



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: Joint Fiscal Committee
From: Graham Campbell, Senior Fiscal Analyst, JFO
Emily Byrne, Associate Fiscal Officer, JFO
Date: September 20, 2022
Subject: ACCD request to Increase the VEGI LMA Incentive Enhancement Cap

Executive Summary

The Vermont Economic Progress Council (VEPC) has asked the Joint Fiscal Committee (JFC) to increase the Labor Market Area enhancement cap by \$500,000 from \$1 million to \$1.5 million for final applications in calendar year 2022.

- Through the Vermont Economic Growth Incentive (VEGI) program, Vermont businesses can apply for incentives to encourage/accelerate economic activity through increased employment and capital investments.
 - In addition to a regular VEGI incentive, there is an additional incentive for firms in areas of the state with less favorable economic conditions known as Labor Market Area (LMA) Incentive Enhancements.
- There are statutory maximums that can be allocated annually for both the regular VEGI incentives as well as the LMA enhancement, both of which can be raised by the JFC under certain circumstances.
- Agency of Commerce and Community Development (ACCD) is seeking an increase to the LMA cap, which has been done twice (2015 and 2016) since VEGI's creation in 2007.

As it stands, VEPC has awarded \$1.16 million in initial approvals to two firms (Ivy Computer and Simon Pearce), the majority of which was awarded at the beginning of the calendar year. VEPC expects these awards will be finalized, putting them over the \$1 million statutory LMA cap. VEPC also anticipates additional applications this calendar year that will qualify for a LMA enhancement.

JFC has the statutory responsibility in 32 V.S.A. § 3334(d) and (e) to consider whether increasing the cap will represent a net fiscal benefit to the state. As of the September 2022 JFC meeting, JFO and its agent have not reviewed specific applicant information to advise the committee on this subject. In addition to this, in considering the request the Committee should consider seeking more detail about:

- *Information on the 2022 applicants' enhancements*, including justifications about the size and timing of each firm's 2022 LMA enhancement.
- *The LMA enhancement approval process in general*, including questions about how VEPC manages award enhancements while facing the cap during the calendar year.

- *Implications for 2022 awards* if JFC does not make changes to the LMA enhancement cap and how this would affect awardees and their plans.

The JFC may exercise its authority under 32 V.S.A. § 3441(b) and request that information and materials be made available to the Joint Fiscal Office or its agent for review.

VEGI Background

Pursuant to 32 V.S.A. §3325 the Vermont Economic Progress Council (VEPC) operates the Vermont Economic Growth Incentive Program (VEGI) to provide incentives to Vermont businesses to encourage economic activity through increased employment and capital investment. Annually, companies can submit applications for VEGI awards to VEPC demonstrating that with the award they will be able to grow, relocate, start new, or prevent the closure of a Vermont company. These incentives are earned over a 5-year period based on meeting labor force and capital investment performance metrics.¹

Annually, VEPC is authorized by statute to award up to \$15 million in initial awards and up to \$10 million in final awards². The amount awarded to a business is established through a cost benefit calculation that determines if the theoretical amount of net tax revenue to the state generated is greater than the requested VEGI award. The difference between the revenue to the state determined by the cost benefit model and the amount of the VEGI award is known as the “Net Revenue Benefit”. To receive an award, a business must generate a positive Net Revenue Benefit to the state.³

Labor Market Area Incentive Enhancement

In addition to a base award, a company may be awarded additional funds up to the amount of the calculated Net Revenue Benefit if it is in a designated Labor Market Area (LMA)⁴. The total LMA incentive enhancement amount available for allocation each year by VEPC is set in statute at \$1.5 million for initial awards and \$1 million for final awards (32 V.S.A §3334). Like the general VEGI awards, there is capacity built into the system to approve more initial awards because not all initial applications are submitted for final applications. VEPC can request the Joint Fiscal Committee increase the LMA cap to \$1.5 million in the event additional capacity is needed per 32 V.S.A. §3334.

There is no formula that drives the calculation of an LMA enhancement; the basis for an LMA enhancement is based on the benefits and projected outcomes of a project as outlined in an application. VEPC’s review of the applicant’s justification for LMA enhancement is qualitative in nature. VEPC has discretion on how much to award as an LMA enhancement, however it

¹ A more detailed summary of the VEGI Program can be found here:

https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/Programsummary.pdf

² Not all initial awards result in final awards, some applications are withdrawn each year. If the number of final awards is anticipated to exceed the \$10 million cap, VEPC can request that the Joint Fiscal Committee increase the cap by up to \$5 million to accommodate additional awards.

³ More information on the calculation can be found here:

https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/HowVEGIWorks.pdf

⁴ LMA is a federal designation of a region that is economically integrated where individuals reside and are employed. The Department of Labor establishes the states, found here:

<http://www.vtlni.info/lmadef2015.pdf>.

The LMAs eligible for enhanced VEGI grants have either a greater than state average unemployment or a below-state-average annual wages. A list of current LMAs can be found on the ACCD website: https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/LMA_Enhancement-Eligible_LMAs.pdf

cannot exceed the Net Revenue Benefit to the state, as calculated by the cost benefit model. Typically, the LMA cap is awarded up to the full amount of the Net Revenue Benefit that a project is anticipated to generate, unless the Net Revenue Benefit is greater than the LMA cap or VEPC determines that a lower amount is appropriate. The discussions that determine these awards occur in executive session of VEPC as the details of the applications are sensitive in nature.

Per 32 V.S.A. §3334 the Joint Fiscal Committee can authorize VEPC to exceed the \$1 million LMA cap by up to an additional \$500,000 in a calendar year. Prior to authorizing an increase in the cap, the Joint Fiscal Committee may authorize a review of the information and materials submitted to VEPC by the Joint Fiscal Office or its agent, per 32 V.S.A. §3341(b). An increase in the cap has been approved twice in the history of the program: in 2015 and 2016, although at that time, the increase was approved by the Emergency Board, not the Joint Fiscal Committee.⁵

ACCD's Request of the Joint Fiscal Committee

In calendar year 2022, VEGI awards to Ivy Computer of Waterbury and Simon Pearce of Windsor were accompanied by LMA enhancements of \$1 million and \$160,473 respectively, for a total of \$1.16 million in initial application LMA enhancements. VEPC has also informed JFO and the Joint Fiscal Committee of a potential forthcoming applicant that may be eligible for a LMA enhancement. The \$1.16 million VEPC has awarded is well within its statutory authority for initial applications of \$1.5 million.

ACCD is requesting an increase in the LMA enhancement cap for final applications from \$1 million to \$1.5 million. If both 2022 awardees submit final applications in line with their initial applications, VEPC would be above its statutory authority of \$1 million in final LMA enhancements prior to considering additional applications in 2022. Thus, it is requesting that the Joint Fiscal Committee increase the cap for final approvals to accommodate the two initial awards as well as ensure capacity for any additional awards in 2022.

Additional Historical Context

Since 2007, VEPC has awarded LMA enhancements to active and completed applications totaling \$5.365 million across 31 awardees⁶ with an average of just over \$173,000. In most years, LMA enhancements do not approach the cap: in the 15 years VEGI has existed, LMA enhancements in any given year have only ever exceeded \$750,000 (or 75% of the cap) five times.⁷ In the past, applicants eligible for an LMA enhancement have tended to be small so if VEPC awarded the enhancement, it would take many applicants to approach the cap.

⁵ Approval was changed from the Emergency Board to the Joint Fiscal Committee in January of 2017 per 2016 Act 157.

⁶ An additional 31 projects were in qualified LMAs but either did not apply or were not awarded LMA enhancement.

⁷ 2022 VEGI Annual Report
https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/ED/VEGI/AnnualReports/2022%20VEGI%20Annual%20Report-FINAL.pdf

Process for Awarding LMA Enhancements

In awarding LMA enhancements to applicants, VEPC is constrained by two parameters: the LMA enhancement cap and the Net Revenue Benefit to the state. VEPC cannot award any single applicant more than the Net Revenue Benefit or an amount greater than \$1 million. The applicant must justify the enhancement request, answering questions such as the following, typically in executive sessions of VEPC meetings:

- Will the project result in extraordinary and/or increased benefits to the State that are in addition to the job creation and incremental revenue generated by the project?
- Will the project result in the reopening or avoid imminent closure of a business?
- Does the project involve a critical business operation upon which a community relies for employment or tax revenue?

The full list of questions can be found on VEGI's website.⁸

VEGI's 2022 Annual Report and VEPC minutes back to the beginning of 2018 show that the standard practice for VEPC appears to be awarding applicants eligible for LMA enhancement 100% of the Net Revenue Benefit to the state as an enhancement. Given this record, it would appear VEPC has determined that nearly all LMA applicants sufficiently and credibly answer one or all the above questions in the strong affirmative.

Calendar Year 2022 LMA Enhancements

The question before the Joint Fiscal Committee is whether to increase the LMA enhancement cap by \$500,000 to \$1.5 million for final applications in calendar year 2022. As it stands, VEPC has awarded \$1.16 million in initial approvals which it expects will be finalized, putting them over the \$1 million statutory cap. VEPC also anticipates additional applications this calendar year that will qualify for a LMA enhancement.

VEPC and ACCD were aware that there would be limited space to make future LMA enhancements in 2022 since January this year. For calendar year 2022, VEPC has already approved \$1 million enhancement in December 2021 to Ivy Computer. This instantly brought total 2022 enhancements to their final approval cap with 12 months to go in the calendar year. The Council's actions indicate that they assumed the Joint Fiscal Committee would increase the approval cap in later months, or that Ivy Computer would finalize its application later in the year with a lower number, and/or that future applicants in 2022 would not require an LMA.

The \$1 million enhancement to Ivy Computer is nearly equivalent to the net revenue benefit projected for the project, which is not atypical for LMA projects. However, what is notable is the size of the enhancement. \$1 million is the largest LMA enhancement granted in VEGI's history. Because the award was granted at the outset of the calendar year, forgoing the ability to make future LMA enhancements without a Joint Fiscal Committee increase, the Council's actions must be interpreted as a strong belief in the strength of the application and importance of Ivy Computer's plans in Waterbury.

When Simon Pearce applied to VEPC for an LMA enhancement, the Council awarded the company \$160,473, bringing enhancements for the year to \$1.16 million⁹. Given they had

⁸ Typical LMA questions:

<https://accd.vermont.gov/sites/accdnew/files/documents/DED/VEPC/VEGI/LMAEnhancement.pdf>

⁹ Note, Simon Pearce only received an LMA enhancement equivalent to 60% of the Net Revenue Benefit to the state, per the VEGI minutes, a diversion from the typical 100% allocation.

already awarded the entirety of the final approval cap to Ivy Computer, VEPC was counting on either the Joint Fiscal Committee would increase the final cap or that Ivy Computer would reduce its LMA enhancement upon final approval, and that there would be no future applicants with LMA enhancement in calendar year 2022.

Finally, in its supporting documents for the request, VEPC noted at least one additional applicant coming in calendar year 2022 that may be eligible for an LMA enhancement. Without an increase in the LMA enhancement cap or a significant change to Ivy Computer or Simon Pearce's awards upon final application, they will be unable to award any LMA enhancement to this applicant.

Considerations for the Joint Fiscal Committee

It is important to note that 32 V.S.A. § 3441(d) and (e) grants the JFC the responsibility to determine whether the increasing the cap will generate net fiscal benefit to the state in the context of the current revenue forecast and budget environment. Statute also gives the committee the authority to review applicant information in order to make that determination. Given the confidentiality requirements around the program, this review can only occur by JFO's agent in concert with ACCD, rather than in an open JFC meeting. This review has not been requested or completed prior to the September 2022 JFC meeting so JFO cannot report to the committee on these statutory requirements at this time

In addition to this statutory requirement, the Committee may also use the opportunity to seek more detail about the 2022 applicants, the process for LMA enhancement, or the VEGI process in general. The Joint Fiscal Committee may exercise its authority under 32 V.S.A. § 3441(b) and request that information and materials, be made available to the Joint Fiscal Office or its agent for review.

With respect to the 2022 calendar year enhancements, the committee might consider seeking more information about the award and subsequent enhancement to Ivy Computer, since its award is the primary reason an increase in the cap is needed:

- Why did the Council feel the urgency or need to award \$1 million in LMA enhancement, the entire final approval cap, to Ivy Computer at the beginning of the calendar year?
 - What were the specific aspects of the application the Council found compelling?
 - Does this award represent extraordinary fiscal benefit to the state that would justify raising the LMA enhancement cap?
 - Was there strong belief that the company would not move forward in its plans if the enhancement was not awarded?
- What led the Council to award \$1 million, or 96% of the Net Revenue Benefit?
 - Were other amounts considered?
 - Is this enhancement tied to the costs of new employees or capital investment, or is it purely a function of the Net Revenue Benefit from the VEGI cost benefit model?

In addition to the specific applicants in 2022, the Joint Fiscal Committee might consider seeking additional detail and explanation on the overall approval process for LMA enhancements:

- The \$1 million LMA enhancement for Ivy Computer, which consumed the entire 2022 final approval cap, was made late in 2021.
 - Why was such a large enhancement given so early in the calendar year?

- Does VEPC consider future applicants and uncertainty about final applications when determining the size of any given applicant's LMA enhancement?
 - How does VEPC tailor its awards at points in the year based upon the LMA enhancement cap?
- Why has awarding 100% of the Net Revenue Benefit for almost all LMA enhancement-eligible applicants become the standard?
 - What determines whether an applicant receives 100% of the Net Revenue Benefit or 60%, as was the case with Simon Pearce?

Finally, while statute provides direction about the maximum amount of LMA enhancements that can be awarded, if VEPC awards exceed that amount, it is worth considering what actions VEPC will take if the Joint Fiscal Committee does not increase the cap:

- How would they adjust the awards for Ivy Computer and Simon Pearce?
 - For the anticipated future applicant in 2022, how will it calculate this award?
- If the cap is increased, does VEPC anticipate future applicants being awarded the entire remaining \$440,000?

JFO and its agent in VEGI matters, Tom Kavet, are available to assist on these questions as well as any additional questions the Joint Fiscal Committee may have as it considers this request.