

Proposals by Senators Ashe and Lyons

(April 21, 2016 at 10:00 a.m.)

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

Sec. X. 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 jointly adopt rules pertaining to the administration and oversight of the EB-5 Program. The rules shall be

1 consistent with federal regulations and requirements as well as with the
2 statutory expertise of the Department and Agency.

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

9 (1) communication with and reporting to the USCIS;

10 (2) marketing activities;

11 (3) required provisions pertaining to private placement memoranda;

12 (4) securities analysis and standards for project approval;

13 (5) ongoing oversight and compliance of approved projects, including
14 annual audits;

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

18 (7) investor relations and a formal complaint protocol;

19 (8) standards for revoking approval of a project;

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

1 (10) fees and costs of the Regional Center, consistent with subsection
2 21(c) of this title; and

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

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

11 Sec. Y. 10 V.S.A. § 21 is amended to read:

12 § 21. EB-5 SPECIAL FUND

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

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

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

10 (3) Expenditures from the Fund shall be used only to ~~administer the EB-~~
11 ~~5-Program~~ support the operating expenses of the Regional Center, including
12 the costs of providing specialized services to support participating economic
13 development projects, marketing and related travel expenses, application
14 review and examination expenses, and personnel expenses incurred by the
15 Agency of Commerce and Community Development and the Department of
16 Financial Regulation. At the end of each fiscal year, the Secretary of
17 Administration shall transfer from the EB-5 Special Fund to the General Fund
18 any amount that the Secretary of Administration determines, in his or her
19 discretion, exceeds the funds necessary to administer the Program.

20 (c) Notwithstanding 32 V.S.A. § 603, the Secretary of Commerce and
21 Community Development, with input from the Commissioner of Financial
22 Regulation, is authorized to impose ~~an~~ administrative ~~charge~~ charges on

1 ~~project developers for the costs of administering the Regional Center and~~
2 ~~providing specialized services in support of participating economic~~
3 ~~development projects to achieve the Fund's purpose. The charges shall include~~
4 ~~a one-time application fee as well as an annual assessment apportioned among~~
5 ~~approved projects in a fair and equitable manner as specified in rules adopted~~
6 ~~under section 20 of this title. In addition, the rules shall require that an~~
7 ~~applicant or approved project developer, as applicable, is liable for any~~
8 ~~additional expenses incurred with respect to the retention of outside legal,~~
9 ~~financial, and examination services deemed necessary by the Secretary or the~~
10 ~~Commissioner to assist with application or project review. Any charges~~
11 ~~imposed under this section shall be included in the consolidated Executive~~
12 ~~Branch fee report required under 32 V.S.A. § 605.~~

13 Sec. Z. EB-5 PROJECT DEVELOPER; COLLECTION OF PAST-DUE
14 FEES

15 On or before July 1, 2016, the Secretary of Commerce and Community
16 Development shall make every reasonable effort to collect all past-due fees
17 incurred by an EB-5 project developer and owing to the EB-5 Special Fund
18 established under 10 V.S.A. § 21. The fees shall be collected in a manner that
19 does not diminish the value of a foreign investor's interest acquired through a
20 capital investment in an EB-5 project.