Introduced by Representatives Kornheiser of Brattleboro and Marcotte of Coventry

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

THINK VERMONT INVESTMENT 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.

(1) The Council shall have 11 voting members:

(A) 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:

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

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

(C) 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 the member’s 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 Department of Financial Regulation and the Department of Taxes.

(B) The Council shall receive legal counsel exclusively from the Office of the Attorney General.

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Subchapter 2: Vermont Employment Growth Incentive Think Vermont Investment Program

§ 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 incentivizing a business to add new payroll, create new jobs, and make or 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; and

(B) an enhanced incentive for an environmental technology business
pursuant to section 3335 of this title.

(C) [Repealed.]

(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 three years during which a business may apply for an incentive under this subchapter.

(5) “Economically disadvantaged area” means labor market areas in which the average annual unemployment rate is greater than the average annual unemployment rate for the State or the average annual wage is less than the average annual wage for the State.

(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:

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

___The new revenue the proposed activity would generate to the State would exceed 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 rules; and

(C) the proposed economic activity would conform to applicable town and regional plans and with applicable State laws and rules.

(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 the business attests that, 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.

§ 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 or an enhanced incentive for an environmental technology business under section 3335 of this title, the Businesses may earn an incentive for both capital investments and creation of qualifying jobs. 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.

(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.

(A) Each new qualifying job will yield an incentive amount of $5,000. For all other labor market economically disadvantaged areas, each new qualifying job will yield an incentive amount of $7,500; and.
(B) A capital investment incentive amount will be determined by calculating an amount not to exceed the lesser of 20% or $1,000,000 for the capital investments.

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

(A) divide the value of the incentive for each award period by five three.; and

(B) 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.

* * *

§ 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.

(e) 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.]

§ 3337. Earning an incentive

(a) Earning an incentive; installment payments.

   (1) A business with an approved application is eligible to earn the incentive installment payment specified for an award year if, within the applicable time period provided in this section, the business:

       (A) maintains or exceeds its base payroll and base employment; and

       (B) meets or exceeds the payroll performance requirement specified for the award year; and

       (C) 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.

   (2) A business that earns an incentive specified for an award year is eligible to receive an installment payment for the year in which it earns the incentive and for each of the next four years in which the business:
(A) maintains or exceeds its base payroll and base employment; and

(B) maintains or exceeds the payroll performance requirement specified for the award year; and

(C) 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.

(b) Award year one.

(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.

(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.

(c) Award years two and three.

(1) For award year two and award year three, beginning on January 1 of the award year, a business has three two years to meet the performance requirements specified for the award year.

(2) A business that does not meet the performance requirements specified for award year two or for award year three within three two years becomes ineligible to earn incentives for the award year and for all remaining award years in the award period.

(d) Extending the earning period in award years one and two. Notwithstanding subsections (b) (c) of this section:

(1) Upon request, the Council may extend the period to earn an incentive for
award year one or award year two if it determines:

(A) a business did not earn the incentive for the award year due to facts or circumstances beyond its control; and

(B) there is a reasonable likelihood the business will earn the incentive within the extended period.

(2) The Council may extend the period to earn an incentive:

(A) for award year one, by two years, reviewed annually; or

(B) for award year two, by one year.

(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.

e) Award year four.

(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.

(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.

f) Award year five three.

(1) Beginning on January 1 of award year five three, a business that remains eligible to earn incentives has one year to meet the performance requirements specified for award year five three.

(2) A business that does not meet the performance requirements specified for
award year five three by the end of that award year becomes ineligible to earn the
incentive specified for that award year.

(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 award year, provided that the business maintains the excess payroll, excess jobs, or excess capital investment into the future award year.

§ 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

(E) the aggregate number new qualifying jobs anticipated to be created;

(F) the aggregate amount of new full-time payroll anticipated to be created and average wage; and

(G) NAICS Code

(3) the following aggregate information for claims processed:

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

(B) the number of qualifying jobs for each approved claim; and

(C) the amount of new payroll and capital investment for each approved claim.

(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 financial return information, including reporting information in an aggregate form of a business, as defined in section 3102 of this title, consistent with this section.

(b)(1) Information and materials submitted by a business concerning its income taxes and other confidential financial Return information shall not be subject to public disclosure under the State’s public records law in 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 return information:
(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 business return 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 and final 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 five 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, 2023.

(c) A business that provides notice pursuant to subsection (b) of this section is subject to and shall comply with the requirements of 32 V.S.A. chapter 105 as it appeared prior to the effective date of this act for the remainder of its participation in the Program.

2016 Acts and Resolves No. 157, Sec. H.12 is amended to read:

See. H.12. VEGI; REPEAL OF AUTHORITY TO AWARD INCENTIVES

Notwithstanding any provision of law to the contrary, the Vermont Economic Progress Council shall not accept or approve an application for a Vermont Employment Growth Incentive under 32 V.S.A. chapter 105, subchapter 2 on or after January 1, 2024.

[Repealed]

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2023 January 1, 2024.