

1 S.33

2 Introduced by Senators Sirotkin, Balint, Brock and Clarkson

3 Referred to Committee on

4 Date:

5 Subject: Taxation; economic development; tax increment financing; project-  
6 based tax increment financing

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

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

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

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

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

15 (1) the City of Burlington, Downtown;

16 (2) the City of Burlington, Waterfront;

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

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

19 (5) the City of Winooski;

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

- 1           ~~(7)~~ the Town of Hartford;
- 2           ~~(8)~~(7) the City of St. Albans;
- 3           ~~(9)~~(8) the City of Barre;
- 4           ~~(10)~~(9) the Town of Milton, Town Core; and
- 5           ~~(11)~~(10) the City of South Burlington.

6           Sec. 2. TAX INCREMENT FINANCING PROJECT DEVELOPMENT;

7                   PILOT PROGRAM

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

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

12                   (2) “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 in accordance with 24 V.S.A. § 1894. Payment for eligible  
17 related costs may also include direct payment by the municipality using the  
18 district increment. However, such anticipated payments shall be included  
19 in the vote by the legal voters of the municipality in accordance with  
20 subsection (e) of this section. If interfund loans within the municipality are  
21 used as the method of financing, no interest shall be charged. Bond

1 anticipation notes may be used as a method of financing and may qualify as a  
2 municipality's first incurrence of debt. A municipality that uses a bond  
3 anticipation note during the third or sixth year that a municipality may incur  
4 debt pursuant to subsection (e) of this section shall incur all permanent  
5 financing not more than one year after issuing the bond anticipation note.

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

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

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

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

20 (7) "Project" means public improvements, as defined in subdivision (3)  
21 of this subsection (a), that meet the criteria set forth in subdivision (h)(2) of

1 this section, with a total debt ceiling, including related costs, and principal and  
2 interest payments, of not more than \$1,500,000.00.

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

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

13 (c) General authority. Under the pilot program established in subsection  
14 (b) of this section, a municipality, upon approval of its legislative body, may  
15 apply to the Vermont Economic Progress Council pursuant to the approval  
16 process set forth in subsection (h) of this section to use tax increment financing  
17 for an individual project located within or serving one or more active  
18 designations approved by the Vermont Downtown Board under 24 V.S.A.  
19 chapter 76A or located within an industrial park as defined in 10 V.S.A.  
20 § 212(7).

21 (d) Eligibility.

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

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) Incurring indebtedness.

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

13          (2) Notwithstanding any provision of any municipal charter, the  
14          municipality shall only have one authorizing vote to incur debt through one  
15          instance of borrowing to finance or otherwise pay for the tax increment  
16          financing project improvements and related costs. The municipality shall be  
17          authorized to incur indebtedness only after the legal voters of the municipality,  
18          by a majority vote of all voters present and voting on the question at a special  
19          or annual municipal meeting duly warned for the purpose, authorize the  
20          legislative body to pledge the credit of the municipality, borrow, or otherwise  
21          secure the debt for the specific purposes so warned.

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

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

14           (g) Tax increments.

15           (1) In each year following the approval of the project, the lister or  
16           assessor shall include no more than the original taxable value of the real  
17           property in the assessed valuation upon which the treasurer computes the rates  
18           of all taxes levied by the municipality and every other taxing district in which  
19           the project is situated, but the treasurer shall extend all rates so determined  
20           against the entire assessed valuation of real property for that year. In each year  
21           for which the assessed valuation exceeds the original taxable value, the

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

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

1 not for improvements within the district, as defined in subdivision (a)(3) of this  
2 section.

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

6 (h) Approval process. The Vermont Economic Progress Council shall only  
7 approve a municipality's application for a tax increment financing project  
8 development if:

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

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

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

18 (B) The project will affect the remediation and redevelopment of a  
19 brownfield located within the district. As used in this section, "brownfield"  
20 means an area in which a hazardous substance, pollutant, or contaminant is or



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

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

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

10 (i) Use of tax increment.

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

20 (2) Use of the municipal property tax increment. For only debt incurred  
21 within the period permitted under subdivision (e)(3) of this section after

1 approval of the project, not less than 85 percent of the municipal tax increment  
2 shall be retained to service the debt, beginning the first year in which debt is  
3 incurred, pursuant to subdivision (1) of this subsection.

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

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

19 (k) Information Reporting. Every municipality with an approved project  
20 pursuant to this section shall:

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

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

11           (3) Annually:

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

17           (B) On or before February 15 of each year, on a form prescribed by  
18           the Council, submit an annual report to the Vermont Economic Progress  
19           Council and the Department of Taxes, including the information required by  
20           subdivision (2) of this section if not already submitted during the year, all  
21           information required by subdivision (A) of this subdivision (3), and the

1 information required by 32 V.S.A. § 5404a(i), including performance measures  
2 and any other information required by the Council or the Department of Taxes.

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

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

20 (1) on or before January 1, submit an annual report to the Vermont  
21 Economic Progress Council, which shall provide sufficient information for the

1 Vermont Economic Progress Council to prepare its report required by  
2 subsection (i) of this section; and

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

11 (n) Authority to issue decisions.

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

18 (2) The Vermont Economic Progress Council shall prepare  
19 recommendations for the Secretary prior to the issuance of a decision. As  
20 appropriate, the Council may prepare such recommendations in consultation  
21 with the Commissioner of Taxes, the Attorney General, and the State

1 Treasurer. In preparing recommendations, the Council shall provide a  
2 municipality with a reasonable opportunity to submit written information in  
3 support of its position. The Secretary shall review the recommendations of the  
4 Council and issue a final written decision on each matter within 60 days of the  
5 receipt of the recommendations. The Secretary may permit an appeal to be  
6 taken by any party to a Superior Court for determination of questions of law in  
7 the same manner as the Supreme Court may by rule provide for appeals before  
8 final judgment from a Superior Court before issuing a final decision.

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

11 Sec. 3. EFFECTIVE DATE

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