DOUGLAS R. HOFFER
STATE AUDITOR

STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

To: Senate Committee on Finance, Senator Anne Cummings, Chair
From: Doug Hoffer, State Auditor
Re: SAO review of VEPC proposed changes to Sections 6, 7, and 9 of H.159
Date: April 6, 2022

As promised, the Table below is our response to VEPC's reqursts.

Sincerely,

Doug Hoffer

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SAO review of VEPC proposed changes to Sections 6, 7, and 9 of H.159

Item #	Section of H.159	H.159 proposed change/addition	VEPC perspective	VEPC remedy	SAO comment/ proposed remedy
1.	Section 6 & 7 amend 24 VSA 1892(d) and 32 VSA 5404a(f)	Section 6 updates the list of TIF Districts in Title 24 to reflect the approved TIF Districts and removes districts that have either retired or dissolved. Section 7 updates 32 VSA 5404a(f)(2) to reflect the number of TIF Districts remaining that the Vermont Economic Progress Council (VEPC) may approve to four to maintain the total number at six as established in Act 69 (2017). Sec. 7 adds to 32 VSA 5404a(f): <u>(2)(D) The Council shall not approve more than one district in Bennington County and one district in Washington County.</u>	Language as proposed could be interpreted to mean that if a current TIF district terminates, VEPC won't be able to approve another TIF district to replace the vacated spot and/or if the Montpelier or Bennington TIF districts terminate, VEPC won't be able to approve another TIF district in Washington or Bennington counties.	Recommend that Sections 6 and 7 be removed from H.159, to prevent any unintended consequences.	Amend the proposed revisions to 24 VSA 1892(d) and 32 VSA 5404a(f) Add the following to 32 VSA 5404a(f)(2): (E) If a district terminates without issuing debt, VEPC may approve another district to fill the vacated spot.
2.	Section 7, 32 VSA 5404a(b)(2)	<u>Section 7 adds:</u> <u>(b)(2) Notwithstanding any other provision of law, if a municipality has entered into an agreement that reduces the municipality's education property tax liability under this chapter and the municipality establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5, the municipality's municipal and education tax increment shall be calculated based on the assessed value of the properties in the municipality's grand list and not on the stabilized value.</u>	Could be interpreted to mean tax increment for all property within the TIF District must be calculated on the assessed value rather than taxable value, including those parcels that are municipally owned and do not pay property taxes.	Revise so that this calculation applies only to those parcels that have a tax stabilization agreement.	Municipally owned parcels that are leased to private parties may be taxable depending upon the use of the parcel and should be subject to tax based on the assessed value so it's not clear why VEPC is proposing that the language be narrowed to those parcels with a tax stabilization agreement. Suggest asking Tax to weigh in on VEPC's suggested change.
3.	NO ISSUE				

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4.	Section 7, 32 VSA 5404a(h)(4)(C)	(C) The project will affect the remediation and redevelopment of a brownfield located within the district. In the case of a brownfield, the Vermont Economic Progress Council is authorized to adopt rules pursuant to subsection (j) of this section to clarify what is a reasonable improvement, as defined in 24 V.S.A. § 1891, to remediate and stimulate the development or redevelopment in the district. As used in this section, "brownfield" means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.	Leaves this open for VEPC to interpret. Prefer to have greater specificity of legislative intent.	Request the revised language be changed to, "For environmental remediation of a brownfield, this shall include the cost of the site preparation needed to stimulate the development or redevelopment in the tax increment financing district as identified in clean-up documentation approved by a regulatory agency."	Regulatory agency and clean-up documentation is vague. Seems likely that this is the Department of Environmental Conservation (DEC) and the corrective action plan (CAP) described in DEC's Brownfields Handbook. Suggest specifying the agency and the clean-up documentation. Second, if the regulatory agency is DEC, request that DEC testify and provide information to ensure committee understands the extent of site preparation costs that could be "identified in clean-up documentation." For example, a CAP may include surface parking [Brownfields Handbook p. 15] which, if the property is subsequently sold at no or low cost to a private developer, could result in the parking being restricted to private use and the developer realizing significant savings on the cost of developing the property.
5.	Details not provided in memo. Relates to mini TIF.				

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6.	Section 9, 24 VSA 1891(7),	(7) “Financing” means debt incurred, including principal, interest, and any fees or charges directly related to that debt, or other instruments or borrowing used by a municipality to pay for improvements in a tax increment financing district, only if authorized by the legal voters of the municipality in accordance with section 1894 of this subchapter. Payment for the cost of district improvements <u>and related costs</u> may also include direct payment by the municipality using the district increment.		The added text “related costs” would better clarify the definition of financing by placing it in the first sentence after “improvements” and striking out “related costs” in the second sentence.	Suggest that the universe of “related costs” that can be financed with TIF debt be limited to those that are directly related to the construction of eligible district improvements. Otherwise, municipalities may borrow debt to pay for TIF district application costs, audit costs, and other administrative costs.