

VEGI Provisions: Current Law vs. As Passed House in H.868			
Subject and Current Cite	Current Provisions: 32 V.S.A. §§ 5930a-5930b	New Provisions: 32 V.S.A. §§ 3025-3042 (SED proposal in highlights)	Subject and New Cite
Creation of VEPC §5930a	§ 5930A. VERMONT ECONOMIC PROGRESS COUNCIL (a) There is created a Vermont Economic Progress Council	<p><u>§ 3025. VERMONT ECONOMIC PROGRESS COUNCIL</u></p> <p><u>(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:</u></p> <p><u>(1) the Vermont Employment Growth Incentive Program pursuant to subchapter 2 of this chapter; and</u></p> <p><u>(2) property tax stabilization, tax exemption, and tax increment financing districts pursuant to 24 V.S.A. chapter 53, subchapter 5 and 32 V.S.A. § 5404a.</u></p>	§25(a)
Administrative Support §5930a	which shall be attached to the Department of Economic Development for administrative support	<u>(2) The Council shall receive administrative support from the Agency of Commerce and Community Development and the Department of Taxes.</u>	§25(e)(2)
Executive Director §5930a	including an Executive Director who shall be appointed by the Governor with the advice and consent of the Senate, who shall be knowledgeable in subject areas of the Council's jurisdiction, and hold the status of an exempt State employee, and administrative staff employed in the State classified service	<p><u>(3) The Council shall have:</u></p> <p><u>(A) an executive director appointed by the Governor with the advice and consent of the Senate, who is knowledgeable in subject areas of the Council's jurisdiction and who is an exempt State employee; and</u></p> <p><u>(B) administrative staff.</u></p>	§25(a)(3)

<p>Membership of VEPC Board §5930a</p> <p>VEPC Board – Governor Appointee Member Qualifications §5930a</p>	<p>The council shall consist of 11 members, nine of whom shall be residents of the State appointed by the Governor with the advice and consent of the Senate.</p> <p>In addition, the Council shall include one member selected by the Speaker of the House, who shall be a member of the House; and one member selected by the Committee on Committees of the Senate, who shall be a member of the Senate. Legislative members shall be voting members.</p> <p>There shall also be two regional members from each region of the State; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the Council of applications from their respective regions. The Governor shall appoint residents to the Council who are knowledgeable and experienced in the subjects of community development and planning, education funding requirements, economic development, State fiscal affairs, property taxation, or entrepreneurial ventures, and shall make appointments to the Council insofar as possible as to provide representation to the various geographical areas of the State and municipalities of various sizes.</p>	<p><u>(b) Membership.</u></p> <p><u>(1) The Council shall have 11 voting members:</u></p> <p><u>(A) nine residents of the State appointed by the Governor with the advice and consent of the Senate who are knowledgeable and experienced in the subjects of community development and planning, education funding requirements, economic development, State fiscal affairs, property taxation, or entrepreneurial ventures, and represent diverse geographical areas of the State and municipalities of various sizes;</u></p> <p><u>(B) one member of the Vermont House of Representatives appointed by the Speaker of the House; and</u></p> <p><u>(C) one member of the Vermont Senate appointed by the Senate Committee on Committees.</u></p> <p><u>(2)(A) The Council shall have two regional members from each region of the State, one appointed by the regional development corporation of the region and one appointed by the regional planning commission of the region.</u></p> <p><u>(B) A regional member shall be a nonvoting member and shall serve during consideration by the Council of an application from his or her region.</u></p>	<p>§ 2 5 ( b )</p>
<p>VEPC Board Member Terms §5930a</p>	<p>Members of the Council appointed by the Governor shall serve initial staggered terms with five members serving four-year terms, and four members serving two-year terms. All Council members' terms shall be four-year terms upon the expiration of their initial terms and Council members may be reappointed to serve successive terms. All terms shall commence on April 1 of each odd-numbered year.</p>	<p><u>(c) Terms.</u></p> <p><u>(1) Members of the Council appointed by the Governor shall serve initial staggered terms with five members serving four-year terms, and four members serving two-year terms.</u></p> <p><u>(2) After the initial term expires, a member's term is four years and a member may be reappointed.</u></p> <p><u>(3) A term commences on April 1 of each odd-numbered year.</u></p>	<p>§25(c)</p>
<p>VEPC Chair §5930a</p>	<p>The Governor shall select a Chair from among the Council's members.</p>	<p><u>(e) Operation.</u></p> <p><u>(1) The Governor shall appoint a chair from the Council's members.</u></p>	<p>§25(e)</p>
<p>VEPC Powers</p>	<p>(f) The Economic Progress Council shall have the authority to adopt rules</p>	<p><u>(f) Rulemaking authority. The Council shall have the authority to adopt</u></p>	<p>§25(f)-(g)</p>

<p>and Authority §5930a(f)-(g)</p>	<p>under 3 V.S.A. chapter 25 to provide streamlined and efficient procedures for processing and deciding applications. (g) Decisions of the Economic Progress Council shall be administrative decisions that are not subject to the contested case hearing requirements of 3 V.S.A. chapter 25. The Council's decisions shall be final and not subject to judicial review.</p>	<p><u>policies and procedures as necessary, and to adopt rules under 3 V.S.A. chapter 25, to implement the provisions of this chapter.</u>  <u>(g) Decisions not subject to review. A decision of the Council to approve or deny an application under subchapter 2 of this chapter, or to approve or deny a property tax stabilization agreement, tax exemption, or tax increment financing district pursuant to 24 V.S.A. chapter 53, subchapter 5 and 32 V.S.A. § 5404a, is an administrative decision that is not subject to the contested case hearing requirements under 3 V.S.A. chapter 25 and is not subject to judicial review.</u></p>	
<p>VEPC Member Compensation</p>	<p>For attendance at meetings and for other official duties, appointed members shall be entitled to compensation for services and reimbursement of expenses as provided in section 1010 of this title, except that members who are members of the Legislature shall be entitled to compensation for services and reimbursement for expenses as provided in 2 V.S.A. § 406. A regional member who does not otherwise receive compensation and reimbursement for expenses from his or her regional development or planning organization shall also be entitled to compensation and reimbursement of expenses for attendance at meetings and for other official duties as provided in section 1010 of this title.</p>	<p><u>(d) Compensation.</u> <u>(1) For attendance at a meeting and for other official duties, a member appointed by the Governor shall be entitled to compensation for services and reimbursement of expenses as provided in 32 V.S.A. § 1010, except that a member who is a member of the General Assembly shall be entitled to compensation for services and reimbursement of expenses as provided in 2 V.S.A. § 406.</u> <u>(2) A regional member who does not otherwise receive compensation and reimbursement of expenses from his or her regional development or planning organization shall be entitled to compensation and reimbursement of expenses for attendance at meetings and for other official duties as provided in 32 V.S.A. § 1010.</u></p>	<p>§25(d)</p>
<p>Caps on Program Costs §5930a(i) and</p>	<p>(i) The Governor shall recommend to the General Assembly, and the General Assembly shall thereafter establish by law: (1) an annual authorization for the total net fiscal cost of incentives the Council may approve in the authorized year under subdivisions (b)(1), (4), and (5) of this section for projects that are net negative under the cost-benefit model; (2) an annual authorization for the total net fiscal cost of incentives the Council may approve in the authorized year under subdivisions (b)(2) and (3) of this section for projects that are net negative under the cost-benefit model.</p>		

<p>§5930b(b)(5)(B)</p> <p>And</p>	<p>(B)(i) Except as provided in subdivision (ii) of this subdivision (5)(B), the total amount of employment growth incentives the Vermont Economic Progress Council is authorized to approve under subdivision (A) of this subdivision (5) shall not exceed \$1,000,000.00 from the General Fund.</p> <p>(ii) The Council shall have the authority to exceed the cap imposed in subdivision (i) of this subdivision (5)(B) upon application to and approval by the Emergency Board.</p>	<p><u>(b) In each calendar year, the amount by which the Council may increase the value of all incentives pursuant to this section is:</u></p> <p>(1) \$1,500,000.00 for one or more initial approvals; and</p> <p>(2) \$1,000,000.00 for one or more final approvals.</p> <p><u>(c) The Council may increase the cap imposed in subdivision (b)(2) of this section by not more than \$500,000.00 upon application by the Governor to, and approval of, the Joint Fiscal Committee [Emergency Board].</u></p> <p><u>(d) In evaluating the Governor’s request, the Committee shall consider the economic and fiscal condition of the State, including recent revenue forecasts and budget projections.</u></p> <p><u>(e) The Council shall provide the Committee with testimony, documentation, company-specific data, and any other information the Committee requests to demonstrate that increasing the cap will create an opportunity for return on investment to the State.</u></p>	<p>§34(b)-(e)</p>
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<p>§5930b(i)</p>	<p>(i) Overall gross cap on total employment growth incentive and education tax incentive authorizations.                  (1) For any calendar year, the total amount of employment growth incentives the Vermont Economic Progress Council is authorized to approve under this section and property tax stabilizations under subsection 5404a(a) of this title shall not exceed \$10,000,000.00 from the General Fund and Education Fund combined each year.                  (2) The Council shall have the authority to exceed the cap imposed in subdivision (1) of this subsection upon application to and approval by the Emergency Board.</p>	<p><u>§ 42. ANNUAL PROGRAM CAP</u>  <u>(a) In each calendar year the Vermont Economic Progress Council may approve one or more incentives under this subchapter, the total value of which shall not exceed:</u>                  (1) <u>\$15,000,000.00 for one or more initial approvals; and</u>                  (2) <u>\$10,000,000.00 for one or more final approvals.</u>  <u>(b) The Council may increase the cap imposed in subdivision (a)(2) of this section by not more than \$5,000,000.00 upon application by the Governor to, and approval of, the Joint Fiscal Committee [Emergency Board].</u>  <u>(c) In evaluating the Governor’s request, the Committee shall consider the economic and fiscal condition of the State, including recent revenue forecasts and budget projections.</u>  <u>(d) The Council shall provide the Committee with testimony, documentation, company-specific data, and any other information the Committee requests, to demonstrate that increasing the cap will create an opportunity for return on investment to the State.</u></p>	<p>§42</p>
<p>Net Negative Awards                  §5930b(b)(5)(A)</p>	<p>(5)(A) Notwithstanding subdivision (3) of this subsection, the Council may authorize incentives in excess of net fiscal benefit multiplied by the incentive ratio for awards to businesses located in a labor market area in which the average annual unemployment rate is greater than the average annual unemployment rate for the State or in which the average annual wage is below the average annual wage for the State.</p>	<p><u>§ 34. ENHANCED INCENTIVE FOR A BUSINESS IN A QUALIFYING LABOR MARKET AREA</u>  <u>(a) The Council may increase the value of an incentive for a business that is located in a labor market area in which:</u>                  (1) <u>the average annual unemployment rate is greater than the average annual unemployment rate for the State; or</u>                  (2) <u>the average annual wage is less than the average annual wage for the State.</u></p>	<p>§34(a)</p>
<p>Eligible Applicant                  §5930a(e)</p>	<p>(e) Only a business may apply for approval under subdivision (b)(1)(B) of this section. A municipality and a business must apply jointly for approval of a tax stabilization agreement pursuant to subdivision (b)(1)(A) of this section.</p>	<p><u>(c) Eligible applicant.</u>  <u>(1) Only a business may apply for an incentive in the form of a direct cash payment.</u>  <u>(2) A business and a municipality shall apply jointly for an incentive in the combined form of a direct cash payment and property tax stabilization.</u></p>	<p>§31(c)</p>

		<p><u>§ 30. PURPOSE; FORM OF INCENTIVES; ELIGIBLE APPLICANT; PROGRAM CAPS</u></p> <p><u>(a) Purpose. The purpose of the Vermont Employment Growth Incentive Program is to encourage a business to add new payroll, create new jobs, and make new capital investments by sharing with the business a portion of the revenue generated by the new payroll, new jobs, and new capital investment.</u></p> <p><u>[(a) Purpose. The purpose of the Vermont Employment Growth Incentive Program is to encourage a business to add incremental and qualifying payroll, jobs, and capital investments by sharing with the business a portion of the revenue generated by the new payroll, new jobs, and new capital investments, thereby generating net new revenues to the State.]</u></p>	<p>Purpose of Program</p> <p>§30(a)</p>
		<p><u>(b) Form of incentives; enhanced incentives.</u></p> <p><u>(1) The Vermont Economic Progress Council may approve an incentive under this subchapter in the form of:</u></p> <p><u>(A) a direct cash payment in annual installments; or</u></p> <p><u>(B) a combination of direct cash payment and property tax stabilization pursuant to a property tax stabilization agreement approved by a municipality under 32 V.S.A. § 5404a.</u></p> <p><u>(2) The Council may approve the following enhanced incentives:</u></p> <p><u>(A) an enhanced incentive for a business in a labor market area with higher than average unemployment or lower than average wages pursuant to section 34 of this title;</u></p> <p><u>(B) an enhanced incentive for an environmental technology business pursuant to section 35 of this title; and</u></p> <p><u>(C) an enhanced incentive for a business that participates in a State workforce training program pursuant to section 36 of this title.</u></p>	<p>(Overview) Form of Incentives; Enhanced Incentives</p> <p>§30(b)</p>
<p>Nature of</p>	<p>(1) A business may apply to the Vermont Economic Progress Council for</p>	<p><u>§ 32. APPLICATION; APPROVAL CRITERIA</u></p>	<p>Application</p>

<p>application and payment §5930b(b)(1)</p>	<p>approval of a performance-based employment growth incentive to be paid out of the business's withholding account upon approval by the Department of Taxes pursuant to the conditions set forth in this section. Businesses shall not be permitted to deduct approved incentives from withholding liability payments otherwise due.</p>	<p><u>(a) Application.</u>  <u>(1) A business may apply for an incentive in one or more years of an award period by submitting an application to the Council in the format the Council specifies for that purpose.</u>  <u>(2) For each award year the business applies for an incentive, the business shall:</u>  <u>(A) specify a payroll performance requirement;</u>  <u>(B) specify a jobs performance requirement, a capital investment performance requirement, or both; and</u>  <u>(C) provide any other information the Council requires to evaluate the application under this subchapter.</u></p>	<p>§32(a)</p>
<p>Content of Application §5930b(b)(1)</p>	<p>In addition to any other information that the Council may require in order to fulfill its obligations under section 5930a of this title, an employment growth incentive application shall include all the following information:          (A) application base number of jobs;          (B) total jobs at time of application;          (C) application base payroll;          (D) total payroll at time of application;          (E) jobs target for each year in the award period;          (F) payroll target for each year in the award period;          (G) capital investment target for each year in the award period; and          (H) a statement signed by the president or chief executive officer or equivalent acknowledging that to the extent the applicant fails to meet the minimum capital investment by the end of the award period, any incentives remaining to be earned shall be limited, and any incentives taken shall be subject to complete or partial reversal, pursuant to subdivisions (c)(10) and (11) of this section.</p>		
<p>Applicability of Incentive Ratio § 5930a(b)(2)  §5930b(b)(3)</p>	<p>(2) All incentives are subject to application of the incentive ratio as determined under subdivision 5930b(b)(3) of this title and no tax stabilization agreement or exemption shall be approved except in conjunction with the approval of an incentive under subdivision (1)(B) of this subsection.</p> <p>An incentive ratio shall be applied to the net fiscal benefit generated by the cost-benefit model in order to determine the maximum award the Council may authorize for each application it approves.</p>	<p>See § 33(2) – Calculating value of an incentive; includes incentive ratio</p> <p><u>§ 33. CALCULATING THE VALUE OF AN INCENTIVE</u>          * * *</p> <p><u>(2) Calculate the business's potential share of new revenue growth. Except as otherwise provided for an environmental technology business in section 35 of this title, to calculate the business's potential share of new revenue growth, the Council shall multiply the new revenue growth determined under subdivision (1) of this subsection by 80 percent.</u></p>	

<p>“But for” test §5930a(c)</p>	<p>(c) The Council shall first review each application under subsection (b) of this section and ascertain, to the best of its judgment, that but for the economic incentive to be offered, the proposed economic development would not occur or would occur in a significantly different and significantly less desirable manner. Applications that do not meet the "but for" test are not eligible for economic incentives, and shall not be considered further by the Council.</p>		
<p>Guidelines § 5930a(c)  (1)-(9)</p>	<p>If the "but for" test is answered in the affirmative, then prior to approving any application for an economic incentive under subsection (b) of this section, the Council shall evaluate the overall consistency of each application with the following guidelines:</p> <p>(1) The enterprise should create new, full-time jobs to be filled by individuals who are Vermont residents. The new jobs shall not include jobs or employees transferred from an existing business in the State, or replacements for vacant or terminated positions in the applicant's business. The new jobs include those that exceed the applicant's average annual employment level in Vermont during the two preceding years, unless the Council determines that the enterprise will establish a significantly different, new line of business and create new jobs in the new line of business that were not part of the enterprise prior to filing its application for incentives with the Council. The enterprise should provide opportunities that increase income, reduce unemployment, and reduce facility vacancy rates. Preference should be given to projects that enhance economic activity in areas of the State with the highest levels of unemployment and the lowest levels of economic activity.</p> <p>(2) The new jobs should make a net positive contribution to employment consistent with the applicable wage threshold for the labor market area. The new jobs should offer benefits and opportunities for advancement and professional growth consistent with the employment sector.</p> <p>(3) The enterprise should create positive fiscal impacts on the State, the host municipality, and the region as projected by the cost-benefit model applied by the council under subsection (d) of this section.</p> <p>(4) The enterprise should be welcomed by the host municipality, and should conform to all appropriate town and regional plans and to all permit and</p>	<p><u>(b) Mandatory criteria. The Council may approve an application if it finds:</u></p> <p><u>(1) Except as otherwise provided for an enhanced incentive for a business in a qualifying labor market area under section 34 of this title, the new revenue the proposed activity generates to the State exceeds the costs of the activity to the State.</u></p> <p><u>(2) The host municipality welcomes the new business.</u></p> <p><u>(3) The proposed economic activity conforms to applicable town and regional plans.</u></p> <p><u>(4) If the business proposes to expand within a limited local market, an incentive would not give the business an unfair competitive advantage over other Vermont businesses in the same or similar line of business and in the same limited local market.</u></p> <p><u>(5) But for the incentive, the proposed economic activity:</u></p> <p><u>(A) would not occur; or</u></p> <p><u>(B) would occur in a significantly different manner that is less desirable to the State.</u></p>	<p>Approval Criteria  §32(b)</p>



	<p>approval requirements.</p> <p>(5) The enterprise should protect or improve Vermont's natural, historical, and cultural resources, and enhance Vermont's historic settlement patterns.</p> <p>(6) It is desirable for the enterprise to make use of Vermont resources.</p> <p>(7) It is desirable for the enterprise to strengthen the quality of life in the host municipality, and to foster cooperation within the region.</p> <p>(8) It is desirable for the enterprise to use existing infrastructure or to locate in an existing downtown redevelopment project.</p> <p>(9) If the enterprise proposes to expand within a limited local market, then the enterprise should not be given an unfair competitive advantage over other Vermont businesses in the same or similar line of business and in the same limited local market as a result of the economic incentive granted.</p>		
<p>Cost-Benefit Model §5930a(d)</p>	<p>(d) The Council shall apply the cost-benefit model in reviewing applications under subdivision (b)(1)(A) and (B) of this section to determine the net fiscal benefit to the State. The cost-benefit model shall be a uniform and comprehensive methodology for assessing and measuring the projected net fiscal benefit or cost to the State of proposed economic development activities. Any modification of the cost-benefit model shall be subject to the approval of the Joint Fiscal Committee. The cost-benefit analysis shall include consideration of the effect of the passage of time and inflation on the value of multi-year fiscal benefits and costs.</p>	<p><u>§ 26. COST-BENEFIT MODEL</u></p> <p><u>(a) The Council shall adopt and maintain a cost-benefit model for assessing and measuring the projected net fiscal cost and benefit to the State of proposed economic development activities.</u></p> <p><u>(b) The Council shall not modify the cost-benefit model without the prior approval of the Joint Fiscal Committee.</u></p>	<p>§26</p>
<p>Calculating Net Fiscal Benefit - Cash Payments §5930a(d)(1)</p>	<p>(1) In determining the projected net fiscal benefit or cost of the incentives considered under subdivision (b)(1)(A) of this section, the Council shall calculate the net present value of the enhanced or forgone statewide education tax revenues, reflecting both direct and indirect economic activity. If the Council approves an incentive pursuant to this section, the net fiscal costs, if any, to the State shall be counted as if all those costs occurred in the year in which the Council first approved the incentive and that cost shall reduce the amount of the annual authorization for such approvals established by the Legislature for the applicable calendar year.</p>	<p>See § 33 – Calculating value of incentive; does not prescribe <i>how</i> to calculate net fiscal benefit ~ does not use same terminology as current law, e.g., “net present value,” “direct and indirect economic activity,” or direct Council to count costs “as if all those costs occurred in the years in which the Council first approved the incentive....”etc.</p> <p>Thought here is – allow VEPC discretion to implement this calculation in its capacity as program administrator rather than being so prescriptive in statute</p> <p>As in many areas, GA has policy choice whether to be more prescriptive here.</p>	<p>§33</p>

§ 33. CALCULATING THE VALUE OF AN INCENTIVE

Except as otherwise provided for an enhanced incentive for a business in a qualifying labor market area under section 34 of this title, an enhanced incentive for an environmental technology business under section 35 of this title, or an enhanced incentive for workforce training under section 36 of this title, the Council shall calculate the value of an incentive for an award year as follows:

(1) Calculate new revenue growth. To calculate new revenue growth, the Council shall determine the amount by which the new revenue generated by the proposed economic activity to the State exceeds the costs of the activity to the State.

(2) Calculate the business's potential share of new revenue growth. Except as otherwise provided for an environmental technology business in section 35 of this title, to calculate the business's potential share of new revenue growth, the Council shall multiply the new revenue growth determined under subdivision (1) of this subsection by 80 percent.

(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.

(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.

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

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

(A) subtract from the value of the incentive the amount of any applicable property tax stabilization agreement;

(B) divide the difference by five; and

(C) adjust the value of the first installment payment so that it is

		<u>proportional to the actual number of days that new qualifying employees are employed in the first year of hire.</u>	
Calculating Net Fiscal Benefit - Tax Stabilization §5930a(d)(2)	(2) In determining the projected net fiscal benefit or cost of the incentives considered under subdivision (b)(1)(B) of this section, the Council shall calculate the net present value of the enhanced or forgone State tax revenues attributable to the incentives, reflecting both direct and indirect economic activity over the five-year award period. If the Council approves an incentive, the net fiscal costs, if any, to the State shall be counted as if all of those costs occurred in the year in which the Council first approved the incentive and that cost shall reduce the amount of the Council's annual authorization for approval of economic incentives as established by the Legislature for the applicable calendar year.	Same issues as previous box for calculating tax stabilization	§33
Value of Incentives – Generally §5930b(b)(3)	(3) Except as provided in subdivision (5) of this subsection, the value of the incentives will be dependent upon the net fiscal benefit resulting from projected qualifying payroll and qualifying capital investment.	Value is determined by process set out in § 33. Calculating the Value of an Incentive	§33
Wage Threshold §5930b(b)(3)	The Council may establish a threshold for wages in excess of, but not less than, the wage threshold, as defined in subsection (a) of this section for individual applications the Council wishes to approve.	Council’s authority included in definition of “wage threshold” – may wish to specify that authority somewhere else?  <u>(12) “Wage threshold” means the minimum amount of annualized Vermont gross wages and salaries a business must pay for a qualifying job, as required by the Council in its discretion, but not less than:</u> <u>(A) 60 percent above the State minimum wage at the time of application; or</u> <u>(B) for a business located in a labor market area in which the average annual unemployment rate is higher than the average annual unemployment rate for the State, 40 percent above the State minimum wage at the time of application.</u>	§42
Incentive	The Council shall calculate an incentive percentage for each approved	Included in §33 process for Calculating the Value of an Incentive	§33

<p>Percentage §5930b(b)(3)</p>	<p>application as follows: Authorized award amount ÷ the five-year sum of all payroll targets</p>	<p><u>§ 33. CALCULATING THE VALUE OF AN INCENTIVE</u> * * *  <u>(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.</u> * * *</p>	
<p>VEPC Review of Application – Initial and Final Approval  §5930b(b)(2)</p>	<p>(2) The Council shall review each application in accordance with section 5930a of this title, except that the Council may provide for an initial approval pursuant to the conditions set forth in subsection 5930a(c), followed by a final approval at a later date, before December 31 of the calendar year in which the economic activity commences.</p>	<p>Proposed draft does not specifically authorize by statute VEPC ability to provide initial and final approval – again, thought here is that, as program administrator with duty to implement a program, VEPC should have flexibility to design and implement the process that works for the program.  Prime example is the pre-application process VEPC currently uses to work with businesses to estimate awards, which is not expressly authorized in statute.</p>	<p>N/A</p>
<p>Deadline to act on application  §5930(b)(1)</p>	<p>(b)(1) The Vermont Economic Progress Council, within 60 days of receipt of a complete application, shall approve or deny the following economic incentives: (A) tax stabilization agreements and exemptions under subdivision 5404a(a)(2) of this title; and (B) Vermont employment growth incentives (VEGI) under section 5930b of this title.</p>	<p>No specific deadline included in draft. Administrative flexibility.</p>	<p>N/A</p>
<p>VEPC Notice of Approval of Application to Applicants</p>	<p>(k) The Council shall provide written notification to the applicant of its approval of economic incentives under subsection (b) of this section. The written notification shall include both an assessment of the probability that the economic development activity would not occur or would occur in a significantly different and significantly less desirable manner but for the</p>	<p>EATI language; not directly applicable and not included in draft</p>	<p>N/A</p>

<p>§5930a(k)  (EATI)</p>	<p>approval of incentives under this section, and an assessment of the application's consistency with the guidelines set forth in subsection (c) of this section. The written notification shall also specify performance expectations on which approval has been granted and continuing approval shall be conditioned. In the written notification, the Council shall set out the performance expectations upon which an award is based in clear and quantifiable benchmarks, sufficient to enable the Department of Taxes, pursuant to subdivision (1)(1)(B) of this section, to determine whether performance expectations have been met. The Council shall forward a copy of the written notification, including its assessment and the performance expectations, with the certificate of eligibility that it provides to the Department of Taxes.</p>		
<p>VEPC Notice</p>	<p>(4) An approval shall specify: the application base jobs at the time of the</p>	<p>VEPC currently uses electronic system accessible to Tax and the applicant.</p>	

<p>of Approval of Application to Applicants</p> <p>§5930b(b)(4)</p> <p>(VEGI)</p>	<p>application; total jobs at time of application; the application base payroll; total payroll at time of application; the incentive percentage; the wage threshold; the payroll thresholds; a job target for each year of the award period; a payroll target for each year of the award period; a capital investment target for each year of the award period and description sufficient for application of subdivisions (c)(10) and (11) of this section of the nature of qualifying capital investment over the award period upon which approval shall be conditioned; and the amount of the total award. The Council shall provide a copy of each approval to the Department of Taxes along with a copy of the application submitted by that applicant.</p>	<p>Draft does not specify in statute the various information that an approval must include ~ administrative flexibility.</p>	
<p>“Green VEGI”</p> <p>§5930b(g)</p>	<p>(g) Employment growth incentive for environmental technology business.</p> <p>(1) As used in this subsection, an "environmental technology business" means a business that is subject to income taxation in Vermont and whose current or prospective economic activity in Vermont for which incentives are sought under this section is certified by the Secretary of Commerce and Community Development to be primarily research, design, engineering, development, or manufacturing activity related to any one or more of the following:</p> <p>(A) waste management, including waste collection, treatment, disposal, reduction, recycling, and remediation;</p> <p>(B) natural resource protection and management, including water and wastewater purification and treatment, air pollution control and prevention or remediation, soil and groundwater protection or remediation, and hazardous waste control or remediation;</p> <p>(C) energy efficiency or conservation;</p> <p>(D) clean energy, including solar, wind, wave, hydro, geothermal, hydrogen, fuel cells, waste-to-energy, or biomass.</p> <p>(2) Any application for a Vermont employment growth incentive under this section for an environmental technology business shall be considered and administered pursuant to all provisions of this section, except that:</p> <p>(A) the "incentive ratio" pursuant to subdivision (a)(11) of this section shall be set at 90 percent; and</p>	<p><u>§ 35. ENHANCED INCENTIVE FOR ENVIRONMENTAL TECHNOLOGY BUSINESS</u></p> <p><u>(a) In this section, an “environmental technology business” means a business that:</u></p> <p><u>(1) is subject to income taxation in Vermont; and</u></p> <p><u>(2) seeks an incentive for economic activity in Vermont that the Secretary of Commerce and Community Development certifies is primarily research, design, engineering, development, or manufacturing related to one or more of the following:</u></p> <p><u>(A) waste management, including waste collection, treatment, disposal, reduction, recycling, and remediation;</u></p> <p><u>(B) natural resource protection and management, including water and wastewater purification and treatment, air pollution control and prevention or remediation, soil and groundwater protection or remediation, and hazardous waste control or remediation;</u></p> <p><u>(C) energy efficiency or conservation;</u></p> <p><u>(D) clean energy, including solar, wind, wave, hydro, geothermal, hydrogen, fuel cells, waste-to-energy, or biomass.</u></p> <p><u>(b) The Council shall consider and administer an application from an environmental technology business pursuant to the provisions of this subchapter, except that:</u></p> <p><u>(1) the business’s potential share of new revenue growth shall be 90</u></p>	

	<p>(B) the "payroll threshold" pursuant to subdivision (a)(17) of this section shall be deemed to be 20 percent of the expected average industry payroll growth as determined by the cost-benefit model.</p>	<p>percent; and  <u>(2) to calculate qualifying payroll, the Council shall:</u>  <u>(A) determine the background growth rate in payroll for the applicable business sector in the award year;</u>  <u>(B) multiply the business's full-time payroll for the award year by 20 percent of the background growth rate; and</u>  <u>(C) subtract the product from the payroll performance requirement for the award year.</u></p>	
<p>Enhanced Training Incentive §5930b(h)</p>	<p>(h) Enhanced training incentive. Notwithstanding any provision of law to the contrary, the Council may award an enhanced training incentive as follows:  (1) A business whose incentive application is approved may elect to claim an enhanced training incentive at any time during the award period by:  (A) notifying the Council of its intent to pursue an enhanced training incentive and dedicate its incentive funds to training through the Vermont Training Program or a Workforce Education and Training Fund program; and  (B) applying for a grant from the Vermont Training Program or the Workforce Education and Training Fund to perform training for new employees who hold qualifying jobs.  (2) If a business is awarded a grant for training pursuant to subdivision (1) of this subsection, the Agency of Commerce and Community Development or the Department of Labor, as applicable, shall disburse grant funds for on-the-job training of not more than 75 percent of wages for each employee in training, or not more than 75 percent of trainer expense, and the business shall be responsible for the remaining 25 percent of the applicable training costs.  (3) If the business successfully completes its training and meets or exceeds its payroll target and either its jobs target or capital investment target, the Council shall approve the enhanced training incentive and notify the Department of Taxes.  (4) Upon notification by the Council, the Department of Taxes:  (A) shall disburse to the business a payment in an amount equal to 25 percent of the cost for training expenses pursuant to subdivision (3) of this subsection (h);</p>	<p><u>§ 36. ENHANCED INCENTIVE FOR WORKFORCE TRAINING</u>  <u>(a) A business whose application is approved may elect to claim the incentive specified for an award year as an enhanced training incentive by:</u>  <u>(1) notifying the Council of its intent to pursue an enhanced training incentive and dedicate its incentive funds to training through the Vermont Training Program; and</u>  <u>(2) applying for a grant from the Vermont Training Program to perform training for one or more new employees who hold qualifying jobs.</u>  <u>(b) If a business is awarded a grant for training under this section, the Agency of Commerce and Community Development shall disburse grant funds for on-the-job training of 75 percent of wages for each employee in training, or 75 percent of trainer expense, and the business shall be responsible for the remaining 25 percent of the applicable training costs.</u>  <u>(c) A business that successfully completes its training shall submit a written certificate of completion to the Agency of Commerce and Community Development which shall notify the Department of Taxes.</u>  <u>(d) Upon notification by the Agency, and if the Department determines that the business has earned the incentive for the award year, it shall:</u>  <u>(1) disburse to the business a payment in an amount equal to 25 percent of the cost for training expenses pursuant to subsection (b) of this section;</u>  <u>(2) disburse to the Agency of Commerce and Community Development a payment in an amount equal to 25 percent of the cost for training expenses pursuant to subsection (b) of this section; and</u>  <u>(3) disburse the remaining value of the incentive in annual installments</u></p>	<p>§36</p>

	<p>(B) shall disburse to the Agency of Commerce and Community Development or the Department of Labor, as applicable, a payment in an amount equal to 25 percent of the cost for training expenses pursuant to subdivision (3) of this subsection (h); and</p> <p>(C) shall disburse the remaining value of the incentive award in annual installments pursuant to subdivision (c)(2) of this section.</p> <p>(5)(A) If, during the utilization period for the incentive paid pursuant to this subsection (h), the business fails to maintain the qualifying jobs or qualifying payroll established in the award year, or does not reestablish qualifying jobs or qualifying payroll to 100 percent of the award year level, the Department of Taxes shall recapture the enhanced incentive pursuant to subsection (d) of this section.</p> <p>(B) The amount of recapture shall equal the sum of the installments that the Department would have disbursed if it had paid the incentive in five-year installments pursuant to subdivision (c)(2) of this section for the years during the utilization period that the qualifying jobs or qualifying payroll were not maintained.</p>	<p><u>pursuant to section 37 of this title.</u></p>	
<p>Filing a Report with VEPC and Tax to Claim an EATI Payment §5930a(1)</p>	<p>(1)(1)(A) On or before the date, including the date of any extensions, that an award recipient is required to file its return under the provisions of section 5861, 5862, 5914, or 5920 of this title, an award recipient shall file a report with the Department of Taxes and with the Council for each tax year for which the award is authorized by the Council. The report shall respond directly to the performance expectations in the written notification of approval issued under subsection (k) of this section, and shall include a description of the economic activity, including the total number of jobs created, the number of new jobs filled by Vermont residents, the wages for the new jobs, investments made according to the categories of incentives awarded, the nature and extent to which the economic activity was consistent with the guidelines in subsection (c) of this section, and any other information required by the Council or the Department of Taxes to assess the performance of the award recipient.</p> <p>(B) The Department of Taxes shall compare the award recipient's report with the performance expectations in the written notification of approval.</p>		



Upon determining that an award recipient has met all of the performance expectations the Department of Taxes shall allow the tax credit and shall provide the council with a report of the credit amount allowed and the basis for allowing the credit. If the Department of Taxes is unable to determine full compliance with the performance expectations, the Department shall request that the Council conduct a more detailed review. If the Department requests the Council to conduct a more detailed review, the Council shall assess whether the taxpayer's actual performance meets the goals of the overall performance expectations and all factors upon which the authorization was originally based. The Council shall conduct the review in a manner consistent with the original authorization, including examination of consistency with guidelines, and, if necessary, application of the cost-benefit model. At the conclusion of its review, the Council shall submit a written report to the Commissioner of Taxes, setting out the factors and bases for the Council's reassessment, if any, and recommending that the credit be approved, in full or in part, or disallowed. Upon receiving the Council's reassessment and recommendation, the Commissioner of Taxes shall decide whether the credit shall be approved, in full or in part, or disallowed.

(C) In assessing the performance of an award recipient, the Department of Taxes shall have the authority to obtain from the Council all records and information necessary to determine whether the award recipient has complied with the performance expectations in the written notice of approval.

(D) In any one year, an economic incentive awarded under subdivision (b)(2) of this section shall not be applied to reduce the award recipient's income tax liability by more than 80 percent of its income tax liability in that year.

(E) Nothing in this subsection shall preclude the Department of Taxes from adjusting the tax liability of any award recipient whose credit was incorrectly calculated.

(2) By December 31 of each year following the approval of an economic incentive, until the December 31 following the taxable year in which the approved incentive expires, an award recipient that has obtained the Council's approval under subdivision (b)(1), (4), or (5) of this section shall file a report with the Council, stating the amount of any incentives used during the

	preceding taxable year, and detailing compliance with all performance expectations upon which the award was conditioned.		
Business Right/Duty to File an Annual Return to Claim a VEGI Payment §5930b(c)(1) and (c)(9)	<p>(c) Claiming an employment growth incentive.</p> <p>(1) A business whose application is approved and, in any year during the award period, meets or exceeds its payroll target and either its jobs or capital investment target may file an annual return claiming incentives pursuant to this section.</p> <p>(9) Incentive claims must be filed annually no later than the last day of April of the current year for the prior year's utilization period. For a claim to be considered a timely filing and eligible for an incentive payment, all forms and workbooks must be complete and all underlying documentation, such as that required pursuant to subsection 5842(c) of this title, must be filed with the Department of Taxes. Incomplete claims may be considered to have been timely filed if a complete claim is filed within the time prescribed by the Department of Taxes. If a claim is not filed each year of the utilization period, any incentive installment previously paid shall be recaptured in accordance with subsection (d) of this section and upon notice from the Department of Taxes that the business failed to file a complete timely claim, the Vermont Economic Progress Council shall revoke all authority for the business to earn and claim incentives under this subchapter. The incentive return shall be subject to all provisions of this chapter governing the filing of tax returns. No interest shall be paid by the Department of Taxes for any reason with respect to incentives allowed under this section.</p>	<p><u>§ 37. EARNING AN INCENTIVE</u></p> <p>(a) <u>Earning an incentive; installment payments.</u></p> <p>(1) <u>A business with an approved application earns the incentive specified for an award year if, within the applicable time period provided in this section, the business:</u></p> <p>(A) <u>maintains or exceeds its base payroll and base employment;</u></p> <p>(B) <u>meets or exceeds the payroll performance requirement specified for the award year; and</u></p> <p>(C) <u>meets or exceeds the jobs performance requirement specified for the award year, or the capital investment performance requirement specified for the award year, or both.</u></p> <p>(2) <u>A business that earns an incentive specified for an award year is eligible to receive an installment payment and any applicable property tax stabilization for the year in which it earns the incentive and for each of the next four years in which the business:</u></p> <p>(A) <u>maintains or exceeds its base payroll and base employment;</u></p> <p>(B) <u>maintains or exceeds the payroll performance requirement specified for the award year; and</u></p> <p>(C) <u>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.</u></p> <p><u>§ 38. CLAIMING AN INCENTIVE; ANNUAL FILING WITH DEPARTMENT OF TAXES</u></p> <p>(a) <u>On or before April 30 following each year of the utilization period, a business with an approved application shall submit an incentive to the Department of Taxes.</u></p> <p>(b) <u>A business shall include in its the information the Department requires,</u></p>	<p>Earning an Incentive; Award year and Installment Payments</p> <p>§37</p> <p>Claiming and Incentive</p>

		<p><u>including the information required in 32 V.S.A. § 5842 and other documentation concerning payroll, jobs, and capital investment necessary to determine whether the business earned the incentive specified for an award year and any installment payment or property tax stabilization, or both, for which the business is eligible.</u></p> <p><u>(c) The Department may consider an incomplete claim to be timely filed if the business files a complete within the additional time allowed by the Department in its discretion.</u></p> <p><u>(d) Upon finalizing its review of a complete claim, the Department shall:</u></p> <p><u>(1) notify the business, the Council, the Treasurer, and any municipality with which the business has a property tax stabilization agreement whether the business is entitled to an installment payment or property tax stabilization for the applicable year; and</u></p> <p><u>(2) make an installment payment and confirm the business receives tax stabilization to which the business is entitled.</u></p> <p><u>(e) The Department shall not pay interest on any amounts it holds or pays for an incentive or installment payment pursuant to this subchapter.</u></p>	<p>§38</p>
<p>Department of Taxes Reviews, Approves, Calculates, Pays Incentive  §5930b(c)(1)</p>	<p>Upon approval by the Department of Taxes, incentive payments will be calculated for each of the five award period years. The Department of Taxes will disburse the incentives over consecutive five-year periods, beginning with each award period year, provided that the incentive-triggering award period year payroll and job targets are maintained in each utilization period year for which an installment is claimed.</p> <p>(2) Incentives shall be calculated and disbursed as follows: Qualifying payroll for the award period year, not to exceed the payroll target reduced by the payroll threshold for the incentive-triggering award period year shall be multiplied by the incentive percentage. Up to one-fifth of the total incentive amount shall be disbursed in the first of five consecutive utilization period years, to the extent the full amount of qualifying payroll was actually paid in that year. A full one-fifth of the total incentive amount shall be disbursed in each of the remaining four consecutive utilization period years, provided that incentive-triggering targets are maintained.</p>	<p><u>§ 33. CALCULATING THE VALUE OF AN INCENTIVE</u></p> <p><u>Except as otherwise provided for an enhanced incentive for a business in a qualifying labor market area under section 34 of this title, an enhanced incentive for an environmental technology business under section 35 of this title, or an enhanced incentive for workforce training under section 36 of this title, the Council shall calculate the value of an incentive for an award year as follows:</u></p> <p><u>(1) Calculate new revenue growth. To calculate new revenue growth, the Council shall determine the amount by which the new revenue generated by the proposed economic activity to the State exceeds the costs of the activity to the State.</u></p> <p><u>(2) Calculate the business’s potential share of new revenue growth. Except as otherwise provided for an environmental technology business in section 35 of this title, to calculate the business’s potential share of new revenue growth, the Council shall multiply the new revenue growth determined under subdivision (1) of this subsection by 80 percent.</u></p> <p><u>(3) Calculate the incentive percentage. To calculate the “incentive</u></p>	<p>§33</p>

<p>§5930b(c)(2)</p>		<p><u>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.</u>  <u>(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.</u>  <u>(5) Calculate the value of the incentive. To calculate the value of the incentive, the Council shall multiply qualifying payroll by the incentive percentage.</u>  <u>(6) Calculate the amount of the annual installment payments. To calculate the amount of the annual installment payments, the Council shall:</u>  <u>(A) subtract from the value of the incentive the amount of any applicable property tax stabilization agreement;</u>  <u>(B) divide the difference by five; and</u>  <u>(C) 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.</u></p>	
<p>Business Duty to Maintain or Reestablish Award Year Qualifying Jobs and Qualifying Payroll Levels</p> <p>§5930b(c)(3)</p>	<p>(3) The Department of Taxes shall permanently deny claims for incentive installments in any utilization period year in which the award-year qualifying jobs and qualifying payroll levels are not maintained or have not been reestablished to 100 percent of award-year levels.</p>	<p>See §37(a) regarding earning an incentive payment</p>	<p>§37(a)</p>
<p>Carry Forward</p> <p>§5930b(c)(4)</p>	<p>(4) Qualifying jobs, qualifying capital investment, and qualifying payroll in excess of the jobs, capital investment, and payroll targets for an award year shall be carried forward and counted toward future award period year targets, provided such excess jobs, investment, and payroll are maintained.</p>	<p><u>(g) 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</u></p>	<p>§37(g)</p>

		<p><u>award year, provided that the business maintains the excess payroll, excess jobs, or excess capital investment into the future award year.</u></p>	
<p>Failure to Meet Targets – Award Years One, Two, Three §5930b(c)(6)(A)</p>	<p>(6)(A) A business whose application is approved and, in the first, second, or third year of the award period, fails to meet or exceed its payroll target and one out of two of its jobs and capital investment targets may not claim incentives in that year. To the extent such business reaches its first, second, or third year award period targets within the succeeding two calendar year reporting periods immediately succeeding year one, two, or three of the award period, or within the extended period if an extension is granted under subdivision (B) of this subdivision (6), whichever is applicable, such business may claim incentives in five-year installments as provided in subdivisions (1) through (4) of this subsection. A business which fails to meet or exceed its payroll target and one of its two jobs and capital investment targets within this time frame shall forfeit all authority under this section to earn and claim incentives for award period year one, two, or three, as applicable, and any future award period years. The Department of Taxes shall notify the Vermont Economic Progress Council that the first, second, or third year award period targets have not been met within the prescribed period, and the Council shall rescind authority for the business to earn incentives for the activity in year one, two, or three, as applicable, and any future award period years.</p>	<p><u>(b) Award year one.</u>  <u>(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.</u>  <u>(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.</u>  <u>(c) Award years two and three.</u>  <u>(1) For award year two and award year three, beginning on January 1 of the award year, a business has three years to meet the performance requirements specified for the award year.</u>  <u>(2) A business that does not meet the performance requirements specified for award year two or for award year three within three years becomes ineligible to earn incentives for the award year and for all remaining award years in the award period.</u></p>	<p>§37(b)-(c)</p>
<p>Grace Period for Award Year One and Two §5930b(c)(6)(B)</p>	<p>(B)(i) Notwithstanding subdivision (A) of this subdivision (6), if a business determines that it may not reach its first or second year award period targets within the succeeding two calendar year reporting periods due to facts or circumstances beyond its control, the business may request that the Council extend the period to meet the targets for another two reporting periods, reviewed annually, for award year one, and one reporting period for award year two.                  (ii) The Council may grant an extension pursuant to this subdivision (B) if it determines that the business failed to meet its targets due to facts or circumstances beyond the control of the business and that there is a reasonable likelihood the business will meet the award period targets within the extension</p>	<p><u>(d) Extending the earning period in award years one and two.</u>  <u>Notwithstanding subsection (b) of this section:</u>  <u>(1) Upon request, the Council may extend the period to earn an incentive for award year one or award year two if it determines:</u>  <u>(A) a business did not earn the incentive for the award year due to facts or circumstances beyond its control; and</u>  <u>(B) there is a reasonable likelihood the business will earn the incentive within the extended period.</u>  <u>(2) The Council may extend the period to earn an incentive:</u>  <u>(A) for award year one, by two years, reviewed annually; or</u>  <u>(B) for award year two, by one year.</u></p>	<p>§37(d)</p>

	<p>period.</p> <p>(iii) If the Council grants an extension pursuant to this subdivision (B), the Council shall recalculate the value of the incentive using the cost-benefit model and shall adjust the amount of the award as is necessary to account for the extension of the award period.</p>	<p><u>(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.</u></p>	
<p>Failure to Meet Targets – Award Year Four</p> <p>§5930b(c)(7)</p>	<p>(7) A business whose application is approved and, in the fourth year of the award period, fails to meet or exceed its payroll target and one out of two of its jobs and capital investment targets may not claim incentives in that year. To the extent such business reaches its fourth year award period targets within the next calendar year reporting period, such business may claim incentives in five-year installments as provided in subdivisions (1) through (4) of this subsection. A business which fails to meet or exceed its payroll target and one out of two of its jobs and capital investment targets within this time frame shall forfeit all authority under this section to earn and claim incentives for award period years four and five. The Department of Taxes shall notify the Vermont Economic Progress Council that fourth-year award period targets have not been met within the prescribed period, and the Council shall rescind authority for the business to earn incentives for activity in award period years four and five.</p>	<p><u>(e) Award year four.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>	<p>§37(e)</p>
<p>Failure to Meet Targets – Award Year Five</p> <p>§5930b(c)(8)</p>	<p>(8) A business whose application is approved and, in the fifth year of the award period, fails to meet or exceed its payroll target and one out of two of its jobs and capital investment targets may not claim year five award period incentives in that year or any subsequent year.</p>	<p><u>(f) Award year five.</u></p> <p><u>(1) Beginning on January 1 of award year five, a business that remains eligible to earn incentives has one year to meet the performance requirements specified for award year five.</u></p> <p><u>(2) A business that does not meet the performance requirements specified for award year five by the end of that award year becomes ineligible to earn the incentive specified for that award year.</u></p>	<p>§37(f)</p>
<p>Recapture – Failure to Meet Performance Expectations</p>	<p>(m)(1) Recapture for failure to meet performance expectations. The value of any economic incentives taken by an applicant that has obtained the Council's approval under this section shall be refunded to the State, and any economic incentives remaining to be exercised shall be disallowed in the event that:</p> <p>(A) the applicant fails to comply with all performance expectations</p>	<p><u>§ 39. RECAPTURE; REDUCTION; REPAYMENT</u></p> <p><u>(a) Recapture.</u></p> <p><u>(1) The Department of Taxes may recapture the value of one or more installment payments and property tax stabilization a business has claimed, with interest, if:</u></p>	<p>§39</p>

<p>§5930a(m)</p>	<p>upon which the award was conditioned as set out in the notification provided in subsection (k) of this section and determined by the Department of Taxes under subsection ( 1 ) of this section;</p> <p>(B) the applicant knowingly fails to supply any information required under this section or knowingly files false or misleading information; or</p> <p>(C) the applicant fails to file the report required in subsection ( 1 ) of this section.</p> <p>(2) The Commissioner may assess amounts payable under this subsection any time within the time period provided in section 5882 of this title for adjustments to the returns on which the credit is applied or within three years of the date that the required report or information was due or the false or misleading information was supplied. The award recipient shall pay the amount required by this subsection within 30 days of the Commissioner's assessment.</p>	<p><u>(A) the business fails to file a claim as required in section 38 of this title; or</u></p> <p><u>(B) during the utilization period the business experiences:</u></p> <p><u>(i) a 90 percent or greater reduction from base employment; or</u></p> <p><u>(ii) if it had no jobs at the time of application, a 90 percent or greater reduction from the sum of its job performance requirements.</u></p> <p><u>(2) If the Department determines that a business is subject to recapture under subdivision (1) of this subsection, the business becomes ineligible to earn or claim an additional incentive or installment payment, and the business's property becomes ineligible for property tax stabilization, for the remainder of the utilization period.</u></p> <p><u>(3) Notwithstanding any other statute of limitations, the Department may commence a proceeding to recapture amounts under subdivision (1) of this subsection as follows:</u></p> <p><u>(A) under subdivision (1)(A) of this subsection, no later than three years from the last day of the utilization period; and</u></p> <p><u>(B) under subdivision (1)(B) of this subsection, no later than three years from date the business experiences the reduction from base employment, or three years from the last day of the utilization period, whichever occurs first.</u></p> <p><u>(b) Reduction; recapture. If a business fails to make capital investments that equal or exceed the sum of its capital investment performance requirements by the end of the award period:</u></p> <p><u>(1) The Department shall:</u></p> <p><u>(A) calculate a reduced incentive by multiplying the combined value of the business's award period incentives by the same proportion that the business's total actual capital investments bear to the sum of its capital investment performance requirements; and</u></p> <p><u>(B) reduce the value of any remaining installment payments and tax stabilization for which the business is eligible by the same proportion.</u></p> <p><u>(2) If the value of the installment payments and tax stabilization the business has already received exceeds the value of the reduced incentive, then:</u></p> <p><u>(A) the business becomes ineligible to claim any additional installment payments for the award period and the business's property becomes ineligible for</u></p>	
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<p>Recapture – 90 % Drop in Jobs  §5930b(d)</p>	<p>(d) Recapture. To the extent a business authorized to earn employment growth incentives under this section experiences a 90-percent or greater drop below application base jobs or, in the case of a business with no jobs at the time its application is approved, a 90-percent or greater drop below its cumulative job target during the utilization period, all authority to earn and claim incentives pursuant to this section shall be revoked, and such business shall be subject to recapture of all incentives previously claimed, together with interest and penalty. Notwithstanding any other statute of limitations provisions, for purposes of recapture under this section, the Department of Taxes shall issue a recapture bill any time within three years from the triggering drop in payroll or employment or three years from the last day of the end of the utilization period, whichever occurs first. Any amounts subject to recapture under this subsection shall retain their character as withholding and shall be subject to the provisions of section 5844 of this title, including the provision concerning personal liability.</p>		<p>§39</p>
<p>Repayment or Reduction – Failure to Make Minimum</p>	<p>(10) A business that fails to invest the minimum qualifying capital investment specified by the Council by the end of the award period shall be liable for repayment of incentives taken, plus interest, to the extent incentives taken exceed the total award after it is reduced in proportion to the deficiency by which the applicant fails to meet its minimum qualifying capital investment.</p>		<p>§39</p>



<p>Qualifying Capital Investment</p> <p>§5930b(c)(10)-(11)</p>	<p>The repayment, if any, shall be calculated and remitted with the incentive return for the last year of the award period, and no further incentives may be earned. The repayment shall be calculated as follows:                  Incentives taken minus qualifying capital investments made ÷ minimum qualifying capital investment] x authorized award amount                  (11) To the extent the minimum qualifying capital investment is not met by the end of the award period but no repayment is triggered, the authorized award amount against which future incentives may be earned shall be reduced in proportion to the level of deficiency by which the applicant fails to meet the minimum qualifying capital investment.</p>		
<p>Business with Revoked Authority Ineligible for Property Tax Stabilization</p> <p>§5930b(f)</p>	<p>(f) The property of a business whose authority to earn, apply, or retain incentives under this section has been revoked is ineligible for property tax stabilization under subdivision 5404a(a)(2) of this title after the date of revocation.</p>		<p>§39</p>
<p>VEPC and Tax Report to General Assembly</p> <p>§5930a(j)</p> <p>And...</p>	<p>(j) By April 1 of each year, the Council and the Department of Taxes shall file a joint report on economic advancement tax incentives with the Chairs of the House Committee on Ways and Means, the House Committee on Commerce, the Senate Committee on Finance, the Senate Committee on Economic Development, Housing and General Affairs, the House and Senate Committees on Appropriations, and the Joint Fiscal Committee of the General Assembly and provide notice of the report to the members of those committees. The joint report shall contain the gross and net value of incentives granted pursuant to subdivisions (b)(1), (4), and (5) of this section and pursuant to subdivisions (b)(2) and (3) of this section during the preceding year. The joint report shall include an account of each incentive granted under subsection (b) of this section, from inception of the program to the date of the report, including the date and amount of the award, the expected calendar year or years in which</p>	<p><u>§ 40. REPORTING</u>  <u>(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.</u>  <u>(b) The Council and the Department shall include in the joint report:</u>  <u>(1) the total amount of incentives authorized during the preceding year;</u>  <u>(2) with respect to each business with an approved application:</u>  <u>(A) the date and amount of authorization;</u>  <u>(B) the calendar year or years in which the authorization is expected to be exercised;</u></p>	<p>Reporting</p> <p>§40</p>

the award will be exercised, whether the award is currently available, the date the award will expire, and the amount and date of all incentives exercised. The joint report shall also describe the extent to which the tax credits allowed by the Department of Taxes in the previous calendar year supported economic activity that complied with the performance expectations in the written notification of approval under subsection (k) of this section. The joint report shall summarize all credits awarded and earned, applied for, and carried forward by entities participating in the Economic Advancement Tax Incentives Program authorized by this subchapter through the end of the preceding calendar year. The joint report shall include the claims by specific type of credit, number of participating entities, and tax type against which the credit is applied. The joint report shall also include information on award recaptures. The joint report shall also include information on economic activity, benefits to the State, and recipient performance in the fiscal year in which the credit was applied. The Department of Taxes shall develop the capacity to report by fiscal year the amount of total credits applied by tax type against the tax liabilities for the prior fiscal year and any award recaptures. The joint report shall also address the Council's conformance with the annual authorizations established in subsection (i) of this section. The Council and Department may use measures to protect confidential financial information, such as reporting information in an aggregate form or masking the identity of the tax award recipient.

(e) Reporting. By September 1 each year, the Council and the Department of Taxes shall file a joint report on the employment growth incentives authorized by this section with the Chairs of the House Committee on Ways and Means, the House Committee on Commerce and Economic Development, the Senate Committee on Finance, the Senate Committee on Economic Development, Housing and General Affairs, the House and Senate Committees on Appropriations, and the Joint Fiscal Committee of the General Assembly and provide notice of the report to the members of those committees. The joint report shall contain the total amount of incentives authorized during the preceding year and, with respect to each recipient, the date and amount of authorization, the calendar year or years in which the authorization is expected

- (C) whether the authorization is active;
- (D) the date the authorization will expire; and
- (3) the following aggregate information:
  - (A) the number of claims and incentive payments made in the current and prior claim years;
  - (B) the number of qualifying jobs; and
  - (C) the amount of new payroll and capital investment.
- (c) The Council and the Department shall present data and information in the joint report in a searchable format.

	<p>to be exercised, whether the authorization is active, and the date the authorization will expire. The joint report shall also include the following aggregate information: total number of claims and total incentive payments made in the current and prior claim years, the balance of credits not yet allocated, the number of qualifying new jobs created and qualifying payroll of those jobs, and qualifying new capital investments. The Council and Department shall use measures to protect proprietary financial information, such as reporting information in an aggregate form. Data and information in the joint report shall be presented in a searchable format.</p>		
<p>§5930b(e)</p>			
<p>Confidentiality of Materials §5930a(h)</p>	<p>(h) Information and materials submitted by a business concerning its income taxes and other confidential financial information shall not be subject to public disclosure under the State's public records law in 1 V.S.A. chapter 5, but shall be available to the Joint Fiscal Office or its agent upon authorization of the</p>	<p><u>§ 41. CONFIDENTIALITY OF PROPRIETARY BUSINESS INFORMATION</u> <u>(a) The Council and the Department shall use measures to protect proprietary financial information, including reporting information in an aggregate form.</u></p>	<p>Confidentiality §41</p>

	<p>Joint Fiscal Committee or a standing committee of the General Assembly, and shall also be available to the auditor of accounts in connection with the performance of duties under section 163 of this title; provided, however, that the Joint Fiscal Office or its agent, and the Auditor of Accounts, shall not disclose, directly or indirectly, to any person any proprietary business information or any information which would identify a business except in accordance with a judicial order or as otherwise specifically provided by law. Nothing in this subsection shall be construed to prohibit the publication of statistical information, rulings, determinations, reports, opinions, policies, or other information so long as the data are disclosed in a form that cannot identify or be associated with a particular business.</p>	<p><u>(b) Information and materials submitted by a business concerning its income taxes and other confidential financial information shall not be subject to public disclosure under the State’s public records law in 1 V.S.A. chapter 5, but shall be available to the Joint Fiscal Office or its agent upon authorization of the Joint Fiscal Committee or a standing committee of the General Assembly, and shall also be available to the Auditor of Accounts in connection with the performance of duties under 32 V.S.A. § 163; provided, however, that the Joint Fiscal Office or its agent, and the Auditor of Accounts, shall not disclose, directly or indirectly, to any person any proprietary business information or any information that would identify a business except in accordance with a judicial order or as otherwise specifically provided by law.</u></p> <p><u>(c) Nothing in this section shall be construed to prohibit the publication of statistical information, rulings, determinations, reports, opinions, policies, or other information so long as the data are disclosed in a form that cannot identify or be associated with a particular business.</u></p>	
<p>Definitions §5930b(a)</p>	<p>(a) Definitions. As used in this section:</p> <p>(1) "Application base number of jobs" means the total number of full-time Vermont jobs, on an annualized basis, held by nonowners at the time of application, including employees that have been laid off or otherwise terminated within six months of the date of application.</p> <p>(2) "Application base payroll" means the total Vermont gross wages and salaries paid to full-time, nonowner employees on an annualized basis at the time of application, including employees who have been laid off or otherwise terminated within six months prior to the date of application.</p> <p>(3) "Authorized award amount" means the amount of the incentive award as determined by the Vermont Economic Progress Council pursuant to this section.</p> <p>(4) "Award period" means the consecutive five years during which a business may add qualifying jobs and qualifying capital investments eligible for employment growth incentives under this section.</p> <p>(5) "Base number of jobs" means the total number of full-time Vermont jobs held by nonowners on an annualized basis.</p>	<p><u>§ 31. DEFINITIONS</u></p> <p><u>In this subchapter:</u></p> <p><u>(1) “Award period” means the consecutive five years during which a business may apply for an incentive under this subchapter.</u></p> <p><u>(2) “Base employment” means the number of full-time Vermont jobs held by non-owner employees as of the date a business with an approved application commences its proposed economic activity.</u></p> <p><u>(3) “Base payroll” means the Vermont gross salaries and wages paid as compensation to full-time Vermont jobs held by non-owner employees as of the date a business with an approved application commences its proposed economic activity.</u></p> <p><u>(4) “Capital investment performance requirement” means the minimum value of additional investment in one or more capital improvements.</u></p> <p><u>(5) “Jobs performance requirement” means the minimum number of qualifying jobs a business must add.</u></p> <p><u>(6) “Labor market area” means a labor market area as designated by the Vermont Department of Labor.</u></p>	<p>Definitions §31</p>

(6) "Base payroll" means the total Vermont gross wages and salaries actually paid to full-time, nonowner employees.

(7) "But-for" means the determination of whether, in the absence of the economic incentive sought, the proposed economic development would not occur or would occur in a significantly different and significantly less desirable manner.

(8) "Capital investment target" means qualifying capital investment in an award period year as represented on the Vermont employment growth incentive application.

(9) "Full-time job" means a permanent position filled by an employee who works at least 35 hours each week.

(10) "Incentive percentage" means the percentage applied to qualifying payroll in order to calculate earned incentives.

(11) "Incentive ratio," set at 80 percent, is the percentage applied to the preincentive net fiscal benefit in order to calculate the maximum award that may be authorized under this section.

(12) Repealed.]

(13) "Jobs target" means the projected number of new qualifying jobs in an award period year as reported on the Vermont employment growth incentive application.

(14) "Net fiscal benefit" means the excess of the present value benefit to the State over the present value cost to the State as calculated by the cost-benefit model.

(15) "Nonowner" means an employee with no more than 10 percent ownership interest, including attribution of ownership interests of the employee's spouse, parents, spouse's parents, siblings, and children.

(16) "Payroll target" means the projected Vermont gross wages and salaries for qualifying jobs in an award period year as reported on the Vermont employment growth incentive application.

(17) "Payroll threshold" means expected average industry payroll growth as determined by the cost-benefit model.

(18) "Projected average wage" means the total payroll targets divided by the total jobs targets.

(7) "Non-owner" means a person with no more than 10 percent ownership interest, including attribution of ownership interests of the person's spouse, parents, spouse's parents, siblings, and children.

(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:

(A) The position is filled by a non-owner employee who regularly works at least 35 hours each week.

(B) The business provides compensation for the position that equals or exceeds the wage threshold.

(C) The business provides for the position at least three of the following:

- (i) health care benefits with 50 percent or more of the premium paid by the business;
- (ii) dental assistance;
- (iii) paid vacation;
- (iv) paid holidays;
- (v) child care;
- (vi) other extraordinary employee benefits;
- (vii) retirement benefits;
- (viii) other paid time off, including paid sick days.

(D) The position is not an existing position that the business transfers from another facility within the State.

(E) When the position is added to base employment, the business's total employment exceeds its average annual employment during the two preceding years, unless 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 years immediately following each year of the award period.

(11) "Vermont gross wages and salaries" means Medicare wages as

(19) "Qualifying capital investment" means projected investments in Vermont in new facilities, machinery, and equipment, the value of which is an input to the cost-benefit model in evaluating applications.

(20) "Qualifying job" means a new, full-time Vermont job held by a nonowner that meets the wage threshold and for which the employer provides at least three of the following:

- (A) health care benefits with 50 percent or more of the premium paid by the employer;
- (B) dental assistance;
- (C) paid vacation;
- (D) paid holidays;
- (E) child care;
- (F) other extraordinary employee benefits;
- (G) retirement benefits;
- (H) other paid time off, including paid sick days.

(21) "Qualifying payroll" means annualized Vermont gross wages and salaries paid for qualifying jobs created in or carried forward to the award period year, provided that:

- (A) award period year base payroll; minus
- (B) Vermont gross wages and salaries paid for new qualifying jobs created in or carried forward to the award period year; equals or exceeds
- (C) prior-year base payroll minus any carry-forward of qualifying payroll under subdivision (c)(4) of this section, plus award-year payroll threshold.

(22) "Utilization period" means the period during which incentives can be claimed, and includes each year of the award period plus the four years immediately following each year of the award period.

(23) "Vermont gross wages and salaries" means Medicare wages as reported on Federal Tax Form W2 to the extent those wages are Vermont wages, excluding income from nonstatutory stock options.

(24) "Wage threshold" means the minimum annualized Vermont gross wages and salaries paid, as determined by the Council, but not less than:

- (A) 60 percent above the minimum wage at the time of application; or

reported on Federal Tax Form W-2 to the extent those wages are Vermont wages, excluding income from nonstatutory stock options.

(12) "Wage threshold" means the minimum amount of annualized Vermont gross wages and salaries a business must pay for a qualifying job, as required by the Council in its discretion, but not less than:

- (A) 60 percent above the State minimum wage at the time of application; or
- (B) for a business located in a labor market area in which the average annual unemployment rate is higher than the average annual unemployment rate for the State, 40 percent above the State minimum wage at the time of application.

	<p>(B) for a business located in a labor market area in which the average annual unemployment rate is higher than the average annual unemployment rate for the State, the greater of:</p> <ul style="list-style-type: none"><li>(i) 40 percent above the State minimum wage at the time of application; or</li><li>(ii) \$13.00 per hour.</li></ul> <p>(25) "Labor market area" means a labor market area as designated by the Vermont Department of Labor.</p>		
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