

VEPC AND VEGI STATUTE

ANNOTATED TO INCLUDE 2015 LEGISLATIVE SESSION

Title 32 : Taxation And Finance

Chapter 151 : Income Taxes

§ 5930a. Vermont Economic Progress Council

(a) There is created a Vermont Economic Progress Council which shall be attached to the Department of Economic Development for administrative support, 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. 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. 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. 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. The Governor shall select a Chair from among the Council's members. 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. 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. 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.

(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.

(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.

(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. 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:

(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.

(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 opportunities for advancement and professional growth consistent with the employment sector.

(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.

(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 approval requirements.

(5) The enterprise should protect or improve Vermont's natural, historical, and cultural resources, and enhance Vermont's historic settlement patterns.

(6) It is desirable for the enterprise to make use of Vermont resources.

(7) It is desirable for the enterprise to strengthen the quality of life in the host municipality, and to foster cooperation within the region.

(8) It is desirable for the enterprise to use existing infrastructure or to locate in an existing downtown redevelopment project.

(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.

(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.

(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.

(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.

(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.

(f) The Economic Progress Council shall have the authority to adopt rules 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.

(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 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.

§ 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.]

(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 job" means 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

(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:

(i) 40 percent above the State minimum wage at the time of application; or

(ii) \$13.00 per hour.

(25) "Labor market area" means a labor market area as designated by the Vermont Department of Labor.

(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)(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.

(B)(i) Except as provided in subdivision (B)(ii) of this subdivision (5), 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.

(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.

(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) [Repealed.]

(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.

(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 period.

(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.

(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.

Subdivision (c)(9) shall apply to taxable years prior to January 1, 2014; see note set out below.

(9) Incentive claims must be filed annually no later than the last day of April of each year of the 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. 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.

Subdivision (c)(9) shall apply to taxable years beginning on and after January 1, 2014; see note set out below.

(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) 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:

(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.

(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);

(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

(C) shall disburse the remaining value of the incentive award in annual installments pursuant to subdivision (c)(2) of this section.

(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.

(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.

(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.