



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

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

FROM: Doug Hoffer, State Auditor, Vermont State Auditor

DATE: February 27, 2025

RE: TIF Observations Informed by 12 Years of Independent Review

Summary

Since 2013 the Legislature has required the State Auditor's Office to conduct a series of audits of Tax Increment Finance (TIF) districts. Ten audits and many policy discussions later, we make the following observations:

1. TIF has been an expensive way to finance municipal infrastructure projects, costing \$1 in interest for every \$2.70 of capital spending, totaling more than \$70 million in interest payments.
2. The Joint Fiscal Office, the Executive and Legislative economists, and the Emergency Board have all concluded that TIF is a cost to the Education Fund.
3. TIF's complexity has led even Vermont's largest municipality to make millions of dollars of accounting errors.
4. TIF's complexity results in frequent legal ambiguities which make enforcement of statutes and rules difficult. The problem is compounded because TIF administration is subject to internal conflicts as VEPC (along with DED and ACCD) is expected to promote TIF while also enforcing the rules.
5. Auditing TIFs is expensive both because of the rigor of our audits (intended by the Legislature to protect the Education Fund) and because some communities struggle to administer the TIFs, resulting in longer audits.
6. The Legislature is frequently presented with TIF program results which are not supported by the nonpartisan Joint Fiscal Office, including core outcomes such as Grand List growth, job creation, and new tax increment, which are predicated on flawed assumptions.
7. Frequent and common problems uncovered in our audits are not small, technical matters, and the Legislature can act to improve compliance (see section 7 for legislative recommendations).

We look forward to assisting the Legislature as you consider how to address the existing TIF program, and to advise you as you consider proposals to expand or change TIF.

Background

Since 2013 the State Auditor's Office has been required by state statute to conduct audits of Vermont TIF districts. The Legislature mandated these audits after former Auditor Salmon conducted first audits of TIF districts in Burlington, Milton, Winooski, and Newport. The audits found significant compliance issues that detected large sums owed to the state Education Fund from the TIF communities.

The four initial TIFs each operated under a unique set of parameters which were set out in statute. As a result of the audits described above, most TIFs are now subject to a common set of statutes and rules.

The State Auditor's Office has developed significant TIF expertise, not because we elected to, but because the Legislature wanted to make sure that an independent entity was monitoring TIFs to avoid the worsening-while-undetected issues that were found when the original TIFs were first audited.

We do not take a position for or against the use of TIFs in Vermont. Rather, we wish to summarize the facts we've observed from the completion of ten TIF audits during my tenure. As the chairs of Ways and Means and Finance know, my office was considering requesting a change in the statute to relieve us of the mandate to conduct TIF audits so frequently. For that reason, and in light of the Administration's new proposal to create a limitless TIF program, we offer this memo to inform you about key themes in the TIF program and to help you consider the role the State Auditor's Office should play moving forward.

Key Observations

1. TIF Is An Expensive Way to Finance Public Infrastructure

We reviewed all of the debt issued by TIF communities, and the interest costs associated with that debt. Through FY2023 a total of \$193,064,227 in debt has been issued. The interest and fees associated with that debt is \$70,710,069. Put another way, for every \$2.70 of capital spending, TIF communities have paid \$1 in interest.

We can appreciate the desire of municipalities to seek financing that imposes the least direct tax on local taxpayers. And decades ago, few funding sources existed to help municipalities address infrastructure needs, so larger communities in particular advocated for TIF in the absence of other tools and in the face of declining federal funding. More options exist today. Our office has consistently encouraged policymakers to develop lower-cost strategies to finance municipal infrastructure.

The question is not whether we should support municipal infrastructure investments, but rather how to do it at the best cost, with the least administrative complexity, and resulting in the broadest benefit to communities across Vermont.

2. The Joint Fiscal Office, the Legislature’s Nonpartisan Analysts, Have Reported That the TIF Program Has A Negative Effect On the Education Fund

In their 2022 TIF report to the Legislature, JFO stated the following: “JFO estimates that TIF will cost the Education Fund approximately \$5.5 million in 2022, growing to roughly \$6 to \$7 million per year by the mid-2020s. Because of Vermont’s statewide system for funding education, this means that the average homestead property tax rate will be roughly a penny higher to fund development in TIF towns.”

Some advocates suggest that there is no “cost” to the Education Fund, asserting that none of the municipal improvements would have occurred without the TIF program. However, JFO, your analysts upon whom you depend to make evidence-based decisions, report otherwise. Furthermore, the consensus estimates provided to and adopted by the Emergency Board is in line with JFO’s analysis. That means both the Administration’s economist and the Legislature’s economist agree with JFO’s analysis, and the Governor and the four “money chairs” adopt that position when they approve the consensus forecast.

We present this concern in light of the concerns expressed by both the Executive and Legislative branches about the property tax burden. If the TIF program is going to cost a State fund, policymakers have a choice about which one. Current proposals place more burden on the property tax.

3. The Complexity of TIF Has Led Even Vermont’s Largest Municipality to Make Millions of Dollars of Administrative Errors

In the last ten years, we have performed TIF audits in Milton (3), St. Albans, Winooski (2), Hartford, Barre City, South Burlington, and Burlington (2). These were conducted on a schedule that is laid out in statute. The complexity of the program has led to mistakes large and small, some of which directly and negatively impact the state Education Fund. Our Burlington TIF audits found that the City owes approximately \$300,000 to the Education Fund. Not only does this mean all statewide taxpayers had to carry those costs in the meantime, but the municipality finds itself scrambling to come up with the funds to rectify the situation. In recent years, Administration officials have expressed their desire to simplify the TIF program so that smaller communities can capably handle the administration of a district in their town. Effectively, they are saying they want the program to be more like a grant or straightforward revolving loan program. Policymakers should consider whether they should go all the way and fund these infrastructure improvements with just that – grant or revolving loan programs.

4. The Complexity of TIF Means Our Audits Uncover Legal Ambiguities, While the Compliance Issues Presented by Those Legal Ambiguities Could Be Deepening Over Many Years Prior to Being Audited

It is not uncommon to find TIF statutes that lack clarity or consistency. This has forced us to obtain eight opinions from the Attorney General's Office in the last twelve years. While the AG's opinion often settles the matter, there are times when VEPC has sought and ultimately relied upon an opinion from ACCD's inhouse attorney that is contrary to the AG's opinion. Obviously, dueling opinions is not efficient, presents conflicts of interest, and challenges the statutory view of the AG as the ultimate State government legal authority. The integrity of the TIF system is undermined if anyone other than the AG is permitted to be the basis for an Agency or program's interpretation of statutes and rules.

The legal conflicts described above speak to a more fundamental structural issue. TIF's administration and enforcement duties are assigned to the same entity, VEPC (and DED and ACCD), that promotes TIF. The Legislature has consistently raised concerns when enforcement and promotion activities are performed by the same department or agency - EB-5 and water quality are useful examples. If state employees are promoting a program, and offering program participants technical assistance, and even proposing legislative changes to accommodate them, then it is unsurprising that enforcement actions for noncompliance would be exceedingly rare.

When the Legislature passed Act 180 in 2013, they were trying to establish consistent rules to which all TIF districts would need to adhere. They created an enforcement mechanism that remained internal to ACCD (in which VEPC is housed). Looking back with the benefit of twelve years of seeing things play out, we suspect the Legislature, if it could go back in time, would have relied instead upon an independent arbiter (perhaps the Tax Department or the Attorney General's Office) to make enforcement decisions.

The reason for the enforcement mechanism in the first place is to ensure that a TIF district does not draw more funds away from the Education Fund than approved by VEPC in the first place. It is a program design flaw to leave that enforcement in the hands of those whose mission is to promote the program and who view the TIF municipalities as partners.

5. Auditing TIF Districts is Expensive

As a result of our office's legislative mandate to audit TIF districts, our staff has developed more expertise in this area than anyone else. But it is not inexpensive. To date, our office has billed TIF communities approximately \$850,000 to reimburse us for our staff time. And that is after discounting the billing in some of the more difficult and time-consuming audits.

The primary reason the audits are expensive is because they are comprehensive, as directed by state statute. Typical municipal financial audits do not dig in the way we do to determine compliance with all statutes and rules, which explains why they do not detect the many problems we uncover. Another reason the audits can be so expensive is because some TIF municipalities struggle to manage the complexity of the program, and, therefore, struggle to provide the audit team with necessary records and responses to questions. The City of Burlington has been the best example of this.

Remember, though, statute requires these comprehensive audits because the Legislature wanted to prevent inappropriate management of TIF districts, thereby protecting Vermont taxpayers from larger-than-agreed-upon draws from the Education Fund.

Currently, the cost of our audits is billed back to the TIF municipality, and it is considered a “related cost,” meaning it is paid for with the TIF debt proceeds. A proposal this year from the Administration would have the cost be borne by the Auditor’s Office. This is very problematic. Our office is mostly paid for by an internal service fund which is paid on a prorated basis by each entity of State government based upon a formula approved by Finance and Management and the federal Office of Management and Budget. If TIF audits are to be borne out of our budget, that is simply a cost-shift to the rest of State government who will pay more to support our office’s expenses. It is unclear why the Legislature would consider straining the General Fund component of every department in order to relieve the burden on TIF districts.

6. Advocates For Expanding the TIF Program Present Legislators With Extremely Attractive Claims That the Nonpartisan Joint Fiscal Office Disputes

Economic development is a policy area rife with overheated claims of financial and community benefits. After all, who doesn’t want more well-located economic activity, more jobs, etc.? Policymakers, though, should not be willing to pay *any* price for economic development; they should pay the lowest price for the desired outcomes. And if the Education Fund is going to serve as a municipal infrastructure lending institution, it should act like a fiduciary and pay only what is absolutely needed to support the projects.

We offer three examples of advocates’ claims and the nonpartisan response.

First, the tax increment calculation, which is the basis for how much money is diverted from the Education Fund in order to finance TIF activities, assumes that there would be no property value growth in a TIF district for 20 years unless the TIF infrastructure projects proceed. JFO’s 2022 TIF report to the Legislature concludes otherwise:

“JFO also concludes the core theoretical assumption upon which tax increment calculations are based is flawed and unsupported by the data and economic theory. In reviewing property value growth of parcels within existing TIF districts over a pre-TIF time horizon, JFO found that no district experienced zero or negative property value growth.”

This means the TIF program’s benefit calculation assumes that the portion of a community comprising the TIF district – Burlington’s Downtown, Killington village, etc. – would have flat or negative property value growth for 20 years. By operating under that implausible premise, the TIF draws more dollars from the Education Fund.

Second, when reporting on the benefits that have resulted from TIF activity, advocates frequently assign 100% of the credit to TIF. JFO reports:

“It is inaccurate for towns or VEPC to attribute all growth in property values, jobs, wages, or any other economic variable solely to TIF if there are substantial outside subsidies flowing into a district. In some districts, outside funds accounted for more than 50% of total dollars used for infrastructure improvements.”

Third, VEPC has acknowledged that the job figures they report are unreliable, but continue to report them. Additionally, they report aggregate job figures over time without verifying that all the jobs reported are still there. Each community devises its own job-counting methodology. The information isn’t verified, but it is passed on to the Legislature nonetheless.

7. The Problems Uncovered in Our Audits Are Not Small Technical Matters, and the Legislature Can Take Action to Protect Taxpayers and Improve Compliance

Certain themes have emerged from our audits that could benefit from your attention and action as they represent policy decisions which may be best handled by the Legislature. If these areas are clarified in statute, it would reduce the risk that TIF is administered contrary to legislative intent and lessen the need for repeated audits, thus reducing costs to the State Education Fund.

A. Disclosure Deficiencies in Municipal Public Votes on TIF District Debt

We’ve noted numerous disclosure issues related to these votes. St. Albans, Hartford, Milton Town Core, Burlington Waterfront and Burlington Downtown TIF districts had various deficiencies in the public information notice required by law to be provided in advance of the public vote and in the ballot

Clarify TIF statute or legislatively mandate a TIF Rule change to specify 1) the level of noncompliance that would lead to the public not being reasonably informed of a topic for public action and 2) whether noncompliance can be remediated or if the public vote is invalid. If remediation is possible, specify the action necessary to remedy the noncompliance.

language required by law. Disclosure deficiencies raise concerns regarding the public’s ability to meaningfully understand the cost of the proposed debt. To-date, we’ve concluded it’s not clear whether the instances of noncompliance would invalidate the municipal vote results or require municipalities to take steps to correct deficiencies.

B. Errors in Tax Increment Calculation and Payments to the State Education Fund

Several municipalities made errors in their municipal and education tax increment calculation which also led to incorrect payments to the State Education Fund. Tax increment calculation errors range from \$655 to \$437,028 and incorrect payments to

the State Education Fund range from \$119,154 owed to the Education Fund to \$437,028 owed to Barre City. Various issues accounted for these errors. For example:

- Six municipalities omitted properties and used incorrect values.
- Three municipalities made mistakes in the tax status of properties.
- Three municipalities had NERMC software programming errors.

The commonality and extent of these errors demonstrates the complexity of administering the TIF district program, even for larger municipalities.

In particular, a legislatively authorized tax increment calculation unique to the Burlington Waterfront TIF District increased the complexity of the tax increment calculation and the determination of the amount owed to the State Education Fund.

We suggest that the Legislature refrain from authorizing exceptions and exemptions from TIF statute or TIF Rule as these tend to make a challenging program even more difficult to administer.

C. Lack of Detail in Legislature’s Extension of Burlington’s Waterfront TIF District

During the life of the Waterfront TIF District (created in 1996), the Legislature codified numerous extensions and exemptions which have added complexity to administering the district. In our recent audit of the Waterfront TIF district, we highlighted three issues arising from the most recent legislative modification which could benefit from clarification. In [Act 134 \(2016\) Sec. 18](#), the Legislature extended the City’s debt borrowing period to FY2021 (later amended to June 30, 2023) and extended the retention of tax increment for three properties to FY2035 to pay for debt to finance public improvements associated with CityPlace, a private development project.

However, the Act did not address details of the tax increment calculation including the percent of education tax increment that may be retained and whether any portion is required to be paid to the State Education Fund. Nor did the Act address if the City is authorized to use surplus tax increment accumulated through FY2025 (end date of TIF district per Act 45 of 2011) to pay for debt issued to support the CityPlace project.

Clarification of these issues will ensure that the City manages the Waterfront TIF District consistent with the Legislature’s intent and that the State Education Fund receives education tax increment when it is supposed to.

D. After-the-Fact VEPC Approval versus Noncompliance Enforcement

Our audits have highlighted several instances of noncompliance including substantial changes to District Finance Plans for which municipalities did not obtain VEPC approval as required by law. For example:

- The City of Burlington generated aggregate proceeds from debt issuances \$4.6 million above the cap VEPC had set for debt to finance public improvements in the Downtown TIF District.
- The City of St. Albans used \$1 million of TIF district debt to repay debt and \$1.7 million to finance a project known as ACE Hardware – neither of which was in VEPC-approved plans for the TIF district. Significantly, the Attorney General’s Office advised that St. Albans’s use of TIF district debt to pay debt was not allowed under the TIF statutes at that time.

Statute indicates that the Secretary of ACCD is authorized to issue decisions on instances of noncompliance identified in audits and the TIF Rules expand upon noncompliance enforcement, requiring the Council to vote on a recommendation to the Secretary who will issue a final written decision on the noncompliance. However, it appears more common for VEPC to approve changes to District Finance Plans after-the-fact rather than hold a municipality accountable for noncompliance with the VEPC-approved plan.

To our knowledge, VEPC has authorized most departures from approved TIF District Finance Plans after-the-fact (e.g., after the municipality has implemented a change and is out of compliance with the approved plan). This includes approving the use of debt to pay for debt despite the AG’s conclusion that this was not allowed under existing law and establishing a new cap for the Downtown TIF District debt financing to incorporate debt that had been issued above the authorized level.

We are aware that VEPC held the City of Burlington accountable for an instance of noncompliance with the VEPC-approved District Finance Plans (failure to use almost \$1 million of a developer fee to pay for TIF district debt as required). To correct for this noncompliance, VEPC reduced the percent of education tax increment Burlington is authorized to keep.

The level of noncompliance which would necessitate the use of the enforcement process lacks clarity. To our knowledge VEPC has only used the enforcement process in one instance – when the City of Burlington was sued by residents for deficiencies in disclosures for a public vote held on TIF district debt.

Clarify TIF statute or legislatively mandate a TIF Rule change to specify 1) which departures from VEPC-approved TIF District Finance Plans warrant handling via the enforcement process and 2) which may be remediated in another manner. If remediation is possible, specify the action necessary to remedy the noncompliance.

E. Drawing the Line Between Public Improvement and Private Developer Costs

According to statute and the TIF Rule, eligible improvements “generally are the installation, new construction, or reconstruction of infrastructure that will serve a

public purpose.” During the 2019 audit of the St. Albans TIF District, we raised questions about the extent to which public financing via TIF may be used for the costs of private development (i.e., a hotel), rather than public infrastructure aimed at attracting that development. At the time, we noted that neither the statute nor the TIF rule explicitly addressed whether the costs of a private development are eligible to be financed with TIF district debt.

It has come to our attention that VEPC approved an update to the City of St. Albans TIF District Finance Plan which included Bellevue, a \$10 million TIF district improvement project in support of private workforce housing development. A [VEPC FAQ](#) indicates that “public infrastructure may assist or encourage a developer to build their project and may reduce the overall costs to the developer, but the cost of the direct infrastructure a developer needs to complete their project is borne by the developer.”

Based on information that is publicly available about Bellevue, I’m concerned that this project crosses the line between public improvement and private developer costs. For example, \$2 million is planned for acquisition of properties which may be sold to the private developer for significantly less (previously the City sold the hotel developer land for \$1). In addition, \$6 million is estimated for garage podiums, paving, walks, pads, and pavers. The project details aren’t finalized (e.g., percent of parking that will be public) but I understand garage podiums to be an integral component of overall building structure which suggests the cost would typically be borne by the private developer.

More explicit direction is needed in statute to establish the line between public improvement and private development costs and to ensure the Legislature’s intent regarding this distinction is clear.