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MEMORANDUM

TO: Marilyn Miller

FROM: Clare Buckley/Kimbell Sherman Ellis LLP

DATE: May 26, 2009

SUBJECT: 2009 Regular Session Wrap Up

The purpose of this memorandum is to provide a final report concerning the 2009 regular session of the Vermont General Assembly, which concluded late in the evening on Saturday, May 9.

It should be noted that Governor Jim Douglas has called the legislature back for a special session on June 2. The Governor has indicated he is likely to veto the appropriations bill for FY 2010 (H.441), which begins on July 1. State revenues are in a serious decline, and the heavily Democratic dominated legislature based its FY 2010 budget bill on increased taxes, use of federal stimulus monies and cuts to state programs. Governor Douglas believes that the legislature raised taxes too much and did not make enough cuts to state programs. The Governor also dislikes the reliance on federal stimulus monies to support on-going programs, since those monies are temporary in nature. In his view there is a systemic problem in the state's finances that can only be solved by structural changes in state government.

As of this writing, the Governor has not yet vetoed the FY2010 budget bill, and if he does there is some chance that the legislature will override his veto. It is also possible that a deal will be reached before June 2 whereby the legislative leadership and the Governor agree on a package of modifications to the budget bill. If a deal is reached the special session will still be needed for the legislature to adopt the agreement. In all events, the special session will focus primarily on the budget issue and, possibly, an attempt to override a veto of the Vermont Yankee decommissioning bill.

It is premature to analyze the balance of power between the governor and legislature and winners and losers this session until we know the outcome of the special session. We will supply a supplemental memo with a political overview after the special session concludes.

VADA Issues

The following bills relevant to VADA's interests were passed by the House and Senate during the recently concluded regular session. Governor Douglas is expected to sign all of these bills except the budget bill (H.441). Please see the Internet links below for the full text of the bill.

Motor Vehicle Franchise Law Passes (S.51). Effective July 1, 2009. Attached is a section-by-section summary of the bill. - Arguably the most important bill to VADA members in decades, S.51, An Act Related to Vermont's Motor Vehicle Franchise Laws, passed the House and Senate this year thanks to the strong support of many lawmakers. After negotiating dozens of changes to the lengthy bill with the Alliance of Automobile Manufacturers, VADA battled both the automobile and motor home manufacturers through eight legislative committees, and succeeded in getting the bill passed on unanimous votes by the House and Senate. Key issues that VADA could not compromise on and succeeded in getting in the final bill include a provision prohibiting the practice of manufacturers charging a "warranty surcharge" on each vehicle sold in the state, a strong "dualling" provision, a provision requiring manufacturers to assume lease payments upon termination in certain circumstances and strong vehicle buy back provisions. Significantly, the transportation board, rather than the superior court, will begin hearing franchise law disputes between dealers and manufacturers starting July 1, 2009. Dealers and manufacturers will be assessed annual fees to cover the board's costs. Governor Douglas is expected to sign the bill on June 1st. <http://www.leg.state.vt.us/docs/2010/bills/Passed/S-051.pdf>

DMV Fees Increased/Transportation Bill (H.438) – The FY10 transportation bill contains a \$549 million spending plan that includes just over \$9 million in increased department of motor vehicle fees and \$12.8 million in new gas tax revenue from a 2 percent tax on the wholesale price of gasoline and a 3 cent per gallon tax on the sale of diesel fuel. The DMV fee increases include vehicle registration, in transit plates, inspection sticker fees, title certificates and lien fees, to name a few, as well as an increase in the cap on purchase and use tax for trucks and a new "DMV Warranty fee" of \$5 per new vehicle sold to support the lemon law board. Attached is a summary of the DMV fee increases contained in the final bill. Governor Douglas's proposal to require inspections of vehicles every other year instead of every year did not make it into the final bill. VADA along with the law enforcement community opposed this proposal mainly due to public safety concerns. <http://www.leg.state.vt.us/docs/2010/bills/Passed/H-438.pdf>

An Act Related to the Sale of Engine Coolants and Antifreeze (H.6) – This bill prohibits any engine coolant or antifreeze from being sold in Vermont after January 1, 2011, unless it contains a bittering agent called denatonium benzoate. The purpose of this bill is to make engine coolant or antifreeze unpalatable to dogs and other animals that sometimes drink it and die. Inventory purchased by retailers before January 1, 2011, that does not contain the bittering agent may be sold off. The bill also exempts the sale of a motor vehicle that contains engine coolants and antifreeze. The bill is effective May 12, 2009, the date the Governor signed it into law. <http://www.leg.state.vt.us/docs/2010/bills/Passed/H-006.pdf>

Vehicles Exempt from New Ban on Products Containing Flame Retardants (H.444) - This is a lengthy health care reform bill but at the end of the session the Senate added a bill related to flame retardants to this bill. Senate Section 46 mirrors [S.109](#), a flame retardant bill. It was added by the Senate as S.109, which passed the Senate 30-0, was stalled in the House. It bans the sale of all products containing two types of brominated flame retardants, "OCTA" and "PENTA," effective July 1, 2010. It also bans the sale of mattresses, upholstered furniture, computer cases and TVs that contain the more commonly used, and arguably safer "DECA" brominated flame retardant. The ban on DECA containing mattresses and upholstered furniture is effective July 1, 2010, but does not apply to inventory of those items acquired prior to July 1, 2009. The ban on computer cases and TVs containing DECA is effective July 1, 2012, but does not apply to inventory of those items acquired prior to July 1, 2009. **The sale or resale of used products**

and the sale of motor vehicles or motor vehicle parts are exempt from the ban. This section is enforceable under Vermont's consumer fraud statute.

[Bill as Passed the House](#)

[Senate Proposal of Amendment \(adopted by the House\)](#)

Credit Life Caps Increased (S.42) – This bill makes various “housekeeping” amendments to statutes under the purview of the Department of Banking, Insurance, Securities and Health Care Administration (BISHCA). Significantly for dealers, section 10 of the bill raises the maximum death benefit for group credit life policies from \$40,000 to \$70,000. As you know, Vermont has a \$40,000 maximum death benefit for group policies (8 V.S.A. § 3805), while individual policies may not exceed indebtedness (8 V.S.A. § 4105). Many Vermont families who own more than one new vehicle were hitting this \$40,000 statutory limit. While VADA would have preferred removing the limit entirely, lifting it to \$70,000 is a step in the right direction.

<http://www.leg.state.vt.us/docs/2010/bills/Passed/S-042.pdf>

An Act Related to Motor Vehicles (S.67) – This bill makes miscellaneous changes to the motor vehicle statutes including creating a traffic violation for failure to deliver a certificate of title for a vehicle after transfer, clarifying the law regarding motorcycle helmets and providing for the issuance of salvage titles for vessels, snowmobiles, and all-terrain vehicles, among other things.

<http://www.leg.state.vt.us/docs/2010/bills/Passed/S-067.pdf>

FY10 Budget/Tax Bill - Federal Tax Deduction For Purchasing New Vehicles in 2009

Blocked for State Income Tax Purposes (H.441) – H.441 is the FY10 budget bill that is the root cause of the showdown between legislative leaders and the Governor. The bill includes a number of new taxes. One tax provision of interest to VADA relates to the tax deduction the federal government recently authorized for certain taxpayers to deduct the state and local taxes they pay when purchasing a new vehicle in 2009 on their federal income tax returns. The General Assembly and Governor both agree that this deduction will not be allowed to pass through to Vermonters on their state income tax return. This is estimated to raise \$1.5 million in one-time revenue for the state. See section H.47b of the bill. Blocking the purchase and use tax deduction on Vermont income tax forms does not appear to be an issue of contention between the governor and lawmakers so it will likely end up in any future budget bill if this bill is vetoed. It is worth noting that lawmakers had a serious discussion about removing the purchase and use trade credit that one receives when trading in an old vehicle as part of purchasing a vehicle. That proposal was thankfully not included in the final tax package.

<http://www.leg.state.vt.us/docs/2010/bills/Passed/H-441.pdf>

Economic Development Bill (H.313) – H.313 is an omnibus economic development bill. Significantly for VADA, this bill gives the transportation board the authority to hear necessity cases when private land is being taken by the government for a road project (see sections 71-75). The significance of this to dealers is that the transportation board is also going to begin hearing franchise law disputes between dealers and manufacturers for the first time starting July 1, 2009. It is hard to judge how much additional work these two new duties will generate for the board. Here is a link to the conference committee report of this bill as it passed the House and Senate.

<http://www.leg.state.vt.us/misc/247336.pdf>

Thank you for the opportunity to work on behalf of VADA at the State House this year. Please call Clare Buckley with questions or for more information.