

**Agency of Commerce and Community Development**

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TO: House Committee on Commerce & Economic Development  
House Committee on Ways & Means  
Senate Committee on Economic Development, Housing and General Affairs  
Senate Committee on Finance

CC: Tanya Morehouse, Chief Auditor, State Auditor's Office

FROM: Megan Sullivan, Executive Director, Vermont Economic Progress Council

SUBJECT: Summary of Revisions to TIF Rule

DATE: October 18, 2019

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The task of revising the TIF Rule has been a 2-year effort which started with former VEPC Executive Director, Fred Kenney. Changes to the TIF program in the 2017 legislative session authorized VEPC to approve up to six new TIF Districts and spurred the need to update the TIF Rule. An initial review of the adopted TIF Rule and its implementation has brought to light several areas where clarification is needed.

VEPC staff conducted numerous meetings with general counsel from the Agency of Commerce and Community Development (ACCD) and staff from the Tax Department's Property Valuation and Review (PVR). The purposes of these meetings were to do an in-depth review of the current rule and draft revisions to make the TIF Rule a document that allows all involved parties in the TIF program to have the same understanding of regulations and expectations. The first draft was review by the full Council as part of its July 2019 retreat. TIF Districts provided comment at an August 2019 informational meeting with VEPC staff. The Council and VEPC staff reviewed those comments and incorporated suggestions into the TIF Rule as appropriate. The result is the current iteration of the draft TIF Rule which is intended to remedy identified ambiguity or conflict.

There are still several steps left before the final draft is ready to be submitted for the rule making process including: the legislative meeting on October 23; a request for review and input from state agencies, as willing, that are consulted in the program; a second meeting with TIF Districts; and final review by the Council.

A high-level overview of the changes in the draft TIF Rule are as follows:

- "TIF Notes" - During our initial review of the TIF Rule, we discovered much of the text provided examples, history, or commentary rather than guidance. For those cases, we created "TIF Notes" to separate regulatory language from commentary.



- The 2015 Adopted TIF Rule included several sections meant to resolve specific issues identified in audits conducted by the State Auditor’s Office on Districts in existence prior to 2006. Those issues have since been resolved, making these sections obsolete. The draft TIF Rule addresses any future issues identified by an audit through the process outlined in Section 1100 – Oversight, Compliance Review, Non-compliance Enforcement, and Audits.
- The definitions in Section 300 have been updated to more closely align with definitions in Title 32 as they apply to tax and property assessments and definitions in 24 VSA § 1891.
- The definition for Substantial Change Requests had been removed and references to this process have been combined into a new section, 900 – Substantial Changes to District Plan, Financing Plan, or Reconciliation Plan. This new section identifies the specific changes that require VEPC’s review and approval before a District can proceed. Changes of the listed types which are made without prior VEPC approval will require review through the process in Section 1100.
- “Direct infrastructure” has been addressed in subsection 604 -Improvements. The draft TIF Rule identifies the “cost of installation, new construction, or reconstruction of private capital assets a developer would reasonably incur to complete a private project” as an ineligible improvement cost.
- The process for a District to obtain an extension of the 5-year requirement to incur first debt is considered a substantial change request.
- Subsections related to the public vote for incurring debt has been moved to Section 700 – Indebtedness.

There are several questions or issues that are still under consideration or have received strong opposition. I will discuss these items with you in further detail at the meeting on Wednesday.

### **Direct Payments**

Consideration in the draft TIF Rule was given to provide for direct payment of allowable related costs with tax increment through approval of the municipal legislative body. However, the statutory definition for financing means debt incurred and allows that direct payments from tax increment may be only made if it is an improvement included in the financing plan and it is approved by voters.

The restrictions in this definition could cause some difficulties:

- 32 VSA § 5404a(1) provides that the cost of conducting a performance audit by the State Auditor’s Office is considered a “related cost” and is billed back to the municipality. Districts are required to submit to 3 audits by the State Auditor’s Office, two of which are conducted after the 10-year period to incur debt. Statute does not clearly allow for a method that allows for costs to be paid after year 10.



- Districts have inquired as to whether an infrastructure project identified in the financing plan could be directly paid with tax increment after the 10-year period to incur debt. Statute does not appear to allow for this, but it would seem a reasonable request in fitting with the statutory purpose of the program would save the taxing authorities costs in interest on debt service.
- Districts inquired to the process of making direct payment for related costs and the need for voter approval. Costs incur annually related to the agreed-upon-procedures to verify OTV, tax increment, expenditures, and current balance. It would seem reasonable that payment for these types of related costs at the municipal legislative body level would be adequate when there is sufficient tax increment in the District Fund.

### **Boundary Adjustments**

The definition of “original taxable value” in 24 VSA § 1891(5) states that “...no parcel within the district shall be divided or bisected by the district boundary.” The 2015 adopted TIF Rule allowed that boundary adjustments in a TIF District could be requested by filing a Substantial Change Request. The 2015 TIF Rule did not preclude Districts from submitting a substantial change request for a larger boundary adjustment (not just in the case of bisected parcels) in which parcels to their District could be added later if a new project needing TIF became known outside of the approved boundary.

PVR advised that advances in property management software now allow PVR to track changes in parcels and maintain the original boundary of a TIF District. The draft TIF Rule reflects that capability by no longer allowing boundary adjustments. Feedback from TIF Districts on this change has not been favorable. Districts were informed by previous VEPC staff that this would be allowable and created districts with smaller boundaries, understanding they could come back to increase the boundary in the future. VEPC staff is continuing to consult with PVR on this issue and the feedback that has been received.

### **Bond Anticipation Notes**

Clarification from the legislature may be needed regarding the allowable use of bond anticipation notes (BANs) for first or last incurrence of TIF District Debt. Districts who are near their 5-year requirement to incur first debt may want the flexibility of obtaining a BAN as their first incurrence. Districts note that the use of a BAN as the last incurrence of debt at year 10 would save the District charges in interest and allow them to more easily comply with the schedule for the Vermont Municipal Bond Bank.

Conversely, it may be more sensible for Districts who are having difficulty meeting the deadline for first incurrence of debt to review their plans and submit a substantial change request to VEPC for an extension. In terms of the last incurrence of debt, a BAN can be held for 3 to 5 years which also prolongs the period in which debt will be repaid by the



District. Use of BANs as a last insurance of debt is also at odds with the required review of the District at year 10 for adjustment of equal share of increment.

### **Increment Deficit or “Decrement”**

Section 612. Retention Period for Tax Increment states, “For any years where there is an education tax increment deficit, that deficit amount must be paid to the Education Fund.” This language is a carry-over from the 2015 adopted TIF Rule, but there is no statutory reference. District have questioned whether this sentence should be removed noting things out of their control like natural disasters or fire which could lead to a decrease in the original taxable value.

### **Tax Stabilization**

Recently, the issue of the allowance and parameters of Municipal Tax Stabilization have been raised. This is currently under review by VEPC staff and the Tax Department. It is not addressed in the current draft of the TIF Rule but will likely need to be addressed in a future draft or in statute.

