H.416

Introduced by Representatives Smith of New Haven, Bouchard of Colchester, Clark of Vergennes and Lawrence of Lyndon

Referred to Committee on

Date:

Subject: Commerce and trade; taxation; job opportunity building zones

Statement of purpose: This bill proposes to authorize creation of job opportunity building zones.

An act relating to job opportunity building zones

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE PURPOSE

The purpose of this act is to build upon current efforts to help create jobs and foster economic development within the state. This act authorizes the creation of job opportunity building zones, expands the number of value-added agricultural processing facilities, and attracts green energy development and manufacturing of green energy technology.

Sec. 2. 10 V.S.A. chapter 3 is amended to read:

CHAPTER 3. ~~NATURAL RESOURCES INTERAGENCY COMMITTEE~~

JOB OPPORTUNITY BUILDING ZONES

§ 21. DEFINITIONS

As used in this chapter:

(1) "Agricultural processing facility" means one or more facilities or operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plants or plant products into goods that are used for intermediate or final consumption, including goods for nonfood use, and surrounding property.

(2) "Applicant" means a local government unit or units applying for designation of an area as a job opportunity building zone.

(3) "Commissioner" means the commissioner of economic, housing and community development.

(4) "Development plan" means a plan meeting the requirements of section 22 of this chapter.

(5) "Job opportunity building zone" or "zone" means a zone designated by the commissioner under section 25 of this chapter, and includes an agricultural processing facility zone.

<u>(6) “Job opportunity building zone percentage” or “zone percentage” means a percentage adopted by rule of the commissioner, the formula for which shall be based on a combination of:</u>

<u>(A) the percentage which the sales made within a zone in connection with the trade or business during the tax period are of the total sales wherever made in connection with the trade or business during the tax period;</u>

<u>(B) the percentage which the total tangible property used by the taxpayer in a zone in connection with the trade or business during the tax period is of the total tangible property, wherever located, used by the taxpayer in connection with the trade or business during the tax period; and</u>

<u>(C) job opportunity building zone payroll.</u>

<u>(7) “Job opportunity building zone payroll” means that portion of a qualifying business’s payroll that represents:</u>

<u>(A) wages or salaries paid to an individual for services performed in a job opportunity building zone; or</u>

<u>(B) wages or salaries paid to individuals working from offices within a job opportunity building zone if their employment requires them to work outside the zone and the work is incidental to the work performed by the individual within the zone.</u>

<u>(8) “Local government unit” means a Vermont city, town, or regional development corporation.</u>

(9) "Qualified business" means a person carrying on a trade or business at a place of business located within a job opportunity building zone according to the following criteria:

(A) A person is a qualified business only on those parcels of land for which the person has entered into a business subsidy agreement, as required under section 24 of this chapter, with the appropriate local government unit in which the parcels are located.

(B) Prior to execution of the business subsidy agreement, the local government unit must consider the following factors:

(i) how wages compare to the regional industry average;

(ii) the number of jobs that will be provided relative to overall employment in the community;

(iii) the economic outlook for the industry the business will engage in;

(iv) sales that will be generated from outside the state of Vermont;

(v) how the business will build on existing regional strengths or diversify the regional economy;

(vi) how the business will increase capital investment in the zone; and

(vii) any other criteria the commissioner deems necessary.

(C) A person that relocates a trade or business from outside a job opportunity building zone into a zone is not a qualified business unless the business meets all of the requirements of subdivisions (A) and (B) of this subdivision (9) and:

(i) increases full-time employment in the first full year of operation within the job opportunity building zone by a minimum of five jobs or 20 percent, whichever is greater, measured relative to the operations that were relocated and maintains the required level of employment for each year the zone designation applies; and

(ii) enters a binding written agreement with the commissioner that:

(I) pledges the business will meet the requirements of subdivision (i) of this subdivision (9)(C);

(II) provides for repayment of all tax benefits enumerated under section 26 of this chapter to the business under the procedures in set out in section 30 of this chapter, if the requirements of subdivision (i) of this subdivision (9)(C) are not met for the taxable year or for taxes payable during the year in which the requirements were not met; and

(III) contains any other terms the commissioner determines appropriate.

(D) The commissioner may waive the requirements under subdivision (C)(i) of this subdivision (9) if the commissioner determines that the qualified business will substantially achieve the factors under this subdivision (9).

(E) A business is not a qualified business if, at its location or locations in the zone, the business is primarily engaged in making retail sales to purchasers who are physically present at the business's zone location.

(F) A qualifying business must pay each employee compensation, including benefits not mandated by law, that on an annualized basis is equal to at least 110 percent of the federal poverty level for a family of four.

(10)(A) "Relocates" means that the trade or business:

(i) ceases one or more operations or functions at another location in Vermont and begins performing substantially the same operations or functions at a location in a job opportunity building zone; or

(ii) reduces employment at another location in Vermont during a period starting one year before and ending one year after it begins operations in a job opportunity building zone and its employees in the job opportunity building zone are engaged in the same line of business as the employees at the location where it reduced employment.

(B) "Relocate" does not include an expansion by a business that establishes a new facility that does not replace or supplant an existing operation or employment, in whole or in part.

(C) For purposes of this subdivision (10), "trade or business" means any business entity seeking to be a qualified business under this chapter, and any business entity that is substantially similar in operation or ownership to the business entity seeking to be a qualified business under this chapter.

(11) "Relocation payroll percentage" is a fraction, the numerator of which is the zone payroll of the business for the tax year minus the payroll from the relocated operations in the last full year of operations prior to the relocation, and the denominator of which is the zone payroll of the business for the tax year. The relocation payroll percentage of a business that is not a relocating business is 100 percent.

§ 22. DEVELOPMENT PLAN

(a) An applicant for designation of a job opportunity building zone must adopt a written development plan for the zone before submitting the application to the commissioner.

(b) The development plan must contain at least the following:

(1) a map of the proposed zone that indicates the geographic boundaries of the zone, the total area, and present use and conditions generally of the land and structures within those boundaries;

(2) evidence of community support and commitment from local government, local workforce investment boards, school districts, and other education institutions, business groups, and the public;

(3) a description of the methods proposed to increase economic opportunity and expansion, facilitate infrastructure improvement, reduce the local regulatory burden, and identify job-training opportunities;

(4) current social, economic, and demographic characteristics of the proposed zone and anticipated improvements in education, health, human services, and employment if the zone is created;

(5) a description of anticipated activity in the zone and each subzone, including industrial use, industrial site reuse, commercial or retail use, and residential use; and

(6) any other information required by the commissioner.

§ 23. JOB OPPORTUNITY BUILDING ZONES; LIMITATIONS

(a) Maximum size.

(1) A job opportunity building zone may not exceed 5,000 acres.

(2) For a zone designated as an agricultural processing facility zone, the zone also may not exceed the size of a site necessary for the agricultural processing facility, including ancillary operations and space for expansion in the reasonably foreseeable future.

(b) Subzones. The area of a job opportunity building zone may consist of one or more noncontiguous areas or subzones.

(c) Duration limit.

(1) The maximum duration of a zone is 12 years. The applicant may request a shorter duration. The commissioner may specify a shorter duration, regardless of the requested duration.

(2) The duration limit under this subsection and the duration of the zone for purposes of allowance of tax incentives described in section 26 of this chapter is extended by three calendar years for a parcel of property on which the qualified business operates an alternative energy generation facility, other than wind, on the site that includes the parcel, and the business subsidy agreement is executed after July 1, 2011, and before July 1, 2013; and

(3) The duration limit under this subdivision and the duration of the zone for purposes of allowance of tax incentives described in section 26 of this chapter is extended by five calendar years for each parcel of property that meets the following requirements:

(A) the parcel is located in a county with an unemployment rate that on the date that the business subsidy agreement is executed:

(i) equals or exceeds eight percent; or

(ii) is ten percent higher than the statewide average;

(B) the operations of the qualified business on the site include:

(i) its headquarters;

(ii) facilities for research and development; and

(iii) the manufacturing of products, used by the building, transport, consumer products, and industrial products sectors, that reduce the use of or increase the efficiency of the use of energy resources and that are manufactured using innovative and high technology processes; and

(C) the business subsidy agreement is executed after July 1, 2011, and before July 1, 2013.

(4) The duration limit under this subdivision and the duration of the zone for purposes of allowance of tax incentives described in section 26 is extended by five calendar years for each parcel of property that meets all the following requirements:

(A) the parcel is located in a county with an unemployment rate for any of the 12 months preceding the date on which the business subsidy agreement is executed that:

(i) equals or exceeds eight percent; or

(ii) is ten percent higher than the statewide average.

(B) The qualified business is engaged in the business of manufacturing wind turbines and related products for the generation of energy, and the parcel includes one or more of the following facilities of the qualified business:

(i) the headquarters of the business in this country;

(ii) training facilities; or

(iii) manufacturing facilities.

(C) The initial business subsidy agreement is executed after July 1, 2011, and before November 1, 2012.

§ 24. APPLICATION FOR DESIGNATION

(a) Who may apply. One or more local government units may apply for designation of an area as a job opportunity building zone. All or part of the area proposed for designation as a zone must be located within the boundaries of each of the governmental units. A local government unit may not submit or have submitted on its behalf more than one application for designation of a job opportunity building zone.

(b) Application content. The application must include:

(1) a development plan meeting the requirements of section 22 of this chapter;

(2) the proposed duration of the zone, not to exceed 12 years;

(3) a resolution or ordinance adopted by each of the cities or towns and the counties in which the zone is located, agreeing to provide all of the local tax exemptions provided under section 26 of this chapter;

(4) supporting evidence to allow the commissioner to evaluate the application under the criteria in section 25 of this chapter.

§ 25. DESIGNATION OF JOB OPPORTUNITY BUILDING ZONES

(a) Commissioner to designate.

(1) The commissioner, in consultation with the commissioner of taxes, shall designate not more than ten job opportunity building zones. In making the designations, the commissioner shall consider need and likelihood of success to yield the most economic development and revitalization of economically distressed rural areas of Vermont.

(2) In addition to the designations under subdivision (1) of this subsection, the commissioner may, in consultation with the secretary of agriculture, food and markets and the commissioner of taxes, designate up to five agricultural processing facility zones.

(3) The commissioner may, upon designation of a zone, modify the development plan, including the boundaries of the zone or subzones, if in the commissioner's opinion a modified plan would better meet the objectives of the job opportunity building zone program. The commissioner shall notify the applicant of the modification and provide a statement of the reasons for the modifications.

(b) Need indicators.

(1) In evaluating applications to determine the need for designation of a job opportunity building zone, the commissioner shall consider the following factors as indicators of need:

(A) the percentage of the population that is below 200 percent of the poverty rate, compared with the state as a whole;

(B) the extent to which the area's average weekly wage is significantly lower than the state average weekly wage;

(C) the amount of property in or near the proposed zone that is deteriorated or underutilized;

(D) the extent to which the median sale price of housing units in the area is below the state median;

(E) the extent to which the median household income of the area is lower than the state median household income;

(F) the extent to which the area experienced a population loss during the 20-year period ending the year before the application is made;

(G) the extent to which an area has experienced sudden or severe job loss as a result of closing of businesses or other employers;

(H) the extent to which property in the area would remain underdeveloped or nonperforming due to physical characteristics;

(I) the extent to which the area has substantial real property with adequate infrastructure and energy to support new or expanded development; and

(J) the extent to which the business startup or expansion rates are significantly lower than the respective rate for the state.

(2) In applying the need indicators, the best available data shall be used. If reported data are not available for the proposed zone, data for the smallest

area that is available and includes the area of the proposed zone may be used. The commissioner may require applicants to provide data to demonstrate how the area meets one or more of the indicators of need.

(c) Success indicators. In determining the likelihood of success of a proposed zone, the commissioner shall consider:

(1) the strength and viability of the proposed development goals, objectives, and strategies in the development plan;

(2) whether the development plan is creative and innovative in comparison to other applications;

(3) local public and private commitment to development of the proposed zone and the potential cooperation of surrounding communities;

(4) existing resources available to the proposed zone;

(5) how the designation of the zone would relate to other economic and community development projects and to regional initiatives or programs;

(6) how the regulatory burden will be eased for businesses operating in the proposed zone;

(7) proposals to establish and link job creation and job training; and

(8) the extent to which the development is directed at encouraging and that designation of the zone is likely to result in the creation of high-paying jobs.

(d) Designation schedule.

(1) The commissioner shall publish the form for applications and any procedural, form, or content requirements for applications by no later than August 1, 2011. The commissioner shall publish these requirements on one or more government websites, or by any other means the commissioner determines appropriate to disseminate the information to potential applicants for designation.

(2) Applications must be submitted by October 15, 2011.

(3) The commissioner shall designate the zones by no later than December 31, 2011.

(4) The designation of the zones takes effect on January 1, 2012.

(5) The commissioner may reserve one or more of the ten authorized zones for a second round of designations in calendar year 2012. If the commissioner chooses to reserve designations for this purpose, the commissioner shall establish the schedule for the second round of designations, notwithstanding the dates in subdivisions (2), (3), and (4) of this subsection. The commissioner shall allow a period of at least 90 days for submission of applications after notification of the second round. A zone designated in the second round takes effect on January 1, 2013.

(e) Geographic distribution. The commissioner shall have as a goal the geographic distribution of zones around the state.

(f) Rulemaking exemption. The commissioner's actions in establishing procedures, requirements, and making determinations to administer this chapter are not a rulemaking and are not subject to 3 V.S.A. chapter 25.

§ 26. TAX INCENTIVES AVAILABLE IN ZONES

Qualified businesses that operate in a job opportunity building zone, individuals who invest in a qualified business that operates in a job opportunity building zone, and property located in a job opportunity building zone shall qualify for:

(1) exemption from individual income taxes as provided under section 27 of this chapter;

(2) exemption from corporate franchise taxes as provided under section 28 of this chapter;

(3) exemption from the state sales and use tax and any local sales and use taxes on qualifying purchases under 32 V.S.A. chapter 32;

(4) exemption from the property tax as provided under 32 V.S.A. chapter 135; and

(5) the jobs credit allowed under section 29 of this chapter.

§ 27. INDIVIDUAL INCOME TAX EXEMPTIONS

(a) Application.

(1) An individual, estate, or trust operating a trade or business in a job opportunity building zone, and an individual, estate, or trust making a

<u>qualifying investment in a qualified business operating in a job opportunity building zone qualify for the exemptions from taxes imposed under 32 V.S.A. chapter 135, as provided in this section.</u>

<u>(2) The exemptions provided under this section apply only to the extent that the income otherwise would be taxable under 32 V.S.A. chapter 135.</u>

<u>(3) Subtractions under this section from federal taxable income, alternative minimum taxable income, or any other base subject to tax are limited to the amount that otherwise would be included in the tax base absent the exemption under this section.</u>

<u>(4) This section applies only to taxable years beginning during the duration of the job opportunity building zone.</u>

<u>(b) Rents.</u>

<u>(1) An individual, estate, or trust is exempt from the taxes imposed under 32 V.S.A. chapter 135 on net rents derived from real or tangible personal property used by a qualified business and located in a zone for a taxable year in which the zone was designated a job opportunity building zone.</u>

<u>(2) If tangible personal property was used both within and outside the zone by the qualified business, the exemption amount for the net rental income shall be multiplied by a fraction, the numerator of which is the number of days the property was used in the zone and the denominator of which is the total days the property is rented by the qualified business.</u>

(c) Business income.

(1) An individual, estate, or trust is exempt from the taxes imposed under 32 V.S.A. chapter 135 on net income from the operation of a qualified business in a job opportunity building zone.

(2) If the trade or business is carried on within and without the zone, the exemption must be apportioned based on the zone percentage and the relocation payroll percentage for the taxable year.

(3) No subtraction is allowed under this section in excess of 20 percent of the sum of the job opportunity building zone payroll and the adjusted basis of the property at the time that the property is first used in the job opportunity building zone by the business.

(d) Capital gains.

(1) An individual, estate, or trust is exempt from the taxes imposed under 32 V.S.A. chapters 135 and 236 on:

(A) net gain derived on a sale or exchange of real property located in the zone and used by a qualified business. If the property was held by the individual, estate, or trust during a period when the zone was not designated, the gain must be prorated based on the percentage of time, measured in calendar days, that the real property was held by the individual, estate, or trust during the period the zone designation was in effect to the total period of time the real property was held by the individual;

(B) net gain derived on a sale or exchange of tangible personal property used by a qualified business in the zone. If the property was held by the individual, estate, or trust during a period when the zone was not designated, the gain must be prorated based on the percentage of time, measured in calendar days, that the property was held by the individual, estate, or trust during the period the zone designation was in effect to the total period of time the property was held by the individual. If the tangible personal property was used outside the zone during the period of the zone's designation, the exemption must be multiplied by a fraction, the numerator of which is the number of days the property was used in the zone during the time of the designation and the denominator of which is the total days the property was held during the time of the designation; and

(C) net gain derived on a sale of an ownership interest in a qualified business operating in the job opportunity building zone, meeting the requirements of subdivision (1)(B) of this subsection. The exemption on the gain must be multiplied by the zone percentage of the business for the taxable year prior to the sale.

(2) A qualified business meets the requirements of subdivision (1)(C) of this subsection if it is a corporation, an S corporation, or a partnership, and for the taxable year its job opportunity building zone percentage exceeds

25 percent, or such other percentage as is determined by rule of the commissioner.

§ 28. CORPORATE FRANCHISE TAX EXEMPTION

(a) A qualified business is exempt from any applicable franchise tax, alternative minimum tax, or minimum fee on the portion of its income attributable to operations within the zone.

(b) No subtraction is allowed under this section in excess of 20 percent, or such other percentage as determined by rule of the commissioner, of the sum of the corporation's job opportunity building zone payroll and the adjusted basis of the property at the time that the property is first used in the job opportunity building zone by the corporation.

(c) This section applies only to taxable years beginning during the duration of the job opportunity building zone.

§ 29. JOBS CREDIT

(a) Credit allowed. A qualified business is allowed a credit against the taxes imposed under 32 V.S.A. chapter 151. The credit equals seven percent of the:

(1) lesser of:

(i) zone payroll for the taxable year, less the zone payroll for the base year; or

(ii) total Vermont payroll for the taxable year, less total Vermont payroll for the base year; minus

(2) $30,000.00 multiplied by (the number of full-time equivalent employees that the qualified business employs in the job opportunity building zone for the taxable year, minus the number of full-time equivalent employees the business employed in the zone in the base year, but not less than zero).

(b) Definitions. In this section:

(1) "Base year" means the taxable year beginning during the calendar year prior to the calendar year in which the zone designation took effect.

(2) "Full-time equivalent employees" means the equivalent of annualized expected hours of work equal to 2,080 hours.

(3) "Vermont payroll" means the wages or salaries attributed to Vermont for the qualified business or the unitary business of which the qualified business is a part, whichever is greater.

(4) "Zone payroll" means wages or salaries used to determine the zone payroll for the qualified business, less the amount of compensation attributable to any employee that exceeds $100,000.00.

(c) Inflation adjustment. For taxable years beginning after December 31, 2011, the dollar amounts provided in this chapter shall be annually adjusted for inflation as determined by formula adopted by the commissioner for that purpose.

(d) Refundable. If the amount of the credit exceeds the liability for tax under 32 V.S.A. chapter 135, the commissioner of taxes shall refund the excess to the qualified business.

(e) Appropriation. An amount sufficient to pay the refunds authorized by this section shall be appropriated to the commissioner of taxes from the general fund.

§ 30. REPAYMENT OF TAX BENEFITS BY BUSINESSES THAT NO LONGER OPERATE IN A ZONE

(a) Repayment obligation. A business must repay the total tax benefits listed in section 26 of this chapter received during the two years immediately before it:

(1) ceased to perform a substantial level of activities described in the business subsidy agreement; or

(2) otherwise ceased to be a qualified business, other than those subject to the provisions of section 31 of this chapter.

(b) Repayment obligation of businesses not operating in zone. Persons that receive benefits without operating a business in a zone are subject to repayment under this section if the business for which those benefits relate is subject to repayment under this section. Such persons are deemed to have ceased performing in the zone on the same day that the qualified business for which the benefits relate becomes subject to repayment under subsection (a) of this section.

(c) Definitions. In this section:

(1) "Business" means any person that received tax benefits enumerated in section 26 of this chapter.

(2) "Commissioner" means the commissioner of taxes.

(3) "Persons that receive benefits without operating a business in a zone" means persons that claim benefits under subsection 27(b) or (d) of this chapter.

(d) Disposition of repayment. The repayment must be paid to the state to the extent it represents a state tax reduction and to the town to the extent it represents a property tax reduction. Any amount repaid to the state must be deposited in the general fund. Any amount repaid to the town for the property tax exemption must be distributed to the taxing authorities with authority to levy taxes in the zone in the same manner provided for distribution of payment of delinquent property taxes. Any repayment of local sales taxes must be repaid to the commissioner for distribution to the city or county imposing the local sales tax.

(e) Repayment procedures.

(1) For the repayment of applicable income taxes, a business must file an amended return with the commissioner of taxes and pay any taxes required

<u>to be repaid within 30 days after becoming subject to repayment under this section. The amount required to be repaid is determined by calculating the tax for the period or periods for which repayment is required without regard to the exemptions and credits allowed under section 26 of this chapter.</u>

<u>(2) For the repayment of property taxes, the commissioner shall prepare a tax statement for the business, applying the applicable tax rates for each payable year and provide a copy to the business and to the taxpayer of record. The business must pay the taxes to the commissioner within 30 days after receipt of the tax statement. The business or the taxpayer of record may appeal the valuation and determination of the property tax within 30 days after receipt of the tax statement.</u>

<u>(3) The provisions of Title 32, relating to the commissioner's authority to audit, assess, and collect the tax and to hear appeals, are applicable to the repayment required under this section.</u>

<u>(4) For determining the tax required to be repaid, a reduction of a state or local sales or use tax is deemed to have been received on the date that the good or service was purchased or first put to a taxable use. In the case of an income tax or franchise tax, a reduction of tax is deemed to have been received for the two most recent tax years that have ended prior to the date that the business became subject to repayment under this section. In the case of a property tax, a reduction of tax is deemed to have been received for the taxes</u>

payable in the year that the business became subject to repayment under this section and for the taxes payable in the prior year.

(5) The commissioner may assess the repayment of taxes any time within two years after the business becomes subject to repayment or within any period of limitations for the assessment of tax under Title 32, whichever period is later.

(6) A business is not entitled to any income tax or franchise tax benefits, including refundable credits, for any part of the year in which the business becomes subject to repayment under this section nor for any year thereafter. Property is not exempt from tax for any taxes payable in the year following the year in which the property became subject to repayment under this section nor for any year thereafter. A business is not eligible for any sales tax benefits beginning with goods or services purchased or first put to a taxable use on the day that the business becomes subject to repayment under this section.

(f) Waiver authority.

(1) The commissioner may waive all or part of a repayment required under this section, if the commissioner, in consultation with the commissioner of economic, housing and community development and appropriate officials from the local government units in which the qualified business is located, determines that requiring repayment of the tax is not in the best interest of the

state or the local government units, and the business ceased operating as a result of circumstances beyond its control, including:

(A) a natural disaster;

(B) unforeseen industry trends; or

(C) loss of a major supplier or customer.

(2)(A) The commissioner shall waive repayment required under this section if the commissioner has waived repayment by the operating business under subsection (a) of this section, unless the person that received benefits without having to operate a business in the zone was a contributing factor in the qualified business becoming subject to repayment under subsection (a) of this section;

(B) the commissioner shall waive the repayment required under subsection (b) of this section, even if the repayment has not been waived for the operating business if:

(i) the person that received benefits without having to operate a business in the zone and the business that operated in the zone are not related parties as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended through December 31, 2011; and

(ii) actions of the person were not a contributing factor in the qualified business becoming subject to repayment under subsection (a) of this section.

(3) Requests for waiver must be made no later than 60 days after the notice date of an order or tax statement issued under subsection (e) of this section.

§ 31. BREACH OF AGREEMENT BY BUSINESS THAT CONTINUES TO OPERATE IN ZONE

(a) A "business in violation of its business subsidy agreement but not subject to section 30 of this chapter" means a business that is operating in violation of the business subsidy agreement but maintains a level of operations in the zone that does not subject it to the repayment provisions of subdivision 30(a)(1) of this chapter.

(b) A business described in subsection (a) of this section that does not sign a new or amended business subsidy agreement, as authorized under subsection (h) of this section, is subject to repayment of benefits under section 30 of this chapter from the day that it ceases to perform in the zone a substantial level of activities described in the business subsidy agreement.

(c) A business described in subsection (a) of this section ceases being a qualified business after the last day that it has to meet the goals stated in the agreement.

(d) A business is not entitled to any income tax or franchise tax benefits, including refundable credits, for any part of the year in which the business is no longer a qualified business under subsection (c) of this section, and thereafter. A business is not eligible for sales tax benefits beginning with goods or services purchased or put to a taxable use on the day that it is no longer a qualified business under subsection (c) of this section. Property is not exempt from tax under 32 V.S.A. chapter 135 for any taxes payable in the year following the year in which the business is no longer a qualified business under subsection (c) of this section, and thereafter.

(e) A business described in subsection (a) of this section that wants to resume eligibility for benefits under section 26 of this chapter must request that the commissioner of economic, housing and community development determine the length of time that the business is ineligible for benefits. The commissioner shall determine the length of ineligibility by applying the proportionate level of performance under the agreement to the total duration of the zone as measured from the date that the business subsidy agreement was executed. The length of time must not be less than one full year for each tax benefit listed in section 26 of this chapter. The commissioner and the appropriate local government officials shall consult with the commissioner of taxes to ensure that the period of ineligibility includes at least one full year of benefits for each tax.

(f) The length of ineligibility determined under subsection (e) of this section must be applied by reducing the zone duration for the property by the duration of the ineligibility.

(g) The zone duration of property that has been adjusted under subsection (f) of this section must not be altered again to permit the business additional benefits under section 26 of this chapter.

(h) A business described in subsection (a) of this section becomes eligible for benefits available under section 26 of this chapter by entering into a new or amended business subsidy agreement with the appropriate local government unit. The new or amended agreement must cover a period beginning from the date of ineligibility under the original business subsidy agreement through the zone duration determined by the commissioner under subsection (f) of this section. No exemption of property taxes under 32 V.S.A. chapter 135 is available under the new or amended agreement for property taxes due or paid before the date of the final execution of the new or amended agreement, but unpaid taxes due after that date need not be paid.

(i) A business that violates the terms of an agreement authorized under subsection (h) of this section is permanently barred from seeking benefits under section 26 of this chapter and is subject to the repayment provisions under section 30 of this chapter effective from the day that the business ceases to operate as a qualified business in the zone under the second agreement.

§ 32. PROHIBITION AGAINST AMENDMENTS TO BUSINESS SUBSIDY AGREEMENT

Except as authorized under section 31 of this chapter, under no circumstance shall terms of any agreement required as a condition for eligibility for benefits listed under section 26 of this chapter be amended to change job creation, job retention, or wage goals included in the agreement.

§ 33. CERTIFICATION OF CONTINUING ELIGIBILITY FOR BENEFITS

(a) By October 15 of each year, every qualified business must certify to the commissioner of taxes, on a form prescribed by the commissioner of taxes, whether it is in compliance with any agreement required as a condition for eligibility for benefits listed under section 26 of this chapter. A business that fails to submit the certification, or any business, including those still operating in the zone, that submits a certification that the commissioner of revenue later determines materially misrepresents the business's compliance with the agreement, is subject to the repayment provisions under section 30 of this chapter from January 1 of the year in which the report is due or the date that the business became subject to section 30 of this chapter, whichever is earlier. Any such business is permanently barred from obtaining benefits under section 26 of this chapter. For purposes of this section, the bar applies to an entity and also applies to any individuals or entities that have an ownership interest of at least 20 percent of the entity.

(b) Before the sanctions under subsection (a) of this section apply to a business that fails to submit the certification, the commissioner of taxes shall send notice to the business, demanding that the certification be submitted within 30 days and advising the business of the consequences for failing to do so. The commissioner of taxes shall notify the commissioner and the appropriate job opportunity subzone administrator whenever notice is sent to a business under this subsection.

(c) The certification required under this section is public.

(d) The commissioner of taxes shall promptly notify the commissioner of all businesses that certify that they are not in compliance with the terms of their business subsidy agreement and all businesses that fail to file the certification.

§ 34. ZONE PERFORMANCE; REMEDIES

(a) Reporting requirement. An applicant receiving designation of a job opportunity building zone under section 25 of this chapter must annually report to the commissioner on its progress in meeting the zone performance goals under the development plan for the zone.

(b) Procedures. For reports required by subsection (a) of this section, the commissioner may prescribe:

(1) the required time or times by which the reports must be filed;

(2) the form of the report; and

(3) the information required to be included in the report.

(c) Remedies. If the commissioner determines, based on a report filed under subsection (a) of this section or other available information, that a zone or subzone is failing to meet its performance goals, the commissioner may take any actions the commissioner determines appropriate, including modification of the boundaries of the zone or a subzone or termination of the zone or a subzone. Before taking any action, the commissioner shall consult with the applicant and the affected local government units, including notifying them of the proposed actions to be taken. The applicant may appeal the commissioner's order under the contested case procedures of 3 V.S.A. chapter 25.

(d) Existing businesses.

(1) An action to remove area from a zone or to terminate a zone under this section does not apply to:

(A) the property tax on improvements constructed before the first January 2 following publication of the commissioner's order;

(B) sales tax on purchases made before the first day of the next calendar month beginning at least 30 days after publication of the commissioner's order; and

(C) individual income tax or corporate franchise tax attributable to a facility that was in operation before the publication of the commissioner's order.

(2) The tax exemptions specified in subsection (a) of this section terminate on the date on which the zone expires under the original designation.

§ 35. STATE AUDITOR; AUDITS OF JOB OPPORTUNITY BUSINESS ZONES AND BUSINESS SUBSIDY AGREEMENTS

The office of the state auditor shall annually audit the creation and operation of all job opportunity building zones and business subsidy agreements entered into under this chapter. To the extent necessary to perform this audit, the state auditor may request from the commissioner of taxes any tax return information of taxpayers who are eligible to receive tax benefits authorized under section 26 of this chapter. To the extent necessary to perform this audit, the state auditor may request from the commissioner wage detail report information required of taxpayers eligible to receive tax benefits authorized under section 26 of this chapter.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.