

Act No. 199 (S.220). Economic development; commerce; banking; land use; education; workers' compensation

An act relating to furthering economic development

Sec. 1: One-Stop Shop Web Portal

Sec. 1 directs the Secretary of State, the Department of Taxes, Department of Labor, the Vermont Attorney General, the Agency of Commerce and Community Development (ACCD), and the Agency of Administration to coordinate with other relevant agencies and departments within State government and outside partners, including regional development corporations, regional planning commissions, and small business development centers, to provide comprehensive business services, regional coaching teams, print materials, other outreach, and a "One-Stop Shop" on or before June 30, 2015, and requires a status report on the project on or before January 15, 2015.

Secs. 4–5: Vermont Entrepreneurial Lending Program and Investment Tax Credit

Sec. 4 amends 10 V.S.A. chapter 12 to create the "Vermont Entrepreneurial Lending Program," a lending program within the Vermont Economic Development Authority (VEDA) whose purpose will be to meet the capital needs of seed, start-up, and early growth-stage businesses that do not meet the underwriting criteria of other public and private lending institutions. New language in 10 V.S.A. § 280bb does not provide mandatory lending criteria, but does provide guidance to VEDA regarding potential targeted lending activities, including (1) loans up to \$100,000.00 for manufacturing businesses with innovative products that typically reflect long-term growth; (2) loans up to \$1,000,000.00 to early growth stage companies who do not meet the current underwriting criteria of other public and private lending institutions; and (3) loans to businesses that are unable to access adequate capital resources because the primary assets of these businesses are typically intellectual property or similar nontangible assets. New language in subsection (c) of that section also directs VEDA to give additional consideration and weight to applications from businesses whose practices "have a demonstrable effect in achieving other public policy goals of the State," such as creating jobs in strategic sectors, location in a designated downtown, energy and thermal efficiency practices, or offering livable wage jobs." Finally, new language in subsection (d) requires that a loan recipient will maintain operations in Vermont for a minimum of five years.

Sec. 5 relates to the capitalization of the Entrepreneurial Lending Program, directing VEDA to capitalize loan loss reserves with up to \$1 million from its funds or eligible federal funds it administers, and any FY 2014 or FY 2015 funds appropriated or authorized by the General Assembly.

Sec. 6: Vermont Agricultural Credit Program

Sec. 6: (1) increases the maximum balance limit on loans available to borrowers under the Program to the higher of the Farm Services Agency limit (currently \$1.3 million) or \$2 million; and (2) adds forestry and forest-based businesses to eligible participants in the Program.

Sec. 7: Connecting Capital Providers; Networking Initiatives

Sec. 7 directs ACCD to support networking events to connect capital providers and Vermont entrepreneurs.

Secs. 8–11: Downtown Tax Credits; Qualified Technology Project

Secs. 8–11 expand eligible projects for the tax credit program to include qualified technology projects to install or improve data or network wiring, or heating, ventilating, or cooling systems reasonably related to data or network installations or improvements, in a qualified building, which qualify for a maximum tax credit of \$30,000.00.

Sec. 12: Implementing State Energy Policy; Manufacturing

Sec. 12 adds 30 V.S.A. § 218e, which provides that implementation of the State’s energy policy should: (1) encourage recruitment and retention of employers providing high quality jobs and related economic investment and support the State’s economic welfare; and (2) appropriately balance the objectives of this section with the other policy goals and criteria established in this title.

Sec. 13. Investigation; Electricity Costs; Manufacturing

Sec. 13 directs the Commissioner of Public Service and the Secretary of Commerce and Community Development, in consultation with the Public Service Board and other public and private stakeholders, to conduct an investigation of how best to advance the public good through consideration of the competitiveness of Vermont’s industrial or manufacturing businesses with regard to electricity costs and to provide a status report to the General Assembly by December 15, 2014 and a final report by December 15, 2015.

Sec. 14: Domestic Export Program

Sec. 14 directs the Secretary of Agriculture, Food and Markets, in collaboration with the Agency of Commerce and Community Development and the Chief Marketing Officer, to create—subject to available funding—a Domestic Export Program Pilot Project within the “Made in Vermont” designation program, the purpose of which shall be to: connect Vermont producers with brokers, buyers, and distributors in other U.S. state and regional markets, provide technical and marketing assistance to Vermont producers, and provide matching grants of up to \$2,000.00 per business per year (subject to available funding) to attend trade shows and similar events to expand producers’ market presence in other U.S. states.

Secs. 15–17: Criminal Penalties for Computer Crimes; Statute of Limitations

Sec. 15 increases the penalties for alteration, damage, interference, theft, or destruction of a computer, system, or network, and allows the recovery of costs and fees in a successful civil action for these violations.

Sec. 16 extends the statute of limitations for an action alleging misappropriation of trade secrets from three to six years.

Sec. 17 allows the recovery of costs and fees in a successful civil action for the misappropriation of a trade secret.

Sec. 18: State Contracting; Intellectual Property, Software Design, IT

Sec. 18 directs the Secretary of Administration to include in its procurement policies a provision that would allow State agencies to provide in its contracts with information technology (IT) and software businesses the ability for the private contractor to use the intellectual property (IP) created under the contract for other commercial purposes, to secure license fees or royalty rights for the State, and to secure the State's right to further use the IP.

Sec. 19: Small Business Access to Capital

Sec. 19 directs the Department of Financial Regulation (DFR) to report to the General Assembly by January 15, 2015 on studies concerning crowdfunding and the Vermont Small Business Offering Exemption, and to conduct at least two small business issuer education and outreach events.

Sec. 20: Study – Licensed Lender Requirements; Commercial Lenders

Sec. 20 directs the Department of Financial Regulation to evaluate and report to committees of jurisdiction any statutory and regulatory changes to the State's licensed lender requirements that are necessary to open private capital markets and remove unnecessary barriers to business investment in Vermont.

Sec. 21: Licensed Lender Exemption for De Minimis Lending Activity

Sec. 21 creates an exemption from the licensed lender and Mortgage Loan Originator license requirement for a person who makes no more than three mortgage loans in any consecutive three-year period and creates a rebuttable presumption that a person who is exempt from licensure pursuant to this exemption is not engaged in the business of making loans or being a mortgage loan originator.

Sec. 22: Credit Facility for Vermont Clean Energy Loan Fund

Sec. 22 amends Act No. 87 (H.395 - 2013) and provides the Treasurer additional flexibility to structure a credit facility for the benefit of the Vermont Economic Development Authority to provide funds for sustainable energy projects through the Clean Energy Loan Fund.

Sec. 23–25: Vermont State Treasurer; Credit Facility for Local Investments; Treasurer's Local Investment Advisory Committee

Sec. 23 authorizes the Treasurer to establish a credit facility of up to 10 percent of the State's average cash balance on terms acceptable to the Treasurer consistent with the provisions of the Uniform Prudent Investor Act, 14A V.S.A. chapter 9.

Sec. 24 creates the Treasurer's Local Investment Advisory Committee to advise the Treasurer on funding priorities for credit facilities authorized by current law and to address other mechanisms to increase local investment.

Sec. 25 sunsets Secs. 23–24 on July 1, 2015

Sec. 26: Unlicensed Loan Transactions

Sec. 26 exempts the business-to-business operations of an interbank clearinghouse from individual consumer protection provisions regarding unlicensed loan transactions.

Secs. 27–33: Telecommunications Permitting

Sec. 27: Telecommunications facility permitting, 30 V.S.A. § 248a

- Extends the sunset of Public Service Board (PSB) authority to approve telecommunications facilities to July 1, 2017.
- Clarifies that municipal legislative bodies and planning commissions have the right to appear and participate and that they may hold a meeting on the application to be attended by the applicant and the Department of Public Service (DPS) on the municipality's request.
- Requires the PSB to make a detailed written ruling on each recommendation of a municipal legislative body and planning commission.
- Clarifies that the DPS may retain experts and allocate costs to the applicant. A municipality may request that the DPS retain an expert. If the request is granted, the DPS and the expert are not required to agree with the municipality's position.
- Requires the DPS to create a citizen's guide to the telecommunications facility permitting process.

Sec. 28. Telecommunications facility permitting, PSB revision of procedures order

After an opportunity for public comment, requires the PSB to amend its telecommunications facility permitting procedures and define the terms “substantial deference” and “good cause” as used in 30 V.S.A. § 248a.

Sec. 29. Telecommunications facility permitting; report

Requires the DPS to submit to House Commerce and Senate Finance a report assessing the telecommunications facility review process under 30 V.S.A. § 248a, including the number of applications made and granted during the year ending August 31, 2015. DPS to file the report by October 1, 2015.

Secs. 30–31. Telecommunications facility permitting; appeals

Extends the sunset of PSB authority to hear appeals of Agency of Natural Resources (ANR) permits for telecommunications facilities to July 1, 2017.

Sec. 32. Telecommunications facility permitting; municipal land use bylaws

Repeals the sunset of provisions that exempt the following from municipal land use regulation, making the exemptions permanent:

- ancillary improvements to telecommunications facilities, if the improvements do not exceed a footprint of 300 square feet and a height of 10 feet
- the attachment of a new or replacement communications cable or wire to an existing utility pole
- the replacement of a utility pole for the purpose of installing a communications line if the new pole is not more than 10 feet taller than the pole it replaces

Sec 33. Telecommunications facility permitting; ANR billbacks

Extends to July 1, 2017 the sunset of a limit to \$10,000.00 on the amount that ANR can bill back to a telecommunications facility for the costs of reviewing a stormwater discharge permit.

Sec. 34: JFO ACCD Demographic Study

Sec. 34 directs the Agency of Commerce and Community Development, with consultation and review by the legislative economist and the Joint Fiscal Office (JFO), to conduct an economic impact analysis, including study of demographic and infrastructure impacts associated with recently announced development projects in the Northeast Kingdom of Vermont, and shall submit its findings on or before December 1, 2014.

Sec. 35: Tourism Funding Study

Sec. 35 directs the Secretary of Commerce and Community Development to submit to committees of jurisdiction a report that analyzes the results of the performance-based funding pilot project for the Department of Tourism and Marketing and recommends appropriate legislative or administrative changes to the funding mechanism for tourism and marketing programs.

Secs. 36–39: Natural Resources and Land Use Provisions

Sec. 36 adds to the authority of VEDA the ability to finance, under its subchapter 5 authority (lending to private developers), to provide loans and assistance for the planning, development, or improvement of an industrial park or an eligible project within an industrial park.

Sec. 37 defines “industrial park” under Act 250 as land subject to an Act 250 permit that is planned, designed, and zoned as a location for one or more industrial buildings, that includes adequate infrastructure and services for the industrial buildings, and that includes no retail use except that which is incidental to an industrial use, and no office use except that which is incidental or secondary to an industrial use.

Sec. 38 directs the Natural Resources Board to review its master plan policy under Act 250 and begin the process of adopting the policy as a rule. The proposed rule is to include provisions for efficient master plan permitting and amendments for industrial parks.

Sec. 39 amends the primary agricultural soil mitigation requirements for existing industrial parks permitted under Act 250. The bill would strike a reference to the definition of “industrial park” under 10 V.S.A. § 212 and instead rely on the definition of industrial park added in Sec. 15. The bill also directs that, on an application for a permit amendment for an industrial park, the District Commission shall allow full use of the land consistent with the Act 250 criteria. The effect would be to allow for the expansion and full use of a permitted industrial park without requiring a finding, as under current law, that the expansion will realize the land’s maximum economic development potential.

Secs. 41–45: Workforce Education and Training

Sec. 41 amends 10 V.S.A. chapter 22A, governing workforce education and training within the Department of Labor (DOL).

§ 540 – declares the Commissioner of Labor to be the leader of workforce education and training in the State and articulates the associated responsibilities of the position.

§ 541a – redesignates the Workforce Development Council as the State Workforce Investment Board, alters its composition and duties, and provides additional guidance on its role in workforce and education and training in the State.

§ 541b - addresses in one section other agencies' duties to provide information and coordinate with the Department of Labor.

§ 543 – amends the eligibility criteria for grants through the Workforce Education and Training Fund.

Sec. 42 addresses the eligibility criteria and authority of the Secretary of Commerce and Community Development for the Vermont Training Program.

Sec. 43 repeals certain workforce education and training provisions in session law that have been incorporated into § 540 above.

Sec. 44 directs the Commissioner of Labor and the Secretary of Commerce and Community Development to submit proposals on or before November 1, 2014 regarding best practices for the Workforce Education and Training (WET) fund and the Vermont Training Program, respectively.

Sec. 45 directs the Commissioner of Labor to study and report on expanding internship opportunities for 15–18 year olds.

Secs. 46–48: Vermont Strong Scholars and Internship Initiative

Sec. 46 amends the title of 16 V.S.A. chapter 90 to reflect more accurately the sections in that chapter.

Sec. 47 adds a new § 2888 within 16 V.S.A. chapter 90 creating the Vermont Strong Scholars and Internship Initiative, which includes a postsecondary loan forgiveness program for Vermont residents who graduate from Vermont postsecondary institutions and take a job in Vermont in an economic sector designated by the Secretary of Commerce and Community Development and the Commissioner of Labor as critical to the Vermont economy; also creates an internship program for Vermont residents or students at Vermont postsecondary institutions to build experiential opportunities for students and the workforce available to Vermont employers.

Sec. 48 directs the Secretary of Commerce and Community Development to report to the Joint Fiscal Committee on the Vermont Strong loan forgiveness program details, including funding sources, mechanisms, and expansion to include out-of-state residents attending school in Vermont and Vermont residents attending schools outside Vermont.

Sec. 49: Vermont Products Program; Study

Sec. 49 directs the Secretaries of Commerce and Community Development and of Agriculture, Food and Markets, and the Vermont Attorney General, to identify and report collaboratively on the creation of a Vermont Products Program and the replacement of the Vermont origin rule.

Secs. 50–66: Workers' Compensation

Secs. 50–51 (burial and funeral expenses) increase caps for actual burial and funeral expenses an employer shall pay; directs Commissioner of Labor to report every two years on possible adjustment of cap.

Sec. 52 (opioid deterrence) directs Commissioner of Labor to adopt rules consistent with the best practices governing the prescription of opioids.

Sec. 53 (Vocational Rehab) directs Commissioner of Labor to adopt rules on early return-to-work programs.

Sec. 54 (Discontinuance of benefits) – adds one new component (14 days):

If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of 14 days. The objection to the discontinuance shall be specific as to the reasons and include supporting evidence. A copy of the objection shall be provided to the employer at the time the request is made to the Commissioner.

Sec. 54a Repeals the above change to discontinuance on July 1, 2018.

Sec. 54b Reinstates current law on discontinuance effective July 1, 2018.

Sec. 54c Department of Labor study on effects of Sec. 54 changes to discontinuance; report on January 15, 2017.

Sec. 55 (Posting of Safety Records) – requires posting of workplace safety record information.

Sec. 56 (Cancellation of Insurance Contracts) – contract cannot be cancelled within time specified in contract; notice of cancellation must be filed with Commissioner in accordance with rules and provided to the employer by certified mail.

Sec. 57 (Notice of Intent Not to Renew Policy) – governs notice requirements to employer and Commissioner of intent not to renew.

Sec. 58 (Robert H. Wood Training Center Study) – directs DOL and Office of Risk Management to study injuries, etc., at training center.

Sec. 59 (Workplace Safety Ranking Study) – directs DOL and DFR to study whether employers may access information to compare workplace safety experience with others.

Sec. 60 (Unified Pain Management System Advisory Council) – changes composition of council to include Commissioner of Labor, clinicians, and a consumer representative.

Sec. 61 (Process and Procedure) – requires that any communication from an employer not on a prescribed form must include an advisory statement to contact DOL to determine a right to object, appeal, or seek information. When an employer communicates to an employee other than on a prescribed form, the communication must include a statement advising the claimant that he or she should contact DOL to determine any right to object or appeal.

Sec. 62 (Procedure in Obtaining Compensation; Medical Examination; Video and Audio Recording) – provides that an examination shall be within 2-hour driving of residence of

an injured employee, with discretion to Commissioner of Labor to permit examination further for a specialist.

Sec. 63 (Fraud) – requires investigation of fraud claims, establishes process for disputes; orders repayment of compensation in cases of fraud; fraud payments not charged to employer’s experience rating.

Sec. 64 (Fraud Study and Report) – directs DOL to study best practices to detect and deter workers’ compensation (WC) fraud.

Sec. 65 (Subrogation) – adds new subdivision 624(e)(2) governing reimbursement for recovery of damages, allocation of damages, and mediation/arbitration process for disputes over allocation.

Sec. 66 (Costs; Attorney’s Fees) – specifies recovery of costs and fees includes attorney’s fees, deposition expenses, subpoena fees, and expert witness fees.

Secs. 67–68: Notice of Data Security Breach; Notice to Insurers

Sec. 67 changes 9 V.S.A. § 2435, Vermont’s Security Breach Notice Act; requires a Vermont law enforcement agency with a reasonable belief that a security breach has or may have occurred at a specific business to notify that business of its belief in writing; must also inform the business that additional information on the security breach may need to be furnished to the Vermont Office of the Attorney General or the Vermont Department of Financial Regulation; the notification must include the website and telephone number for the Office of the Attorney General and the Department of Financial Regulation.

Sec. 68 adds 8 V.S.A. § 3666 to direct DFR to adopt rules specifying the methods by which a notice to a party required under certain insurance laws shall be given.

Sec. 69: Effective Dates

Multiple effective dates, beginning on June 24, 2014