

Vermont State Auditor  
Douglas R. Hoffer



*Vermont Employment Growth Incentive*  
*Part 1:*  
**Marvell Technologies – A Case  
Study**

## **Mission Statement**

The mission of the Vermont State Auditor's Office is to hold government accountable. This means ensuring taxpayer funds are used effectively and efficiently, and that we foster the prevention of waste, fraud, and abuse.

## **Non-Audit Inquiry**

This is a non-audit report. A non-audit report is a tool used to inform citizens and management of issues that may need attention. It is not an audit and is not conducted under generally accepted government auditing standards. A non-audit report has a substantially smaller scope of work than an audit. Therefore, its conclusions are more limited, and it does not contain recommendations. Instead, the report includes information and possible risk-mitigation strategies relevant to the entity that is the object of the inquiry.

## INTRODUCTION

The Vermont Employment Growth Incentive (VEGI) is the State's flagship business grant program and is administered by the Vermont Economic Progress Council (VEPC).<sup>1</sup> The Legislature created VEGI in 2006<sup>2</sup> to replace the Economic Advancement Tax Incentive (EATI), which ran from 1998 - 2006.<sup>3</sup>

*"[VEGI] provides incentives from the State...to businesses to encourage prospective economic activity...that is beyond an applicant's "organic" or background growth [and] that would not occur, would not occur in Vermont, or would occur in a significantly different and less desirable manner, except for the incentive provided...Once authorized, the incentives are earned, and installments paid when performance requirements are met and maintained."*<sup>4</sup>

From the program's inception through December 2018, VEPC authorized \$82.7 million in VEGI awards.<sup>5</sup> Of that, \$35.2 million has been rescinded or forfeited. The remaining \$47.5 million has been paid out or is available to eligible companies. VEPC authorized \$6.8 million more in 2019.<sup>6</sup> In addition, \$34 million in tax credits have been applied to offset income tax from the EATI.<sup>7</sup>

VEPC claims there is no cost to taxpayers because the incentives are paid from tax revenues derived from economic activity incentivized by the program that would not have occurred "but for" the awards.<sup>8</sup>

The "but for" criterion is the touchstone of the program. In theory, it protects taxpayers. But, in practice, VEGI's effectiveness cannot be determined because applicant self-attestations about intent (the "but for") are based on corporate decisions that cannot be independently tested or verified. Therefore, it is impossible to validate VEPC's claims about job creation purportedly resulting from the awards.

There has long been uncertainty about the effectiveness of incentive programs that rely on "but for" attestations. In a recent literature review, a leading economist Timothy Bartik<sup>9</sup> reported that:

*"Based on a review of 34 estimates of "but for" percentages, from 30 different studies, this paper concludes that typical incentives probably tip somewhere between 2 percent and 25 percent of incented firms toward making a decision favoring the location providing the incentive. In other words, for at least 75 percent of incented firms, the firm would have made a similar location / expansion / retention decision without the incentive."*<sup>10</sup> (emphasis added)

Putting aside claims about the "but for," the cost of the two programs is approaching \$90 million over the last 22 years, and that does not include the cost of administering them, which is not insignificant.

In the absence of direct evidence on the veracity of the "but for" attestations, we've chosen to review the award authorized last year for Marvell Technology (Part I), VEPC's due diligence in administering the program (i.e., examining application materials, public statements, VEPC staff analyses, and other relevant information; Part II), and some other issues uncovered during the research (Part III).

---

<sup>1</sup> [32 V.S.A. § 3325](#)

<sup>2</sup> [Act 184](#) (2006) and [Title 32 Chapter 105](#).

<sup>3</sup> [Act 71](#) (1998) Sec. 48.

<sup>4</sup> 2019 VEGI [Annual Report](#), page 1.

<sup>5</sup> Ibid, page 12.

<sup>6</sup> 2019 [VEPC minutes](#).

<sup>7</sup> 2016 EATI [Annual Report](#).

<sup>8</sup> 2019 VEGI [Annual Report](#), page 6 and VEGI ["But For" Approval Criterion](#), page 1.

<sup>9</sup> Mr. Bartik's work has been [cited](#) more than 3,000 times since 2015.

<sup>10</sup> Bartik, Timothy. [Upjohn Institute Working Paper](#) 18-289, July 2018.

## Part I: THE MARVELL CASE

On October 31, 2019, VEPC authorized “an estimated incentive of \$4,459,187”<sup>11</sup> for Marvell Technology. Not only was this an unusually large award,<sup>12</sup> but it occurred just as the company announced substantial layoffs.<sup>13</sup> **What was this about and how did it happen?**

GlobalFoundries announced the creation of a wholly owned subsidiary named Avera Semiconductor in November 2018.<sup>14</sup> Previously part of IBM’s Microelectronics business,<sup>15</sup> Avera “has successfully executed more than 2,000 complex designs in its 25-year history” and built a significant business.<sup>16</sup>

Six months later, Bloomberg reported that Marvell planned to acquire Avera, “for \$650 million in cash.”<sup>17</sup> According to Bloomberg, Marvell would get about 800 engineers focused on application-specific integrated circuits (ASIC).<sup>18</sup>

At some point, VEPC was contacted by the Greater Burlington Industrial Corporation (GBIC) regarding Marvell and Avera.<sup>19</sup> GBIC is Chittenden County’s Regional Development Corporation and is partly funded by the State. GBIC provided information to VEPC about Avera that was needed to calculate an award if Marvell were to submit a VEGI application.<sup>20</sup>

Subsequently, VEPC’s Executive Director asked the Agency of Commerce and Community Development analyst to run the REMI econometric (cost-benefit) model to estimate an award intended to incentivize a minimum level of growth. But she asked the analyst to do something unusual: assume that Marvell would shut down the Essex Junction Avera operation and then restart it with the help of a VEGI award.<sup>21</sup> This was unusual for two reasons.

- 1) Normally, VEPC only asks for an award estimate after the application process has been initiated. In this case, there was no application from Marvell, and there is no evidence of any contact between VEPC and the company prior to the communication from GBIC.
- 2) Absent any communication from Marvell to the contrary, there was no reason to believe that Avera would not continue in Vermont after the sale, so there was no justification for assuming a plant closure in the pre-application award calculation.

VEPC’s decision to treat the situation like a plant closing raises numerous issues. First, the Legislature was very clear as to the purpose of the VEGI program when it was created.

---

<sup>11</sup> VEPC [Meeting Minutes](#), October 31, 2019.

<sup>12</sup> There have been only two awards greater than Marvell’s; Mylan \$5.7 million 2012 and Dealer.com \$4.9 million 2010. See 2019 VEGI [Annual Report](#), Tables 1A and 1B, pages 9 and 10.. The average award is \$754,955.

<sup>13</sup> [VTDigger](#), November 7, 2019.

<sup>14</sup> GlobalFoundries [press release](#), October 31, 2018.

<sup>15</sup> [Bloomberg](#), May 20, 2019.

<sup>16</sup> GlobalFoundries [press release](#), October 31, 2018.

<sup>17</sup> [Bloomberg](#), May 20, 2019.

<sup>18</sup> *Ibid.*

<sup>19</sup> April 17, 2020 e-mail from VEPC Executive Director Megan Sullivan to Doug Hoffer. Ms. Sullivan stated that GBIC contacted her in a phone call.

<sup>20</sup> *Ibid.*

<sup>21</sup> July 2, 2019 e-mail from Megan Sullivan to Ken Jones.

*“The purpose of the Vermont Employment Growth Incentive Program is to generate net new revenue to the State by encouraging a business to add new payroll, create new jobs, and make new capital investments and sharing a portion of the revenue with the business.”<sup>22</sup> (emphasis added)*

Clearly, this means that the program is meant to reward new job creation, as is evident from the program’s title: Vermont Employment Growth Incentive (emphasis added). This is reinforced by the very first sentence on the VEGI website:

*“The State of Vermont offers an economic incentive for business recruitment, growth and expansion.”<sup>23</sup> (Emphasis added.)*

Nowhere in statute is VEPC empowered to authorize awards for job retention. Indeed, the current administration effectively acknowledged that this year by proposing a revision to the VEGI program that would allow grants to companies that make capital investments but don’t promise meaningful job growth.<sup>24 25</sup>

A reasonable inference to be drawn from VEPC’s peculiar approach is that faced with this statutory constraint, VEPC decided to describe the upcoming events at Avera / Global Foundries as a plant shutdown followed by a restart, which allowed them to characterize the retained jobs as new. Looking back, however, there is no evidence of a shutdown, as the Avera employees just shifted from Global Foundries to Marvell (minus the 78 laid off).<sup>26</sup>

Nevertheless, the idea that a shutdown was imminent was the State’s justification for the VEGI award. These are statements after the fact by Joan Goldstein the Commissioner of Economic Development:

*Marvell is a pretty global company, has...no allegiance to Vermont, and so the idea behind VEGI is to make sure that...Marvell would...keep the jobs in Vermont.<sup>27</sup>*

*And the prospect of all of that talent and human capital leaving the state is really, really tough for us to take. If we did not do VEGI, I’m not sure what else would convince them to keep those jobs here.<sup>28</sup>*

As noted above, there was no evidence that Marvell planned to move the jobs. In addition, there was no evidence that State officials talked publicly about the planned purchase (which was announced in May) or the risk of a plant closure before VEPC authorized the award in late October.

Assuming the plant would close and then restart, VEPC was able to offer a huge gift to Marvell.<sup>29</sup> But the law does not appear to permit this, and this action was taken before the company had even announced its intentions or expressed an interest in or a need for a VEGI award.<sup>30</sup>

---

<sup>22</sup> [32 V.S.A. § 3330 \(a\)](#).

<sup>23</sup> ACCD’s [VEGI website](#).

<sup>24</sup> [H.641](#).

<sup>25</sup> The minimum required payroll increase in H.641 is twice the rate of inflation. Hypothetical: Assume a 2.5% CPI, which is often the basis for a COLA. For a company with 50 employees averaging \$50,000 per year, the other 2.5% would equal \$62,500, which would barely cover the wages and benefits for one new employee.

<sup>26</sup> A [SevenDays](#) article quoted a Global Foundries executive (Laurie Kelly, vice president of communications) saying that the 800 Avera employees were “transferred” to Marvell as part of the sale.

<sup>27</sup> [Vermont Public Radio](#). Henry Epp, November 15, 2019.

<sup>28</sup> Ibid.

<sup>29</sup> Absent new jobs, a simple shift of employees from Avera to Marvell would not qualify for a VEGI award.

<sup>30</sup> July 25, 2019 e-mail from (then) ACCD Secretary Michael Schirling re. a meeting with representatives from Marvell, Avera, GBIC and the State.

As noted above, Avera is not a manufacturing operation. Its value is its considerable human and intellectual capital, namely engineers and patents.<sup>31</sup> This was made clear in a press release by Marvell announcing the completion of the acquisition.

*“The Avera team, originally part of IBM’s Microelectronics business, has built a 25-year heritage of delivering leading solutions to blue-chip customers, and we are thrilled to welcome them to Marvell”<sup>32</sup> (emphasis added).*

This is an indication that Marvell fully understood the value of the existing workforce. So, while the Vermont-based company could be moved, it seems likely that relocation would jeopardize the foundation of the firm – its people, since many might be reluctant to leave Vermont and move their lives (i.e., kids in school, spouse with a job, other family nearby, etc.).

Marvell purchased Avera for \$600 million in cash,<sup>33</sup> so Marvell was not short on capital. Avera was expected to produce \$300 - \$500 million in revenues in 2020,<sup>34</sup> so the \$1 million annualized VEGI award<sup>35</sup> represents less than half of one percent of the company’s estimated annual revenues.

Some context is helpful for appreciating the magnitude of the Marvell award. Marvell’s VEGI award of almost \$4.5 million is more than the annual appropriations for some state entities, such as the Secretary of Administration, Public Utility Commission, Office of the State Auditor, and the Department of Tourism & Marketing.

On the other hand, it is a drop in the bucket for a company with \$11 billion in assets, \$1.6 billion in net income, and \$647 million in cash on hand.<sup>36</sup>

In summary, VEPC – at the behest of GBIC – initiated a VEGI award process for Marvell prior to receiving an application. VEPC based its action on unsupported assumptions about the intentions of the company. This led to an offer of one of the largest awards in the program’s history for a plant closing and restart scenario for which there was no evidence. The consequence of these actions was a promise of almost \$4.5 million, ostensibly for job retention, which is not allowed by statute.

It is noteworthy that there is no evidence that anyone involved questioned, at any point during the months-long process, either the assumptions behind the award or the legality of the authorization. This includes the Commissioner of Economic Development, the VEPC Executive Director, ACCD’s attorney, ACCD’s analyst who ran the cost-benefit model, or any of the Council members.

In response to a short questionnaire, several Council members stated that Marvell had no presence in Vermont and no compelling reason to stay. They asserted that Marvell bought a business with no employees and that all the existing Avera workers would lose their jobs absent an incentive. This assumes that Marvel could easily and quickly replace Avera’s engineering talent here or elsewhere while still meeting its contractual obligations to GlobalFoundries and other clients without interruption. But, as we noted above, Avera’s value stemmed from its professional talent and the patents they produced. There is no evidence that Marvell intended to move Avera’s operation or that the Avera employees

---

<sup>31</sup> [GreyB](#), January 23, 2020.

<sup>32</sup> Marvel <https://www.marvell.com/company/newsroom/marvell-completes-acquisition-of-avera-semi.html>

<sup>33</sup> Ibid.

<sup>34</sup> [Bloomberg](#), May 20, 2019 and [Times-Union](#), May 21, 2019.

<sup>35</sup> VEGI [Program Summary](#): “The incentive earned that year is then paid out in five cash installments if the performance requirements are maintained.”

<sup>36</sup> Securities and Exchange Commission, Marvell [10-K](#) for fiscal year ending February 1, 2020.

expected to be fired. Indeed, as was noted above, Marvell welcomed “the team” (Avera) following completion of the purchase.

The only support offered for the assertion that Marvell needed an incentive was the fact that both companies (Marvell and Avera) had other locations. But the record showed that: 1) ASIC was a new business for Marvell that did not seamlessly fit into other existing facilities, and 2) Vermont was the location with the largest group of Avera employees. Simply having options is not the same as having explored such options and evaluated the costs and benefits of moving. Marvell did not present such evidence, and the Council did not request it. To base a \$4.5 million decision on conjecture is a questionable use of public dollars.

So, what can be done to hold VEPC accountable for what appears to have been an unnecessary and unauthorized grant of public dollars? If the decision by the Council was beyond its authority (*ultra vires*), it could be argued that it wasn’t legal in the first place. According to statute, however, decisions by VEPC are not subject to administrative or judicial review,<sup>37</sup> so the Council is immune from such a finding. This raises very serious questions about VEPC as presently constituted.

The idea that a group of appointed officials can make costly decisions about the use of public dollars with absolutely no accountability is antithetical to Vermont’s representative form of government and to the expectations of Vermonters. The Legislature may wish to reconsider this particular statutory provision, but for now we’re left with the fact that public officials appear to have misused their power at great cost to Vermonters.

The Commissioner of Economic Development, Council members, and staff may have acted with what they viewed as good intentions. But they all have an obligation to adhere to the law and act as fiduciaries for Vermont taxpayers. In this case, the evidence suggests that they didn’t fulfill their responsibility.

---

<sup>37</sup> [32 V.S.A. § 3325\(g\)](#)

## Appendix A: SAO Response to VEPC Comments

The Vermont Economic Progress Council (VEPC) and its Executive Director were given three weeks to respond to this 16-page report. At the Director's request, we extended the deadline for their review and response. However, the Council and staff chose not to comment on the substance of the investigation, citing COVID-19-related work as the reason.

VEPC's chair and the other members of the council are not state employees involved in the State's response to COVID-19, and VEPC has met twice during the pandemic (April 30 and June 25) to approve VEGI awards of \$1.3 million during that period.

Despite not commenting on the substance of the report or supplying any additional information, the Director asserted that she was "concerned about the number of serious allegations in this document reached without clear evidence."

Everything in the report is based on materials provided by VEPC or from other public sources clearly footnoted (72 footnotes in all). Furthermore, I requested all evidence related to the applications examined in this investigation and was assured that everything was provided.

The second section of the report discusses VEPC's due diligence and describes application materials and other records that are deemed confidential by statute. Therefore, some details were required by law to be withheld. Nevertheless, VEPC – which is the custodian of all such records – could have communicated privately if they had questions about the facts as presented. They chose not to do so or to supply any additional evidence.

The Executive Director also asserted that "many of the representations in [the report] are not an accurate reflection of events," but she failed to identify specific inaccuracies or provide evidence in support of such claims.

She further stated that "it is unclear what the goal of this document is." Like all state entities that are responsible for spending or awarding taxpayer dollars, VEPC's administration of the VEGI program is subject to review by the Auditor's Office. There is nothing unusual or inappropriate about examining the performance of a state entity, especially when such concerning behavior was brought to my attention by a publicly available report.<sup>38</sup> Like all other work done by the Auditor's Office, the goal is to hold state government accountable. The specific goals of the review were made clear in the one-page introduction:

*"In the absence of direct evidence on the veracity of the "but for" attestations, we've chosen to review the award authorized last year for Marvell Technology (Part I), VEPC's due diligence in administering the program (i.e., examining application materials, public statements, VEPC staff analyses, and other relevant information; Part II), and some other issues uncovered during the research (Part III)."*

The work of state government – including the State Auditor's Office – must continue, even during a pandemic. Identifying efficiencies and efficacies in State spending and operations is critical in a time of

---

<sup>38</sup> Epp, Henry. [Days Before Announcing Essex Junction Layoffs, Company Secured \\$5.3 Million State Incentive](#), November 15, 2019.



shrinking budgets and economic uncertainty. That was our focus before the pandemic, and that is our focus now.

The Executive Director concluded her brief remarks by stating that she looks “forward to continuing the important discussion on how to objectively review and improve Vermont’s economic development programs including the Vermont Employment Growth Incentive...”

Unfortunately, the response did nothing to enhance the discussion about these matters or identify ways to improve the State’s economic development programs. Challenging the veracity of a report without identifying evidentiary failures is opinion, not an argument supported by facts. VEPC’s three paragraph response to this report contributed nothing of substance to the issues flagged in this investigation.

## Appendix B: VEPC Management Comments

The following is a reprint of management's response to a draft of this report.



---

**Vermont Economic Progress Council**  
Agency of Commerce and Community Development  
6<sup>th</sup> Floor, Deane C. Davis State Office Building  
1 National Life Drive, Montpelier, VT 05620-0501

Friday, August 7, 2020

The Honorable Douglas R. Hoffer, State Auditor  
132 State Street  
Montpelier, VT 05633-5101

Dear Mr. Hoffer,

Thank you for the opportunity to offer comment on the provided document. While I am in receipt, I will not be able to comment fully on each segment at this juncture as we are in the midst of responding to the overwhelming impacts of the current global pandemic, COVID19.

Generally, I am concerned about the number of serious allegations in this document reached without clear evidence and without important steps taken in this review process. I have found many of the representations in this document are not an accurate reflection of events. Given this and in light of the fact that global, national, and state economies are contracting at a rate none of us have seen in our collective lifetimes, it is unclear what the goal of this document is.

I look forward to continuing the important discussion on how to objectively review and improve Vermont's economic development programs including the Vermont Employment Growth Incentive in a manner that lives up to standards of Vermont's long tradition of respectful discourse.

Sincerely,

A handwritten signature in black ink that reads 'Megan Sullivan'.

Megan Sullivan  
Executive Director  
Vermont Economic Progress Council  
Vermont Agency of Commerce & Community Development  
1 National Life Dr, Davis Bldg, 6th Floor | Montpelier, VT 05620-0501  
(802)798-2221  
[Megan.Sullivan@Vermont.Gov](mailto:Megan.Sullivan@Vermont.Gov)