

May 25, 2017 – Legislative Wrap-Up

# THE VERMONT **STATEHOUSE INSIDER**

Weekly politics & analysis  
of the issues in Montpelier



## **OVERTIME**

Little will be remembered about the 2017 legislative session beyond what happened during the last four weeks. The end of session debate over teachers' health insurance contracts and Governor Phil Scott's subsequent threat to veto the budget largely defines the first year of the biennium.

Most Statehouse observers expected a leadership adjustment period given the state has a new Governor, House Speaker and Senate President pro-tem. For the first 14 weeks of the session, this read appeared to be correct. Bills were introduced and passed with little fanfare and little to no controversy between the parties or the branches of state government. The pace of the session allowed for

each of the new leaders to get their feet underneath them and get comfortable in their new roles.

As is typical with politics, when one thinks things are predictable, the unexpected happens. Governor Scott and his team began advocating in earnest to implement his plan to shift the negotiation of teachers' health benefits from the local to state level. With the upcoming implementation of the Obamacare "Cadillac tax" on health insurance benefits, teachers' health care plans need to be pared back. This created an opportunity to achieve savings and mandate how those savings would be utilized.

Governor Scott argued his plan could save as much as \$13 million in FY18 and \$26 million annually for the next four years. However, for his plan to be implemented it would require the end of collective bargaining for teacher health insurance contracts at the school district level. That was a non-starter for the Vermont National Education Association, for the state's unions in general and for many within the Democratic and Progressive Parties.

After several attempts to negotiate a solution it was clear that the Governor and legislature were at an impasse. Legislative leaders decided to move on and send the budget bill and a property tax bill to Governor Scott and await the all but certain veto.

This sets up a two-day veto session scheduled for June 21 and 22. Legislative leaders have recently stated they want to reach an agreement with Governor Scott prior to the veto session. If they are successful it could be a relatively short veto session. Governor Scott's recent statements that he will not allow state government to shut down for lack of a deal by July 1 make this all the more likely. With that "nuclear option" off the table there will be a resolution by the end of the second day of the veto session.

The question remains whether a resolution to the budget will further divide the legislature and the governor and thus set up a very contentious second year of the biennium, or whether the commonly accepted notion that Vermont civic discourse

is different from national politics is validated. With 2018 being an election year, everyone's patience and political aspirations will be on full display.

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## VADA ISSUES

### DMV MISCELLANEOUS (S.127) - PASSED

The bill that [passed the House and Senate](#) makes numerous changes to DMV laws including the following:

- Preserves the current requirement that vehicles have two license plates and authorizes Vermont Strong license plates to be displayed indefinitely on the front of a vehicle. (Sec. 24)
- Requires the Commissioner of Motor Vehicles, in consultation with the Commissioner of Corrections, to estimate the cost savings that would result from eliminating the requirement that most vehicles display front license plates and examine whether the redesign of Vermont's license plate could lead to cost savings associated with the production of the plates, among other things. A report is due back to lawmakers by January 15, 2018. (Sec. 24a)
- Changes the standard for the issuance of "exhibition plates" (Sec. 8)
- Increases penalties for certain "distracted driving" offenses (Secs. 12 & 13)
- Revises the standard from "average book value" to "clean trade-in value" in NADA's Official Used Car Guide when calculating the amount of a used vehicle trade credit for purposes of the purchase and use tax. (Sec. 21)
- Allows for the extension of the three month period for obtaining a used vehicle trade credit to purchase and use tax owed in certain instances involving VW, Audi or Porsche vehicles that were bought back by the manufacturer because they violated Vermont's vehicle emission standards. (Sec. 23)

- Requires the Secretary of Transportation to develop educational resources for property owners related to the prevention of injuries arising from recreational use of property. (Sec. 30)

### **TRANSPORTATION BILL (H.494) - PASSED**

The annual transportation budget bill (H.494) appropriates \$594.4 million in transportation funding in FY18. This is a slight \$1.6 million increase over FY17 funding levels. The paving program is funded at \$112.8 million, a \$1.7 million increase over FY17.

H.494 was relatively uncontroversial and the House and Senate versions did not vary greatly. The bill requires VTrans to conduct a study on how to regulate automated vehicles. The agency will convene a stakeholder group of experts on automated vehicle technology and make policy recommendations to the legislature in 2018. The bill also requires the agency to consult with utilities prior to requiring utility relocation for highway projects. The agency is required to give the utility a “reasonable” amount of time to relocate. If the utility fails to meet the deadline they are held accountable for damages. H.494 makes a number of appropriation tweaks, including increasing town highway class 2 roadway spending authority by \$600,000.

### **AUTOMOBILE ADVERTISING - TABLED, PENDING IN HOUSE**

After hearing testimony from VADA, the House Commerce & Economic Development decided to table H.112, a automobile advertising bill. H.112 proposes to require an automobile dealer to remove an Internet advertisement for a vehicle within 48 hours from the time the vehicle is sold and require an automobile dealer to disclose clearly in an advertisement whether a vehicle is for sale or for lease, or both, and on what terms. The bill will carry over to next session and it is unclear whether the committee will take it up again.

### **\$10 VEHICLE REGISTRATION INCREASE/CLEAN WATER FUNDING (H.95) - DID NOT ADVANCE, PENDING IN HOUSE**

The House Natural Resources, Fish and Wildlife Committee (HNRFWC) compiled a series of recommendations on clean water funding and sent them to the House Ways and Means Committee. The HNRFWC decided to submit this list along with a memo and a draft bill rather than to formally vote H.95 out. The HNRFWC committee included a \$10 surcharge on each motor vehicle registration, which is projected to raise \$6 million per year. The money would go to the Transportation Fund to be earmarked for state and municipal stormwater projects for roads. Click [here](#) to view a chart outlining the full list of recommendations. These proposals prompted a swift response from Governor Scott, who has repeatedly stated his opposition to any new taxes or fees. This discussion will likely carry over to 2018.

Link to table of taxes [here](#).

### **PAID FAMILY LEAVE (H.196) - PASSED HOUSE, PENDING IN SENATE**

The House passed [H.196](#) late in the session by a 88-58 vote. The bill was sent to the Senate Rules Committee because it missed the crossover deadline. The Senate will likely take up the bill in 2018. The bill:

- Applies to all employers with ten or more employees who work an average of at least thirty hours per week.
- Expands the group of family members an employee could take leave to care for to include grandchildren, grandparents and siblings.
- Establishes the Parental and Family Leave Insurance Program that provides employees with six weeks of paid family leave benefits.
- Imposes a payroll tax equal to 0.141 percent of each employee's covered wages (up to \$150,000) that an employer must withhold from its employee's wages.

### **CHEMICALS - PASSED HOUSE & SENATE, PENDING IN SENATE (S.103)**

Members of the Senate Natural Resources Committee introduced legislation early in the session that would have made sweeping changes to how chemicals and manufacturing are regulated in Vermont. As introduced, S.103 set up reporting and

regulatory regimes for the use, storage and transport of chemicals in Vermont, changed water testing requirements, changed penalties and litigation standards and changed the chemicals of high concern in children's products statutes (Act 188). The committee spent a couple weeks debating the legislation but at the crossover deadline felt more consideration and additional input from other committees was needed. Ultimately the Senate decided to create an interagency task force that would look at all the proposals included in the original bill.

### **CARBON BILLS - DID NOT ADVANCE - PENDING IN HOUSE**

Late in the session, a series of bills were introduced that involve taxing carbon pollution and using the revenue to fund various tax reform proposals. The bills prompted a swift response from Governor Phil Scott, who stated repeatedly throughout his campaign that he would veto a carbon tax. The bills, [H.528](#), [H.531](#), [H.532](#), and [H.533](#), were referred either to the House Ways and Means Committee or the House Natural Resources, Fish and Wildlife Committee. The bills will carry over to 2018.

### **GENDER-FREE BATHROOMS - PASSED HOUSE, PENDING IN SENATE**

This bill requires that a single-user public bathroom in a public building or a place of public accommodation be identified as gender free. The bill passed the House by a vote of 123-19 late in the session and is pending in the Senate Rules Committee. The Senate will likely work on it in 2018.

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**BELOW IS A SUMMARY OF OTHER SIGNIFICANT BILLS THAT PASSED THE HOUSE AND SENATE IN 2017**

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## **LABOR**

### **PREGNANCY ACCOMMODATION (H.136/ACT 21)**

Governor Scott signed this bill into law on May 4, 2017. [Act 21](#) requires an

employer to provide a reasonable accommodation for an employee's pregnancy-related condition, unless it would impose an undue hardship on the employer. The Act extends the law to women with healthy pregnancies who are not otherwise disabled. Act 21 is effective January 1, 2018.

### **SOCIAL MEDIA PRIVACY FOR EMPLOYEES (H.462/ACT 27)**

The Governor signed the bill into law on May 17, 2017. This act prohibits an employer from requiring, requesting, or coercing an employee to provide a social media account username or password, or to present or divulge social media content to the employer. This act also prohibits employers from requiring or coercing an employee to add the employer to his or her list of contacts for a social media account. This act includes exemptions for certain activities conducted by law enforcement agencies and for social media accounts provided by employers. It also allows an employer to request an employee to disclose specifically identified content necessary for compliance with legal or regulatory requirements, or as part of an investigation of unlawful harassment, threats of violence, or unauthorized disclosure of confidential information.

### **PUBLIC RETIREMENT PLAN (S.135)**

Two of the many provisions in S.135, the economic development bill, provide for the implementation, by January 15, 2019, of a multiple employer public retirement plan. The plan is to be called the "Green Mountain Secure Retirement Plan" and overseen by seven person board chaired by the State Treasurer. The plan is to be available on a voluntary basis to employers with 50 or fewer employees who do not offer a retirement plan and to self-employed persons. Employees of participating businesses will be automatically enrolled unless they affirmatively opt out. The plan is to be funded exclusively by employee contributions. Further details of the plan are to be developed by the existing Public Retirement Study Committee. The Committee is to provide the legislature with a report by January 15, 2018 concerning the details of the plan.

## **MINIMUM WAGE STUDY COMMITTEE**

Minimum Wage Study Committee - Section F1 of [S.135](#) creates a minimum wage study committee that must report its findings and recommendations for legislative action by December 1, 2017.

## **MENTAL HEALTH PARITY FOR WORKERS COMPENSATION**

One of the more contested issues during the 2017 session was the issue of how the workers' compensation system should handle claims for mental injuries. The issue was the subject of a stand-alone bill, H.197, which passed the House but not the Senate. The Senate, however, added the language of H.197 to one of its own bills, S.56, once it came back to the Senate. As enacted, [S.56](#) creates a presumption that a diagnosis of PTSD for certain emergency personnel is work related. It also broadens the control group for so-called "mental-mental" claims (a mental injury unrelated to any physical injury). In doing so it effectively overrules a 2003 Vermont Supreme Court decision that required a "mental-mental" claimant to show that his or her job related stress exceeded the stress a person in the claimant's occupation would normally experience. Under the bill a claimant now only needs to show that the stress exceeds what an average person in the entire workforce typically experiences.

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## **BUDGET + TAXES**

### **BUDGET**

H.518 appropriates \$2.48 billion in state general funds, a 0.7 percent increase over FY17. The proposed overall budget in H.518 is \$5.75 billion, a \$1.3 percent increase over FY17. [Click here](#) to read the conference committee budget highlights.

### **MISCELLANEOUS TAX BILL**

The 2017 tax bill does not create new taxes or increase existing ones. However, it does include provisions that enable the Tax Department to enhance its collection

and compliance rates. This is estimated to raise \$4.9 million in FY18. H.516 lowers the “safe harbor” amount for reporting use taxes due on purchases from vendors who do not collect Vermont sales tax, such as online and out of state retailers. This change is anticipated to increase use tax collections by \$1.8 million. Other provisions require increased reporting by third party settlement organizations and vendors who do not collect Vermont sales tax. These provisions are collectively estimated to raise \$3.1 million. Another notable feature of the bill changes how state income tax is calculated. Beginning in tax year 2018, state income taxes will be based on federal adjusted gross income (AGI), rather than federal taxable income. [No standalone version of the bill as passed by both chambers is available yet.]

### **TAX INCREMENT FINANCING DISTRICTS**

Tax Increment Financing Districts (S.135). Under S.135, the economic development bill, up to six new tax increment financing districts, or “TIFs,” may be created, with no more than two in a single county. TIFs allow municipalities to use a significant portion of new property tax revenue generated by a development project to service debt incurred by the municipality in order to finance public infrastructure that needs to be built or improved in connection with the private development project.

### **EDUCATION PROPERTY TAX RATE BILL**

[H.509](#) sets the education property tax rates for FY18. This annual bill is not normally the center of attention, but this year was different. With Governor Scott’s proposal to shift negotiations for teacher health benefits to the statewide level, H.509 became one of the year’s most controversial bills. H.509 reduces the non-residential education property tax rate from \$1.59 to \$1.55 per \$100. The bill also establishes the Vermont Educational Health Benefits Commission to determine whether and how to establish a single statewide health benefit plan for all teachers, administrators and other employees of supervisory unions and school districts.

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# HEALTHCARE

## TELEMEDICINE (S.50)

This bill removes the limitation in existing law that health care services delivered via telemedicine are covered by insurance only when the patient is at a health care facility. Under [S.50](#), the patient is covered regardless of where they are. The bill also addresses the issue of informed consent to receive health care services by telemedicine.

## DUTY TO WARN (S.3)

A decision by the Vermont Supreme Court in 2016 set higher warning standards for health care providers who believe individuals leaving their care are dangerous. The ruling, commonly known as the “Kuligoski” decision, was seen by mental health providers and caregivers alike as too stringent. Under Kuligoski the risk of harm did not have to be serious or imminent to trigger the warning and caregivers could be held liable for the actions of the person under their care. Also, a potential victim did not need to be identifiable and mental health professionals could be held responsible for patients no longer under their care. S.3 effectively negated the Kuligoski decision and reverted back to the previous warning standard. This was established in 1985 by the “Peck” decision and requires a mental health professional to issue a warning if they believe there is an imminent risk to an identifiable person.

## ACO MEETINGS (S.4)

[This bill](#) sets forth new standards for an accountable care organization (ACO) regarding public access to information being discussed by the ACO governing body.

## NEXT GENERATION ACO REPORTING (H.507/ACT 25)

Governor Scott signed [H.507](#) into law on May 4, 2017. Act 25 requires the Department of Vermont Health Access to report on a quarterly basis information related to the implementation of the Next Generation Accountable Care

Organization. The Act also requires the Green Mountain Care Board to report information regarding the implementation of the All-Payer Model and the board's plans regarding ACO regulation. Finally, the Act addresses issues surrounding bronze plans sold on the health care exchange.

### **MENTAL HEALTH (S.133)**

The Senate Health and Welfare and House Health Committees spent significant time discussing mental health reform in 2017. The discussion stemmed from concern that pressures on the current system are caused by a mismatch between patient needs and provider capacity. There was a strong feeling that more should be done to increase staffing levels and expedite the process of getting patients in crisis to the appropriate care setting. These considerations resulted in S.133, which creates a number of studies of the mental health system and reports for the legislature to consider in 2018. These studies cover the following policy areas:

- Involuntary treatment
- Emergency room stay time for mental health patients
- Staffing issues including wage levels and retaining employees
- Integration of the mental health system into the ACO model
- Improving efficiency within the system
- AHS rate setting practices for designated agencies and substance abuse services
- Including designated agency employees on the state employees health plan

### **LONG TERM CARE OMBUDSMAN (H.265/ACT 23)**

Governor Scott signed this bill into law on May 4, 2017. [The Act](#) updates the Long Term Care Ombudsman statutes to conform with federal law. It also creates a private right of action for a vulnerable adult who is the victim of financial exploitation.

### **ADVERSE CHILDHOOD EXPERIENCES (H.508)**

[This bill](#) creates an Adverse Childhood Experiences Working Group “for the

purpose of investigating, cataloguing, and analyzing existing resources to mitigate childhood trauma, identify populations served, and examine structures to build resiliency.” The working group must submit any proposed legislation to the Senate Health and Welfare and House Human Services Committees by November 1, 2017.

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## **EDUCATION**

### **MISCELLANEOUS EDUCATION BILL (H.513)**

H.513 makes changes to Act 46 as well as a host of small changes on a variety of education policies. A major focus of the legislation is to alter Act 46 to create alternative structures that can be approved to help districts struggling to meet the requirements of the law. Other provisions in the bill relate to pre-k, the state colleges and the Next Generation initiative, the current law governing Professional Educators, definitions related to adult education and several others. The most controversial provision relates to the ongoing rulemaking process at the State Board of Education (SBE) related to independent schools. The majority of legislators were concerned about the SBE’s proposed independent school rules so they directed the SBE to pause their work until a separate working group examining this issue could wrap up.

[Click here](#) to review the bill in its entirety.

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## **CONSUMER PROTECTION**

### **CONSUMER PROTECTION BILL (S.136)**

The final version of S.136, a consumer protection bill, includes the following:

- A report on how other states address consumer protection in home improvement contracts.

- A section dealing with property tax escrow accounts associated with home mortgages.
- A section regulating Fantasy Sports and requiring Fantasy Sports operators to pay an annual registration fee of \$5,000 to the Secretary of State.

[Click here](#) to read the final version of S.136.

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## INTERNET

### DATA BROKERS (H.467)

As introduced, [H.467](#) would require data brokers – any commercial entity that collects one or more items of a wide variety of information about Vermonters for sale to a third party - to register with the Department of Financial Regulation. It would also require data brokers to file annual reports detailing the sources of the information. Finally the bill would require data brokers to implement a customer identification program and require public agencies to maintain a record of the sale of information to a data broker. The bill was intended to identify and hold accountable entities that collect information on vulnerable individuals and share that information with bad-faith actors. After weeks of consideration and debate the House Commerce and Economic Development Committee determined that the definition of data broker was too broad and the Attorney General should study the issue in the off-session. Study language was added to [S.72](#), a bill that would require telemarketers to provide accurate caller identification numbers.

### INTERNET PRIVACY (S.147)

[S.147](#) was introduced late in the session in response to Congressional repeal of a yet-to-take-effect FCC regulation that would have required Internet Service Providers (ISPs) to get customers' permission before selling their data. S.147 would have directed the Attorney General, in consultation with the Commissioner of Public Service, to adopt privacy and data security rules similar to the FCC rule. Ultimately, the Senate Finance Committee decided to move forward with a study, and included the language in [S.72](#).

## **FINANCIAL TECHNOLOGY (S.135)**

One of the provisions in S.135, the economic development bill, relates to financial technology Bitcoin is one example. It contains findings concerning the importance of changes in financial technology and calls for a report, by November 30, 2017, from the Center for Legal Innovation at Vermont Law School. That report, which must be developed in consultation with Department of Financial Regulation, the Agency of Commerce and Community Development, and the Attorney General's Office, is to: (1) provide findings and recommendations on the potential opportunities and risks presented by developments in financial technology, (2) make suggestions for an overall policy direction, and proposals for related legislative and regulatory actions and (3) set forth measurable goals and outcomes that indicate success in the implementation of such a policy.

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## **ENERGY + ENVIRONMENT**

### **PUBLIC SERVICE BOARD (S.52)**

S.52 is the outgrowth of legislation enacted in 2016 (Act 174) calling for a workgroup study of Public Service Board processes and recommendations on how to modify those processes in order to make them easier to understand for lay people. Act 174 reflects the fact that in the last five plus years the Board has seen a significant increase in applications to develop renewable energy facilities. Some projects have been controversial and opponents who do not have an energy background have had difficulty navigating the PSB process. Following the recommendations of the Act 174 work group S.52 makes modest changes to PSB processes for the permitting of both energy and telecommunication projects. The bill also establishes a new, more simplified enforcement process that is designed to make it easier to enforce permit conditions. Finally, S.52 changes the name of the Board to the "Public Utilities Commission" in an attempt to make it more distinguishable from the Public Service Department and requires a study and report on whether the Board (Commission) should be completely exempt from the state's Open Meeting Law.

[As passed by both chambers.](#)

## **HOUSING BOND + WATER**

Governor Scott proposed the use of a \$35 million bond to promote housing, with a significant portion of the funds being directed to affordable and workforce housing projects. The proposal received significant support in the Statehouse but ran into challenges due to the need for a \$1 million revenue source to pay down the bond debt. Attempts to impose an occupancy fee on visitors at lodging establishments to raise the necessary \$1 million were quickly defeated in large part due to Governor Scott's no new fees or taxes pledge.

Due to the fiscal environment and unknown budgetary pressure that may come from federal cuts, the investment appeared less likely to happen. But, a couple of weeks before adjournment, the housing bond was revived in the form of S.100. The bill as modified by conference committee, proposes to divert revenue from the property transfer tax to fund the bond, reallocating money from the clean water fund. The bill set up a fight between housing and clean water advocates. Language from S.100 was ultimately added to the budget to increase the likelihood of the bond proposal becoming law and was an attempt to make it more difficult for Governor Scott to veto the budget.

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## **MARIJUANA + ALCOHOL**

### **MARIJUANA LEGALIZATION (S.22)**

On Wednesday, May 24, Governor Scott held a press conference to announce he would veto S.22, the marijuana legalization bill. S.22 would have legalized small quantities of marijuana for personal use, and created a commission to study and report on how the state could move forward with a regulated market for marijuana. The Governor cited several concerns with the bill and said that if the legislature addresses his concerns, he would be willing to sign the bill, even suggesting that

the legislature could send a new bill to his desk during the veto-override session scheduled for June 21 and 22. If the veto-override session lasts just two days as anticipated, both chambers would need to suspend rules to take up, act on and send a bill to the Governor's desk. House Republican leadership has said it will not suspend rules on a new legalization bill.

### **TITLE 7 MODERNIZATION (S.127)**

The bulk of [this lengthy bill](#) modernizes Vermont's alcohol laws in Title 7. The bill also creates a plan to merge the Department of Liquor Control with the State Lottery Commission as Governor Scott proposed by Executive Order 07-17 in January, 2017. The House rejected the executive order and opted to study the issue. The Senate, which supported the merger, included language approving it in H.238. The final compromise in H.238 creates a Task Force to Create the Department of Liquor and Lottery and states that the task force "shall develop a plan and legislation necessary to merge the Department of Liquor Control and the State Lottery and create a new Department of Liquor and Lottery on or before July 1, 2018." Legislation will be needed in 2018 to complete the merger.

### **MEDICAL MARIJUANA (S.16)**

Vermont first enacted its medical marijuana program in 2004. One major complaint from Vermonters is the geographic distance between patients on the registry and the physical locations of the dispensaries. [S.16](#) addresses this concern by adding one new dispensary license, bringing the total to five, and allowing each dispensary to manage up to two retail locations. That brings the total retail locations for medical marijuana up to ten from the current four. The committee of conference report can be found starting on page 1520 of the Senate Journal.

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## **MISCELLANEOUS BILLS OF INTEREST**

### **NEWS MEDIA PRIVILEGE (S.96)**

In a highly unusual circumstance, Vermont's press corps became the primary

advocates for a piece of legislation. S.96 protects journalist from having to turn over information or sources to government agencies. It prohibits these agencies from issuing subpoenas to obtain information except in narrow circumstances where there is high urgency and information is not available any other way. The bill originated in part from an incident related to the investigation of former state Senator Norm McAllister. Authorities subpoenaed reporters to turn over information obtained during interviews with alleged victims.

### **ETHICS COMMISSION (S.8)**

[S.8](#) creates a five-member State Ethics Commission and standards of governmental ethical conduct. The commission will review cases of unethical behavior and then have the power to send cases to the attorney general's office. The bill also requires statewide candidates to release their tax returns. Lawmakers must also disclose sources of income above \$5,000. Opponents of the bill say the disclosure requirements will turn some people away from running for office. Supporters say the bill will rebuild confidence in the political process and help lawmakers avoid conflicts of interest.