

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 Colechester~~;

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.

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.

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), with a total debt ceiling, including related costs, and  
20           principal and interest payments, of not more than \$5,000,000.00. A project  
21           must:

1           (A) clearly require substantial public investment over and above the  
2           normal municipal operating or bonded debt expenditures;

3           (B) only include public improvements that are integral to the  
4           expected private development; and

5           (C) meet one of the following four criteria:

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

8                   (ii) The project will affect the remediation and redevelopment of a  
9                   brownfield located within the district. As used in this section, “brownfield”  
10                   means an area in which a hazardous substance, pollutant, or contaminant is or  
11                   may be present, and that situation is likely to complicate the expansion,  
12                   development, redevelopment, or reuse of the property.

13                   (iii) The development will include at least one entirely new  
14                   business or business operation or expansion of an existing business within the  
15                   project, and this business will provide new, quality, full-time jobs that meet or  
16                   exceed the prevailing wage for the region as reported by the Department of  
17                   Labor.

18                   (iv) The development will enhance transportation by creating  
19                   improved traffic patterns and flow or creating or improving public  
20                   transportation systems.

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

7           (11) “TIF project zone” means an area located within one or more active  
8           designations approved by the Vermont Downtown Development Board under  
9           24 V.S.A. chapter 76A for the parcels in a municipality that have nexus to the  
10          project.

11          (b) Pilot program. Beginning on January 1, 2022 and ending on  
12          December 31, 2027, the Vermont Economic Progress Council is authorized to  
13          approve not more than 15 tax increment financing projects, provided that there  
14          shall be not more than one project per municipality.

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

20          (d) Eligibility.

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

3           (A) the project will serve one or more active designations approved  
4 by the Vermont Downtown Development Board under 24 V.S.A. chapter 76A;  
5 and

6           (B) the proposed infrastructure improvements and the projected  
7 development or redevelopment are compatible with confirmed municipal and  
8 regional development plans and the project has clear local and regional  
9 significance for employment, housing, or transportation improvements.

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

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

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

1           (B) The review shall take into account:

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

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

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

12                           (II) the percentage of that revenue that shall be paid to the  
13           Education Fund;

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

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

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

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

20                   (B) The municipality has developed a tax increment financing project  
21           plan, including a project description; a development financing plan; a pro

1 forma projection of expected costs; a projection of revenues; a statement and  
2 demonstration that the project would not proceed without the allocation of a  
3 tax increment; evidence that the municipality is actively seeking or has  
4 obtained other sources of funding and investment; and a development schedule  
5 that includes a list, a cost estimate, and a schedule for public improvements  
6 and projected private development to occur as a result of the improvements.

7 (f) Incurring indebtedness.

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

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

1 purposes so warned. The creation of the project shall occur at 12:01 a.m. on  
2 April 1 of the calendar year the municipal legislative body votes to approve the  
3 tax increment financing project plan.

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

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

18 (2) Notwithstanding any charter provision or other provision, all  
19 property taxes assessed within a project shall be subject to the provision of  
20 subdivision (1) of this subsection. Special assessments levied under 24 V.S.A.  
21 chapters 76A or 87 or under a municipal charter shall not be considered

1 property taxes for the purpose of this section if the proceeds are used  
2 exclusively for operating expenses related to properties within the project and  
3 not for improvements within the district, as defined in subdivision (a)(3) of this  
4 section.

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

8 (i) Use of tax increment.

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

18 (2) Use of the municipal property tax increment. For only debt incurred  
19 within the period permitted under subdivision (e)(3) of this section after  
20 approval of the project, not less than 85 percent of the municipal tax increment

1 shall be retained to service the debt, beginning the first year in which debt is  
2 incurred, pursuant to subdivision (1) of this subsection.

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

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

18 (k) Information reporting. Every municipality with an approved project  
19 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) Provide, as required by events, notification to the Vermont  
5           Economic Progress Council and the Department of Taxes regarding any tax  
6           increment financing development project debt obligations, public votes, or  
7           votes by the municipal legislative body immediately following such obligation  
8           or vote on a form prescribed by the Council, including copies of public notices,  
9           agendas, minutes, vote tally, and a copy of the information provided to the  
10           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 (h)(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 in the TIF Project Zone, projected  
11 and actual incremental revenue amounts, and division of the increment revenue  
12 between project debt, the Education Fund, the special account required by  
13 subdivision (h)(1) and the municipal General Fund, projected and actual  
14 financing, and a set of performance measures developed by the Vermont  
15 Economic Progress Council, which may include outcomes related to the  
16 criteria for which the municipality applied and the amount of infrastructure  
17 work performed by Vermont firms.

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

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

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

13           (n) Authority to issue decisions.

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

20           (2) The Vermont Economic Progress Council shall prepare  
21           recommendations for the Secretary prior to the issuance of a decision. As

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

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

14 Sec. 4. EFFECTIVE DATE

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

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2 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE