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 form 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

Emily Byrne | Associate Fiscal Officer
Legislative Joint Fiscal Office | Vermont General Assembly
One Baldwin Street | Montpelier, VT 05633
802-477-2304 cell
802-828-5768 office