



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: Joint Fiscal Committee
From: Graham Campbell, Senior Fiscal Analyst, JFO
Emily Byrne, Associate Fiscal Officer, JFO
Date: September 20, 2022
Subject: ACCD request to Increase the VEGI LMA Incentive Enhancement Cap

Executive Summary

The Vermont Economic Progress Council (VEPC) has asked the Joint Fiscal Committee (JFC) to increase the Labor Market Area enhancement cap by \$500,000 from \$1 million to \$1.5 million for final applications in calendar year 2022.

- Through the Vermont Economic Growth Incentive (VEGI) program, Vermont businesses can apply for incentives to encourage/accelerate economic activity through increased employment and capital investments.
 - In addition to a regular VEGI incentive, there is an additional incentive for firms in areas of the state with less favorable economic conditions known as Labor Market Area (LMA) Incentive Enhancements.
- There are statutory maximums that can be allocated annually for both the regular VEGI incentives as well as the LMA enhancement, both of which can be raised by the JFC under certain circumstances.
- Agency of Commerce and Community Development (ACCD) is seeking an increase to the LMA cap, which has been done twice (2015 and 2016) since VEGI's creation in 2007.

As it stands, VEPC has awarded \$1.16 million in initial approvals to two firms (Ivy Computer and Simon Pearce), the majority of which was awarded at the beginning of the calendar year. VEPC expects these awards will be finalized, putting them over the \$1 million statutory LMA cap. VEPC also anticipates additional applications this calendar year that will qualify for a LMA enhancement.

JFC has the statutory responsibility in 32 V.S.A. § 3334(d) and (e) to consider whether increasing the cap will represent a net fiscal benefit to the state. As of the September 2022 JFC meeting, JFO and its agent have not reviewed specific applicant information to advise the committee on this subject. In addition to this, in considering the request the Committee should consider seeking more detail about:

- *Information on the 2022 applicants' enhancements*, including justifications about the size and timing of each firm's 2022 LMA enhancement.
- *The LMA enhancement approval process in general*, including questions about how VEPC manages award enhancements while facing the cap during the calendar year.

- *Implications for 2022 awards* if JFC does not make changes to the LMA enhancement cap and how this would affect awardees and their plans.

The JFC may exercise its authority under 32 V.S.A. § 3441(b) and request that information and materials be made available to the Joint Fiscal Office or its agent for review.

VEGI Background

Pursuant to 32 V.S.A. §3325 the Vermont Economic Progress Council (VEPC) operates the Vermont Economic Growth Incentive Program (VEGI) to provide incentives to Vermont businesses to encourage economic activity through increased employment and capital investment. Annually, companies can submit applications for VEGI awards to VEPC demonstrating that with the award they will be able to grow, relocate, start new, or prevent the closure of a Vermont company. These incentives are earned over a 5-year period based on meeting labor force and capital investment performance metrics.¹

Annually, VEPC is authorized by statute to award up to \$15 million in initial awards and up to \$10 million in final awards². The amount awarded to a business is established through a cost benefit calculation that determines if the theoretical amount of net tax revenue to the state generated is greater than the requested VEGI award. The difference between the revenue to the state determined by the cost benefit model and the amount of the VEGI award is known as the “Net Revenue Benefit”. To receive an award, a business must generate a positive Net Revenue Benefit to the state.³

Labor Market Area Incentive Enhancement

In addition to a base award, a company may be awarded additional funds up to the amount of the calculated Net Revenue Benefit if it is in a designated Labor Market Area (LMA)⁴. The total LMA incentive enhancement amount available for allocation each year by VEPC is set in statute at \$1.5 million for initial awards and \$1 million for final awards (32 V.S.A §3334). Like the general VEGI awards, there is capacity built into the system to approve more initial awards because not all initial applications are submitted for final applications. VEPC can request the Joint Fiscal Committee increase the LMA cap to \$1.5 million in the event additional capacity is needed per 32 V.S.A. §3334.

There is no formula that drives the calculation of an LMA enhancement; the basis for an LMA enhancement is based on the benefits and projected outcomes of a project as outlined in an application. VEPC’s review of the applicant’s justification for LMA enhancement is qualitative in nature. VEPC has discretion on how much to award as an LMA enhancement, however it

¹ A more detailed summary of the VEGI Program can be found here:

https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/Programsummary.pdf

² Not all initial awards result in final awards, some applications are withdrawn each year. If the number of final awards is anticipated to exceed the \$10 million cap, VEPC can request that the Joint Fiscal Committee increase the cap by up to \$5 million to accommodate additional awards.

³ More information on the calculation can be found here:

https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/HowVEGIWorks.pdf

⁴ LMA is a federal designation of a region that is economically integrated where individuals reside and are employed. The Department of Labor establishes the states, found here:

<http://www.vtlmi.info/lmadef2015.pdf>.

The LMAs eligible for enhanced VEGI grants have either a greater than state average unemployment or a below-state-average annual wages. A list of current LMAs can be found on the ACCD website: https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/LMA_Enhancement-Eligible_LMAs.pdf

cannot exceed the Net Revenue Benefit to the state, as calculated by the cost benefit model. Typically, the LMA cap is awarded up to the full amount of the Net Revenue Benefit that a project is anticipated to generate, unless the Net Revenue Benefit is greater than the LMA cap or VEPC determines that a lower amount is appropriate. The discussions that determine these awards occur in executive session of VEPC as the details of the applications are sensitive in nature.

Per 32 V.S.A. §3334 the Joint Fiscal Committee can authorize VEPC to exceed the \$1 million LMA cap by up to an additional \$500,000 in a calendar year. Prior to authorizing an increase in the cap, the Joint Fiscal Committee may authorize a review of the information and materials submitted to VEPC by the Joint Fiscal Office or its agent, per 32 V.S.A. §3341(b). An increase in the cap has been approved twice in the history of the program: in 2015 and 2016, although at that time, the increase was approved by the Emergency Board, not the Joint Fiscal Committee.⁵

ACCD's Request of the Joint Fiscal Committee

In calendar year 2022, VEGI awards to Ivy Computer of Waterbury and Simon Pearce of Windsor were accompanied by LMA enhancements of \$1 million and \$160,473 respectively, for a total of \$1.16 million in initial application LMA enhancements. VEPC has also informed JFO and the Joint Fiscal Committee of a potential forthcoming applicant that may be eligible for a LMA enhancement. The \$1.16 million VEPC has awarded is well within its statutory authority for initial applications of \$1.5 million.

ACCD is requesting an increase in the LMA enhancement cap for final applications from \$1 million to \$1.5 million. If both 2022 awardees submit final applications in line with their initial applications, VEPC would be above its statutory authority of \$1 million in final LMA enhancements prior to considering additional applications in 2022. Thus, it is requesting that the Joint Fiscal Committee increase the cap for final approvals to accommodate the two initial awards as well as ensure capacity for any additional awards in 2022.

Additional Historical Context

Since 2007, VEPC has awarded LMA enhancements to active and completed applications totaling \$5.365 million across 31 awardees⁶ with an average of just over \$173,000. In most years, LMA enhancements do not approach the cap: in the 15 years VEGI has existed, LMA enhancements in any given year have only ever exceeded \$750,000 (or 75% of the cap) five times.⁷ In the past, applicants eligible for an LMA enhancement have tended to be small so if VEPC awarded the enhancement, it would take many applicants to approach the cap.

⁵ Approval was changed from the Emergency Board to the Joint Fiscal Committee in January of 2017 per 2016 Act 157.

⁶ An additional 31 projects were in qualified LMAs but either did not apply or were not awarded LMA enhancement.

⁷ 2022 VEGI Annual Report
https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/AnnualReports/2022%20VEGI%20Annual%20Report-FINAL.pdf

Process for Awarding LMA Enhancements

In awarding LMA enhancements to applicants, VEPC is constrained by two parameters: the LMA enhancement cap and the Net Revenue Benefit to the state. VEPC cannot award any single applicant more than the Net Revenue Benefit or an amount greater than \$1 million. The applicant must justify the enhancement request, answering questions such as the following, typically in executive sessions of VEPC meetings:

- Will the project result in extraordinary and/or increased benefits to the State that are in addition to the job creation and incremental revenue generated by the project?
- Will the project result in the reopening or avoid imminent closure of a business?
- Does the project involve a critical business operation upon which a community relies for employment or tax revenue?

The full list of questions can be found on VEGI's website.⁸

VEGI's 2022 Annual Report and VEPC minutes back to the beginning of 2018 show that the standard practice for VEPC appears to be awarding applicants eligible for LMA enhancement 100% of the Net Revenue Benefit to the state as an enhancement. Given this record, it would appear VEPC has determined that nearly all LMA applicants sufficiently and credibly answer one or all the above questions in the strong affirmative.

Calendar Year 2022 LMA Enhancements

The question before the Joint Fiscal Committee is whether to increase the LMA enhancement cap by \$500,000 to \$1.5 million for final applications in calendar year 2022. As it stands, VEPC has awarded \$1.16 million in initial approvals which it expects will be finalized, putting them over the \$1 million statutory cap. VEPC also anticipates additional applications this calendar year that will qualify for a LMA enhancement.

VEPC and ACCD were aware that there would be limited space to make future LMA enhancements in 2022 since January this year. For calendar year 2022, VEPC has already approved \$1 million enhancement in December 2021 to Ivy Computer. This instantly brought total 2022 enhancements to their final approval cap with 12 months to go in the calendar year. The Council's actions indicate that they assumed the Joint Fiscal Committee would increase the approval cap in later months, or that Ivy Computer would finalize its application later in the year with a lower number, and/or that future applicants in 2022 would not require an LMA.

The \$1 million enhancement to Ivy Computer is nearly equivalent to the net revenue benefit projected for the project, which is not atypical for LMA projects. However, what is notable is the size of the enhancement. \$1 million is the largest LMA enhancement granted in VEGI's history. Because the award was granted at the outset of the calendar year, forgoing the ability to make future LMA enhancements without a Joint Fiscal Committee increase, the Council's actions must be interpreted as a strong belief in the strength of the application and importance of Ivy Computer's plans in Waterbury.

When Simon Pearce applied to VEPC for an LMA enhancement, the Council awarded the company \$160,473, bringing enhancements for the year to \$1.16 million⁹. Given they had

⁸ Typical LMA questions:

<https://accd.vermont.gov/sites/accdnew/files/documents/DED/VEPC/VEGI/LMAEnhancement.pdf>

⁹ Note, Simon Pearce only received an LMA enhancement equivalent to 60% of the Net Revenue Benefit to the state, per the VEGI minutes, a diversion from the typical 100% allocation.

already awarded the entirety of the final approval cap to Ivy Computer, VEPC was counting on either the Joint Fiscal Committee would increase the final cap or that Ivy Computer would reduce its LMA enhancement upon final approval, and that there would be no future applicants with LMA enhancement in calendar year 2022.

Finally, in its supporting documents for the request, VEPC noted at least one additional applicant coming in calendar year 2022 that may be eligible for an LMA enhancement. Without an increase in the LMA enhancement cap or a significant change to Ivy Computer or Simon Pearce's awards upon final application, they will be unable to award any LMA enhancement to this applicant.

Considerations for the Joint Fiscal Committee

It is important to note that 32 V.S.A. § 3441(d) and (e) grants the JFC the responsibility to determine whether the increasing the cap will generate net fiscal benefit to the state in the context of the current revenue forecast and budget environment. Statute also gives the committee the authority to review applicant information in order to make that determination. Given the confidentiality requirements around the program, this review can only occur by JFO's agent in concert with ACCD, rather than in an open JFC meeting. This review has not been requested or completed prior to the September 2022 JFC meeting so JFO cannot report to the committee on these statutory requirements at this time

In addition to this statutory requirement, the Committee may also use the opportunity to seek more detail about the 2022 applicants, the process for LMA enhancement, or the VEGI process in general. The Joint Fiscal Committee may exercise its authority under 32 V.S.A. § 3441(b) and request that information and materials, be made available to the Joint Fiscal Office or its agent for review.

With respect to the 2022 calendar year enhancements, the committee might consider seeking more information about the award and subsequent enhancement to Ivy Computer, since its award is the primary reason an increase in the cap is needed:

- Why did the Council feel the urgency or need to award \$1 million in LMA enhancement, the entire final approval cap, to Ivy Computer at the beginning of the calendar year?
 - What were the specific aspects of the application the Council found compelling?
 - Does this award represent extraordinary fiscal benefit to the state that would justify raising the LMA enhancement cap?
 - Was there strong belief that the company would not move forward in its plans if the enhancement was not awarded?
- What led the Council to award \$1 million, or 96% of the Net Revenue Benefit?
 - Were other amounts considered?
 - Is this enhancement tied to the costs of new employees or capital investment, or is it purely a function of the Net Revenue Benefit from the VEGI cost benefit model?

In addition to the specific applicants in 2022, the Joint Fiscal Committee might consider seeking additional detail and explanation on the overall approval process for LMA enhancements:

- The \$1 million LMA enhancement for Ivy Computer, which consumed the entire 2022 final approval cap, was made late in 2021.
 - Why was such a large enhancement given so early in the calendar year?

- Does VEPC consider future applicants and uncertainty about final applications when determining the size of any given applicant's LMA enhancement?
 - How does VEPC tailor its awards at points in the year based upon the LMA enhancement cap?
- Why has awarding 100% of the Net Revenue Benefit for almost all LMA enhancement-eligible applicants become the standard?
 - What determines whether an applicant receives 100% of the Net Revenue Benefit or 60%, as was the case with Simon Pearce?

Finally, while statute provides direction about the maximum amount of LMA enhancements that can be awarded, if VEPC awards exceed that amount, it is worth considering what actions VEPC will take if the Joint Fiscal Committee does not increase the cap:

- How would they adjust the awards for Ivy Computer and Simon Pearce?
 - For the anticipated future applicant in 2022, how will it calculate this award?
- If the cap is increased, does VEPC anticipate future applicants being awarded the entire remaining \$440,000?

JFO and its agent in VEGI matters, Tom Kavet, are available to assist on these questions as well as any additional questions the Joint Fiscal Committee may have as it considers this request.

CORRESPONDENCE RELATED TO RECENT VEPC LMA CAP EXPANSION REQUEST

From: Sherman, Abbie <Abbie.Sherman@vermont.gov>
Sent: Tuesday, January 10, 2023 3:07 PM
To: Thomas Kavet <tek@kavet.net>
Cc: Catherine Benham <CBenham@leg.state.vt.us>; Byrne-EXT, Emily <ebyrne@leg.state.vt.us>; Clark-EXT, Sarah C <sclark@leg.state.vt.us>
Subject: RE: JFC Inquiry Follow-Up

Tom,

Regarding your request for information pertaining to all LMA incentive enhancement awards granted since the VEGI program's inception (2007), we believe this to be outside the bounds of the motion made by the Joint Fiscal Committee. As you know, we subsequently rescinded our request which was under consideration by the Committee. Additionally, H.10 proposes to eliminate the LMA Enhancement, which we agree with, and the enhancement would no longer be part of the program.

Thanks,
Abbie

Abbie Sherman | Executive Director
Vermont Agency of Commerce & Community Development
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Written communications to and from state officials regarding state business are considered public records and, therefore, may be subject to public scrutiny.

From: Thomas Kavet <tek@kavet.net>
Sent: Tuesday, January 3, 2023 11:10 AM
To: Sherman, Abbie <Abbie.Sherman@vermont.gov>
Cc: Catherine Benham <CBenham@leg.state.vt.us>; Byrne-EXT, Emily <ebyrne@leg.state.vt.us>; Clark-EXT, Sarah C <sclark@leg.state.vt.us>
Subject: JFC Inquiry Follow-Up

Abbie,

I am writing to follow-up on the second part of the request below from the Joint Fiscal Committee (highlighted in yellow). As we discussed in October, the urgent priority was the first part of the request, after which I understood you would be responding to the second. If you could provide this information prior to January 20th, I'd be most appreciative.

Also, any follow-up information regarding resolution of the Ivy award issue would also be helpful.

With Best Wishes for the New Year,

Tom

From: Thomas Kavet

Sent: Thursday, September 29, 2022 3:03 PM

To: abbie.sherman@vermont.gov

Cc: Catherine Benham (CBenham@leg.state.vt.us) <cbenham@leg.state.vt.us>; Emily Byrne <ebyrne@leg.state.vt.us>; Graham Campbell <GCampbell@leg.state.vt.us>

Subject: JFC Inquiry

Dear Abbie,

Pursuant to the attached memo to, and Authorization from, the Joint Fiscal Committee, I have been asked to review the recent LMA incentive enhancement cap increase request and related programmatic questions. Accordingly, I would like to first request a copy of all communication, including any recorded video and/or audio teleconference or remote meeting notes, minutes or recordings, documents, correspondence to, from and in the possession of, ACCD, related to the recent VEGI awards and LMA incentive enhancements considered and/or granted to Ivy Computer and Simon Pearce. I would also like to see all Cost-Benefit Model inputs and assumptions and all Model output and other information associated with the both the VEGI award considerations and/or determinations and any LMA award considerations and/or determinations, including all information provided by Ivy Computer and Simon Pearce in connection with these awards. If there are any notes or other information from Executive Session deliberations, please also include these.

Secondly, in order to address broader programmatic questions the Committee posed, I would also like to request information regarding all LMA incentive enhancement awards granted since its inception, including the names of all recipients, the award amounts, the rationale behind the award amounts, the amounts of coincident VEGI awards, the theoretical net fiscal impact estimated by the Cost-Benefit Model prior to any LMA award, and the extent to which the LMA award utilized the full theoretical net fiscal benefit calculated by the Cost-Benefit Model. I would also be interested in knowing how many firms applied for an LMA enhancement award and were either rejected or awarded less than the full amount that could have been approved and the reasons for rejection or a reduced award amount. I would also like to know the names of firms that could have qualified for an LMA enhancement award but did not apply for this and were not awarded any LMA enhancement award.

Thirdly, I'd like to have a conversation or meeting with you at your earliest convenience regarding the questions posed by the Committee in the attached memo, so as to determine whether any additional information may be needed.

Since I understand there is some time sensitivity to this request, please feel free to send the supporting information in batches as it becomes available. Also please let me know how you would like to transmit the information so that we may set up any technical and security protocols needed.

With Best Regards,

Tom

Thomas E. Kavet

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EMAIL FROM JFO (CATHERINE BENHAM AND EMILY BYRNE) TO REP. MARCOTTE, 3/1/23

Rep. Marcotte,

Catherine and I have done our best to answer the questions you raised about H.10 and VEGI last week. Please let me know if there is additional information you need.

Executive sessions: We reviewed the minutes for VEPC meetings and they do not indicate who is and who isn't included in executive session. The minutes indicate who was in attendance at the meeting generally, but no details on who was in the room during the executive sessions.

VEGI Awards with issues: The following VEGI awards are the select few that we know have had some issues in recent years:

1. In the last two times that the JFC requested that Tom Kavet review some specific awards he discovered some large errors in how the cost benefit model was run and how the "but for" was determined and applied.
2. Some awards were made to prevent the elimination of jobs, not the creation of new ones. If the legislature wishes to extend the authority of VEPC to make such grants as a part of the VEGI program, it should clarify this in statute and at the same time mandate creation of a Cost-Benefit Model variant to be used to assess net fiscal impacts in such cases. The current model does not do this and would be significantly different than the existing model, which was created to measure impacts from new job creation and related capital investment. This model variant should be created in the same way the original and all subsequent C-B models have been developed, via a consensus process with the Administration and Legislative State Economists.
3. MTX – the problem with this one is the owner publicly said that they were going to move to Waterbury regardless of the award (counter to what you would expect them to say given the "but for" test as part of the VEGI application process), then they were given an award and didn't move to Waterbury. No incentive was given, but state resources were used to process and evaluate this award. Numerous other applicants have been similarly identified in formal audits performed by the State Auditor and in the above-mentioned reviews by our designated legislative agent.

H.10 Draft 2.1: We reviewed the most recent Draft of H.10 and have the following observations and considerations, recognizing that you hope to get the bill out at the end of the week. We are happy to discuss at your earliest convenience.

1. In Section 1 (e)(4) regarding the recording of executive sessions – It would be ideal if there was a list of attendees as part of the recording so that we know who was in the room and who wasn't, given that this isn't included in the minutes that are posted.
2. In Sec. 1(e)(5) add the language in red to ensure that the actual or perceived conflict of interest by the non-voting members that are attending council meetings and executive sessions are explicit about their conflicts: (5) The Council shall adopt and make publicly available a policy governing conflicts of interest, which shall include clear standards for when a voting or non-voting attendee or member of the Council may participate or must be recused when an actual or perceived conflict of interest exists.
3. In Sec. 2 – improvement to have the executive branch economist review the changes. There could be a requirement for consensus review and Cost-Benefit Model analysis with the Legislative Economist for all awards above a specified dollar amount – which we would recommend be not more than \$1million, and/or if the award request is for job retention

instead of new job creation (unless the statute is updated to make it explicit that job retention is not an eligible use of VEGI).

- a. Additionally the following language could be added to the review by the Administration Economist's run of the Cost-Benefit Model to ensure that they are able to review the "but for" details within the application that may inform how the model is run : (c) The Council shall contract with the executive branch State Economist to perform the cost-benefit analysis that includes review of all confidential material that would inform the award, using the Cost-Benefit Model when considering an application for incentives under subchapter 2 of this chapter.
4. In Sec. 3 – The composition of a panel may want to change to include members of the executive branch. It appears that the way it is currently drafted it may include asking JFO to contract with a third party to review the program. JFO does not think that this is an appropriate way to review the program, as local experts are probably most appropriate. To that end, it will be important that the panel remain small otherwise it will be difficult to obtain actionable next steps (maybe drop down to 3-5 members). You could also consider adding language that excludes members of VEPC and ACCD as panel members, however, they would be expected to be asked to provide testimony - but not be a part of the panel making unbiased recommendations.
5. The current bill does not change how information is shared with JFO or the Auditors office. You might want to consider adding some kind of blanket language that gives JFO/the auditor authority to request information as needed. Currently, JFO can only get information with authority granted by JFC (32 VSA 3341). If the statute stays as written, when VEPC submits a request to JFC, it will take more than one meeting to get their request approved because JFC to authorize JFO review. Then JFO will need the time between the meetings to review. Maybe updating existing language that allows JFO to request information with authorization of the Chair and/or Vice Chair of the JFC as needed? This is also different from the new language about requesting the recording of executive sessions – the language about making requests for information should be consistent across sections of the VEGI statute.
6. Some awards in the past have been made because the Agency has interpreted the statute in such a way that allows the awards to be given out to retain jobs, rather than create them. It might be worth considering adding language to subsection 3330 that clarifies that VEGI awards are not for job retention but for job creation. Or in section 3326, add some language that requires an update to the cost benefit model to address job retention vs job additions, as mentioned above.
7. The original bill contemplated the elimination of the LMA enhancement – it is still worth considering eliminating it in this iteration because it only allows for the elimination of the net revenue benefit for awards in all but 3 areas of the state and does not have a clear purpose. Alternatively you could make it more difficult to get an LMA enhancement.

Happy to discuss any of the items further if needed.

Thanks,
Emily

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