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STATE AUDITOR

STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

March 18, 2013

Jeb Spaulding
Secretary of Administration
109 State Street
Montpelier, Vermont 05609

Dear Secretary Spaulding,

Thank you for providing the State Auditor's Office (SAO) with a summary of Governor Shumlin's proposal to amend the tax increment financing (TIF) statutes. We are pleased to see that many of the proposed changes are consistent with the recommendations that we made in our TIF Capstone report.

The Governor's proposal also includes blanket amnesty for the towns that the SAO determined collectively owe $6 million to the state education fund. The State Auditor's Office does not agree with total forgiveness of the amounts owed.

First, we believe that this would set a bad precedent and send the message that municipal errors that affect state funding have no consequence. News reports and statements by administration officials have suggested that forgiveness is the proper course because the municipalities were confused by inconsistent and ambiguous statutory provisions. **However, none of the findings reported by the SAO relative to the amounts owed by municipalities were the result of inconsistent or ambiguous statutory provisions. Furthermore, during the conduct of our audits, if there were inconsistent or ambiguous provisions, the SAO concluded that there was merit in a municipality's position and did not report a finding.**

Second, the Governor's proposal states that forgiveness applies to "all issues…identified in the audit reports," which seems to treat all types of non-compliance as one-time events and does not recognize that some of the noncompliance has continuing effects. Some of the errors identified in the reports will persist for the life of the TIF districts and additional monies will be withheld from the education fund unless corrective action is taken. For example,

- The TIF statute restricts the use of incremental property tax revenue to repaying or prefunding debt issued within 10 years following creation of a TIF district to finance improvements of the TIF district.
    - Burlington used $1 million of incremental education property tax revenue to repay debt associated with property acquired more than four years prior to creation of the TIF district. This is a clear violation of the TIF statutory provisions which require that the issuance of the debt and TIF district improvements occur subsequent to the creation of the

district. Forgiveness of "all issues" seems to allow Burlington to continue its use of education tax increment to repay this debt, which will result in an additional $1 million withheld from the state education fund through 2018 (payoff date for 1999 certificates of participation used to refinance Urban Reserve debt).

- Winooski is using incremental property tax revenue to repay a $25.9 million bond. However, some of the proceeds from the bond were incorrectly used to pay for activities that do not constitute TIF district improvements. The SAO determined that Winooski used $250,675 for city administrative costs that are not TIF district improvements. The SAO also concluded that bond proceeds were used for construction project costs unrelated to the TIF district and outside the TIF district boundaries. Because the city's records were insufficient, the SAO was unable to definitively quantify these costs but we estimate that it could be $1.1 million. If Winooski is allowed to continue to use tax increment to repay all of the bond proceeds, the SAO estimates that this could result in an additional $1.3 million withheld from the state education fund through 2024.

While we do not believe that blanket amnesty for the amounts owed by the municipalities is appropriate, we do believe that it would be reasonable to consider a more limited forgiveness criterion. We suggest that if the law was changed subsequent to when the error was committed and if the law had been applied retroactively it would cause the municipality to be in compliance, then forgiveness could be granted. For example,

- During the period that Milton was able to issue debt, it was restricted to general obligation or revenue bonds. Rather than issue bonds, Milton used an inter-fund loan and repaid the loan with $2.8 of incremental property tax revenue. Subsequently, statute was amended and allowed for the use of inter-fund loans. It seems reasonable to forgive Milton's non-compliance given that the financing mechanism they used, although not allowed during the time Milton was making improvements in the TIF district, is now allowed. However, this partial forgiveness would mean that Milton would still owe $1.3 million to the education fund related to other errors.

We would be pleased to meet with you, or other officials within the administration, should you care to review the data or discuss our concerns.

Best regards,

Doug Hoffer