

# Statehouse Insider

Weekly Politics and Analysis

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## Issue Highlights

2012 Session Wrap-Up

DMV Misc. Bill

Abandoned Tire Study

Transportation

Budget

Reapportionment

Health Care Reform

Misc. Tax Bill

Employment Bills

Solid Waste Bill

## 2012 Legislative Wrap-Up

At 6:43 pm on Saturday, May 5<sup>th</sup> the Vermont General Assembly adjourned. In speeches made before the final gavel fell on the 2012 session, **Governor Peter Shumlin, Speaker Shap Smith** and **Senate President Pro Tem John Campbell** all stated that Vermont's response to **Tropical Storm Irene** was the defining issue of the session. Being "Vermont Strong" and emphasizing the state's swift and competent response to Irene's destruction is what incumbent politicians will focus on in the upcoming elections.

If one measured the biggest issue in terms of money, then Irene certainly would win. There is no doubt that lawmakers spent a lot of time and money in addressing the destruction from Tropical Storm Irene. For example, the **Transportation Bill** contains millions more to repair roads and bridges, the **Capitol Bill** includes money to rebuild state office buildings in Waterbury and Barre, and a **plan** was enacted to rebuild a downsized state hospital and establish a community based mental health system throughout the state.

As far as political maneuvering, however, the real issues that defined the session were **labor** and **energy**.

### Labor

The push to unionize home-based early educators, which passed the House last year, stalled in the Senate in 2012. Senate President Pro Tem John Campbell did not like the tactics used by the American Federation of Teachers (AFT) and in the end successfully blocked the union bill. But this was after hours of debate on the Senate floor. The Senate tacked it on as an amendment to the FY13 budget bill. When the budget conferees removed the union provision in conference committee, Senator Dick McCormack, D-Windsor, proposed the early educators union as an amendment to nearly every bill that came up in the Senate.

And what held up the session after the only “must-pass” budget and tax bills passed and were on their way to the Governor’s desk? A labor bill. This one involved requiring teachers and certain municipal employees who opt not to join their respective unions to pay “fair representation fees.” Fair representation fees passed the Senate as a floor amendment to **H.753**, a bill that encouraged voluntary school mergers. The House was scheduled to pass H.753 on the last day of the session, but a mistake made in the way the bill was placed on the House Calendar gave House Republicans the ability to refuse to suspend the rules and as a result, the representation fees were dropped.

While these two labor bills did not pass, there was a labor provision that did pass as part of **S.95**. It requires any employer that gets a single grant of state funds in the amount of \$1,001 or more to annually certify to the state that none of the funds will be used to interfere with an employee’s rights to unionize. According to the floor debate, this type of union busting activity is against federal law anyway.

## Energy

There were a number of energy bills that passed during the 2012 legislative session. Most notably was the **comprehensive energy bill S.214** (this bill was originally passed in the House as **H.468**). Net metering, expedited permitting for small hydroelectric facilities and property tax consistency for small renewable generation also passed.

The comprehensive energy bill will expand the existing standard offer program, increase the overall goal for renewable power in Vermont’s portfolio to 55 percent by 2017 and implements a number of studies to better understand the impacts of implementing a renewable portfolio standard.

There was also a lively conversation about the **GMP/CVPS proposed merger** that is currently being deliberated by the Public Service Board (PSB). The conversation in the legislature focused primarily on a \$21 million windfall provision contained in the merger agreement between the two utilities. The majority of the coverage in the press focused on returning the \$21 million in the form of checks to ratepayers.

Despite a major media campaign by AARP to have checks sent to ratepayers, the legislature in the end decided that this decision should only appropriately be made by the PSB. Since the board was in the midst of an open docket on the merger, there was a strong belief that the board was the entity that could best interpret previous decisions that were made on a similar issue in 2007 and all the facts surrounding the merger, not just one small provision of a \$700 million proposal that stands to save ratepayers \$144 million.

## State House Politics

At a recent press conference, Senate President Pro Tem John Campbell called this a “transitional” biennium. One with a new Governor for the first time in eight years and a new Senate President Pro Tem for the first time in 20 years.

Many pundits criticize John Campbell for losing control of the Senate. Without a doubt, the proceedings on the Senate floor were often a mess – with disgruntled Senators who wanted their pet issues aired, proposing amendment after amendment on the floor, causing lengthy debates with unpredictable outcomes. However, this was partially due to Sen. Campbell being to the right of his caucus on contentious issues such as the childcare union and death with dignity (a/k/a physician assisted suicide). Campbell’s predecessors would have led the charge on these issues so they would not have been bottled up in committee. But if one looks simply at the result, Senator Campbell was able to kill both of these bills, despite many in his caucus supporting them. That is a measure of power.

Governor Shumlin’s transition from the legislative to the executive branch went smoothly. The Governor’s signature issue, health care reform, passed easily.

House Speaker Shap Smith is the only veteran in the bunch and it showed. Smith held his caucus in complete control throughout the session and wins high marks for fairness from all House members. He briefly flirted with running for Attorney General but decided to remain in the House where he will almost certainly be elected Speaker next year.

### **House and Senate Butt Heads**

There is one other dynamic worth mentioning. With overwhelming Democratic majorities in the House and Senate, the only significant policy arguments were between the House and Senate, rather than the traditional partisan fights between Democrats and Republicans.

One example is the prescription drug-monitoring bill, which would have allowed police warrantless access to an existing Department of Health system that tracks the drugs that doctors are prescribing in Vermont. House members were concerned about privacy of medical records and civil liberties, while Senators supported police access to these records due to the public benefit of reducing drug abuse. The bill failed when both sides dug in their heels.

Another example is “taxing the cloud”, whereby software and other computer services that are accessed remotely would be taxed. The Senate passed a provision that would not tax the cloud. The House felt strongly that the cloud should be taxed. The issue will be studied with a report due next session.

[\(Back to the Top\)](#)

## **S.251 – DMV Miscellaneous Bill Passes**

**S.251**, a bill containing various provisions of interest to the Department of Motor Vehicles, passed the House and Senate. It contains a provision related to the length of trucks that can travel on

portions of Rt. 4 with a permit, prohibits the misuse of inspection stickers and contains provisions related to the lemon law. The lemon law section broadens the scope of who must place a window sticker on a vehicle deemed a "lemon" by the board. Currently, the law requires only a manufacturer, its agent or authorized dealer, to place the window stickers on lemons that are for sale. This bill requires any licensed dealer to do so. The section also prohibits a manufacturer or dealer from reselling a vehicle in Vermont that is deemed to have a "serious safety defect." Finally, the bill provides an affirmative defense to any dealer that did not know that the vehicle was returned as a lemon, either in Vermont or in another state that has a similar law where the title was not marked as a lemon.

[\(Back to the Top\)](#)

## The Abandoned Tire Study

Section 14 of the **solid waste bill** requires the **Agency of Natural Resources (ANR)** to study abandoned tires and report to lawmakers by **January 15, 2013**. The report must include an inventory of sites in the state where the disposal of waste tires is a problem, the number of waste tires disposed of and an estimate of how much it would cost to clean up the tires. In the meantime, the bill authorizes ANR to use funds from the existing solid waste management assistance fund to clean up waste tires. This was proposed in response to ANR's initial request to charge \$1 per tire sold in the state to fund the clean up of abandoned tires, which lawmakers rejected.

[\(Back to the Top\)](#)

## H.770 -Transportation Bill

The legislature approved a record setting transportation budget for FY2013. Totaling more than **\$658 million** it is the largest in history, including recent years that were infused with federal stimulus dollars. The budget highlights a growing priority of both the Shumlin administration and the legislature to better maintain the state's transportation infrastructure and a strong effort to rebuild in the wake of tropical storm Irene.

Program funding was increased across the board for FY13 in **H.770**. Here are some of the highlights:

- Paving: **\$104 million**
- Interstate and state bridge: **\$102 million**
- Roadway (construction): **\$66 million**
- Total town highway programs (includes paving, bridge, construction among other programs) **\$133 million**

A new initiative to help towns affected by Irene that provides state matching funds for FEMA projects was also included in the bill.

H.770 authorizes the creation of 23 new positions at the agency of transportation. 17 are temporary positions related to the response to Tropical Storm Irene and six are permanent positions. This is in addition to 21 limited service positions that were created within the agency by the **FY2012 Budget Adjustment Act**, which was signed by the governor in early March.

The Agency of Transportation requested and legislature approved measures that allow the agency to explore and in some cases engage in activities that traditionally fall to private contractors. H.770 authorizes the agency to explore the feasibility of purchasing a portable hot mix plant. If purchased, the agency indicated it would be used on small paving jobs. The agency has yet to show the economic benefit of purchasing the plant and a similar initiative in Maine has proved unsuccessful. H.770 authorizes the agency to acquire a rail bridge inspection vehicle and appropriates up to \$500,000 for the purchase. The bill also directs the agency to pursue the establishment of a "VTrans Training Center Program" to conduct workforce development and safety training, which is currently provided by private institutions such as the Associated General Contractors of Vermont.

There was a good deal of concern this year in both the House and Senate Transportation Committees regarding **gas tax revenues** declining due to increases in vehicle efficiency and a move toward alternative fuels. As a result, H.770 includes three studies related to transportation revenue. The **first** directs the Joint Fiscal Office (JFO) and the Department of Public Safety (DPS) to do an analysis of the costs incurred in enforcing the state's traffic safety laws and how those costs can be spread out across the general and transportation funds.

A **second** report analyzes options for applying user fees to alternative energy sources that are not currently taxed. This report will be compiled by the agency, JFO, DMV, The Tax Department, and DPS. These two reports are due at the November meeting of the Joint Fiscal Committee.

The **third** study includes the creation of a **Committee on Transportation Funding**. The committee is charged with estimating transportation and transportation infrastructure bond revenues over the next five years and identifying the funding gap between revenues and project costs. The committee will evaluate a variety of tax scenarios and new revenue sources in order to report to the legislature on viable options to maintain sufficient revenue in future years. The committee will be comprised of the Secretary of Transportation, the Commissioner of Motor Vehicles, a Committee on Committees appointee, an appointee of the Speaker of the House, a member of the League of Cities and Towns, a member of the Vermont Association of Planning and Development Agencies and a member of the James M. Jeffords Center for Policy Research. The committee report is due on January 15, 2013.

[\(Back to the Top\)](#)

## The FY13 Budget

For the first time ever, the state of Vermont's budget for the upcoming year exceeds \$5 billion. Much of the increase in spending from last year resulted from increases in federal and transportation funds as a result of Tropical Storm Irene. Surprisingly, there was hardly any debate

in either the House or Senate about the money in this bill, and the final conference committee report passed 113-18 in the House and 25-3 in the Senate.

Most noteworthy is how any surpluses in FY13 will be appropriated: 25 percent will be reserved for federal fund replacement; 25 percent will be deposited into a “true” rainy day fund, meaning lawmakers can tap into it (which they cannot do with the current reserves); and 50 percent to a newly created “supplemental property tax relief fund,” complete with a formula for calculating how the funds will be allocated between the education fund or used for other efforts that address pressure on the property tax.

[\(Back to the Top\)](#)

## Reapportionment

Typically **reapportionment** is one of the most politically divisive issues lawmakers face. This year, the bills that carve up the state into new legislative districts based on new federal census data, were enacted into law with overwhelming, tri-partisan support. Part of this stems from the fact that the Senate made no major changes to Senate districts, just shifting around a few towns between districts and not changing the six member Chittenden Senate district. In the House, in only one district will a lawmaker lose his seat, namely, either Dennis Devereux, R-Mount Holly or Eldred French, D-Shrewsbury. These incumbents will run against each other as portions of their former districts will be merged together and Ludlow, Mt. Holly and Shrewsbury will become a one-member district.

The only thing that can change the maps now is a lawsuit. Republican Party Chair Jack Lindley has publicly stated that the party is mulling a lawsuit. One option would be to challenge the maps because the overall population deviation in the Senate is 18.1 percent and in the House is 18.9 percent, which some allege violates the “one person, one vote” rule or equal protection. Another challenge might be to the six-member Chittenden County District, which is the largest in the country. The so-called “Chittenden six district” was challenged and upheld in the 1960’s. Lawsuits challenging legislative districts filed in state courts over the past 20 years have not been successful. Suits can be filed in state or federal court.

**House Map**  
**Senate Map**

[\(Back to the Top\)](#)

## H.559 - Health Care Reform Bill

After creating a lot of controversy at the beginning of the session, **H.559**, the health care reform bill, passed both chambers with relative ease. The bill implements federal law in order to establish Vermont’s Health Care Benefit Exchange. In response to concerns from business owners, the legislature agreed with the Shumlin administration on defining small employers until 2016 as

those with 50 employees or less, to allow bronze-level plans in the Exchange and to merge the individual and small group insurance markets. One sticking point on the Senate floor in the final days of debate was whether plans should be offered both inside and outside the exchange. In the end, the bill passed as the administration wanted, with only small group plans required to be sold inside the exchange. Vermonters insured through large group plans do not have to purchase through the Exchange until 2016.

The bill also implements last year's health care reform bill, **Act 48**, which lays the groundwork for the creation of a single-payer health care system by creating the quasi-independent Green Mountain Care board. Specifically, H.559 gives the board authority over health insurer rate review, hospital budget review and eventually the certificate of need process.

A number of bills were incorporated into H.559, including a bill banning discretionary clauses in health insurance contracts, a bill regarding parity for mental health services, and another regarding broker's fees. A provision in the bill would require prior authorization forms to be as uniform as possible and would limit the number of forms permitted. The bill also requires the amount of an insured's out-of-pocket expenditures for prescription drugs to be below the minimum deductible amounts for individuals and families in HSA tax laws.

### **S.199 - The Immunization Bill**

One of the most contentious bills of the 2012 legislative session was **S.199**, a bill that sought to remove the ability for parents to use a philosophical exemption to opt out of vaccinating their children before entering public school or a licensed day care. The bill pitted physicians against parents, in a sharply divided debate that came down to individual rights versus public health risks. Mobbed hearings heard doctors and medical professionals citing Vermont's sharp decline in vaccination rates and the return of "whooping cough" in the state as evidence of the serious risk. A coalition of parents quickly launched a campaign called the Vermont Coalition for Vaccine Choice and flogged the committee rooms. Arguing that vaccines come with their own medical risks, like autism and other neurological disorders, they said the bill would infringe on their right to make choices for their children.

The bill went into conference committee with both the House and Senate ready to defend their polarized positions. The Senate had voted to eliminate the use of the philosophical exemption by a vote of 25-4. While the House-passed version kept the philosophical exemption but required parents to receive education on the risks of not vaccinating and required schools to report their immunization rates. After countless conference committee meetings, the bill passed with the philosophical exemption intact, additional reporting requirements for schools regarding immunization rates and a provision that would allow public school students with compromised immunity to choose to attend a school with a higher immunization rate.

The following health care bills also passed this session:

**H.37, the telemedicine bill**, was sent to the governor May 7 and he has until May 12 to sign it into law. The bill mandates insurance coverage and Medicaid coverage of all telemedicine services performed in a health care facility. This bill also permits but does not mandate insurance coverage for teleophthalmology and teledermatology using a practice called "store and forward," which allows a doctor to take a picture of a patient's medical condition and forward it to a specialist for

diagnosis at a later time. Finally, the bill requires a study of telemedicine used outside of a health care facility.

**S.200, the health insurer reporting bill**, passed both chambers. This bill requires health insurers to annually report to the Commissioner of Financial Regulation specific data, including how many claims they've denied for a variety of reasons, bonuses and compensatory benefits for all corporate members, as well as federal and in-state lobbying expenses. The bill creates a consumer-oriented insurance work group to improve access of filings and also changes pharmacy audit procedures.

**S.223**, what was originally called the **autism bill**, was expanded to include insurance coverage of all early childhood development disorders, passed both bodies. The bill expands mandated coverage of autism and other developmental disorders from birth until 21 years old. The original law covered these diagnoses from 18 mos. until the age of six.

There were also a few health care bills that inspired lively debate, but ultimately did not pass:

**H.777**, a bill that would allow midwives to receive insurance reimbursement without medical malpractice insurance passed the House, but failed in the Rules Committee in the Senate.

**S.197**, a bill that would prohibit hospital-owned medical practices from imposing a hospital-based outpatient charge for nonemergency visits, passed the Senate but did not garner support in the House.

[\(Back to the Top\)](#)

## H.782 – The Miscellaneous Tax Bill

The **miscellaneous tax bill** is a perennial Christmas tree of obscure and controversial revenue issues. The 2012 edition addresses everything from an increase in the generation tax on Vermont Yankee to a moratorium on taxing remotely accessed software to closing a sales tax loophole on miniature cigars. As is the case every year, the miscellaneous tax bill was embroiled in the heavy bargaining of the final days of the session, and almost died at the last minute when the mini-cigar provision was added in conference committee.

H.782 increases the generation tax on the **Vermont Yankee nuclear power plant** from roughly \$5 million per year to \$12.5 million per year. The intent behind the increase is to replace payments Entergy was making into the Clean Energy Development Fund under an agreement that expired in March. Critics of the tax increase say the legislature is trying to shut the plant down via tax increases after a federal court struck down the legislature's ability to rule on relicensing.

H.782 imposes a temporary moratorium on taxing remotely accessed software, otherwise known as **cloud computing**. The Department of Taxes issued a bulletin in 2010 that ruled the sales tax on cloud services had been in effect since 2006. The Senate voted this year to refund taxes collected on cloud services since 2006 and repeal the tax going forward. After compromising with the House, an agreement was reached to refund taxes collected back to 2006, and impose a

temporary moratorium on taxing cloud services until July 1, 2013. In the meantime, a study committee will convene to look at taxing the cloud as well as taxing services in general. The committee report is due to the legislature by January 15, 2013, which will allow the legislature to act before the moratorium sunsets in July. In a post session news conference House Speaker Shap Smith and Senate Pro-Tem John Campbell, both Democrats, announced that it will be a priority of the legislature in 2013 to update the sales tax code to better reflect the 21<sup>st</sup> century economy.

Other provisions included in H.782:

- A revision of the tax department's annual report on employment growth incentives.
- A five-year extension of the Vermont Employment Growth Incentive.
- A media campaign to inform farmers about the petroleum cleanup fund.
- A requirement that bottlers and wholesalers of malt vinous beverages provide an electronic copy of their monthly sales reporting.
- Restructuring the income tax for C corporations.
- An Irene income tax credit for eligible applicants.
- A temporary reduction in property tax rates on nonresidential and homestead property for 2013 only.
- Sales and use tax rebates for mobile homes affected by tropical storm Irene.
- A tax exemption for machinery that is used for secondary packaging as part of an integrated process.

[\(Back to the Top\)](#)

## Employment Issues

The following bills relating to business and/or employment related issues were enacted by the Legislature during the recently concluded session:

**H.254.** This is the consumer protection bill from 2011 that was pushed by the Attorney General's Office. It addresses discount membership programs and data security breaches involving personal information such as social security numbers.

**H.730.** This is the 2012 consumer protection bill, also pushed by the Attorney General's Office. It regulates "cause related" marketing, the receipt by businesses of unsolicited goods and services, promotional or loyalty gift certificates, and Internet based loan transactions. In addition, the Senate added a provision requiring the Public Service Board to establish a discount program for low-income users of natural gas delivered by Vermont Gas Systems, Inc.

**H.781.** This bill is the budget bill for FY 2013, i.e., the fiscal year beginning July 1, 2012. In the last days of the session it was amended with supposedly non-controversial employment related provisions due to disagreements between the House and the Senate on each chamber's respective employment related bills, **H.762** and **S.137**. The provisions added to H.781: (1) revise the composition of the Department of Labor's apprenticeship division and state apprenticeship council, (2) increase the penalty for intentionally misrepresenting facts in connection with obtaining unemployment benefits, (3) make significant changes to the unemployment insurance

program regarding “short term compensation employers,” and (4) makes a minor change to the statute concerning payment of child support by way of wage withholding.

**S.95.** This bill bans, with numerous exceptions, the use of credit reports in determining whether to hire an individual as an employee. Among the exceptions to this ban are if the position involves access to confidential information, the employer is a financial institution, the position involves a fiduciary duty to the employer or a client of the employer such as managing accounts payable, transferring money, etc.

[\(Back to the Top\)](#)

## H.485 – The Solid Waste Bill

**H.485**, the bill that was designed to lay out the solid waste plan for the state over next five years went from almost unanimous support in the House, with little to no opposition from interest groups, to almost dying in the Senate with immense opposition from a multitude of interested parties. This is because the House and Senate Natural Resources committees had strikingly different opinions about the purpose of the bill. Chairman Tony Klein, D-East Montpelier, and the House committee wanted the bill to implement an analysis and develop a report on the state’s solid waste system and all programs currently in place. Chairwoman Ginny Lyons, D-Chittenden and the Senate committee wanted to go further and set priorities for the new solid waste plan and even implement new initiatives like expanding the bottle bill and banning plastic bags.

In the final negotiations, major policy decisions like prioritizing extended producer responsibility were removed from the bill. The bottle bill expansion became a general study of the bottle bill and the plastic bag study was dropped altogether. Both the House and Senate did agree to designate materials for mandatory recycling, mostly related to food and beverage packaging. It will be required that solid waste haulers and districts accept these materials for free by July 2014. The bill also mandates free collection of yard residuals in 2015 and compostable material on an increased basis throughout the decade. The Agency of Natural Resources is charged with conducting the analysis, and will file a report by November of 2013 for the legislature to act upon during the 2014 session.

[\(Back to the Top\)](#)

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