Tax Increment Financing (TIF) Clarifications Bill Summary

Office of the State Auditor

OVERVIEW

This bill offers a mix of technical and policy changes meant to address various ambiguities in current TIF law. The goal is to improve oversight and the ability of TIF authorities to understand and comply with the TIF Act. It covers three areas of TIF law:

1) administrative expenses,
2) pooling (expenditures deemed "outside" a TIF district), and
3) violations.

SECTION 1

Section 1 amends the definition of administrative expenses. Current law defines administrative expenses as all expenses other than a list of development expenses. This format has given rise to many questions over the years about whether specific items are administrative expenses. The proposal adds a non-exhaustive list of items that are included as administrative expenses, while continuing to identify items that are excluded. One clarification is to include amounts used for the usual and customary maintenance and operation of properties purchased with tax increment.

SECTION 2

Section 2 adds a definition for "pay-as-you-go contract and note," which currently is an undefined term that gets additional usage in the proposed pooling changes.

SECTION 3

Section 3 allows a minor reporting change. Current law requires certain reporting items and allows the OSA to specify others. The month and year of first receipt of increment is a required item. The proposal strikes the need to include the month.

SECTION 4

Section 4 amends the administrative expense limit. It clarifies how the limit should be calculated when increment is returned to the county. It also provides an exemption from the limit for expenditures for the customary maintenance and operation of properties purchased with TIF that are made from lease proceeds that are defined as tax increment. This ensures that authorities may maintain and operate properties from appropriate funds without hitting a limit intended for broader administrative expenses.

SECTION 5

Section 5 corrects a grammatical flaw in current law and clarifies that administrative expenses are authorized under the general rule for how tax increment may be used.

SECTION 6

Section 6 amends the overall pooling limit, which generally limits the percentage of tax increment that may be spent on activities deemed to be outside the district to 20 or 25 percent, although an extra ten percent may be used for affordable housing if such an election (the “2(d) election”) is expressed in the TIF plan. The proposal clarifies that payments of county admin fees, like county road costs, are not part of the limit calculation, clarifies other language, and adds a new paragraph to clarify how the pooling limit should be calculated when increment is returned to the county.

SECTION 7 **Section 7 amends the Five-Year Rule,** which generally requires that new expenditures or obligations incurred after the first five years must fit within pooling limits, even if tied to activities located in the district. The proposal includes technical changes to delete an obsolete reference and clarify language. A reference to pooling permitted under the 2(d) election for affordable housing is deleted because its use in this section creates confusion and it is better addressed by proposed changes to the Six-Year Rule.

SECTION 8 **Section 8 makes many changes to the Six-Year Rule.** Under current law, the Six-Year Rule has two components: 1) an annual pooling limit starting in year six that is in addition to the cumulative pooling limit over the life of the district, and 2) a requirement to decertify when, generally, sufficient increment exists to pay in-district obligations. The proposal removes the annual limit because it has been difficult for authorities to understand, difficult to monitor and oversee, and is of questionable value beyond the overall pooling limit. The proposal reworks the decertification requirement, replacing ambiguous language with a clearer calculation, and addressing how it applies relative to pay-as-you-go contracts and notes (PAYG notes). PAYG notes only obligate increments from specific parcels as the taxes on those parcels are paid every six months rather than obligating an amount of all increments of a district. If the decertification calculation can be triggered by unobligated increments, PAYG noteholders may be adversely impacted, but averting decertification allows other parcels to continue to receive unobligated increment. The proposal defers decertification until PAYG notes are satisfied but requires removal of parcels that are no longer pledged to an outstanding obligation. The proposal protects existing bonds for pooling expenditures from the changes and clarifies the timing and process for decertifying under this provision. Lastly, an added provision seeks to prevent these changes from impeding an authority's ability to pool for affordable housing provision under the 2(d) election.

SECTION 9 **Section 9 corrects a technical flaw** in language regarding pooling to address deficits caused by prior tax reforms. A deficit is meant to be one amount minus the sum of two other amounts, but the flawed existing language suggests it is the first amount, minus the second, plus the third.

SECTION 10 **Sections 10-12 make technical amendments in the violations section of the TIF Act. Section 10 deletes an obsolete sentence** related to the improper receipt of increment that refers to duration limits. It seems to have been based on an assumption that is not consistent with how current-day processes have evolved.

SECTION 11 **Section 11 streamlines language** that is an artifact of past law changes.

SECTION 12 **Section 12 amends a provision addressing expenditures in violation of various restrictions** to properly cover all such violations. Current language references one section of the TIF Act that contains most limitations. The proposal expands the reference to the full TIF Act, as there are limits in other sections.