

Attachment 1 State Auditor’s Observations on H. 129 -- tax increment project development financing

Item No.	Topic	H. 642 section reference	SAO Observation	Option
1	Increase in number of TIF districts VEPC is authorized to approve	Sec. 1	<p>Act 69 (2017) Sec. J.2. amended 24 V.S.A. §1892(d) to include a list of authorized TIF districts¹ (i.e., the “baseline”) and Sec. J.4. amended 32 V.S.A. §5404a(f)(2) to allow VEPC approval of six TIF districts² in addition to the baseline established in §1892(d). VEPC subsequently approved the Bennington and Montpelier TIF districts, reducing the number of additional TIF districts that VEPC may approve to four.</p> <p>H. 642 Sec. 1 adds the Bennington and Montpelier TIF districts to the baseline and does not reduce the number of additional TIF districts that VEPC may approve. As a result, VEPC will have approved two TIF districts subsequent to Act 69 (2017) and will the ability to approve an additional six, which means in total VEPC will have been given the authority to approve eight TIF districts rather than the limit of six established in Act 69 (2017).</p>	<p>If the Legislature intends to keep the limit to an additional six TIF districts approved by VEPC as of the date this limit was established (Act 69 of 2017), remove Bennington and Montpelier from the proposed amendment to 24 V.S.A. §1892(d).</p> <p>Alternatively, the Legislature could reduce the number of TIF districts VEPC is allowed to approve per 32 V.S.A. §5404a(f)(2) to four.</p>
2	Project definition	Sec. 2(a)(7)	<p>Definition of “project” includes the nature of a project (i.e., public improvements) and a geographic area (an area comprising not more than 10 parcels), assigning two distinct meanings to the term “project.” Because of this dual meaning, there may be confusion when the term “project” is used.</p>	<p>To clarify, the Legislature could remove “an area comprising not more than 10 parcels” from definition of project. Create a separate definition for the geographic area of the project. Use “TIF project zone” or similar term that conveys a geographic area. EX: (a)(8) “TIF project zone” means an area comprising not more than 10 parcels in a municipality which have a nexus to the project. [see Item No. 4 below for suggestion related to nexus]</p>

¹ TIF districts listed in 24 V.S.A. §1892(d): Burlington Downtown, Burlington Waterfront, Milton North/South, Newport, Winooski, Colchester, Hartford, St. Albans, Barre, Milton Town Core, and South Burlington.

² Act 69 (2017) amended 32 V.S.A. §5404a(f)(2) to allow VEPC to approve six TIF districts in addition to those previously approved and listed in 24 V.S.A. §1892(d).

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3	Scope of project	Sec. 2 (a)(7) and Sec. 2 (c)	<p>VEPC’s testimony submitted 2/25/2020 p. 5, indicates the program is intended to be for one public improvement project. However, the definition of project in Sec. 2 (a)(7) does not state this. Rather, it refers to public improvements and 10 parcels. Taken together, this could be interpreted to mean multiple improvement projects for 10 parcels. Given this, the intended scale of the program and potential impact on the Education Fund is not clear.</p> <p>Sec. 2 (c) states that municipalities may apply to VEPC to use tax increment financing for an individual project. However, as noted above the definition of project refers to <u>improvements</u>, not a single improvement.</p>	<p>If the Legislature’s intent is for the project based TIF to be for a single improvement project, this should be clarified in the definition of a project. EX: “Project” means <u>a single</u> public improvement, as defined in subdivision (3) of this subsection (a).</p>
4	Project definition and nexus between public improvement and area designated as the “project”	Sec. 2 (a)(7) Sec. 2 (i)(3)	<p>Sec 2. (a)(7) allows up to 10 parcels to comprise the geographic area of a project but H. 642 does not require any relationship (e.g., nexus) between the planned public improvement and the parcels.</p> <p>According to VEPC’s TIF Primer for the statewide tax increment financing district program, parcels included in the TIF district must have a nexus to the infrastructure improvement or have expected development.</p> <p>Sec. 2 (i)(3) includes a requirement for a nexus between the improvement and the expected development but does not address nexus between the improvement and the parcels that represent the geographic location of the project.</p> <p>Without a requirement for the parcels to have a nexus to the improvement funded with TIF, there is risk that municipalities include parcels that have little to no connection to the improvement and will retain tax increment that should have been directed to the Education Fund.</p>	<p>To address this risk, the Legislature could require municipalities to demonstrate that there is a nexus between the parcels the municipality identifies as the geographic location of the project (e.g., the “TIF project zone” suggested above in Item No. 2) and the improvement to be funded by TIF. Require that VEPC assess this aspect of nexus as part of the approval process.</p>

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5	Date that OTV is established	Sec. 2 (a)(6) Sec. 2 (f)	<p>The date to use for determining OTV is not clear.</p> <p>Sec. 2 (a)(6) indicates OTV is established as of the creation date, but Sec. 2 (f) indicates municipal assessors shall certify the OTV as of the date the project is approved by VEPC. Further, the only use of “creation date” in H. 642 is in Sec. 2 (a)(6) and this section does not specify when creation occurs. This could be the date the municipal legislative body approves applying to VEPC for the use of tax increment financing for a TIF project (Sec. 2 (c)), but it’s not explicitly stated in H. 642.</p> <p>The statewide TIF district program in V.S.A. Title 24 states that creation date is the date the TIF district is approved by the municipal legislative body. Further, OTV is determined as of April 1 of the calendar year in which the TIF district was created. April 1 is a significant date for the annual production of the Grand List and a date familiar to assessors.</p>	<p>Determine which date is preferred for establishing OTV and amend language in H. 642 as necessary. It may make sense to seek the recommendation of the Department of Taxes regarding the best date to use for determining OTV. There may be reasons such as administrative ease or a higher level of assurance over the validity of OTV for selecting a particular date.</p>
6	Tax increment calculation	Sec. 2 (g)	<p>This section uses the same convoluted language used in the Statewide tax increment financing statute in Title 24 but without the benefit of Adopted TIF Rules that detail the actual calculation methodology.</p>	<p>The Legislature could amend Sec. 2 (g) to provide greater clarity and specificity regarding the tax increment calculation.</p>
7	Application requirements	Sec. 2 (h)	<p>Lacks any requirements for materials that must be submitted with the application. Is a project plan or financing plan required? It’s not clear what information municipalities must submit so that VEPC may evaluate applications.</p> <p>32 V.S.A. §5404a(h)(2)(B) describes the information required for application to VEPC for the statewide tax increment financing program.</p>	<p>To clarify, adopt the requirements established in 32 V.S.A. §5404a(h)(2)(B) - TIF project plan, financing plan, private development schedule, etc.</p>
8	Criteria for approval	Sec. 2 (h)	<p>VEPC may approve a project that meets one of five criteria. One of these criteria is an assertion from the municipality that the project requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.</p> <p>Allowing municipalities to use a self-assertion to qualify for approval sets the bar lower for approval to use Education Fund money than exists under the</p>	<p>Consider whether a self-assertion is a valid basis for approval of the use of tax increment. The Legislature could remove this from the list of criteria for qualifying for a project based TIF.</p>

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			statewide tax increment financing program, which requires that TIF districts meet three of five project criteria.	
9	Extension of debt borrowing period	Sec. 2 (2)(3)	Sec. 2 (2)(3) requires an updated plan be provided to VEPC if an extension is requested for the debt period, but there is no other mention of a plan in H. 642 so it's not clear what requires updating.	See Item No. 5
10	Annual report	Sec. 2 (l)	<p>Requires annual report to include OTV of <i>the property subject to the project development</i> while Sec. 2 (a)(6) uses "<i>all taxable real property located within the project</i>" to describe the geographic area of the properties that comprise the project and should be included in the OTV.</p> <p>Use of inconsistent terminology will increase interpretation problems.</p>	Establish a definition for project zone (or similar phrase) that explicitly addresses which properties are in this zone. Use this phrase throughout H. 642 to refer to the geographic area of the project See Item No. 2.
11	Audit requirements	Sec. 2 (m)(2)	Requires that audits prescribed in 24 V.S.A. §1681 and §1690 address the project. These are the audits performed by either an independent public account or an elected town auditor.	Suggest requiring an IPA to perform audits for any municipality with a project based TIF.