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**STATE OF VERMONT**  
GENERAL ASSEMBLY  
LEGISLATIVE JOINT FISCAL COMMITTEE

Megan Sullivan, Executive Director  
Vermont Economic Progress Council  
One National Life Drive  
Montpelier, Vermont 05620

August 1, 2019

Dear Ms. Sullivan,

As you are aware, in late May 2019, the State Auditor's Office (SAO) released its [audit findings of the St. Albans Tax Increment Financing \(TIF\) district](#), as required by 32 VSA §5404a.

At the July 29<sup>th</sup> Joint Fiscal Committee (Committee) meeting, State Auditor Hoffer presented some of the main findings of this report. In particular, the Committee was briefed on two areas identified by the audit where St. Albans may have used TIF funds inappropriately:

- 1) Whether St. Albans' use of TIF bond proceeds for debt service payments on outstanding TIF debt qualified as an appropriate use of TIF proceeds.
- 2) Whether St. Albans' direct payments to a private developer for real estate acquisition costs qualify as a "related cost" (as defined by 24 V.S.A. § 1891(6)) and therefore, are eligible uses of TIF funds.

It is the Committee's understanding that the Vermont Economic Progress Council (VEPC) is moving forward with a rule change that would approve of both these uses of TIF proceeds and is preparing to meet with city managers of TIF municipalities on August 8<sup>th</sup> to brief them on these changes.

The Committee is deeply concerned both by the findings of the State Auditor's report and VEPC's decision to move forward with these interpretations of statute and rule. These are significant policy decisions that the Committee believes should be made by the Legislature, not through rulemaking. The Committee views these changes to TIF rule as significant alterations to the program.

Furthermore, the Office of Legislative Council has raised some procedural concerns, namely whether VEPC's conclusions on the St. Albans TIF audit properly followed the oversight and enforcement procedures set forth in 32 V.S.A. 5404a(j) requiring the Secretary of Commerce and Community Development to issue a final written decision.

With several TIF districts early in their lifespans (South Burlington, Montpelier, Bennington, Burlington Downtown), it is important for the Legislature to properly consider major changes to the program before these municipalities begin using TIF bond proceeds. Furthermore, on the question of whether TIF bond proceeds can be used to service debt, there appears to be a difference in legal opinion between the Attorney General's Office (AGO) and VEPC's legal counsel<sup>1</sup>. In their memo to the SAO, the AGO stated "the statutes do not allow bond proceeds to be used [to pay debt service]<sup>2</sup>."

<sup>1</sup> As noted in the [minutes of VEPC's July 11 meeting](#).

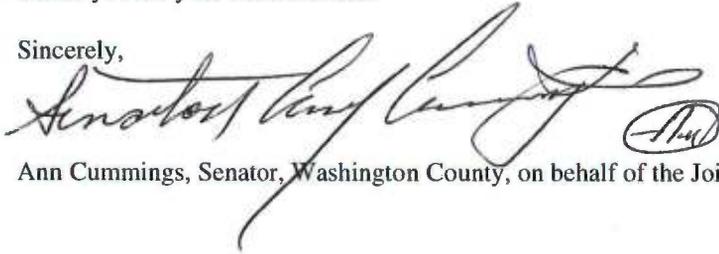
<sup>2</sup> Page 69 in the Appendix of the SAO report.

**Because of the significance of these changes, the procedural questions, and the potential difference in legal opinions, the Committee requests that VEPC delay further action on these rule changes and guidance to municipalities on TIF until the Legislature has had time to consider them fully.**

The Committee recognizes that TIF is an important tool in advancing the State's and municipalities economic development goals. At the same time, we understand that TIF is extraordinarily complex to administer which is why statute requires the State Auditor to conduct periodic audits. Therefore, it is imperative that statute and rules are clear so that the program is functioning the way the Legislature intended.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Cummings". The signature is fluid and cursive, with a circular stamp or mark at the end.

Ann Cummings, Senator, Washington County, on behalf of the Joint Fiscal Committee

CC: T.J. Donovan, Attorney General  
Douglas Hoffer, State Auditor