

## **DRAFT REGULATION**

### **VERMONT ECONOMIC PROGRESS COUNCIL**

#### REG.SEC. 1.5930a. VERMONT ECONOMIC PROGRESS COUNCIL

Reg. § 1.5930a.1. Definitions. For the purposes of this rule:

- 1.1 “Agency” means the Agency of Commerce and Community Development.
- 1.2 “Board” means the nine voting members appointed to the Council by the Governor.
- 1.3 “Council” means the Vermont Economic Progress Council, comprised of the board and the non-voting designated regional representatives.
- 1.4 “Department” means the Department of Economic Development.
- 1.5 “Executive Committee” means the chair, vice-chair, and the executive director.
- 1.6 “Staff” means the executive director or his/her designee.

Reg. § 1.5930a.2. Independent body.

- 2.1 In accordance with 32 VSA §5930a(a), the council is an independent public body created by the General Assembly which is housed within, and attached to, the Department of Economic Development.
- 2.2 The agency and department will provide administrative support to the council, including, but not limited to, office space, information technology, and human resources, legal, budgetary and other support services as agreed to between the agency and the council.
- 2.3 The council’s budget is included within the annual budget of the department and passed through to the council.

Reg. § 1.5930a.3. Board Officers

3.1 Number, Election and Term of Office

- 3.1.1 The officers of the council will consist of a chair and a vice chair or two co-vice chairs if the council chooses to operate with vice-chairs leading subcommittees.

3.1.2 In subsequent years the chair and vice chair or co-vice chairs will be elected annually by the board from among the board's appointed members.

3.2 Resignation - Any officer may resign at any time by presenting a written notice of such resignation to the board. Unless otherwise specified in such written notice, such resignation will take effect upon receipt thereof by the board, and the acceptance of such resignation will not be necessary to make it effective.

3.3 Removal - Any officer may be removed from their position as an officer by a majority vote of the board at any time, whenever in the judgment of the board the best interests of the organization will be served thereby.

3.4 Vacancies - A vacancy in any office by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by a majority vote of the board.

3.5 Duties of officers - Officers of the council, unless otherwise provided by resolution of the board, shall each have such powers and duties as generally pertain to their perspective offices, as well as such powers and duties as may be set forth in these rules or may from time to time be specifically conferred or imposed by the board, the Governor, or the General Assembly.

Reg. § 1.5930a.4. Council Members - Number, Appointment and Term of Office

4.1 The board consists of nine (9) citizens of the state appointed by the Governor in accordance with the requirements of 32 VSA § 5930a(a).

4.2 All board members' terms will be three-year terms upon the expiration of their initial terms and council members may be reappointed to serve successive terms at the discretion of the Governor if requested by the board member.

4.3 In addition to the board of nine members appointed by the Governor, the council includes two regional members from each region of the state, one from each region designated by the regional development corporation, and one from each region designated by the regional planning commission. Each designee shall be appointed by the board of the regional organization, unless that authority has been conferred to the director of the organization. Regional designees must be either the director of the regional organization, a member of the regional organization's board, or a citizen residing in a county represented by the regional organization. Each regional planning commission and regional development corporation is responsible for providing notice to the council regarding any change in designee.

Reg. § 1.5930a.5. Board members - Resignation, Vacancies

5.1 Any board member may resign at any time by giving written notice to the chair, who will notify the board, and the Governor. Unless otherwise specified in

such written notice, such resignation will take effect upon receipt thereof by the board, and the acceptance of such resignation will not be necessary to make it effective.

5.2 Any board vacancy occurring by reason of end of term, death, resignation, disqualification, removal or inability to act, shall be filled as follows:

5.2.1 Staff will, for each vacancy, solicit nominee names from council members and other regional and state leaders, with the goal of obtaining two names for each region of the state that is not represented on the board.

5.2.2 Staff will determine the interest and qualifications of the nominees and submit the list to the Executive Committee, which will select two names to submit to the board for consideration.

5.2.3 Upon a vote by the board, two names, with an order of preference will be submitted to the Governor for consideration.

5.2.4 For each vacancy, the Governor appoints a citizen of the state in accordance with the requirements of 32 VSA § 5030a(a). Such appointment is made at the discretion of the Governor and will not necessarily include the names submitted by the board for consideration.

Reg. § 1.5930a.6. Council Members – Duties.

6.1 Board Members - The board will, within 60 days of receipt of a complete application, and in accordance with statutory requirements, approve or deny applications for:

6.1.1 The Vermont Employment Growth Incentive program as required by 32 VSA §5930b;

6.1.2 The Tax Increment Financing District program as required by 32 VSA §5404a(h); and

6.1.3 Education tax stabilizations and exemptions as required by 32 VSA §5404a(a)(2).

6.2 Designated Regional Members – designated regional members of the council are nonvoting members and serve in an advocacy and advisory capacity.

Reg. § 1.5930a.7. Council Members - Salaries and Expenses

7.1 Board members. No salary shall be paid to board members for their services. Board members will be paid, on a semi-annual basis, for attendance at meetings and for other official duties, expenses as provided by 32 VSA §1010; provided, however, that nothing herein shall be construed to preclude any member from serving the council in any other capacity and receiving compensation therefore.

7.2 Designated Regional Members. No salary shall be paid to designated regional members for their services. Designated regional members can be paid, on a semi-annual basis, for attendance at meetings and for other official duties, expenses as provided by 32 VSA §1010 if they do not otherwise receive compensation and reimbursement for expenses from the designating organization. Designated regional members must submit a request for such reimbursement within 60 days after attending a council meeting. Such request must include a statement from the designating organization that the designee did not receive compensation or reimbursement from the designating organization for such expenses; provided, however, that nothing herein shall be construed to preclude any member from serving the council in any other capacity and receiving compensation therefore.

Reg. § 1.5930a.8. Contracts.

8.1 No contract or other transaction between this council and any other association shall be impaired, affected or invalidated, nor shall any member be liable in any way by reason of the fact that any one or more of the members of this council is or are interested in, or is a director or officer, or are directors or officers of such other association. Notwithstanding this provision, all members of the council are considered governor's appointees for the purpose of complying with Executive Order No. 3-45 on Ethics.

8.2 The council is authorized to enter into a contract (subject to Administration Bulletin 3.5) and transaction by the vote of a majority of the board. This Section shall not be construed to impair or invalidate or in any way affect any contract or other transaction which would otherwise be valid under the law (common, statutory or otherwise) applicable thereto.

Reg. § 1.5930a.9. Committees.

9.1 The council, by resolution adopted by a majority of the members of the board, may from time to time designate from among its members, committees, and alternate members thereof, as they may deem desirable, each consisting of one or more members, with such powers and authority as may be provided in such resolution. Each such committee shall serve at the pleasure of the board chair and the board chair shall serve as an ex-officio member of each committee.

9.2 Standing Committee – The only standing committee shall be the executive committee, which shall consist of the elected officers and the executive director and shall have such powers as conferred by a majority vote of the board.

Reg. § 1.5930a.10 Meetings

10.1 Schedule.

10.1.1 An annual schedule of council meetings shall be approved by a majority vote of the board and published before December 15 for the subsequent year.

10.1.2 Regular meetings of the council shall be held on the fourth (4th) Thursday of each month, unless proper notice is provided otherwise. The board may, by a majority vote of the board, schedule other regular meetings of the council, provided proper notice is provided.

10.1.2 Special meetings of the council shall be held whenever called by the chair or by two or more members of the board, at such time and place as may be specified in the respective notices or waivers thereof. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called, and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting.

10.1.3 An annual retreat of the board may be held, for which proper notice is provided, on a date set by a majority vote of the board.

10.2 Notice.

10.2.1 Written notice of any meeting of the council shall be properly warned and shall specify the date, hour and place of the meeting and business to be transacted. Such notice shall be served either personally, by mail, or electronically upon each council member, not less than seven, nor more than fifty days before the meeting. If mailed, such notice shall be directed to each member's address, as it appears on the records of the council.

10.2.2 Written notice of any meeting of the council shall be provided to the public in accordance with 1 VSA Chapter 5.

10.3 Presiding.

10.3.1 At all meetings of the council, the chair of the board, if present, shall preside, and in his/her absence, the vice chair shall preside. If officers consist of co-vice chairs, the vice-chair selected by the chair shall preside in the chair's absence.

10.3.2 In the absence of both chair and vice chair, an appointed member designated by the Chair shall preside.

10.4 Quorum. At all meetings of the council, the presence of a majority of the board shall be necessary and sufficient to constitute a quorum for the transaction of business.

10.5 Attendance:

10.5.1 The board may, by a concurring vote of a majority of the board then in office, request in writing that the Governor ask for the resignation of any member of the board for failure to attend three consecutive meetings.

10.5.2 Attendance in person is preferred, but attendance may occur by conference phone, if necessary. Board members may vote if attending by conference phone. All requirements of an open meeting will be followed for any meeting held by telephone or for any meeting where one or more members participate by telephone.

10.6 Manner of Acting.

10.6.1 At all meetings of the council, each board member shall have one vote. The designated regional members shall not be entitled to vote.

10.6.2 Upon the request of any board member, any vote shall be taken by roll call, which shall be recorded. If an appointed member must recuse themselves from the discussion, and abstain from any vote by reason of disqualification such as for a conflict of interest, that action shall be recorded in the minutes.

10.6.3 In accordance with 1 VSA §172, the board can only take binding action during public session and only when at least five members of the board (a majority of the total) act in concurrence.

10.6.4 If, because of member absence, a concurrence of five (5) votes cannot be attained, the vote will be considered incomplete and the record left open. The absent member(s) will be provided with the application information and the meeting record and the vote of the absent member(s) will be obtained at the next regularly scheduled meeting or, if required, a special meeting will be called, warned and held to obtain the vote of the absent member(s).

10.6.5 If, because of the lack of a full number of nine (9) appointed members and, or abstention by member(s), a concurrence of five (5) votes cannot be attained, the application, in effect, is denied without prejudice

and may be re-submitted once the Board has nine (9) members or upon removal of the conflict of interest causing the abstention.

## 10.7 Executive Session

10.7.1 In accordance with 1 VSA §313, the council may enter executive session from which the general public is excluded only for the purposes allowed by said section and only upon the affirmative vote of two-thirds of those board members present, which vote shall be taken in the course of a public meeting. A motion to enter executive session must indicate the reason for entering executive session and the nature of the business to be conducted during executive session. No other matter may be considered during the executive session and no formal or binding action can be taken during executive session, except as allowed by 1 VSA §313.

10.7.2 Attendance in executive session shall be limited to board members, council members, and at the discretion of the board, staff, clerical assistants, legal counsel, consultants, and persons or representatives of persons or companies who are the subject of the discussion or who are involved in the transaction or whose expert information or testimony is needed.

10.7.3 Notes of executive session will be kept but shall not be public in accordance with 1 VSA §313(a). The notes will be made available to persons duly authorized to examine information in the custody of the council considered confidential under 32 VSA §5930a(h) or other applicable law.

10.8 Teleconferencing. When appropriate, the council will consider taking advantage of Vermont Interactive Television or teleconferencing as a means of conducting the regular monthly meetings or special meetings.

## Reg. § 1.5930a.11 Council Records and Documents

11.1 Open Records. Records not otherwise protected from disclosure under Vermont law will be made available for public inspection. Requests for copies of public records of the council are subject to the prevailing fee schedule provided by the Vermont Secretary of State.

### 11.2 Manner of Inspection.

11.2.1 Pursuant to Section 11.1 above, and on reasonable notice having been provided, any person may inspect or copy any public record or document of the council during the course of the council's customary business day. If a photocopying machine or other mechanical device maintained for use by the council is used to copy the public record or

document requested by any person, such person may be charged a copying fee pursuant to the rates established by the Vermont Secretary of State.

11.2.2 Notwithstanding the above, the council or its staff may supervise the inspection or copying of all public records, and may limit the amount of inspection and copying in any one day so as to prevent disruption of its internal operations and may take steps to preserve the security of its records and to protect them from damage or disorganization.

### 11.3 Exceptions from Public Disclosure

11.3.1 Exceptions listed in statute. The Vermont access to public records law includes a number of exceptions to the public disclosure requirement and they are listed in 1 V.S.A. § 317(c).

11.3.2 Purpose of Confidentiality. Notwithstanding the policy stated in Section 11.1 above, the council recognizes that it will not be able to function effectively and carry out its statutory purposes unless the records and documents set forth in the exceptions listed in Section 11.3.1 and the information contained therein are kept confidential. Business prospects expect that information provided in an application will be kept confidential, particularly in light of the prospective nature of the investments to be made over one or more years. Such prospects will be deterred from applying for incentives if the records and documents set forth in the exceptions listed in Section 11.3.1 and the information contained therein are not kept confidential. Fuller employment and other benefits to the State of Vermont will not be achieved if business prospects decide not to apply for incentives offered by the State of Vermont and administered by the council.

11.3.3 In consideration of the foregoing, the information, records and documents listed as exceptions in Section 11.3.1 are confidential and not public records. Such records shall only be made available to the persons designated by, and in accordance with the confidentiality provisions of, 32 VSA §5930a(h).

### Reg. 1.5930a.12 Amendments to rules.

12.1 In accordance with 32 VSA §5930a(f), board members shall have the authority to adopt and amend rules to provide streamlined and efficient procedures for processing and deciding applications.

12.2 Such rulemaking shall be made only by a majority vote of the board and through the procedures provided by 3 VSA, Chapter 25; provided, that the council

may develop and operate under interim administrative procedures until such time as rules are promulgated.

Reg 1.5930a.13. Decisions.

13.1 In accordance with 32 VSA §5930a(g), decisions of the board shall be administrative and not subject to the contested case hearing requirements of the Vermont Administrative Procedure Act in Chapter 25 of Title 3 of the Vermont Statutes Annotated.

13.2 Decisions of the board are final and not subject to judicial review. The board will develop procedures and rules under which applicants may reapply following a denial.

Reg 1.5930a.14 Conflict Of Interest

14.1 All board members and the executive director are subject to the Executive Code of Ethics set forth in Executive Order No. 3-45 promulgated by the Governor of the State of Vermont. Because the council meets regularly to approve or deny incentives to businesses as required by statute, this rule is intended to guide board members on the level of their participation in council meetings to ensure fairness and impartiality in the conduct of council business.

14.2 In connection with any staff recommendation on applications involving applicant entities, in which a staff member serves as a director or officer, such association shall be noted in writing in the staff memorandum to the council. In such cases, the staff member shall not participate in any executive session held to discuss the application.

14.3 Council members who disqualify themselves from consideration of matters due to conflicts of interest may not take an active part in either the proceedings before the council or in its deliberations during the period of time the board is discussing the entity in question.

14.4 This policy applies to all regular, special and emergency meetings of the council and all committee meetings governed by the Vermont Open Meeting Law. Nothing herein shall be construed to contradict any code of ethics or executive order applicable to members of the council.

Drafted by Fred Kenney:	January 10, 2007
Initial Draft Approved by VEPC:	January 25, 2007
Edited by John Kessler, ACCD Counsel:	March 16, 2007
Final Draft Approved by VEPC:	May 3, 2007

Amendment drafted by Fred Kenney:  
Edited by John Kessler, ACCD Counsel:  
Amendments Approved by VEPC:

June 27, 2008  
June 27, 2008  
July 24, 2008

DRAFT