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To: Senate Finance Committee

From: Josh Diamond, Deputy Attorney General
Sarah London, Chief Assistant Attorney General

Date: January 14, 2020

Re: Tax Increment Financing Statutes

We understand the Committee would like to hear from the State Auditor, the Agency of Commerce and Community Development (ACCD), the Vermont Economic Progress Council (VEPC) and the Attorney General's Office (AGO) regarding Tax Increment Financing (TIF) statutes and whether the statutes should be clarified.

The AGO has worked with the State Auditor's Office over the last several years, and we have recently been in touch with the ACCD and VEPC, regarding requests for AG Opinions related to TIF statutes and compliance therewith.

The AGO takes no position regarding TIF policy generally. The AGO stands behind the approximately eight informal AG Opinions we have issued to the State Auditor's Office regarding TIF statutes. This includes, but is not limited to, former Chief Assistant Attorney General Bill Griffin's opinion dated February 7, 2019 regarding the use of bond proceeds to pay for debt services. That said, the AGO takes no position on S. 191 as introduced other than support of the General Assembly's interest in clarity and finality.

To the extent helpful to the Committee, below outlines the various statutory roles of the AGO, the State Auditor's Office, and ACCD/ VEPC regarding Vermont's TIF program.

Statutory Roles of State Auditor’s Office, AGO, and ACCD/VEPC:

- The State Auditor is charged with “conduct[ing] performance audits of all tax increment financing districts according to a schedule, which will be arrived at in consultation with the Vermont Economic Progress Council.” 32 V.S.A. § 5404a(l).
- VEPC has the “authority to adopt rules ... for the purpose of providing clarification and detail for administering the provisions of 24 V.S.A. chapter 52, subchapter 5 and the tax increment financing district provisions” of § 5404a of title 32. 32 V.S.A. § 5404a(j)(1).
- VEPC approves all TIF district plans and, at any time during the life of an active TIF district, a municipality may seek approval to change a TIF district plan by filing a “substantial change request” with VEPC. 24 V.S.A. § 1901(2).
- The ACCD Secretary has the authority to issue decisions “to a municipality on questions and inquiries concerning the administration of tax increment financing districts, statutes, rules, noncompliance with 24 V.S.A. chapter 53, subchapter 5, and any instances of noncompliance identified in audit reports conducted pursuant to subsection (l) of this section.” 32 V.S.A. § 5404a(j)(2).
- Prior to such a decision, VEPC is charged with making recommendations to the ACCD Secretary, and the Attorney General (along with the Treasurer and Tax Commissioner) is a party that VEPC may consult with in making such recommendations. 32 V.S.A. § 5404a(j)(2)(B).
- In the event of noncompliance with TIF statutes, the ACCD Secretary may request that that Treasurer bill a municipality for underpayment to the Education Fund; alternatively, the Secretary or Treasurer may refer a matter of noncompliance to the AGO “with a recommendation that an appropriate civil action be initiated.” 32 V.S.A. § 5404a(j)(3)-(4).
- Ultimately, the Secretary’s decision may be appealed to Superior Court. 32 V.S.A. § 5404a(j)(2)(B).
- The AGO represents State officers in court and advises elected and appointed officials “on questions of law relating to their official duties.” 3 V.S.A. § 159 (AG also “shall have general supervision of matters and actions in favor of the State and of those instituted by or against State officers wherein interests of the State are involved and may settle such matters and actions as the interests of the State require”); *see also* 3 V.S.A. § 152.

The overlapping roles above can result in uncertainty of process to the extent similar questions of compliance are simultaneously pending before the State Auditor, AGO, and VEPC/ ACCD. The AGO appreciates the statutory roles of both the State Auditor's Office and ACCD/ VEPC as outlined above, and we do not view the above roles as irreconcilable.

The AGO remains committed to working with all parties identified above to further the interests of the State of Vermont, consistent with the above provisions.