
February 2015

Performance Audit
Recommendations and Corrective
Actions for Audit: 12-8

**TAX INCREMENT
FINANCING DISTRICTS**

Statutory Changes Could Clarify
Municipal Requirements and
Enhance State Oversight

Dated: December 31, 2012

Overview

The SAO makes recommendations designed to improve the operations of state government. For our work to produce benefits, auditees or the General Assembly must implement these recommendations although we cannot require them to do so. Nevertheless, a measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. The greater the number of recommendations that are implemented, the more benefit will be derived from our audit work.

In 2010, the SAO began to follow-up on the recommendations issued in our performance audits. Experience has shown that it takes time for some recommendations to be implemented. For this reason, we perform our follow-up activities two and four years after the calendar year in which the audit report is issued (e.g., we followed up on recommendations contained in audit reports issued in calendar year 2008 in 2010 and 2012). Our annual performance reports summarize whether we are meeting our recommendation implementation targets. (http://auditor.vermont.gov/audits/recommendation_follow-up)

Act 155 (2012) required that we post on our website “a summary of significant recommendations arising out of the...audit reports... and the dates on which corrective actions were taken related to these recommendations. Recommendation follow-up shall be conducted at least biennially and for at least four years from the date of the audit report.”

This report addresses the requirements of Act 155 to post the results of our recommendation follow-up work on our website. The report does not include follow-up on recommendations issued as part of the state’s financial statement audit and the federally mandated Single Audit, which are performed by a contractor. However, our new contract for this work requires the contractor to provide the results of its recommendation follow-up in the future. Accordingly, we expect that future reports will contain this data.

| Audit No., Name & | Rec # | Recommendation | Follow- Up Date | Status & Date | Review Comments |
|--|----------|---|--------------------|------------------|--|
| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 1a | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the date of original taxable value (OTV) establishment | 12/1/2014 | Implemented | <p>Act 80 of the 2013 legislative session clarified tax increment financing laws and specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 900 OTV and Tax Increment of the draft TIF rule. This section contains guidance for establishment of OTV for TIFs created subsequent to 2006 and for Burlington, Winooski and Milton. Specifically, this section addresses the date that OTV is established. In addition, Act 80 (2013) Section 5 amended the language regarding when OTV is established, clarifying that OTV is established as of the date the district is created.</p> <p><i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i></p> |

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| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 1b | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to what portion, if any, of tax increment may be used to repay debt incurred in the 20-year period following creation of the TIF district. | 12/1/2014 | Implemented | Act 80 of the 2013 legislative session clarified tax increment financing laws and specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 711 of the draft rules. This section contains guidance for the share of education increment that may be retained and the share of municipal increment that must be retained for TIFs created after 2006. Section 716 addresses the retention percentages for pre-2006 TIFs (Burlington, Winooski, Newport and Milton). In addition, Act 80 (2013) Section 4 amended 24 V.S.A. §1894 (a) and (b) to clarify that tax increment may be used to repay debt that is incurred within 10 years of the creation of the district, if debt is incurred in the first 5 years following the creation of the district. In addition, if debt is not incurred within the first years, VEPC may grant an extension. |
| | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> | |
| | 1c | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to what qualifies as a macroeconomic condition. | 12/1/2014 | Implemented | Act 80 (2013) removed the term "macro-economic" condition from 24 V.S.A. §1894. |
| | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> | | | |

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| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 1d | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the intent of the single vote requirement. | 12/1/2014 | Implemented | Act 80 (2013) repealed 24 V.S.A. §1897 which was the section that contained the "single vote" requirement. |
| | | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |
| | 1e | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the definition of least-cost financing. | 12/1/2014 | Implemented | Act 80 (2013) removed the term "least-cost financing" from 24 V.S.A. §1894©. |
| | | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |
| | 1f | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to a requirement that terms and conditions of interfund load financing be documented. | 12/1/2014 | Implemented | Act 80 (2013) clarified that terms and conditions of interfund loans must be documented and prohibited charging of interest. |
| | | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |
| | 1g | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to statutory criteria for allowable terms of interfund loans. | 12/1/2014 | Implemented | Act 80 (2013) clarified that terms and conditions of interfund loans must be documented and prohibited charging of interest. |
| | | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |

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| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 1h | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the calculation of the education fund payment in years when property values decline below the OTV. | 12/1/2014 | Partially Implemented | Act 80 of the 2013 legislative session clarified tax increment financing laws and specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 900 OTV and Tax Increment of the draft TIF rule. The subsection 903 contains guidance for calculating the tax increment when there is an increase or decrease in assessed valuation. |
| | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> | |
| | 1i | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the calculation of tax increment when there are gains and losses in the different property categories (i.e., homestead and non-residential). | 12/1/2014 | Partially Implemented | Act 80 of the 2013 legislative session clarified tax increment financing laws and specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 900 OTV and Tax Increment of the draft TIF rule. The subsection 904 (c) contains guidance for calculating the aggregate tax increment for residential and nonresidential properties. |
| | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> | |

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| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 1j | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the inclusion/exclusion of municipal charter restricted components of municipal tax rates in calculation of tax increment. | 12/1/2014 | Implemented | <p>Act 80 (2013) added a provision to address this issue and required that all property taxes, notwithstanding any charter provision or other provision, are subject to the calculation of tax increment. In addition, Act 80 specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 900 OTV and Tax Increment of the draft TIF rule. The subsection 904 (c) contains guidance for the tax rates which must be included in the calculation of the increment.</p> |
| | | | | | <p><i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i></p> |
| | 1k | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the definition of first debt. | 12/1/2014 | Implemented | <p>Act 80 of the 2013 legislative session clarified tax increment financing laws and specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 800 Indebtedness of the draft TIF rule. The subsection 802 contains guidance for determining when debt is incurred and when the retention of increment commences. Act 80 (2013), Section 4 also amended 24 V.S.A. §1894(b) to specify that first debt is that incurred for improvements financed in whole or in part with TIF increment.</p> |
| | | | | | <p><i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i></p> |

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| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 11 | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the definition of related costs and improvements. | 12/1/2014 | Implemented | Act 80 (2013) enhanced the definition of related costs in 24 VSA 1891 (6). In addition, Act 80 specified a process for future oversight and enforcement. Vermont Economic Progress Council was granted the authority to adopt rules in accordance with the Vermont Administrative Procedures Act to provide further clarification of statutory construction and administrative detail. The State Auditor's Office reviewed Section 300 Definitions of the draft TIF rule. The section contains additional clarification of the definition. Section 704 also provides additional guidance regarding improvements and related costs. <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |
| | 1m | The legislature should consider clarifying ambiguous or inconsistent Tax Increment Financing (TIF) statutory provisions for district administration related to the type of debt that may be paid by statewide education increment. | 12/1/2014 | Implemented | Section 2 of Act 80 (2013) removed the list of debt instruments from 24 V.S.A. §1891 (7), leaving "financing" defined as debt incurredused by a municipality to pay for improvements in a TIF district. This section also clarified that tax increment could be used to directly pay for TIF district improvements but that this was required to be included as part of the TIF financing plan approved by the voters and the Vermont Economic Progress Council. Also repealed 24 V.S.A. §1897, which had added ambiguity to which debt instruments were allowed. <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |

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| 12-8 TIF: (Capstone) Statutory Changes Could Clarify Municipal Requirements and Enhance State Oversight 12/31/2012 | 2 | The legislature should consider designating a state agency, such as the Vermont Economic Progress Council (VEPC) and/or the Department of Taxes (DOT), with Tax Increment Financing (TIF) oversight responsibilities, including enforcement of compliance with approved TIF district plans, and authority to interpret and enforce statutory requirements. | 12/1/2014 | Implemented | Act 80 (2013) Section 1 indicates the legislature's intent to establish a process for future oversight and enforcement and Section 14 provides the Vermont Economic Progress Council with rulemaking authority and specifies that the rules are for the purpose of providing clarification and detail for administering the TIF provisions. |
| | 3 | The legislature should consider specifying remedies in the event of non-compliance by municipalities. | 12/1/2014 | Implemented | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |
| | | | | | Section 14 of Act 80 authorizes the Secretary of the Agency of Commerce and Community Development to issue decisions to municipalities regarding questions and inquiries about the administration of TIFs, noncompliance with Title 24 of Vermont Statutes Annotated Chapter 53 and any instances of noncompliance identified in audit reports conducted pursuant to the TIF statutes. |
| | 4 | The legislature should consider requiring municipalities to establish and monitor performance measures with targets where the measures are linked to the statutory Tax Increment Financing (TIF) goals and actual results for each measure are reported to the state oversight entity and the legislature at least annually. | 12/1/2014 | | Act 80 (2013) Section 10 requires every municipality to develop a system for collection of TIF district data and information to fulfill the TIF reporting requirements, including performance indicators (24 V.S.A. §1901 ((1). This section further requires that municipalities with TIF districts submit an annual report to the Vermont Economic Progress Council (VEPC) and the Department of Taxes which includes performance indicators required by VEPC and the Department of Taxes. |
| | | | | | <i>The four-year recommendation/follow-up for this audit will be conducted in 2016.</i> |