

## M E M O R A N D U M

TO: Marilyn Miller

FROM: Clare Buckley of KSE Partners, LLP

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SUBJECT: 2011 Legislative Wrap-Up

An overview of the 2011 legislative session follows after a summary of the bills of interest to VADA that passed this year.

**VADA Issues**

[An Act Relating to Miscellaneous Amendments to the Motor Vehicle Laws \(S.94\)](#) – VADA succeeded in getting the law changed to require that a bank, sales finance company or other lienholder release a vehicle lien within 12 business days after they receive the payoff for the loan, rather than the current 30 days. Vermont banks and credit unions fought hard against shortening this 30-day period. A private right of action, allowing a dealer to sue a lienholder for \$25 per day and get triple damages up to \$7,500 plus attorney's fees, when the lienholder does not release a lien within 60 days or more, is added to Vermont law. The timely release of vehicle lien section (Sec. 14) is effective July 1, 2011. Other provisions related to dealers are:

- If a dealer accepts a vehicle with a preexisting security interest as part of the consideration for a sale or trade from the dealer, the dealer shall mail or otherwise tender payment to satisfy the security interest within five days of the sale or trade. (Sec. 13)
- Every dealer is required to designate a “custodian” of the documents related to all vehicles sold that are already required to be kept by law, including a list of all the vehicles acquired and sold, among other things. If there is no custodian designated, law enforcement officials may still examine all records within reasonable business hours. (Sec. 1)
- Revisions to what can be placed on a vanity license plate offered by the Vermont Attorney General's office in response to numerous lawsuits against DMV for denial of content on license plates.
- Inspection stickers cannot be reaffixed when a windshield is replaced. (Sec. 10)

[An Act Relating to Motor Vehicle Operation and Entertainment Pictures \(S.91\)](#) - This bill authorizes the use of “splitview” technology that is currently available in vehicles manufactured by Mercedes Benz. Splitview allows the driver to view vehicle operational information while the passenger can view a movie on the same screen. Mercedes Benz believed Vermont law prohibited this technology so they supported this bill. Other manufacturers may use this technology in the

future. VADA supported this change to the law.

[An Act Relating to a Transportation Policy to Accommodate All Users \(H.198\)](#) - The stated purpose of this bill is to ensure that the needs of all users of Vermont’s transportation system—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—are considered in all state and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. These “complete streets” principles shall be integral to the transportation policy of Vermont.

[An Act Relating to the State's Transportation Program or the "T-Bill" \(H.443\)](#) - In a year when lawmakers approved a \$460 million transportation budget, the transportation issue that received the most scrutiny in the press was whether or not congratulatory signs violate Vermont’s billboard law. From the time Governor Peter Shumlin proposed the “T-bill” in January to final approval in the legislature on May 3, the overall change in spending was \$125,000. While it is somewhat incredible a \$460 million bill changed so little – and barely received public attention during a recession – the lawmakers responsible for crafting H.443 faced real spending challenges throughout the session.

One challenge was the loss of federal stimulus funding. The FY2012 transportation budget approved in H.443 is \$41 million less than FY2011 overall. However, compared to years prior to federal stimulus funding, transportation funding in H.443 in general is up substantially. This is illustrated in the table below:

Program	FY 2009 (last year without stimulus \$\$\$)	FY 2012
Paving	\$59 Million	\$77.1 Million
Roadway Construction	\$49.7 million	\$58.8 Million
State Bridge	\$21.1 Million	\$52 Million

This illustrates a priority shift in the legislature as it relates to transportation funding. Lawmakers and the governor understand the direct link between transportation infrastructure and the economy. The recession provided a wake up call on how the reliability of roads, bridges and public transportation is vital to economic growth and job creation, especially in a rural state. Similarly, the emphasis on construction in the federal stimulus program as a means of job creation helped solidify transportation funding as a legislative priority.

There was a lot of emphasis put on rail expansion/enhancement in 2011. Rail was a priority for Governor Shumlin in the 2010 campaign and many Democratic lawmakers lobbied for more rail funding during the session. However, when the state’s effort to acquire federal dollars failed, H.443 simply encouraged VTrans to apply for federal grants to get the western rail corridor up and running.

[An Act Relating to Commercial Motor Vehicle Operation on the Interstate System \(S.49\)](#) – This law authorizes commercial truck weights on interstates to increase if Congress gives approval.

Some employer related bills that were considered but did not pass this year but will likely come up next year include: employers providing employee *uniforms* under certain circumstances (S.95); a requirement that employers give their employees bathroom *breaks* in certain circumstances (H.41); and a bill that prohibits employers from making employment decisions based on an applicant's *credit report* with limited exceptions (H.42).

### **Final Adjournment**

The 2011 session of the Vermont General Assembly adjourned shortly after 6 pm on Friday, May 6, 2011. Adjournment was not only one week earlier than originally scheduled but it occurred on a Friday, while it was still light out. Typically the session ends on a Saturday and often runs into the early hours of Sunday morning.

671 bills were introduced during the 2011 session. Seventy-five of them passed. Unlike recent history, there will not be any gubernatorial vetoes so the veto session set for June 7, 2011, will not be needed. However, in an unusual move, the president of the senate and speaker of the house reserved the right to jointly call lawmakers back for a special session on October 18, 2011, if federal spending cuts significantly affect Vermont's FY12 budget. If a special session is not needed, the General Assembly will meet for the second year of the biennium on January 3, 2012.

### **Politics**

For the first time in eight years Vermont has a new governor, which also opened the door for a new President of the Senate, a role Senator John Campbell was elected to fill. The only consistency within leadership heading into the 2011-12 biennium was Representative Shap Smith's re-election as Speaker of the House.

These Democratic leaders enjoyed the continuation of lop-sided Democratic control of both the House and the Senate. Despite the "Red Tide" that swept the rest of the nation during the 2010 elections, the Democrats remained firmly in control of the Vermont House and Senate with a 22-8 majority in the Senate and 94 of the 150 seats in the House (aided by the 5 additional seats being held by the Progressive Party as well as three seats held by Independents that all lean, by varying degrees, left of center).

While there was a great deal of discussion in regard to what policy results one party control would bring to our state, the Democratic super majority did not force a left wing agenda through the legislature. This is not to say that Vermont didn't see its fair share of a liberal agenda passed – single payer is the obvious example – but the so called "tax-and-spend" liberals cut the state's budget without raising a single broad based tax. There were those in both the House and Senate, Representative Paul Poirer and Senator Anthony Pollina for example, who argued for an increase in the state income tax on wealthier Vermonters, but Governor Shumlin and the legislative leadership were steadfast in taking a moderate approach to the state's fiscal challenges.

The session is also notable for what we didn't see: overt fighting amongst the Democratic leadership. While it was clear that serious and tense conversations were occurring among Governor Shumlin, President Campbell, and Speaker Smith, they were each patient and respectful and did not expose their disagreements publicly.

It is clear that Governor Shumlin made a smooth transition from being the President of the Senate to Governor. While he hit a few small bumps in the road the Governor had an extremely successful session both from a political and policy perspective. In his closing remarks to the General Assembly he called this is the “most successful session, ever.”

Senator Campbell’s move to the President of the Senate was not as smooth as Governor Shumlin’s, but given the circumstances he handled the new role well. Like the Governor, Senator Campbell hit some bumps along the way but none were large enough to derail the efficiency of the 2011 session.

As for the Speaker of the House, his power continues to grow. There are few, if any, that don’t consider him to be the most effective and powerful Speaker since Ralph Wright. There is no question that he managed his caucus masterfully and will continue to be the individual that many rely on to get difficult issues resolved in the General Assembly. It is only a matter of time before he runs for higher office and his work in the Vermont House has helped him establish a core of strong supporters.

While this is not an election-year it has become increasingly difficult to see a scenario in which Republicans gain control of either chamber in the legislature and they will not likely control the executive branch of government until Governor Shumlin decides to run for a different office or retires from public service. While it is as clear that the state’s leading Republican, Lt. Governor Phil Scott is secure in his current position, it is unlikely that he will seek the Governor’s office in 2012. As a result, it is fair to say, that at a minimum, the Democrats will be in control for the next four to six years.

### **Issues**

A steady and consistent state of calm at the State House set this year apart from recent years. While the budget gap continued to be large - \$176 million for fiscal year 2012 – the debate on how to fill that gap was noticeably different than it had been while Governor Douglas held Vermont’s highest office.

To compound the financial challenges further, the state could no longer rely on ARRA funding from the federal government like it had the past two years. The basic structure of Vermont’s \$4.6 billion budget remains the same, with more than two thirds of the spending going to education and human services (including health care) programs, another 7 or 8 percent to transportation programs and the rest spread around other government functions in relatively small amounts.

Despite a 95.7% reduction in ARRA monies available, the state was still able to avoid drastic cuts to human services, for now. Instead, the FY 2012 budget was balanced largely by cutting reimbursement rates for health care providers and increasing taxes on them. An increase in cigarette taxes also helped.

The real question will be what effect the pending federal budget cuts have on the state budget for fiscal year 2013.

An issue that played perhaps a larger role in 2011 session than the budget was health care reform. Upon taking office in early January Governor Shumlin immediately pushed his key campaign promise of adopting a publicly financed, single payer health care system. He appointed a team consisting of special assistant Anya Rader Wallach and BISHCA Commissioner Steve Kimbell to lead the effort and the result was the enactment of H.202, *An act relating to a universal and unified health system*.

H.202 begins to implement federal health care reform by establishing the federally required health insurance exchange. The bill puts Vermont on the path to a single payer system that will be known as *Green Mountain Care*. However, key decisions, such as how to finance Green Mountain Care and the types of benefits that will be provided, are postponed for later consideration, thus guaranteeing that health care reform will continue to be a dominant issue in future legislative sessions. The bill also contains measures that accelerate existing, nascent cost containment strategies that, if successful, will cause significant, and undoubtedly controversial, changes in the state's health care delivery system.

The General Assembly also addressed another priority of the Shumlin administration by passing S.78, *An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont*. Governor Shumlin campaigned on bringing statewide broadband and cellular service to the state by the end of 2013. While S.78 expedites the land use permitting processes for building telecommunications facilities and makes beneficial changes to the enabling law for the Vermont Telecommunications Authority (VTA), any success in establishing statewide broadband internet service will be attributable largely to the approximately \$175 million in grants and loans the federal government has provided to various telecom and internet providers in the state as part of the federal stimulus program. Nonetheless, with the passage of S.78, the Shumlin administration will be in a position to legitimately claim at least partial credit, if in fact the infusion of federal funds leads to statewide coverage by the end of 2013.

Like health care, renewable energy has become an issue the legislature deals with annually. This year was no different. H.56, *An act relating to the Vermont Energy Act of 2011* was the vehicle for this year's effort. While H.56 did address several areas of energy policy in the state, a large portion of the bill was set aside while the Department of Public Service (DPS) undertakes the drafting of a statewide energy plan.

The bill does improve net metering opportunities, addresses pricing provisions for existing renewable energy plants, returns the oversight of the Clean Energy Development Fund (CEDF) to DPS, and fixes a shortage of funding in the CEDF by allowing renewable energy developers that were awarded tax credits for projects to immediately take a grant at 50% of the credit value, which will free up half of the money reserved for the tax credits. This proposal was not without controversy, as it was the brainchild of a renewable energy developer who will receive a large portion of the grants and who happens to be a close political ally of and campaign contributor to Governor Shumlin.

## **New Revenue**

During the 2010 campaign, Governor Peter Shumlin ran on a platform of single payer health care and “no new taxes.” The legislature and governor were able to keep these promises for the most part with the passage of legislation setting the groundwork for single payer and the passage of H.436, the miscellaneous tax bill, which raised \$27.4 million in new revenue (however only \$24 million is new revenue since the bill included year-to-year growth in provider taxes).

The relationship between tax policy and health reform became apparent early in the session, when governor Shumlin introduced a budget with new revenue sources relying almost exclusively on provider taxes, including a new proposed tax on dentists, and health assessments. From the administration’s perspective the proposal made logistical sense because the tax increases were focused on familiar and reliable sources, such as hospitals and insurance companies. The proposal also put pressure on health care providers to work on containing costs, a vital component of the governor’s health care reform initiative.

H.436 went to conference committee and proved to be the most controversial and last major bill to be approved in 2011. Lawmakers finally agreed to a 38-cent increase on cigarettes, a 0.8 percent assessment on insurance claims, and provider taxes including a hospital provider tax mechanism based on actual revenues available for the budgeted year to increase the base on which the tax is imposed.

### **Tax Policy**

H.436 makes non-revenue generating changes to tax policy, some of which were controversial. These include a provision to tax online sales of companies that do not have nexus in Vermont. The tax applies to companies that have third-party affiliates domiciled in the state. The debate revolved around the constitutionality of the proposal and whether it would hurt local businesses more than the online corporations at which the tax was directed. The tax goes into effect when 15 other states enact similar provisions.

Another controversial change is a graduated tax on liquor sales that occur outside the DLC system, specifically at farmers markets. Again, the debate revolved around the constitutionality of taxing small distillers (who for all practical purposes are in-state companies) and large distillers (out-of-state companies) at different rates.

Proposed changes to the Tax Increment Financing (TIF) rules were also controversial. Lawmakers ultimately succeeded in approving TIF extensions for the town of Colchester.

Please find below a link to a side-by-side that explains the House and Senate proposals for H.436 and what was approved in the committee of conference.

[http://www.leg.state.vt.us/jfo/fiscal\\_notes/2011%20H.436%20COC%20Side%20by%20Side.pdf](http://www.leg.state.vt.us/jfo/fiscal_notes/2011%20H.436%20COC%20Side%20by%20Side.pdf)

Thank you for having the members of KSE Partners serve as VADA’s lobbyists at the State House this year. Please let us know if you have questions.