

VERMONT EMPLOYMENT GROWTH INCENTIVE “BUT FOR” APPROVAL CRITERION

As part of the approval process for the Vermont Employment Growth Incentive program, the Vermont Economic Progress Council must find for each application and project, that:

- (1) Except as otherwise provided for an enhanced incentive for a business in a qualifying labor market area under section 3334 of this title, the new revenue the proposed activity generates to the State exceeds the costs of the activity to the State.*
- (2) The host municipality welcomes the new business.*
- (3) Pursuant to a self-certification or other documentation the Council requires by rule or procedure, the business attests to the best of its knowledge:
 - (A) the business is not a named party to an administrative order, consent decree, or judicial order issued by the State or a subdivision of the State, or if a named party, that the business is in compliance with the terms of such an order or decree;*
 - (B) the business complies with applicable State laws and regulations; and*
 - (C) the proposed economic activity would conform to applicable town and regional plans and with applicable State laws and regulations.**
- (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.*
- (5) But for the incentive, the proposed economic activity:
 - (A) would not occur; or*
 - (B) would occur in a significantly different manner that is significantly less desirable to the State.**

Why is this part of the program? Because there are no taxpayer dollars appropriated for these incentives. The cost-benefit modeling that is required by statute is conducted with the assumption that the economic activity for which an incentive is sought will be all or partially incremental to the state’s economy. With an affirmative But For determination, the state is giving back to the company, as the incentive payment, a portion of the new tax revenues generated by that company which the state never would have received. Therefore, there is theoretically no cost to the taxpayers. Without a true But For, the state is giving up that which it would have gained anyway, which represents a cost to the taxpayers. Vermont has limited economic development resources. Including a But For “gatekeeper” provision ensures that the program is acting as a true incentive for economic activity that would not have occurred and does not reward economic activity that would take place normally or without an incentive.

How is this finding determined? The Council will consider all evidence, including the But For statement and all supporting documentation, provided by the applicant and information obtained by staff during the application process. Two company officers must certify the application, including the

But For statement. Additionally, one of the officers of the company (the Authorizing Official or Senior Authorizing Official) that certified the application must attend the Council meeting at which the application will be considered, present the project to the Council, and respond to questions posed by Council members. Only the Council members, not staff, can make the But For determination. It is the responsibility of the applicant to present a clear But For case and support it with documentation and evidence.

How this criterion is addressed differs for each applicant and depends on the company, the project and the situation. A company could be making a “grow, no grow” decision that is dependent on receiving an economic incentive. The company could be making a location decision where several states are vying for the location or expansion. The incentive could be a key factor, making an impact of significance, on the scope or timing of a project. Or, the incentive could make a difference regarding whether or not a project occurs because of a financial significance to the company.

What are the application requirements?

VEGI applicants must provide a But For statement as part of the application. Two company officers, authorized to act on behalf of the company, are required to act as Authorizing Official and Senior Authorizing Official to certify, sign, and submit the application.

The But For statement included by the applicant in a VEGI application must include narrative detail supporting the specific But For argument being made by the applicant sufficient for the Council to make a But For determination. For example:

- If the But For is a “yes” or “no” go decision, who is making that decision and what factors are being considered?
- If the But For is based on a location decision, who is making that decision and what factors are being considered?
- If the But For is about a significantly different and less desirable outcome (scope, scale, timing, financial viability), provide details about how the project would be significantly different and less desirable, from the State’s perspective (i.e. fewer jobs, less new payroll, reduced new tax revenues).

Any But For statement regarding a “significantly different and less desirable” outcome must include data in the application showing the different and desired outcome because of the incentive (more jobs, more jobs created sooner, better job) and address the following:

- How is it significantly different *and* less desirable than what would occur without the incentive?
- What is the *significance* of the difference and desirability? What is the level of significance?

To supplement the But For statement, applicants must submit supporting documentation and/or information, *as appropriate*, to substantiate their But For, such as:

- Information regarding incentives offered by other locales and copies of any specific incentive offers. Include names and contact information for any out-of-state officials contacted.
- Data (spreadsheets) documenting significantly different/significantly less desirable outcomes without the incentive.
- Any press releases, media statements, news reports, regarding the project contained in the application.
- Copies of any signed or proposed lease or Purchase and Sale agreements.

- Financial statements.
- Business plans.
- Equity/Financing plans.
- Market information.

Also, the following questions must be addressed by all applicants as part of the But For application form:

- Have you placed ads for the new jobs? Where?
- Will you need any permits? Have you applied for permits for this project? Have any been approved?
- Will you purchase, build or lease? Have you negotiated or signed any purchase and sales or lease agreements?
- Have you made any payments or obligations to architects, engineers, or designers for sites in Vermont or elsewhere?
- Are you negotiating with any economic development officials in (fill in alternate location)? Who are they and what are they offering for incentives?
- Are any permits in place or applied for in Vermont or in (alternate location)? What type, date?
- How will the project be financed? Are any elements of the financing plan in place? Equity investors? Bank financing?
- Will the project receive or has it received any public funds or financing (VEDA, USDA/RD, CDBG, USEDA)?
- Is there a business plan for this project?

Any supplemental information must be submitted with the application by uploading it as an attachment to the But For application form.

A company official (one of the application signatories) is required to attend the VEPC meeting at which the application will be considered. The applicant will have the opportunity to briefly outline the company, project and application and VEPC Board members will ask the applicant questions about the application, including questions pertinent to the But For.

Due to the presentation of proprietary business information by the applicant, as required by statute, the Council will meet with the applicant and deliberate in executive (closed) session. However, a vote on the application will take place in public (open) session during the meeting at which the application is considered. A majority of votes (6) acting in the same manner are required to take any action. If the Council finds that they do not have all the information required to make a determination, the application can be tabled. The Council will consider all application information and all application criteria together to make an approval or denial decision.