject the project to an
12 independent audit. Procedures for the audit must include verification of the
13 original taxable value and annual and total municipal and education tax
14 increments generated, expenditures for debt and related costs, and current
15 balance.

16 (n) Authority to issue decisions.

17 (1) The Secretary of Commerce and Community Development, after
18 reasonable notice to a municipality and an opportunity for a hearing, is
19 authorized to issue decisions to a municipality on questions and inquiries
20 concerning the administration of projects, statutes, rules, noncompliance with

1 this section, and any instances of noncompliance identified in audit reports
2 conducted pursuant to subsection (m) of this section.

3 (2) The Vermont Economic Progress Council shall prepare
4 recommendations for the Secretary prior to the issuance of a decision. As
5 appropriate, the Council may prepare such recommendations in consultation
6 with the Commissioner of Taxes, the Attorney General, and the State
7 Treasurer. In preparing recommendations, the Council shall provide a
8 municipality with a reasonable opportunity to submit written information in
9 support of its position. The Secretary shall review the recommendations of the
10 Council and issue a final written decision on each matter within 60 days of the
11 receipt of the recommendations. The Secretary may permit an appeal to be
12 taken by any party to a Superior Court for determination of questions of law in
13 the same manner as the Supreme Court may by rule provide for appeals before
14 final judgment from a Superior Court before issuing a final decision.

15 (o) The Vermont Economic Progress Council is authorized to adopt
16 policies that are consistent with the 2015 TIF Rule to implement this section.

17 Sec. 3. EFFECTIVE DATE

18 This act shall take effect on July 1, 2021.