

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to  
3 which was referred Senate Bill No. 33 entitled “An act relating to project-  
4 based tax increment financing” respectfully reports that it has considered the  
5 same and recommends that the bill be amended by striking out all after the  
6 enacting clause and inserting in lieu thereof the following:

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

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

10 (1) the City of Burlington, Downtown;

11 (2) the City of Burlington, Waterfront;

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

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

14 (5) the City of Winooski;

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

16 (~~7~~) the Town of Hartford;

17 (~~8~~)(7) the City of St. Albans;

18 (~~9~~)(8) the City of Barre;

19 (~~10~~)(9) the Town of Milton, Town Core; and

20 (~~11~~)(10) the City of South Burlington.

1 Sec. 2. 32 V.S.A. § 5404a is amended to read:

2 § 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT

3 FINANCING DISTRICTS

4 \* \* \*

5 (f) A municipality that establishes a tax increment financing district under  
6 24 V.S.A. chapter 53, subchapter 5 shall collect all property taxes on properties  
7 contained within the district and apply not more than 70 percent of the State  
8 education property tax increment, and not less than 85 percent of the municipal  
9 property tax increment, to repayment of financing of the improvements and  
10 related costs for up to 20 years pursuant to 24 V.S.A. § 1894, if approved by  
11 the Vermont Economic Progress Council pursuant to this section, subject to the  
12 following:

13 (1) In a municipality with one or more approved districts, the Council  
14 shall not approve an additional district until the municipality retires the debt  
15 incurred for all of the districts in the municipality.

16 (2) The Council shall not approve more than ~~six~~ four districts in the  
17 State, and not more than two per county, provided:

18 (A) The districts listed in 24 V.S.A. § 1892(d) shall not be counted  
19 against the limits imposed in this subdivision (2).

20 (B) The Council shall consider complete applications in the order  
21 they are submitted, except that if during any calendar month the Council

1 receives applications for more districts than are actually available in a county,  
2 the Council shall evaluate each application and shall approve the application  
3 that, in the Council's discretion, best meets the economic development needs  
4 of the county.

5 (C) If, while the General Assembly is not in session, the Council  
6 receives applications for districts that would otherwise qualify for approval  
7 but, if approved, would exceed the ~~six-district~~ four-district limit in the State,  
8 the Council shall make one or more presentations to the Emergency Board  
9 concerning the applications, and the Emergency Board may, in its discretion,  
10 increase the six-district limit.

11 (D) The Council shall not approve more than one district in  
12 Bennington County and one district in Washington County.

13 \* \* \*

14 **Sec. 3. TAX INCREMENT FINANCING PROJECT DEVELOPMENT;**  
15 **PILOT PROGRAM**

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

17 (1) "Committed" means pledged and appropriated for the purpose of the  
18 current and future payment of tax increment financing and related costs as  
19 defined in this section.

20 (2) "Coordinating agency" means any public or private entity from  
21 outside the municipality's departments or offices and not employing the

1 municipality’s staff, which has been designated by a municipality to administer  
2 and coordinate a district during creation, public hearing process, approval  
3 process, or administration and operation during the life of the district,  
4 including overseeing infrastructure development, real property development  
5 and redevelopment, assisting with reporting, and ensuring compliance with  
6 statute and rule.

7 (3) “Financing” means debt incurred, including principal, interest, and  
8 any fees or charges directly related to that debt, or other instruments or  
9 borrowing used by a municipality to pay for improvements and related costs  
10 for the approved project, only if authorized by the legal voters of the  
11 municipality in accordance with 24 V.S.A. § 1894. Payment for eligible  
12 related costs may also include direct payment by the municipality using the  
13 district increment. However, such anticipated payments shall be included  
14 in the vote by the legal voters of the municipality in accordance with  
15 subsection (f) of this section. If interfund loans within the municipality are  
16 used as the method of financing, no interest shall be charged. Bond  
17 anticipation notes may be used as a method of financing and may qualify as a  
18 municipality’s first incurrence of debt. A municipality that uses a bond  
19 anticipation note during the third or sixth year that a municipality may incur  
20 debt pursuant to subsection (f) of this section shall incur all permanent  
21 financing not more than one year after issuing the bond anticipation note.

**Commented [BW1]:** Committee decision: This BAN language is not in statute for TIF districts

1           (4) “Improvements” means the installation, new construction, or  
2           reconstruction of infrastructure that will serve a public purpose, including  
3           utilities, transportation, public facilities and amenities, land and property  
4           acquisition and demolition, and site preparation. “Improvements” also means  
5           the funding of debt service interest payments for a period of up to five years,  
6           beginning on the date on which the first debt is incurred.

**Commented [BW2]:** Committee decision: this debt service language is not in statute for TIF districts

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

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

11          (7) “Nexus” means the causal relationship that must exist between the  
12          improvements and the expected development and redevelopment in the TIF  
13          Project Zone or the expected outcomes in the TIF Project Zone.

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

18          (9) “Project” means a public improvement, as defined in subdivision (4)  
19          of this subsection (a), that clearly requires substantial public investment over  
20          and above the normal municipal operating or bonded debt expenditures and  
21          meets one of the following four criteria:

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

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

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

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

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

1           (11) “TIF project zone” means an area located within one or more active  
2           designations approved by the Vermont Downtown Development Board under  
3           24 V.S.A. chapter 76A or located within an industrial park as defined in  
4           10 V.S.A. §212(7) for the parcels in a municipality that have nexus to the  
5           project.

6           (b) Pilot program. Beginning on January 1, 2022 and ending on  
7           December 31, 2024, the Vermont Economic Progress Council is authorized to  
8           approve not more than six tax increment financing projects, provided that there  
9           shall be not more than one project per municipality.

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

15           (d) Eligibility.

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

18           (A) the project will serve one or more active designations approved  
19           by the Vermont Downtown Development Board under 24 V.S.A. chapter 76A  
20           or located within an industrial park as defined in 10 V.S.A. § 212(7); and

**Commented [BW3]:** Committee decision: keep this definition of industrial park?

1           (B) the proposed infrastructure improvements and the projected  
2           development or redevelopment are compatible with confirmed municipal and  
3           regional development plans and the project has clear local and regional  
4           significance for employment, housing, or transportation improvements.

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

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

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

17           (B) The review shall take into account:

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

1           (ii) how the proposed project components and size would differ, if  
2 at all, including, if applicable to the project, in the number of units of  
3 affordable housing, as defined in 24 V.S.A. § 4303, without education property  
4 tax increment financing; and

5           (iii)(I) the amount of additional revenue expected to be generated  
6 as a result of the proposed project;

7                   (II) the percentage of that revenue that shall be paid to the  
8 Education Fund;

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

10                   (IV) the percentage of the revenue paid to the municipality that  
11 shall be used to pay financing incurred for development of the project.

12           (2) Process requirements. Determine that each application meets all of  
13 the following four requirements:

14                   (A) The municipality held public hearings and established a project  
15 in accordance with 24 V.S.A. §§ 1891–1900.

16                   (B) The municipality has developed a tax increment financing project  
17 plan, including a project description; a development financing plan; a pro  
18 forma projection of expected costs; a projection of revenues; a statement and  
19 demonstration that the project would not proceed without the allocation of a  
20 tax increment; evidence that the municipality is actively seeking or has  
21 obtained other sources of funding and investment; and a development schedule

1 that includes a list, a cost estimate, and a schedule for public improvements  
2 and projected private development to occur as a result of the improvements.

3 (f) Incurring indebtedness.

4 (1) A municipality approved under the process set forth in subsection (e)  
5 of this section may incur indebtedness against revenues to provide funding to  
6 pay for improvements and related costs for tax increment financing project  
7 development.

8 (2) Notwithstanding any provision of any municipal charter, the  
9 municipality shall only have one authorizing vote to incur debt through one  
10 instance of borrowing to finance or otherwise pay for the project improvements  
11 and related costs. The municipality shall be authorized to incur indebtedness  
12 only after the legal voters of the municipality, by a majority vote of all voters  
13 present and voting on the question at a special or annual municipal meeting  
14 duly warned for the purpose, authorize the legislative body to pledge the credit  
15 of the municipality, borrow, or otherwise secure the debt for the specific  
16 purposes so warned. The creation of the project shall occur at 12:01 a.m. on  
17 April 1 of the calendar year the municipal legislative body votes to approve the  
18 debt.

**Commented [BW4]:** Committee decision: Should the language allow for a municipality to go back for an additional vote if the first vote fails?

19 (3) Any indebtedness shall be incurred within three years from the date  
20 of approval by the Vermont Economic Progress Council, unless the Vermont  
21 Economic Progress Council grants an extension of an additional three years

**Commented [RW5]:** Committee decision: Should this be based on when municipality votes to approve debt or votes to approve TIF plan?

1 pursuant to the substantial change process set forth in the 2015 TIF Rule;  
2 provided, however, that an updated plan is submitted prior to the three-year  
3 termination date of the project.

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

11 **(h) Tax increments.**

12 (1) In each year following the approval of the project, the lister or  
13 assessor shall include no more than the original taxable value of the real  
14 property in the assessed valuation upon which the treasurer computes the rates  
15 of all taxes levied by the municipality and every other taxing district in which  
16 the project is situated, but the treasurer shall extend all rates so determined  
17 against the entire assessed valuation of real property for that year. In each year  
18 for which the assessed valuation exceeds the original taxable value, the  
19 municipality shall hold apart, rather than remit to the taxing districts, that  
20 proportion of all taxes paid that year on the real property within the project that  
21 the excess valuation bears to the total assessed valuation. The amount held

1 apart each year is the “tax increment” for that year. No more than the  
2 percentages established pursuant to subsection (i) of this section of the  
3 municipal and State education tax increments received with respect to the  
4 project and committed for the payment for financing for improvements and  
5 related costs shall be segregated by the municipality in a special tax increment  
6 financing project account and in its official books and records until all capital  
7 indebtedness of the project has been fully paid. The final payment shall be  
8 reported to the treasurer, who shall thereafter include the entire assessed  
9 valuation of the project in the assessed valuations upon which municipal and  
10 other tax rates are computed and extended and thereafter no taxes from the  
11 project shall be deposited in the project’s tax increment financing account.

12 (2) Notwithstanding any charter provision or other provision, all  
13 property taxes assessed within a project shall be subject to the provision of  
14 subdivision (1) of this subsection. Special assessments levied under 24 V.S.A.  
15 chapters 76A or 87 or under a municipal charter shall not be considered  
16 property taxes for the purpose of this section if the proceeds are used  
17 exclusively for operating expenses related to properties within the project and  
18 not for improvements within the district, as defined in subdivision (a)(3) of this  
19 section.

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

4           (i) Use of tax increment.

5           (1) Education property tax increment. For only debt incurred within the  
6           period permitted under subdivision (e)(3) of this section after approval of the  
7           project, up to 70 percent of the education tax increment may be retained for up  
8           to 20 years, beginning with the education tax increment generated the year in  
9           which the first debt incurred for the project financed in whole or in part with  
10           incremental education property tax revenue. Upon incurring the first debt, a  
11           municipality shall notify the Department of Taxes and the Vermont Economic  
12           Progress Council of the beginning of the 20-year retention period of the  
13           education tax increment.

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

19           (3) The Vermont Economic Progress Council shall determine there is a  
20           nexus between the improvement and the expected development and  
21           redevelopment for the project and expected outcomes in the TIF Project Zone.

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

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

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

18            (2) provide, as required by events, notification to the Vermont  
19            Economic Progress Council and the Department of Taxes regarding any tax  
20            increment financing development project debt obligations, public votes, or  
21            votes by the municipal legislative body immediately following such obligation

1 or vote on a form prescribed by the Council, including copies of public notices,  
2 agendas, minutes, vote tally, and a copy of the information provided to the  
3 public in accordance with 24 V.S.A. § 1894(i).

4 (3) Annually:

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

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

17 (1) Annual report. The Vermont Economic Progress Council and the  
18 Department of Taxes shall submit an annual report to the Senate Committees  
19 on Economic Development, Housing and General Affairs and on Finance and  
20 the House Committees on Commerce and Economic Development and on  
21 Ways and Means on or before April 1 each year. The report shall include the

1 date of approval, a description of the project, the original taxable value of the  
2 property subject to the project development, the scope and value of projected  
3 and actual improvements and developments in the TIF Project Zone, projected  
4 and actual incremental revenue amounts, and division of the increment revenue  
5 between project debt, the Education Fund, the special account required by  
6 subdivision (h)(1) and the municipal General Fund, projected and actual  
7 financing, and a set of performance measures developed by the Vermont  
8 Economic Progress Council, which may include outcomes related to the  
9 criteria for which the municipality applied and the amount of infrastructure  
10 work performed by Vermont firms.

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

14 (1) on or before January 1, submit an annual report to the Vermont  
15 Economic Progress Council, which shall provide sufficient information for the  
16 Vermont Economic Progress Council to prepare its report required by  
17 subsection (i) of this section; and

18 (2) on or before April 1, ensure that the project is subject to the annual  
19 audit prescribed in 24 V.S.A. § 1681 or 1690. In the event that the audit is  
20 only subject to the audit under 24 V.S.A. § 1681, the Vermont Economic  
21 Progress Council shall ensure a process is in place to subject the project to an

1 independent audit. Procedures for the audit must include verification of the  
2 original taxable value and annual and total municipal and education tax  
3 increments generated, expenditures for debt and related costs, and current  
4 balance.

5 (n) Authority to issue decisions.

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

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

1 the same manner as the Supreme Court may by rule provide for appeals before  
2 final judgment from a Superior Court before issuing a final decision.

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

6 Sec. 4. EFFECTIVE DATE

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

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15 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE