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H.10

Introduced by Representatives Kornheiser of Brattleboro and Marcotte of
Coventry

Referred to Committee on

Date:

Subject: Commerce and trade; economic development

Statement of purpose of bill as introduced: This bill proposes to amend the
Vermont Employment Growth Incentive Program.

An act relating to amending the Vermont Employment Growth Incentive
Program

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. chapter 105 is amended to read:

~~CHAPTER 105. VERMONT EMPLOYMENT GROWTH INCENTIVE-~~

THINK VERMONT INVESTMENT PROGRAM

Subchapter 1. Vermont Economic Progress Council

§ 3325. VERMONT ECONOMIC PROGRESS COUNCIL

(a) Creation. The Vermont Economic Progress Council is created to
exercise the authority and perform the duties assigned to it, including its
authority and duties relating to:

1 (1) the Vermont Employment Growth Incentive Program pursuant to
2 subchapter 2 of this chapter; and

3 (2) tax increment financing districts pursuant to 24 V.S.A. chapter 53,
4 subchapter 5 and section 5404a of this title.

5 (b) Membership.

6 (1) The Council shall have 11 ~~nine~~ voting members:-

7 ~~(A) nine who are residents of the State appointed by the Governor~~
8 ~~with the advice and consent of the Senate and~~ who are knowledgeable and
9 experienced in the subjects of community development and planning,
10 education funding requirements, economic development, State fiscal affairs,
11 property taxation, or entrepreneurial ventures and represent diverse
12 geographical areas of the State and municipalities of various sizes; appointed
13 as follows:

14 (A) ~~five~~ nine members appointed by the Governor with the advice and
15 consent of the Senate;

16 (B) ~~two~~ one members appointed by the Speaker of the House; and

17 (C) ~~two~~ one members appointed by the Senate Committee on Committees

18 ~~(B) one member of the Vermont House of Representatives appointed~~
19 ~~by the Speaker of the House; and~~

20 ~~(C) one member of the Vermont Senate appointed by the Senate~~
21 ~~Committee on Committees.~~

1 (2)(A) The Council shall have two regional members from each region
2 of the State, one appointed by the regional development corporation of the
3 region and one appointed by the regional planning commission of the region.

4 (B) A regional member shall be a nonvoting member and shall serve
5 during consideration by the Council of an application from ~~his or her~~ the
6 member's region.

7 * * *

8 (e) Operation.

9 (1) The Governor shall appoint a chair from the Council's members.

10 (2)(A) The Council shall receive administrative support from the
11 ~~Agency of Commerce and Community Development~~ Department of Financial
12 Regulation and the Department of Taxes.

13 ~~(B) The Council shall receive legal counsel exclusively from the~~
14 ~~Office of the Attorney General.~~

15 * * *

Subchapter 2: ~~Vermont Employment Growth Incentive~~ Think Vermont Investment Program

16 § 3330. PURPOSE; FORM OF INCENTIVES; ~~ENHANCED INCENTIVES~~;

17 ELIGIBLE APPLICANT

18 (a) Purpose. The purpose of the Vermont Employment Growth Incentive
19 Program is to generate net new revenue to the State by ~~encouraging~~ rewarding
incentivizing

20 a business ~~to add~~ for adding new payroll, ~~create~~ new jobs, ~~and make~~ or new

1 capital investments it otherwise would not have undertaken without the
2 incentive and sharing a portion of the revenue with the business.

3 (b) ~~Form of incentives; enhanced incentives.~~

4 (1) ~~The Vermont Economic Progress Council may approve an incentive~~
5 ~~under this subchapter in the form of a direct cash payment in annual~~
6 ~~installments.~~

7 ~~(2) The Council may approve the following enhanced incentives:~~

8 ~~(A) an enhanced incentive for a business in a labor market area with~~
9 ~~higher than average unemployment or lower than average wages pursuant to~~
10 ~~section 3334 of this title; and~~

11 ~~(B) an enhanced incentive for an environmental technology business~~
12 ~~pursuant to section 3335 of this title.~~

13 ~~(C) [Repealed.]~~

14 (e) Eligible applicant.

15 (1) Only a business may apply for an incentive pursuant to this
16 subchapter.

17 ~~(2) For purposes of the Program, the Council shall treat a business and~~
18 ~~its legal predecessor or successor in interest as the same entity.~~

19 * * *

§ 3331. Definitions

As used in this subchapter:

(1) "Award period" means the consecutive ~~five~~ **three** years during which a business may apply for an incentive under this subchapter.

(5) "~~Economically disadvantaged area~~" means labor market areas in which the average annual unemployment rate is greater than the average annual unemployment rate for the State or the average annual wage is less than the average annual wage for the State.

~~(8) "Payroll performance requirement" means the minimum value of Vermont gross salaries and wages a business must pay as compensation for one or more qualifying jobs.~~

(9) "Qualifying job" means a new, permanent position in Vermont that meets each of the following criteria:

(E) When the position is added to base employment, the business's total employment exceeds its ~~average highest annual~~ employment level during the two preceding years, unless the ~~business proves and the~~ Council determines that the business is establishing a significantly different, new line of business and creating new jobs in the new line of business that were not part of the business prior to filing its application.

(10) "Utilization period" means each year of the award period and the ~~four~~ **two** years immediately following each year of the award period.

20 § 3332. APPLICATION; APPROVAL CRITERIA

21 (a) Application.

1 (1) A business may apply for an incentive in one or more years of an
2 award period by submitting an application to the Council in the format the
3 Council specifies for that purpose.

4 (2) For each award year the business applies for an incentive, the
5 business shall:

6 ~~(A) specify a payroll performance requirement;~~

7 (B) specify a jobs performance requirement or a capital investment
8 performance requirement, or both; and

9 (C) provide any other information the Council requires to evaluate
10 the application under this subchapter.

11 (b) Mandatory criteria. The Council shall not approve an application
12 unless it finds:

13 (1) ~~Except as otherwise provided for an enhanced incentive for a
14 business in a qualifying labor market area under section 3334 of this title, the~~

15 ~~The new revenue the proposed activity would generate to the State would~~

16 ~~exceed the costs of the activity to the State.~~

17 (2) The host municipality welcomes the new business.

18 (3) Pursuant to a self-certification or other documentation the Council
19 requires by rule or procedure, the business attests to the best of its knowledge:

20 (A) the business is not a named party to an administrative order,
21 consent decree, or judicial order issued by the State or a subdivision of the

1 State, or if a named party, that the business is in compliance with the terms of
2 such an order or decree;

3 (B) the business complies with applicable State laws and rules; and

4 (C) the proposed economic activity would conform to applicable
5 town and regional plans and with applicable State laws and rules.

6 (4) If the business proposes to expand within a limited local market, an
7 incentive would not give the business an unfair competitive advantage over
8 other Vermont businesses in the same or similar line of business and in the
9 same limited local market.

10 (5) ~~But~~ The business attests that, but for the incentive, the proposed
11 economic activity:

12 (A) would not occur; or

13 (B) would occur in a significantly different manner that is
14 significantly less desirable to the State.

15 § 3333. CALCULATING THE VALUE OF AN INCENTIVE

16 ~~Except as otherwise provided for an enhanced incentive for a business in a~~
17 ~~qualifying labor market area under section 3334 of this title or an enhanced~~
18 ~~incentive for an environmental technology business under section 3335 of this~~
19 ~~title, the~~

20 Businesses may earn an incentive for both capital investments and creation of
qualifying jobs. The Council shall calculate the value of an incentive for an award
year as

21 follows:

~~1 (1) Calculate new revenue growth. To calculate new revenue growth,
2 the Council shall use the cost-benefit model created pursuant to section 3326
3 of this title to determine the amount by which the new revenue generated by
4 the proposed economic activity to the State exceeds the costs of the activity to
5 the State.~~

~~6 (2) Calculate the business's potential share of new revenue growth.
7 Except as otherwise provided for an environmental technology business in
8 section 3335 of this title, to To calculate the business's potential share of new
9 revenue growth, the Council shall multiply the new revenue growth determined
10 under subdivision (1) of this subsection by 80 percent.~~

~~11 (3) Calculate the incentive percentage. To calculate the incentive percentage, the
Council shall divide the business's potential share of new revenue growth by the sum
of the business's annual payroll performance requirements.~~

~~12 (4) Calculate qualifying payroll. To calculate qualifying payroll, the Council shall
subtract from the payroll performance requirement the projected value of
background growth in payroll for the proposed economic activity.~~

~~13 (5) Calculate the value of the incentive. To calculate the value of the incentive, the
Council shall multiply qualifying payroll by the incentive percentage.~~

14 (A) Each new qualifying job will yield an incentive amount of \$5,000. For all other
labor market economically disadvantaged areas, each new qualifying job will yield
an incentive amount of \$7,500; and.

15 (B) A capital investment incentive amount will be determined by calculating an
amount not to exceed the lesser of 20% or \$1,000,000 for the capital investments.

(6) Calculate the amount of the annual installment payments. To calculate the
amount of the annual installment payments, the Council shall:

~~(A) divide the value of the incentive for each award period by five three.; and~~

~~(B) adjust the value of the first installment payment so that it is proportional to the
actual number of days that new qualifying employees are employed in the first year
of hire.~~

11 * * *

12 § 3334. ~~ENHANCED INCENTIVE FOR A BUSINESS IN A QUALIFYING~~
13 ~~LABOR MARKET AREA~~

14 (a) ~~The Council may increase the value of an incentive for a business that is~~
15 ~~located in a labor market area in which:~~

16 ~~(1) the average annual unemployment rate is greater than the average~~
17 ~~annual unemployment rate for the State; or~~

18 ~~(2) the average annual wage is less than the average annual wage for the~~
19 ~~State.~~

20 (b) ~~In each calendar year, the amount by which the Council may increase~~
21 ~~the value of all incentives pursuant to this section is:~~

1 ~~(1) \$1,500,000.00 for one or more initial approvals; and~~

2 ~~(2) \$1,000,000.00 for one or more final approvals.~~

3 ~~(c) The Council may increase the cap imposed in subdivision (b)(2) of this~~
4 ~~section by not more than \$500,000.00 upon application by the Governor to,~~
5 ~~and approval of, the Joint Fiscal Committee.~~

6 ~~(d) In evaluating the Governor's request, the Committee shall consider the~~
7 ~~economic and fiscal condition of the State, including recent revenue forecasts~~
8 ~~and budget projections.~~

9 ~~(e) The Council shall provide the Committee with testimony,~~
10 ~~documentation, company specific data, and any other information the~~
11 ~~Committee requests to demonstrate that increasing the cap will create an~~
12 ~~opportunity for return on investment to the State.~~

13 ~~(f) The purpose of the enhanced incentive for a business in a qualifying~~
14 ~~labor market area is to increase job growth in economically disadvantaged~~
15 ~~regions of the State, as provided in subsection (a) of this section. [Repealed.]~~

16 § 3335. ~~ENHANCED INCENTIVE FOR ENVIRONMENTAL~~
17 ~~TECHNOLOGY BUSINESS~~

18 ~~(a) As used in this section, an "environmental technology business" means a~~
19 ~~business that:~~

20 ~~(1) is subject to income taxation in Vermont; and~~

1 ~~(2) seeks an incentive for economic activity in Vermont that the~~
2 ~~Secretary of Commerce and Community Development certifies is primarily~~
3 ~~research, design, engineering, development, or manufacturing related to one or~~
4 ~~more of the following:~~

5 ~~(A) waste management, including waste collection, treatment,~~
6 ~~disposal, reduction, recycling, and remediation;~~

7 ~~(B) natural resource protection and management, including water and~~
8 ~~wastewater purification and treatment, air pollution control and prevention or~~
9 ~~remediation, soil and groundwater protection or remediation, and hazardous~~
10 ~~waste control or remediation;~~

11 ~~(C) energy efficiency or conservation;~~

12 ~~(D) clean energy, including solar, wind, wave, hydro, geothermal,~~
13 ~~hydrogen, fuel cells, waste to energy, or biomass.~~

14 ~~(b) The Council shall consider and administer an application from an~~
15 ~~environmental technology business pursuant to the provisions of this~~
16 ~~subchapter, except that:~~

17 ~~(1) the business's potential share of new revenue growth shall be 90~~
18 ~~percent; and~~

19 ~~(2) to calculate qualifying payroll, the Council shall:~~

20 ~~(A) determine the background growth rate in payroll for the~~
21 ~~applicable business sector in the award year;~~

(A) maintains or exceeds its base payroll and base employment; and

~~(B) maintains or exceeds the payroll performance requirement specified for the award year; and~~

(C) if the business earns an incentive by meeting or exceeding the jobs performance target specified for the award year, maintains or exceeds the jobs performance requirement specified for the award year.

(b) Award year one.

(1) For award year one, a business has from the date it commences its proposed economic activity through December 31 of that year, plus two additional years, to meet the performance requirements specified for award year one.

(2) A business that does not meet the performance requirements specified for award year one within this period becomes ineligible to earn incentives for the award year and for all remaining award years in the award period.

(c) Award years two and three.

(1) For award year two ~~and award year three~~, beginning on January 1 of the award year, a business has three two years to meet the performance requirements specified for the award year.

(2) A business that does not meet the performance requirements specified for award year two ~~or for award year three~~ within ~~three two~~ years becomes ineligible to earn incentives for the award year and for all remaining award years in the award period.

~~(d) Extending the earning period in award years one and two. Notwithstanding subsections (b) (c) of this section:~~

~~(1) Upon request, the Council may extend the period to earn an incentive for~~

~~award year one or award year two if it determines:~~

~~(A) a business did not earn the incentive for the award year due to facts or circumstances beyond its control; and~~

~~(B) there is a reasonable likelihood the business will earn the incentive within the extended period.~~

~~(2) The Council may extend the period to earn an incentive:~~

~~(A) for award year one, by two years, reviewed annually; or~~

~~(B) for award year two, by one year.~~

~~(3) If the Council extends the period to earn an incentive, it shall recalculate the value of the incentive using the cost-benefit model and shall adjust the amount of the incentive as is necessary to account for the extension.~~

~~(e) Award year four.~~

~~(1) Beginning on January 1 of award year four, a business that remains eligible to earn incentives has two years to meet the performance requirements specified for award year four.~~

~~(2) A business that does not meet the performance requirements specified for award year four within two years becomes ineligible to earn incentives for award year four and award year five.~~

(f) Award year ~~five~~ three.

(1) Beginning on January 1 of award year ~~five~~ three, a business that remains eligible to earn incentives has one year to meet the performance requirements specified for award year ~~five~~ three.

(2) A business that does not meet the performance requirements specified for

award year ~~five~~ **three** by the end of that award year becomes ineligible to earn the incentive specified for that award year.

(g) Carrying forward growth that exceeds targets. ~~Carrying forward growth that exceeds targets.~~ If a business exceeds one or more of the payroll performance requirement, the jobs performance requirement, or the capital investment performance requirement specified for an award year, the business may apply the excess payroll, excess jobs, and excess capital investment toward the performance requirement specified for a future award year, provided that the business maintains the excess payroll, excess jobs, or excess capital investment into the future award year.

§ 3340. Reporting

(a) On or before September 1 of each year, the Vermont Economic Progress Council and the Department of Taxes shall submit a joint report on the incentives authorized in this subchapter to the House Committees on Ways and Means, on Commerce and Economic Development, and on Appropriations, to the Senate Committees on Finance, on Economic Development, Housing and General Affairs, and on Appropriations, and to the Joint Fiscal Committee.

(b) The Council and the Department shall include in the joint report:

(1) the total amount of incentives authorized during the preceding year **and the amount per business;**

(2) with respect to each business with an approved application:

(A) the date and amount of authorization;

(B) the calendar year or years in which the authorization is expected to be exercised;

(C) whether the authorization is active; and

(D) the date the authorization will expire; and

(E) the aggregate number new qualifying jobs anticipated to be created;

(F) the aggregate amount of new full-time payroll anticipated to be created and average wage; and

(G) NAICS Code

(3) the following aggregate information for claims processed:

(A) the number of claims and incentive payments made in the current and prior claim years;

(B) the number of qualifying jobs for each approved claim; and

(C) the amount of new payroll and capital investment for each approved claim.

(c) The Council and the Department shall present data and information in the joint report in a searchable format.

(d) Notwithstanding any provision of law to the contrary, an incentive awarded pursuant to this subchapter shall be treated as a tax expenditure for purposes of chapter 5 of this title.

9 § 3341. CONFIDENTIALITY OF PROPRIETARY BUSINESS

10 INFORMATION; ~~ACCESS TO INFORMATION~~

11 (a) The Vermont Economic Progress Council and the Department of Taxes

12 shall use measures to protect proprietary financial ~~return~~ information,-

13 ~~including reporting information in an aggregate form of a business, as defined~~

14 ~~in section 3102 of this title, consistent with this section.~~

15 (b)(1) Information and materials submitted by a business concerning its

16 income taxes and other confidential financial ~~Return~~ information shall not be ~~is~~

17 ~~not~~ subject to public disclosure under the State's public records law in 1

18 V.S.A. chapter 5, but shall be available, _

19 ~~(2) The Council shall make available all the information that a business~~

20 ~~submits to the Council in the course of its application to and participation in~~

21 ~~the Program, including return information.~~

1 (A) to the Joint Fiscal Office, or to its agent, upon authorization of
2 the Joint Fiscal Committee or a standing committee of the General Assembly;
3 and shall also be available

4 (B) to the Auditor of Accounts in connection with the performance of
5 duties under section 163 of this title; provided, however, that the

6 (3) The Joint Fiscal Office or its agent and the Auditor of Accounts shall
7 not disclose, directly or indirectly, to any person any proprietary business
8 return information or any information that would identify a business except in
9 accordance with a judicial order or as otherwise specifically provided by law.

10 (c) Nothing in this section shall be construed to prohibit the publication of
11 statistical information, rulings, determinations, reports, opinions, policies, or
12 other information so long as the data are disclosed in a form that cannot
13 identify or be associated with a particular business. ~~Repealed.~~

14 § 3342. ANNUAL PROGRAM CAP; LIMITATION ON AWARDS IN
15 PERIODS OF LOW UNEMPLOYMENT

16 (a) In each calendar year, the Vermont Economic Progress Council may
17 approve one or more incentives under this subchapter, the total value of which
18 shall not exceed:

19 (1) \$15,000,000.00 for one or more initial and final approvals; and

20 ~~(2) \$10,000,000.00 for one or more final approvals.~~

1 (b) The Council may increase the cap imposed in subdivision (a)(2) of this
2 section by not more than \$5,000,000.00 upon application by the Governor to,
3 and approval of, the Joint Fiscal Committee.

4 (c) In evaluating the Governor's request, the Committee shall consider the
5 economic and fiscal condition of the State, including recent revenue forecasts
6 and budget projections.

7 (d) The Council shall provide the Committee with testimony,
8 documentation, company-specific data, and any other information the
9 Committee requests to demonstrate that increasing the cap will create an
10 opportunity for return on investment to the State.

~~11 (e) Notwithstanding any provision of this subchapter to the contrary, the
12 Council shall not award any incentives during the six-month period following a
13 January or July consensus revenue forecast if the State unemployment rate at
14 the time of the forecast is five percent or lower.~~

~~15 Sec. 2. IMPLEMENTATION~~

~~16 (a) Subject to subsections (b) and (c) of this section, 32 V.S.A. §§ 3341 and
17 3342, as amended in Sec. 1 of this act, apply to current and future participants
18 in the Vermont Employment Growth Incentive Program.~~

~~19 (b) A business with an approved application may opt out of the amended
20 reporting requirements in 32 V.S.A. §§ 3341 and 3342 and withdraw from
21 future participation in the Program, except as otherwise provided in subsection~~

1 ~~(c) of this section, by providing written notice of its intent to the Vermont~~
2 ~~Economic Progress Council on or before December 31, 2023.~~
3 ~~(c) A business that provides notice pursuant to subsection (b) of this section~~
4 ~~is subject to and shall comply with the requirements of 32 V.S.A. chapter 105~~
5 ~~as it appeared prior to the effective date of this act for the remainder of its~~
6 ~~participation in the Program.~~

2016 Acts and Resolves No. 157, Sec. H.12 is amended to read:

~~Sec. H.12. VEGI; REPEAL OF AUTHORITY TO AWARD INCENTIVES~~

~~—Notwithstanding any provision of law to the contrary, the Vermont Economic
Progress Council shall not accept or approve an application for a Vermont Employment
Growth Incentive under 32 V.S.A. chapter 105, subchapter 2 on or after January 1, 2024.~~

[Repealed]

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on ~~July 1, 2023~~ January 1, 2024.