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MEMORANDUM

TO: Marilyn Miller

FROM: Clare Buckley/Kimbell Sherman Ellis LLP

DATE: May 20, 2010

SUBJECT: 2010 Legislative Wrap Up

The Vermont General Assembly adjourned shortly after midnight on Wednesday, May 12th. If any bills are vetoed by the Governor, the General Assembly may reconvene on Wednesday, June 9, 2010, to override any veto, or they may choose not to return and let any vetoed bill die. In any event, the General Assembly will convene on Wednesday, January 5, 2011, for the start of the 2011-2012 legislative biennium. A summary of VADA issues is set forth below after the political overview of the session.

Political Overview

All legislative activity in the 2010 session took place against a backdrop of highly charged electoral politics. Three of the five candidates for the Democratic gubernatorial nomination are state senators: Senate President Pro Tempore Peter Shumlin, Senate Health and Welfare Committee Chair Doug Racine and Senate Appropriations Committee Chair Susan Bartlett. Senator Racine championed a health care bill calling for a comprehensive study of various options, including a single payer system, for financing and providing access to health care. Senator Bartlett was a driving force behind the Challenges for Change initiative. Senator Shumlin is claiming credit for all of the actions taken by the legislature that are being favorably perceived.

To make matters even more interesting the Senate's Presiding Officer, Lt. Governor Brian Dubie, is running unopposed for the Republican gubernatorial nomination. Lt. Governor Dubie was present at Governor Douglas' side at virtually all of the public events the governor held in the statehouse during the session.

Even though he is going to retire from public service next January, Governor Douglas was the political winner of the 2010 session. Despite having been overridden twice during the 2009 session on his vetoes of a bill allowing same sex couples to marry and the FY 2010 budget bill, during the 2010 session he successfully threatened the use of his veto authority to get a budget and tax cut package that was closer to his wishes than that of the Democratic legislative leadership.

Even though Governor Douglas came out as a winner, it cannot be said that the legislative leadership, and in particular, the senators seeking the Governor's chair, were losers. It was in their interest to cut the deals they cut with the Governor, as opposed to continuing with the confrontational policies of the past. Nobody came out of the session looking bad.

With the departure of Governor Douglas and almost all key leaders in the Senate, Speaker Shap Smith will yield a lot of power as the only veteran leader at the State House next year.

Issues

The 2010 session was marked by the difficult and sometimes controversial measures taken to address the state's poor fiscal condition, a last minute deal that staves off the insolvency of the state's unemployment insurance program, a tumultuous debate over the future of the state's only nuclear power plant, and an overblown effort to supposedly set the stage for the adoption of a single payer health care system.

At the beginning of the session in January it was projected that the state faced a \$150 million revenue shortfall relative to the FY 2011 budget that begins on July 1, 2010. As a point of reference, the state's overall budget is approximately \$4 billion.

This shortfall was addressed by an agreement by the state's teachers concerning changes to the funding of their retirement income, a 3% cut in pay for state employees, an increase in the provider tax that hospitals pay, straight cuts to the Agency of Human Service's \$500 million budget and the expectation of increased federal Medicaid funding.

In addition, the legislature embarked on a novel budget cutting process called "Challenges for Change." The concept is to restructure state government to achieve desired outcomes while spending less money. The whole process was controversial because fairly significant changes to the way state government operates were made in a fairly short time frame—the committees had only a few weeks to review and act upon the report. In the end, although it was messy the legislature pulled it off and the Challenges for Change initiative will result in approximately \$30 million in savings in FY 2011, although that is some \$8 million less than what was expected. The Douglas Administration has the authority to figure out how to fill the \$8 million hole in the budget while the legislature is out of session. Some advocates are uncomfortable with this lack of legislative oversight, especially given a lame duck Administration.

Another noteworthy aspect of how the legislature addressed the state's fiscal problems is that it did so without significantly raising taxes. In fact, as a result of a veto threat by Governor Douglas estate taxes and capital gains taxes were actually reduced.

The legislature also addressed structural flaws in the state's unemployment insurance program. As a result of the large increase in unemployment claims stemming from the recession the program is seriously in the red and is operating on money borrowed from the federal government. For a long time the issue was at an impasse and it looked like the legislature would adjourn without solving the problem. However, under strong pressure from the Governor a compromise was arrived at involving modest reductions in benefits and stepped up employer contributions.

Another high profile issue during the session was the future of the Vermont Yankee nuclear power plant, which is owned by the Louisiana-based Entergy Corporation. The plant has been in operation for almost 40 years, and its authority under state law to be in operation expires in March 2012. Entergy would like to continue to operate the plant for another 20 years. However, under a curious feature of Vermont law the legislature has to affirmatively approve continued operation beyond March 2012. At the beginning of the session it appeared that there might be a majority of legislators who could be convinced to vote to keep the plant in operation due to the considerable economic benefits the plant provides. However, Entergy ruined its own cause when shortly after the session started it was learned that not only was the plant leaking water containing low levels of radioactivity, but Entergy had provided misleading and incomplete information to regulators and to the public about the systems that caused the leakage. As a result, a bill authorizing continued operation was easily defeated in the Senate. The plant's future could be re-visited during the 2012 session but absent a significant rehabilitation of Entergy's image it appears that Vermont Yankee will in fact cease operating in 2012.

Finally, the House and Senate passed a health care bill that Governor Douglas may veto. The bill will continue the state's effort to re-vamp the health care delivery system by expanding the state's chronic care management program, the so-called "Blueprint for Health," and laying the foundation for the creation of accountable care organizations, i.e., the integration of the delivery of health care by physicians' practices, hospitals, and other providers, and payment for that care by means other than fee for service. Most of the interest in the bill related to the fact that it calls for the hiring of a consultant to design at least three alternate systems for financing health care services and providing universal access, and that one of those systems must be a taxpayer financed single payer system. Finally, another part of the bill that would require drug manufacturers to disclose to the Attorney General's office details about the drug samples they give physician's offices.

Because the 2010 session was the second half of the 2009-2010 legislative biennium all bills pending at the time of final adjournment will not be carried over to the 2011 session but instead will die.

VADA Issues

The following bills of interest to VADA passed by the House and Senate during the 2010 session most of which are awaiting the Governor's signature:

LENGTH OF TIME EXTENDED FOR DEALERS TO GET PAPERWORK TO DMV

(S.282) - At VADA's request, the deadline for dealers to get the paperwork for the sale of vehicles to DMV, along with the purchase and use tax and other state fees, has been extended from 3 business days to 15 calendar days effective July 1, 2010. Since dealers will be holding the state's money for a longer period of time, the amount of the bond a dealer must provide to the commissioner of DMV to cover any costs in the event a dealer fails to remit any fees or tax proceeds to DMV has been increased to between \$20,000 and \$35,000, depending on how many cars the dealer sells (the bonds used to be between \$5,000 and \$15,000). See sections 13 & 14 of this bill. This bill also contains numerous miscellaneous changes to the DMV statutes including changing the definition of "moped" to "motor-driven cycle."

[Text of S.282 as It Passed the House and Senate](#)

TEXTING BAN, CELL PHONE BAN & PRIMARY SEATBELT ENFORCMENT FOR JUNIOR OPERATORS (S.280) – This bill bans texting while driving for both adult and junior operators. Individuals under age 18 cannot use any electronic devices while operating a motor vehicle, including cell phones, PDAs or laptops, unless necessary to make a 911 call. The bill makes it a primary offense for individuals under age 18 to not wear a seatbelt. For adults, not wearing a seatbelt remains a secondary offense. The bill is on its way to the Governor for his consideration and will be effective once he signs it.

TRANSPORTATION BILL (H.784) – Lawmakers passed the FY11 Transportation Capital Bill, which appropriates a record \$577 million for transportation spending. A large infusion of federal recovery dollars allowed for record breaking spending, much of which is directed at improving Vermont’s transportation infrastructure, including bridges and paving. [Text of H.784 as It Passed the House and Senate](#)

IGNITION INTERLOCK DEVICES (S.103) – This bill authorizes the use of ignition interlock devices, which are devices that measure a person’s alcohol concentration and then prevents a motor vehicle from being started if the person’s alcohol concentration is 0.02 percent or greater. A person whose license has been suspended or revoked for operating under the influence of alcohol in some instances may shorten or eliminate the loss of his or her license by obtaining an “ignition interlock restricted driver’s license.”

AN ACT RELATING TO LOAN SERVICERS (S.287) – This bill regulates “third party loan servicers,” that services residential mortgage loans that are owed to others. As introduced the bill would have covered auto loans but VADA worked with some sales finance companies, including Ford Credit, and convinced the banking department and lawmakers to limit the bill to residential mortgage loans, which they did. [Text of S.287 as Enacted Into Law](#)

SALVAGE YARDS (S.237) - This bill requires salvage yards to obtain a “certificate of registration” from the Agency of Natural Resources and gives ANR rulemaking authority to site, regulate and close salvage yards. The law now requires that salvage yards drain all fluids from vehicles before they are crushed. There is a new definition of “automobile graveyard” which exempts licensed dealers. [Link to S.237 as Enacted into Law](#)

GENERAL BUSINESS ISSUES

CREDIT CARDS (S.138) - This bill regulates certain practices by credit card companies doing business in Vermont, including: allowing merchants to set minimums amounts for credit card purchases if the merchant has a sign posted; prohibiting the credit card companies from fining merchants who allow a discount for using a credit card that imposes less fees on the merchant; and allowing merchants to accept credit cards in one location but not another. The bill also requires the Vermont Department of Banking, Insurance, Securities and Health Care Administration to study credit card interchange fees and make recommendations to the General Assembly. Finally, penalties for the use or possession of credit card skimming devices are imposed. Governor Douglas has not signed this bill yet. [Text of S.138 As It Passed the House and Senate](#)

UNEMPLOYMENT INSURANCE (UI) (S.290) – This bill is a compromise forged by the Governor and lawmakers and is expected to put the UI trust fund balance in the black in 5 years. Its impact on employers includes an increase in the taxable wage base from the current \$10,000 to \$13,000 on 1/1/2011 and to \$16,000 on 1/1/2012. Taxable wage base will index upward annually by overall wage growth after the trust fund balance becomes positive, projected to be 2015. Fines on employers are increased for failure to file timely reports and misclassification. For employees, the current \$425 maximum weekly benefit amount remains frozen, with increases to resume when the fund balance is positive. There is a one week waiting period before new claims can be established. If workers work less than full-time, year round, there are changes to the way their benefits are calculated. There are also provisions related to firings for misconduct and exempting part time earning while collecting UI benefits. There are many other provisions in this bill. [Text of S.290 as It Passed the House and Senate](#)

INCREASED PENALTIES FOR MISCLASSIFYING WORKERS FOR WORKER'S COMP AND UNEMPLOYMENT COMP. (H.647) – This bill increases the penalties for an employer who misclassifies workers for the purposes of workers' compensation or unemployment compensation. [Text of H.647 As It Passed the House and Senate](#)

CAPITAL GAINS, ESTATE TAX & PRODUCTION DEDUCTION (H.783) - On the last day of the session, lawmakers gave into the Governor's demands on various taxes in the miscellaneous tax bill including:

- **Capital Gains** - lawmakers partially rolled back an increase made last year in the capital gains tax. Effective Jan. 1, 2011, a taxpayer will have the choice to exempt either (a) the first \$5,000 of federal adjusted net capital gain, or (b) 40 percent of gains from certain sale, such as those held by a business, as long as the asset has been held for more than three years. Gains that are not eligible for the 40 percent exclusion include gains from the sale of real estate that is a primary or nonprimary residence, the sale of depreciable personal property other than farm property and standing timber, and gains from the sale of stock, bonds and other financial instruments.
- **Estate Tax** – For decedents dying in 2011, the exclusion amount is increased from \$2 million to \$2.75 million for 2011. The bill states that it is the intent of the legislature to “re-couple” to the federal estate tax system if the federal government adopts a system that is similar to the one in place before “de-coupling” in 2002.
- **Domestic Production Activities Deduction** – No change was made in the ability of Vermont companies to take advantage of this federal tax credit that is passed through for Vermont tax purposes at 9 percent (the House initially voted to freeze it at 6 percent).

HEALTH CARE ISSUES

AUTISM MANDATE (S.262) – This bill requires health insurance companies to cover the diagnosis and treatment of autism spectrum disorder for children from age 18 months to 6 years old, or when they enter kindergarten, whichever occurs first. The mandate applies to all health insurance carriers on or after July 1, 2011, as they renew their policies after that date, but must be in place no later than July 1, 2012. This one year delay will allow health insurance companies to better understand the services and providers of these services, many of whom are not under contract with the carriers at this time. The bill contains a study to determine if the state

can afford to apply the same mandate to Medicaid and the Vermont Health Access Plan, among other things. [Text of S.262 as It Passed the House and Senate](#)

HEALTH CARE (S.88) – This bill authorizes the Health Care Reform Commission to hire a consultant to design three new designs for health insurance, one design must be a single-payer government financed option, and another must be a public insurance option. The designs will be due to lawmakers by Feb. 1, 2011. The bill also contains provisions to expand statewide Vermont’s Blueprint for Health, the program that coordinates care for the chronically ill. There are also provisions to slow the rate of hospital budgets, including targets for net revenue growth are 4.5% in 2011 and 4% in 2012. Finally, the bill contains provisions that require free samples of drugs given to physicians to be reported to the attorney general’s office.

KEY BILLS TO VADA THAT DID NOT PASS

VADA worked to stop two bills this session:

- S.234, proposed to authorize the **automatic adoption by Vermont of amendments to the California vehicle emissions standards**. This would take away the right of VADA and others to have the opportunity to submit comments to the Vermont Agency of Natural Resources or to testify before the Legislative Committee on Administrative Rules when changes are being made to Vermont’s vehicle emissions rules. ANR supported the bill as a cost saving measure. VADA opposed the measure both because there are Constitutional issues and it is bad policy for Vermont to give California the ability to write our laws without any oversight or public input.
- H.97, proposed to **prohibit idling** of commercial vehicles under certain circumstances. Lawmakers offered VADA an exception for dealers to allow idling of vehicles to clear lots after a snow storm. However, VADA held out for an outright exemption for dealers to the entire idling ban. In the end, the bill did come out of one House committee but was referred to the House Transportation Committee where it died.

Thank you for the opportunity to work on behalf of VADA at the State House this year. Please contact Clare Buckley at 802-229-4900, ext 108 or cbuckley@kse50.com with questions or for more information.