



States' Biofuels Statutes

STATE OF VERMONT

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Current through the 2014 Legislative Session of the Vermont State Legislature.

§ 5930b. Vermont employment growth incentive

(a) Definitions. As used in this section:

- (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.
- (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.
- (3) “Authorized award amount” means the amount of the incentive award as determined by the Vermont Economic Progress Council pursuant to this section.
- (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.
- (5) “Base number of jobs” means the total number of full-time Vermont jobs held by nonowners on an annualized basis.
- (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(12) Repealed by [2007, No. 81](#), § 16, eff. June 11, 2007.

(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.

(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 jobs” means new, full-time Vermont jobs held by nonowners that meet the wage threshold.

(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 60 percent above the minimum wage at the time of application, in order for a new job to be a qualifying job under this section.

(b) Authorization process.

(1) A business may apply to the Vermont Economic Progress Council for 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. 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.

(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.

(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. 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. 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. The Council shall calculate an incentive percentage for each approved application as follows:

Authorized award amount / the five-year sum of all payroll targets

(4) An approval shall specify: the application base jobs at the time of the 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.

(5) Notwithstanding subdivision (3) of this subsection, the Council may authorize incentives in excess of net fiscal benefit multiplied by the incentive ratio not to exceed an annual authorization established by law.

(c) Claiming an employment growth incentive.

(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. 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.

(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.

(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.

(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.

(5) Deleted by [2007, Adj. Sess., No. 190](#), § 28, eff. July 1, 2008.

(6) 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, which ever 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.

(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.

(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.

<Subdiv. (c)(9) applicable for tax year 2014 and after pursuant to [2013, Adj. Sess., No. 174](#), § 70(1).

See Historical and Statutory notes, post.>

(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.

(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. 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.

(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.

(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 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.

(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.

(g) Employment growth incentive for environmental technology business.

(1) For purposes of 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:

(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.

(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:

(A) the “incentive ratio” pursuant to subdivision (a)(11) of this section shall be set at 90 percent; and

(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.

Credits 1997, Adj. Sess., No. 71, § 48; 2001, Adj. Sess., No. 138, § 3; 2003, No. 67, § 15; 2005, Adj. Sess., No. 184, § 9; 2007, No. 81, §§ 16 to 21, eff. June 11, 2007; 2007, Adj. Sess., No. 190, §§ 28, 42, eff. January 1, 2007; 2007, Adj. Sess., No. 190, § 41, eff. July 1, 2008; 2009, No. 54, §§ 12, 15, eff. June 1, 2009; 2009, Adj. Sess., No. 160, § 10, eff. Jan. 1, 2010; 2011, No. 45, § 14, eff. May 24, 2011; 2011, No. 52, § 5, eff. May 27, 2011; 2011, Adj. Sess., No. 143, §§ 18, 19, eff. May 15, 2012; 2013, Adj. Sess., No. 174, § 4, eff. Jan. 1, 2014.