Introduced by Representatives Ancel of Calais, Kornheiser of Brattleboro,
Anthony of Barre City, Bluemle of Burlington, Brumsted of
Shelburne, Coffey of Guilford, Colburn of Burlington, Conlon
of Cornwall, Cordes of Lincoln, Hooper of Burlington, Howard
of Rutland City, Masland of Thetford, Mrowicki of Putney,
Mulvaney-Stanak of Burlington, Ode of Burlington, Patt of
Worcester, Squirrel of Underhill, Stebbins of Burlington,
Stevens of Waterbury, Surprenant of Barnard, Townsend of
South Burlington, and White of Bethel

Referred to Committee on

Date:

Subject: Commerce and trade; economic development

Statement of purpose of bill as introduced: This bill proposes to amend the
Vermont Employment Growth Incentive Program.

An act relating to amending the Vermont Employment Growth Incentive
Program
It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. chapter 105 is amended to read:

CHAPTER 105: VERMONT EMPLOYMENT GROWTH INCENTIVE PROGRAM

Subchapter 1: Vermont Economic Progress Council

§ 3325. VERMONT ECONOMIC PROGRESS COUNCIL

(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:

(1) the Vermont Employment Growth Incentive Program pursuant to subchapter 2 of this chapter; and

(2) tax increment financing districts pursuant to 24 V.S.A. chapter 53, subchapter 5 and section 5404a of this title.

(b) Membership.

(4) The Council shall have 11 voting members:

(A) nine who are residents of the State appointed by the Governor with the advice and consent of the Senate and 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, appointed
as follows:

(1) five members appointed by the Governor with the advice and
consent of the Senate;

(2) two members appointed by the Speaker of the House; and

(3) two members appointed by the Senate Committee on Committees

(B) one member of the Vermont House of Representatives appointed
by the Speaker of the House; and

(C) one member of the Vermont Senate appointed by the Senate
Committee on Committees.

(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.

(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.

* * *

(e) Operation.

(1) The Governor shall appoint a chair from the Council’s members.

(2)(A) The Council shall receive administrative support from the
Agency of Commerce and Community Development and the Department of
Taxes.
(B) The Council shall receive legal counsel exclusively from the Office of the Attorney General.

* * *

§ 3330. PURPOSE; FORM OF INCENTIVES; ENHANCED INCENTIVES; ELIGIBLE APPLICANT

(a) Purpose. The purpose of the Vermont Employment Growth Incentive Program is to generate net new revenue to the State by encouraging rewarding a business to add new payroll, create new jobs, and make new capital investments it otherwise would not have undertaken without the incentive and sharing a portion of the revenue with the business.

(b) Form of incentives; enhanced incentives.

(1) The Vermont Economic Progress Council may approve an incentive under this subchapter in the form of a direct cash payment in annual installments.

(2) The Council may approve the following enhanced incentives:

(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 3334 of this title;

(B) an enhanced incentive for an environmental technology business pursuant to section 3335 of this title; and
(C) an enhanced incentive for a business that participates in a State workforce training program pursuant to section 3336 of this title.

(e) Eligible applicant.

(1) Only a business may apply for an incentive pursuant to this subchapter.

(2) For purposes of the Program, the Council shall treat a business and its legal predecessor or successor in interest as the same entity.

§ 3331. DEFINITIONS

As used in this subchapter:

(1) “Award period” means the consecutive five years during which a business may apply for an incentive under this subchapter.

(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.

(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.

(4) “Capital investment performance requirement” means the minimum value of additional investment in one or more capital improvements.
(5) “Jobs performance requirement” means the minimum number of qualifying jobs a business must add.

(6) “Labor market area” means a labor market area as designated by the Vermont Department of Labor.

(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 not fewer than eight weeks of paid family leave at not less than 70 percent of the employee’s regular compensation;

(iii) not fewer than 20 days of paid vacation or sick time, or both;

and

(iv) paid holidays;

(v) child care, either provided on-site or for reimbursement of the full cost of care, for one child;

(vi) other extraordinary employee benefits;

(vii) retirement benefits, under which the business matches 100 percent of the employee’s retirement contribution for up to five percent of the employee’s regular compensation

(viii) other paid time off, excluding paid sick days.

(D) The position is not an existing position that the business, or a parent, subsidiary, or affiliate under common ownership or control, 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 highest employment level during the two preceding years, unless the business proves and the Council determines verifies 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 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) 100 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.

§ 3332. APPLICATION; APPROVAL CRITERIA

(a) Application.

(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.

(2) For each award year the business applies for an incentive, the business shall:
(A) specify a payroll performance requirement;

(B) specify a jobs performance requirement or a capital investment performance requirement, or both; and

(C) provide any other information the Council requires to evaluate the application under this subchapter.

(b) Mandatory criteria. The Council shall not approve an application unless it finds:

(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 would generate to the State would exceed the costs of the activity to the State.

§ 3333. 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 3334 of this title, an enhanced incentive for an environmental technology business under section 3335 of this title, or an enhanced incentive for workforce training under section 3336 of this title, the

(a) 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 use the cost-benefit model created pursuant to section 3326 of this title to 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 3335 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.

* * *

(b) Notwithstanding subsection (a) of this section, the amount of an incentive shall not exceed 10 percent of the new revenue growth calculated pursuant to subdivision (a)(1) of this section.

§ 3334. ENHANCED INCENTIVE FOR A BUSINESS IN A QUALIFYING LABOR MARKET AREA

(a) The Council may increase the value of an incentive for a business that is located in a labor market area in which:

(1) the average annual unemployment rate is greater than the average annual unemployment rate for the State; or
(2) the average annual wage is less than the average annual wage for the State.

(b) In each calendar year, the amount by which the Council may increase the value of all incentives pursuant to this section is:

(1) $1,500,000.00 for one or more initial approvals; and

(2) $1,000,000.00 for one or more final approvals.

(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.

(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.

(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.

(f) The purpose of the enhanced incentive for a business in a qualifying labor market area is to increase job growth in economically disadvantaged regions of the State, as provided in subsection (a) of this section. [Repealed.]

§ 3335. ENHANCED INCENTIVE FOR ENVIRONMENTAL TECHNOLOGY BUSINESS
(a) As used in this section, an “environmental technology business” means a business that:

(1) is subject to income taxation in Vermont; and

(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:

(A) waste management, including waste collection, treatment, disposal, reduction, recycling, and remediation;

(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;

(C) energy efficiency or conservation;

(D) clean energy, including solar, wind, wave, hydro, geothermal, hydrogen, fuel cells, waste to energy, or biomass.

(b) The Council shall consider and administer an application from an environmental technology business pursuant to the provisions of this subchapter, except that:

(1) the business’s potential share of new revenue growth shall be 90 percent; and
(2) to calculate qualifying payroll, the Council shall:
   (A) determine the background growth rate in payroll for the applicable business sector in the award year;
   (B) multiply the business’s full-time payroll for the award year by 20 percent of the background growth rate; and
   (C) subtract the product from the payroll performance requirement for the award year.

(c) The purpose of the enhanced incentive for an environmental technology business is to promote the growth of businesses in Vermont that both create and sustain high-quality jobs and improve the natural environment. [Repealed.]

§ 3340. REPORTING

(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.

(b) The Council and the Department shall include in the joint report:
(1) the total amount of incentives authorized during the preceding year and the amount per business;

(2) with respect to each business with an approved application:

(A) the date and amount of authorization;

(B) the calendar year or years in which the authorization is expected to be exercised;

(C) whether the authorization is active; and

(D) the date the authorization will expire; and

(3) the following aggregate information specific to each business that earns an incentive:

(A) the number of claims and incentive payments made in the current and prior claim years;

(B) the payroll performance requirement, the jobs performance requirement, and the capital investment performance requirement for each award year;

(B)(C) the number, NAICS code, median wage, and average wage of qualifying jobs; and

(D) the number of jobs by wage range; and

(E) 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.
(d) Notwithstanding any provision of law to the contrary, an incentive
awarded pursuant to this subchapter shall be treated as a tax expenditure for
purposes of chapter 5 of this title.

§ 3341. CONFIDENTIALITY OF PROPRIETARY BUSINESS
INFORMATION; ACCESS TO INFORMATION

(a) The Vermont Economic Progress Council and the Department of Taxes
shall use measures to protect proprietary confidential financial information,
including reporting information in an aggregate form.

(b)(1) 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.

(2) The Council shall make available all the information that a business
submits to the Council in the course of its application to and participation in
the Program, including tax and other confidential information that is subject to
subdivision (1) of this subsection:

(A) to the Joint Fiscal Office, or to its agent, upon authorization of
the Joint Fiscal Committee or a standing committee of the General Assembly;
and shall also be available

(B) to the Auditor of Accounts in connection with the performance of
duties under section 163 of this title; provided, however, that the
(3) The Joint Fiscal Office or its agent and the Auditor of Accounts shall not disclose, directly or indirectly, to any person any proprietary confidential business information or any information that would identify a business except in accordance with a judicial order or as otherwise specifically provided by law.

(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. [Repealed.]

§ 3342. ANNUAL PROGRAM CAP; LIMITATION ON AWARDS IN PERIODS OF LOW UNEMPLOYMENT

(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:

(1) $15,000,000.00 for one or more initial approvals; and

(2) $10,000,000.00 for one or more final approvals.

(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.
(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.

(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.

(e) Notwithstanding any provision of this subchapter to the contrary, the Council shall not award any incentives during the six-month period following a January or July consensus revenue forecast if the State unemployment rate at the time of the forecast is 2.5 percent or lower.

Sec. 2. IMPLEMENTATION

(a) Subject to subsections (b) and (c) of this section, 32 V.S.A. §§ 3341 and 3342, as amended in Sec. 1 of this act, apply to current and future participants in the Vermont Employment Growth Incentive Program.

(b) A business with an approved application may opt out of the amended reporting requirements in 32 V.S.A. §§ 3341 and 3342 and withdraw from future participation in the Program, except as otherwise provided in subsection (c) of this section, by providing written notice of its intent to the Vermont Economic Progress Council on or before December 31, 2021.
(c) A business that provides notice pursuant to subsection (b) of this
section:

(1) is subject to and shall comply with the reporting requirements in 32 V.S.A. §§ 3341 and 3342, as those sections of law appeared prior to the effective date of this act, for the remainder of its participation in the Program;

(2) may earn an incentive and the installment payments for award year 2020 if the business otherwise meets the requirements of the Program;

(3) may earn the remaining installment payments for one or more incentives the business earned in award years prior to 2021 if the business otherwise meets the requirements of the Program; and

(4) is ineligible to earn an incentive for any award year after 2021.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2021.