

Attachment – State Auditor’s Observations re. S.33 “An act relating to project-based tax increment financing”

Item	Topic	S.33 reference	SAO Observation	Option
1	Increase in number of TIF districts VEPC is authorized to approve	Sec. 1	<p><a href="#">Act 69 (2017) Sec. J.2.</a> amended 24 V.S.A. §1892(d) to include a list of authorized TIF districts<sup>1</sup> (i.e., the “baseline”) and Sec. J.4. amended 32 V.S.A. §5404a(f)(2) to allow VEPC approval of six TIF districts<sup>2</sup> 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><a href="#">S.33 Sec. 1</a> 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 have 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	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 S.33 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 S.33.</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 S.33 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>

<sup>1</sup> 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.

<sup>2</sup> 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).

Attachment – State Auditor’s Observations re. S.33 “An act relating to project-based tax increment financing”

Item	Topic	S.33 reference	SAO Observation	Option
3	Parcels that comprise OTV and nexus to the project	None	<p>Numerous sections of S.33 refer to taxable real property located “within the project” but the bill lacks a description of which parcels fall within the project. Without clarification, it’s not known which parcels should be used to determine OTV and to calculate tax increment.</p> <p>According to <a href="#">VEPC’s TIF Primer</a> 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>S.33 Sec. 2 (i)(3) includes a requirement for a nexus between the improvement and the expected development but does not address nexus between the project and the parcels that will be used to calculate tax increment.</p> <p>Without a requirement for the parcels to have a nexus to the project funded with TIF, there is risk that municipalities include parcels that have little to no connection to the project and will retain tax increment that should have been directed to the Education Fund.</p>	<p>Create a separate definition for the geographic area of the parcels that comprise the area that must be used to determine OTV and to calculate tax increment. Use “TIF project zone” or similar term that conveys a geographic area.</p> <p>EX: “TIF project zone” means an area comprising not more than X [number] parcels in a municipality which have nexus to the project.</p> <p>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”) and the project to be funded by tax increment financing. Require that VEPC assess this aspect of nexus as part of the approval process.</p>
4	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 <a href="#">Adopted TIF Rules</a> (Rule 900) 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>
5	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>
6	Extension of debt borrowing period	Sec. 2 (e)(3)	<p>Sec. 2 (e)(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 S.33 so it’s not clear exactly what requires updating.</p>	<p>See Item No. 5</p>
7	Annual report	Sec. 2 (l)	<p>Requires annual report to include OTV <i>of 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>	<p>Establish a definition for project zone (or similar phrase) that explicitly addresses which properties are in this zone. Use this phrase throughout S.33 to refer to the geographic area of the project.</p>