

## Act 80, Tax Increment Financing Legislation

Complex tax increment financing (TIF) district statutes have resulted in much confusion over many years. Act 80 addresses uncertainty around the administration and implementation of TIF districts in Vermont. That uncertainty arose as the result of many years of piecemeal amendments to the statutes enabling TIFs, and most recently as a result of the former State Auditor's office performing audits of TIFs in four municipalities; Burlington, Milton, Winooski and Newport. The legislation also provides new oversight and reporting, and establishes a process and remedies going forward for all TIF districts once rules are adopted. As adopted, Act 80:

Section 1. Provides that based upon individual agreements for each of the disputing municipalities, the state will not seek to recover amounts *identified* as "underpayments" to the Education Fund by the 2011 and 2012 Reports of the State Auditor. (These findings were vigorously disputed by the municipalities of Burlington, Winooski and Milton on qualitative and legal grounds.) If the rules that are established identify practices that result in future underpayment and those practices continue thereafter, those amounts of underpayments shall start to accumulate upon the date that rules are enacted and be payable to the state.

Section 2. Clarifies the definitions of "improvements," "related costs," and "financing" so that going forward TIF municipalities, the legislature, and administering agencies have the same understanding of those terms. As well, "original taxable value" would be defined as the value of property in the district on the date the TIF was created, and that original taxable value would not be changed throughout the life of the district.

Section 3. Provides for creation and administration of TIFs to include no more than those listed and (at Section 17) South Burlington.

Sections 4 (and 9). Establishes how and for how long education tax increments may be used in the TIF district. A municipality will have five years in which to incur its first debt. If no debt is incurred in the first five years, the municipality must be reapproved for a new five year period of debt incurrence eligibility. If, however, first debt is incurred within the first five years, the municipality thereafter the TIF district could use up to 75 percent of the new education property taxes generated and at least an equivalent amount of municipal property taxes to repay debt incurred to finance improvements such as streetscapes, transportation improvements or wastewater treatment upgrades. The new education property taxes generated in the district could be used to repay debt for up to 20 years.

A municipality's voters will need to authorize each instance of debt incurred in the TIF district.

Sections 5 and 6. Clarifies listers' obligation to establish the "original taxable value" of property in the TIF district and how new taxes generated shall be accounted for and expended at the local level.

Section 8. Amends the statute that authorizes a municipality to issue bonds.

Section 10. Establishes information, data, and reporting requirements for TIF districts to the Department of Taxes and the Vermont Economic Progress Council.

Section 11. Establishes that "nonresidential property" will exclude that portion of a property's new incremental value that is dedicated to repayment of debt incurred in the TIF district for up to 20 years.

Section 12. Provides that new education property tax increment within the district is available to repay TIF debt for up to 20 years.

Section 13. Establishes the Department of Taxes and Vermont Economic Progress Council reporting requirements to the legislature.

Section 14. Authorizes the Vermont Economic Progress Council to adopt rules to clarify the TIF statutes. A single rule will be adopted for all TIF districts that will include a process for distributing excess increments to the Education Fund. The rule will specify which of its provisions are written to address which pre-existing TIF. The Secretary of the Agency of Commerce and Community Development is authorized to issue decisions regarding administration of TIFs upon VEPC's recommendation. Appeals of decisions will go first before a hearing officer at the agency as a contested case, and then to the superior court. If non-compliance is found and repayments need to be made to the Education Fund, the State Treasurer is to bill for those amounts.

Section 16 Establishes a schedule for the state auditor to conduct performance audits of TIF districts.

Section 17 As mentioned in Section 3, adds a TIF district for South Burlington. The South Burlington and Barre City TIF applications were submitted at the same time to the Vermont Economic Progress Council, and only one of them could be approved because the statute restricts new TIF districts to six.

Section 18. Extend the Burlington waterfront's time to incur debt in the existing TIF district for five years, beginning January 15, 2015.

With the passage of Act 80 and the subsequent adoption of rules to implement the new law, municipalities, VEPC, and the Tax Department should find it far easier to implement TIF districts and establish what expenditures may be paid for with new education property taxes generated within the district. This has been at the heart of disagreements over the years. Finally, Vermont may have a workable TIF program on which all can agree.