

Senate proposal of amendment

H. 872

An act relating to Executive Branch fees

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1, 6 V.S.A. § 1, in subdivision (a)(13), in the final sentence, by striking out the final sentence in its entirety and inserting in lieu thereof The Secretary may assess a late fee of \$27.00, provided that the late fee is no greater than the fee due, in which case the late fee shall equal the fee due, for any license, registration, permit, or certification renewal that is received more than 30 days past expiration unless a higher late renewal fee is otherwise prescribed by statute;

Second: In Sec. 5, 6 V.S.A. § 366, in subdivision (a)(1), after “a \$150.00” by striking out “base fee” and inserting in lieu thereof minimum tonnage fee

Third: In Sec. 13, 6 V.S.A. § 1112, in subdivision (a)(4), after “a maximum of”, by striking out “\$100.00” and inserting in lieu thereof \$120.00

Fourth: In Sec. 13, 6 V.S.A. § 1112, after subdivision (a)(6), before the existing period, by inserting a semicolon ; and by inserting a subdivision (7) to read as follows:

(7) Government, Municipal, and Public Education Institution Applicators—\$30.00

Fifth: In Sec. 16, 6 V.S.A. § 2724(b), after “under the supervision of a person that is registered.” in the sentence before the final sentence, by striking out the final sentence in its entirety.

Sixth: After Sec. 33, by inserting a Sec. 33a to read as follows:

Sec. 33a. 9 V.S.A. § 5410 is amended to read:

§ 5410. FILING FEES

(a) A person shall pay a fee of ~~\$250.00~~ \$300.00 when initially filing an application for registration as a broker-dealer and a fee of ~~\$250.00~~ \$300.00 when filing a renewal of registration as a broker-dealer. A separate application in writing for branch office registration or renewal, accompanied by a filing fee of ~~\$100.00~~ \$120.00 per branch office, shall be filed in the Office of the Commissioner in such form as the Commissioner may prescribe by any broker-dealer who transacts business in this State from any place of business located within this State. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(b) The fee for an individual is ~~\$60.00~~ \$85.00 when filing an application for registration as an agent, ~~\$60.00~~ \$85.00 when filing a renewal of registration as an agent, and ~~\$60.00~~ \$85.00 when filing for a change of registration as an

agent. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(c) A person shall pay a fee of ~~\$250.00~~ \$300.00 when filing an application for registration as an investment adviser and a fee of ~~\$250.00~~ \$300.00 when filing a renewal of registration as an investment adviser. A separate application in writing for branch office registration or renewal, accompanied by a filing fee of ~~\$100.00~~ \$120.00 per branch office, shall be filed in the Office of the Commissioner in such form as the Commissioner may prescribe by any investment adviser who transacts business in this State from any place of business located within the State. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(d) The fee for an individual is ~~\$55.00~~ \$80.00 when filing an application for registration as an investment adviser representative, ~~\$55.00~~ \$80.00 when filing a renewal of registration as an investment adviser representative, and ~~\$55.00~~ \$80.00 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the Commissioner shall retain the fee.

(e) A federal covered investment adviser required to file a notice under section 5405 of this title shall pay an initial fee of ~~\$250.00~~ \$300.00 and an annual notice fee of ~~\$250.00~~ \$300.00. To the extent required to be included in documents filed with the Securities and Exchange Commission, such notice filing shall include information on the branch offices of a federal covered investment adviser who transacts business in this State from any place of business located within this State, accompanied by a notice filing fee of ~~\$100.00~~ \$120.00 per branch office in Vermont. A notice filing may be terminated by filing notice of such termination with the Commissioner. If a notice filing results in a denial or withdrawal, the Commissioner shall retain the fee.

* * *

Seventh: In Sec. 34, 32 V.S.A. § 602 (definitions), in subdivision (2) (definition of “fee”), by striking out subparagraph (A) in its entirety and inserting in lieu thereof a new subparagraph (A) to read as follows:

(A) Means a monetary charge by an agency ~~or~~, ~~the judiciary~~ Judiciary, or a municipal official when that charge is established in statute, for a service or product provided to, or the regulation of, specified classes of individuals or entities.

Eighth: By inserting a new section to be numbered Sec. 34a to read as follows:

Sec. 34a. 32 V.S.A. chapter 7, subchapter 6 is amended to read:

Subchapter 6. Executive and Judicial Branch Fees; Municipal Fees

§ 601. STATEMENT OF PURPOSE

It is the purpose of this subchapter to establish a uniform policy on the creation and review of Executive and Judicial Branch fees and statutorily established municipal fees, and to require that any such fee be created solely by the General Assembly.

* * *

§ 605b. MUNICIPAL ADVISORY COMMITTEE; CONSOLIDATED
MUNICIPAL FEE REPORT AND REQUEST

(a) Creation. There is created a Municipal Advisory Committee for the purpose of preparing a municipal fee report and request to be submitted to the General Assembly every three years.

(1) The Committee shall be composed of the following five members:

(A) two municipal officials, one of whom is from a small town, and one of whom is from a big town, and one of whom receives fees as salary, and one of whom does not receive fees as salary, who are current members of the Vermont Municipal Clerks' and Treasurers' Association (VMCTA), and who shall be appointed by the Governor after recommendation by the VMCTA;

(B) two municipal officials, one of whom is from a small town, and one of whom is from a big town, and one of whom receives fees as salary, and one of whom does not receive fees as salary, who are not members of the VMCTA, and who shall be appointed by the Governor after recommendation by the Vermont League of Cities and Towns; and

(C) The Secretary of State or designee.

(2) The Secretary of State or designee shall be the Chair of the Committee. The Chair shall call the first meeting of the Committee to occur on or before September 1, 2016. A majority of the membership shall constitute a quorum.

(3) The Committee shall have the administrative, technical, and legal assistance of the Secretary of State.

(4) There shall be no reimbursement for attendance at meetings of the Municipal Advisory Committee.

(b) Duties; generally. The Committee shall submit a consolidated municipal fee report and request no later than the third Tuesday of the legislative session of 2017 and every three years thereafter. The report shall be submitted to the House Committee on Ways and Means, the Senate Committee on Finance, and the House and Senate Committees on Government Operations. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(c) Fee report. After the Committee consults with any affected agency, a fee report shall contain for each fee required to be paid to a municipality that the Committee recommends be amended:

(1) its statutory authorization and termination date if any;

(2) its current rate or amount and the date this was last set or adjusted by the General Assembly;

(3) the fund into which its revenues are deposited; and

(4) the revenues derived from it in each of the two previous fiscal years.

(d) Fee request. A fee request shall contain any proposal to:

(1) Create a new fee, or change, reauthorize, or terminate an existing fee, which shall include a description of the services provided or the function performed.

(2) Set a new or adjust an existing fee rate or amount. Each new or adjusted fee rate shall be accompanied by information justifying the rate, which may include:

(A) the relationship between the revenue to be raised by the fee or change in the fee and the cost or change in the cost of the service, product, or regulatory function supported by the fee, with costs construed pursuant to subdivision 603(2) of this title;

(B) the inflationary pressures that have arisen since the fee was last set;

(C) the effect on budgetary adequacy if the fee is not increased;

(D) the existence of comparable fees in other jurisdictions;

(E) policies that might affect the acceptance or the viability of the fee amount; and

(F) other considerations.

§ 606. LEGISLATIVE FEE REVIEW PROCESS; FEE BILL

When the consolidated fee reports and requests are submitted to the General Assembly pursuant to ~~sections~~ section 605, and 605a, or 605b of this ~~title~~ subchapter, they shall immediately be forwarded to the House Committee on Ways and Means, which shall consult with other standing legislative committees having jurisdiction of the subject area of a fee contained in the reports and requests. As soon as possible, the Committee on Ways and Means shall prepare and introduce a “consolidated fee bill” proposing:

* * *

Ninth: After Sec. 34, 32 V.S.A. § 602, by inserting a reader assistance and Secs. 34b through 34d to read as follows:

* * * EB-5; Regulation; Oversight; Fees * * *

Sec. 34b. 10 V.S.A. § 20 is added to read:

§ 20. EB-5 PROGRAM; REGULATION; OVERSIGHT

(a) The U.S. Department of Homeland Security's U.S. Citizenship and Immigrations Services (USCIS) administers the EB-5 Program, a federal program designed to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Vermont EB-5 Regional Center is a USCIS-designated regional center. The Center is managed by the Agency of Commerce and Community Development in partnership with the Department of Financial Regulation.

(b) The Agency of Commerce and Community Development has the personnel and resources to market and promote economic opportunities in Vermont, whereas the Department of Financial Regulation has the personnel and resources to supervise financial services and products offered in Vermont in a manner that advances fair business practices and protects the investing public. It is imperative that management of the EB-5 Program reflect the existing expertise of both these State entities.

(c) The Secretary of Commerce and Community Development and the Commissioner of Financial Regulation shall separately adopt rules pertaining to the administration and oversight of the EB-5 Program. The rules shall be consistent with federal regulations and requirements as well as with the statutory expertise of the Department and Agency.

(d) The rules adopted under this section shall be modeled after the Memorandum of Understanding between the Agency of Commerce and Community Development and the Department of Financial Regulation, dated December 22, 2014, which pertains to the duties and responsibilities of the Agency and the Department with respect to the EB-5 Program. As such, the rules shall include provisions related to:

- (1) communication with and reporting to the USCIS;
- (2) marketing activities;
- (3) required provisions pertaining to private placement memoranda;
- (4) securities analysis and standards for project approval;
- (5) ongoing oversight and compliance of approved projects, including annual audits;

(6) the establishment of escrow accounts for capital investments and third-party oversight of requisitions, if deemed appropriate by the Commissioner and Secretary;

(7) investor relations and a formal complaint protocol;

(8) standards for revoking approval of a project;

(9) penalties for failure to comply with rules adopted under this section;

(10) communication between the Agency and the Department, as well as with media outlets and with other regulatory or law enforcement entities;

(11) fees and costs of the Regional Center, consistent with subsection 21(c) of this title; and

(12) any other matter the Commissioner and the Secretary determine will strengthen the oversight and management of the EB-5 Program and prevent fraudulent activities.

(e) The rules adopted under this section shall explicitly state that any interest obtained through a capital investment in the EB-5 Program is a “security” as defined in 9 V.S.A. § 5102(28) and as such is subject to regulation by the Commissioner of Financial Regulation under the Vermont Uniform Securities Act, 9 V.S.A. chapter 150.

Sec. 34c. 10 V.S.A. § 21 is amended to read:

§ 21. EB-5 SPECIAL FUND

(a) An EB-5 Special Fund is created ~~for the operation of the State of~~ to support the operating costs of the Vermont Regional Center for Immigrant Investment under the federal EB-5 Program. The Fund shall consist of revenues derived from administrative charges by the Agency of Commerce and Community Development pursuant to subsection (c) of this section, any interest earned by the Fund, and all sums which are from time to time appropriated for the support of the Regional Center and its operations. It is the intent of the General Assembly, however, that the collection of charges authorized by this section will obviate the need for legislative appropriations to support Regional Center expenses.

(b)(1) The receipt and expenditure of monies from the Special Fund shall be under the supervision of the Secretary of Commerce and Community Development.

(2) The Secretary of Commerce and Community Development shall maintain accurate and complete records of all receipts and expenditures by and from the Fund, and shall make an annual report on the condition of the Fund to the Secretary of Administration, the House Committees on Commerce and Economic Development and on Ways and Means, and the Senate Committees on Finance and on Economic Development, Housing and General Affairs.

(3) Expenditures from the Fund shall be used only to ~~administer the EB-5 Program~~ support the operating expenses of the Regional Center, including the costs of providing specialized services to support participating economic development projects, marketing and related travel expenses, application review and examination expenses, and personnel expenses incurred by the Agency of Commerce and Community Development and the Department of Financial Regulation. At the end of each fiscal year, the Secretary of Administration shall transfer from the EB-5 Special Fund to the General Fund any amount that the Secretary of Administration determines, in his or her discretion, exceeds the funds necessary to administer the Program.

(c) Notwithstanding 32 V.S.A. § 603, the Secretary of Commerce and Community Development, with input from the Commissioner of Financial Regulation, is authorized to impose ~~an administrative charge for the costs of administering the Regional Center and providing specialized services in support of participating economic development projects~~ charges on project developers to achieve the Fund's purpose. The charges shall include a one-time application fee as well as an annual assessment apportioned among approved projects in a fair and equitable manner as specified in rules adopted under section 20 of this title. In addition, the rules shall require that an applicant or approved project developer, as applicable, is liable for any additional expenses incurred with respect to the retention of outside legal, financial, examination or other services or studies deemed necessary by the Secretary or the Commissioner to assist with application or project review. The collection of some or all charges authorized under this section may be suspended for a period of time as deemed appropriate by the Secretary for good cause shown. Any charges imposed under this section shall be included in the consolidated Executive Branch fee report required under 32 V.S.A. § 605.

Sec. 34d. EB-5 PROJECT DEVELOPER; COLLECTION OF PAST-DUE FEES

On or before July 1, 2016, the Secretary of Commerce and Community Development shall make every reasonable effort to proceed with the invoicing and collection of charges authorized under 10 V.S.A. § 21, including any invoicing and collection of charges previously suspended by the Secretary. The charges shall be collected in a manner that does not diminish the value of a foreign investor's interest acquired through a capital investment in an EB-5 project.

Tenth: After Sec. 40, 7 V.S.A. § 1002, by striking out the reader assistance and Sec. 41, 7 V.S.A. § 1013, in their entirety, and inserting in lieu thereof: Sec. 41. [Deleted.]

Eleventh: After Sec. 44, by striking out the reader assistance in its entirety and inserting a new reader assistance to read as follows:

* * * Environmental Conservation; Stormwater Discharge Permits;
Concentrated Animal Feeding Operations * * *

Twelfth: In Sec. 45, 3 V.S.A. § 2822(j), after subdivision (2), by striking out the “* * *” and inserting in lieu thereof the following:

(A) Application review fee.

* * *

(iv) Indirect discharge or underground injection control, excluding stormwater discharges.

(I) Indirect discharge, sewage.

(aa) Individual permit: original application; amendment for increased flows; amendment for modification or replacement of system.	\$1,755.00 plus \$0.08 per gallon of design capacity above 6,500 gpd.
---	---

(II) Indirect discharge, nonsewage.

(aa) <u>Individual permit: original application; amendment for increased flows; amendment for modification or replacement of system.</u>	<u>\$0.06 per gallon of design capacity; minimum \$400.00.</u>
--	--

(III) Underground injection; ~~original~~ individual permit; amendment for increased flows; amendment for modification or replacement of system.

(aa) For applications where the discharge meets groundwater enforcement standards at the point of discharge:	\$500.00 and \$0.10 for each gallon per day over 2,000 gallons per day.
--	---

(bb) For applications where the discharge meets groundwater enforcement standards at the point of compliance:	\$1,500.00 and \$0.20 for each gallon per day over 2,000 gallons per day.
---	---

Thirteenth: After Sec. 47, 16 V.S.A. § 1694, by inserting a reader assistance and a Sec. 47a to read as follows:

* * * State Lottery Commission; Fantasy Sports Contests; Operators * * *

Sec. 47a. 9 V.S.A. § 4189 is added to read:

§ 4189. ANNUAL ASSESSMENT

(a) A fantasy sports operator shall pay two percent of its annual net revenue to the State Lottery Commission for deposit in the State Lottery Fund established in 31 V.S.A. § 658. These funds shall be reserved for programs addressing addiction in Vermont.

(b) As used in this section, “annual net revenue” means the total amount of consideration received in the prior year by a fantasy sports operator from fantasy sports players in Vermont, less the amount of cash prizes, awards, or cash equivalents that the fantasy sports operator paid in the prior year to fantasy sports players in Vermont. The amount of the annual net revenue shall be determined by the annual independent audit carried out pursuant to 9 V.S.A. § 4186(c).

Fourteenth: In Sec. 48, Effective Dates, by striking out subsections (b) and (c) in their entirety and inserting in lieu thereof the following:

(b) Notwithstanding 1 V.S.A. § 214, in Sec. 45 (stormwater discharge permits), in 3 V.S.A. § 2822(j), subdivision (2)(A) shall take effect retroactively on July 1, 2015.

(c) This section shall take effect on passage.

(d) The remaining sections shall take effect on July 1, 2016.