



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

To: House Committee on Commerce and Economic Development
Re: H.10 2.1
Date: February 28, 2023

I offer the following response to VEPC's February 24 comments re. H.10 2.1. Ms. Sherman's remarks in black and my responses in red.

2) Recording Executive Session:

a. Suggest including the reasons for which the recording could be requested, the method for making the request, and provisions for what the information obtained may be used for.

- I. The recordings will allow the JFO and the State Auditor to better perform their official job duties (i.e., analysis on behalf of the legislature and 32 V.S.A. § 163). The recordings will allow a thorough review of the process. No more explanation is required.
- II. A letter to the Director should suffice for access.
- III. By definition, all information is for analysis and reporting to the legislature, the administration, and the citizens of Vermont.

b. Add a provision that entities obtaining the recording will keep it confidential as it contains discussion of confidential and proprietary information.

No need. Confidential information is already protected by statute.

c. If information from the recording is released or comments on the recording are made by the entities the recording is provided to, is VEPC allowed to respond to those claims? If so, how would VEPC do that without releasing confidential or proprietary information?

- I. It is possible that some comments made in Executive Session are not confidential. If so, they may be used by JFO or the Auditor. For example, a VEPC member might ask an applicant for additional evidence in support of a "but for" statement. Unless I'm mistaken, the fact of the request would not be confidential and could be reported as long as the applicant's identity and details of the request are protected. I used confidential information without disclosing applicants' names in the [report](#) released in 2020. This is no different.
- II. VEPC is free to respond to any public document released by JFO or the Auditor.

3) Conflict-of-Interest Policy:

a. VEPC has a Conflict-of-Interest Policy as part of the VEPC Rules:

In connection with any staff recommendation on applications involving applicant entities, in which a staff member serves as a director or officer, such association shall be noted in writing in the staff memorandum

to the council. In such cases, the staff member shall not participate in any executive session held to discuss the application.

VEPC is saying it is permissible for staff members to have associations with applicants as long as the relationship is “noted in writing in the staff memorandum to the council.” While the policy does not allow participation in executive session, it permits the conflicted staffer to participate in the review of the application and the preparation of the staff memo. This is not appropriate.

VEPC should be asked to revise its policy addressing these issues and to provide a list all such staff member associations past and present. Has this information ever been shared with anyone? Have any such conflicts with applicants ever occurred?

4) VEGI Study:

- a. Suggest that a panel be developed to craft the questions covered in an RFP and the panel should be balanced to include the Governor’s Administration. It would be unusual to exclude the Administration as the entity which implements the program.
 - I. The effort is initiated by and in support of the legislative process, which is independent of the Executive Branch. If the legislature chooses to invite the administration to participate, it can do so, but it is also free to act independently.

BTW – Does VEPC suggest that the inverse is also true. That is, when the administration conducts research about possible changes to an existing program established by the legislature, is it obligated to invite representatives of the legislature to participate? Did VEPC do that when it developed its alternative to H.10?
 - II. The whole point of H.10 was to acknowledge problems with VEGI and consider changes. Having created and frequently modified the program over the years, successive governors have left their mark on the program. VEPC has not raised any of the concerns included in the original H.10 so any plea for involvement in the JFO-based process going forward is disingenuous. In addition, we already know the administration’s view of how best to redesign VEGI as it presented its alternative draft to the Committee.
 - III. Being the entity that implements the program does not entitle VEPC to a role in the proposed process, especially in light of some of the serious concerns raised regarding VEPC’s administration of the program.
- b. If or when an RFP is developed, it should be awarded to someone not currently or previously involved in the VEGI program so that an outside perspective can be gained.
 - I. Outside of VEPC, only a handful of people have had access to application materials and the internal records of VEPC’s administration of the program. It makes no sense to exclude those with direct knowledge of the program and processes under consideration.
 - II. Outside perspective may be valuable, but it doesn’t preclude the use of existing resources with experience. They are not mutually exclusive.
- c. Add language which would allow VEPC and all involved State agencies to provide the information needed and include appropriate coverage to ensure that confidential or proprietary information is not publicly released.

The public records act (and other statutes) already protects confidential records.