



Statehouse Insider

weekly politics and analysis

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This is our final legislative update of the **2013 legislative session**. This report focuses on the bills that the House and Senate passed this year. Many of these bills passed in the waning days of the session and we expect Governor Shumlin will sign them into law over the next few weeks. We will let you know if the Governor vetoes any of these bills, which is unlikely. This report also provides links to the most recent bill language available, but there are some bills that were amended in the final hours of the session. In some cases, the final language may be contained in a calendar or journal. When necessary we have provided a link to that document, instead of a link to the bill. Please don't hesitate to contact us with any questions.

Have a great summer from all of us at KSE Partners!!!!

2013 Session Wrap-Up

Lawmakers adjourned for the 2013 session at 10:25 pm on Tuesday, May 14th. A veto session has been set for June 21, 2013. While it is unlikely that the Governor will veto any of the major pieces of legislation that passed this year, it is possible that the Governor has enough concern about a tier two bill to veto it. Even if Governor Shumlin does veto a bill, it is doubtful the Senate President Pro Tem or the Speaker will call back their members to attempt to override a veto.

The session will be remembered for the passage of liberal social issues and a conservative fiscal package. The legislature passed and the Governor is expected to sign into law bills related to end of life choices, decriminalization of marijuana and the unionization of home care workers. The budget and tax packages were debated right up until the last day of the session, but in the end elected leaders put together a budget that gained the support of members of every political party. In fact, only nine members of the House voted against the final budget package.

The vote for the passage of the budget was symbolic of the final days of the session. While there were some differences of opinion between the Governor and Democratic leaders in the legislature, they were generally resolved amicably. The same can be said for the differences between the Republicans and Democrats.

Vermonters should expect a more contentious session in

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2014. It will be an election year and there are several large policy decisions that will need to be made including the hotly debated income bill that will carry over from the 2013 session and a major overhaul of campaign finance law. Stay tuned.

H.530/FY14 Budget Bill

Lawmakers passed a \$5.23 billion budget bill for FY14, which increases overall spending by 4.2 percent from last fiscal year. Lawmakers had to cut \$10 million in spending from the bill when they could not reach agreement with the Governor over raising taxes. Click [here](#) for a summary of the bill.

H.295/Technical Tax Bill

Governor Shumlin and leadership from both the House and Senate decided to postpone the passage of [H.528](#), this year's tax bill, because of disagreements over proposed income tax changes. The legislature did pass [H.295](#), a technical tax bill, that provides only \$900,000 in increased revenues. There will, however, be some tax increases this year. Lawmakers failed to extend the 'cloud tax' moratorium, so starting July 1, 2013, Vermonters will potentially pay sales tax on software and services accessed in the cloud, depending on how the Vermont Department of Taxes responds. Property tax rates were also increased. [H.265](#) increased homestead rates by 5 cents and by 6 cents for non-homestead property. Click [here](#) for a summary of the technical tax bill.

Act 12 (H.510)/The Transportation Bill

The legislature passed a record \$633 million transportation budget for FY2014. [The bill](#) was signed into law on April 29. Act 12 splits the gas tax into a combination of a penny per gallon tax and a sales tax. It includes a tax increase on diesel fuel and an increase in the amount of revenue that can be raised through transportation infrastructure bonds. The tax changes are implemented over a two-year period. Here is how it breaks down:

FY2014

Diesel tax - Increases two cents from \$0.25 to \$0.27

Gas tax, penny per gallon - Decreases from \$0.19 to \$0.182

Fuel tax assessment (on gas) - The greater of \$0.067 per

gallon or a two percent assessment on the tax-adjusted retail price on each gallon sold by a distributor
Transportation infrastructure bonding authority - \$10.3 million in FY2014.

FY2015

Diesel tax - Increase one cent from \$0.27 to \$0.28
Gas tax, penny per gallon - Decreases from \$0.182 to \$0.121
Fuel tax assessment (on gas) - The greater of \$0.134 per gallon or a four percent assessment on the tax-adjusted retail price on each gallon sold by a distributor

Act 12 does not include price indexing, which would have allowed the tax to increase at the rate of inflation. The law does require a reduction in transportation funds for public safety by \$5 million over a three-year period.

Act 12 also includes two studies on alternative vehicle revenues. The first is a study of charges on electricity used to power plug-in electric vehicles. This study will be conducted by the Department of Public Service and the Department of Taxes. The two departments will consult with the Public Service Board, DMV, the Joint Fiscal Office as well as anyone else deemed appropriate by the two commissioners. The report will try to identify processes by which to recover motor fuel taxes not collected from operators of electric vehicles. The report is due to the House and Senate Transportation Committees by December 15, 2013. The second study looks at mechanisms to collect transportation revenue from the operators of propane or natural gas vehicles. This study is conducted by DMV, the Department of Taxes, the Joint Fiscal Office and anyone else the DMV commissioner deems appropriate. This report is also due December 15, 2013.

Automobile Bills

The following bills relating to motor vehicles were enacted or debated during the 2013 legislative session:

S.150/Miscellaneous DMV Bill/Idling Ban

S.150 bans motor vehicle idling for more than 5 minutes in any 60-minute period. There are numerous exceptions, including for the repair or maintenance of a vehicle, for running defrosters and for auto dealers to maintain their lots, among many others. This bill expands from 10 to 14 days the amount of time that auto dealers can display vehicles "off-site" at fairs

and other events. Finally, the bill expands the definition of "transporter" to allow someone to get a transporter plate to move vehicles that are being repossessed, among other things.

H.520/Electric Vehicle Sales Mandate

One provision in this lengthy [bill](#) repeals a prohibition in Vermont law that does not allow the Agency of Natural Resources (ANR) to adopt a sales mandate for zero emission vehicles in the agency's vehicle emission rules. ANR can now adopt a zero emission vehicle (ZEV) sales mandate by rule. All of the New England states that follow the California emissions standards (only NH does not), plus New York and New Jersey have already adopted a ZEV sales mandate. ANR claims that Vermont dealers will not get stuck with these vehicles because there are many ways for the manufacturers to comply with the mandate, including regional pooling.

Used Car Lemon Law Dead for 2013

[H.165](#), a used car lemon law bill, did not pass this year. Instead, the House passed two provisions related to the federal Buyers Guide and the dealer report of sale as part of [H.299](#), a bill related to propane. The Senate removed those provisions from the bill because they did not have time to take testimony. There is a slight possibility that the AG's office will renew its push to regulate "as is" vehicle sales next year.

S.61/Direct Beer Shipping/Alcohol Issues

Some of the significant provisions of [this bill](#) are as follows:

- Allows in-state and out-of-state brewers to direct ship up to 12 cases containing no more than 36 gallons of beer per year to Vermont consumers if they get a license from Department of Liquor Control (DLC).
- Allows distributor employees to work at a bar or restaurant provided the employee is not in management and it will not result in a competitor's brand being excluded.
- Allows a Vermont retailer to export beer to other states that allow it.
- Allows a Vermont winery, distillery or brewery to sell products of up to five other Vermont wineries, distilleries or breweries at one of their fourth class locations.
- Gives DLC investigators the same powers as the state police.

Commerce Bills

The following bills relating to commerce in Vermont were enacted during the 2013 legislative session:

Act 6 (H.51)/An Act Relating to Payment of Workers' Compensation Benefits by Electronic Payroll Card

H.51 allows a workers' compensation insurer to pay wage replacement benefits by way of a prepaid debit card if the injured worker consents to being paid by that method. The Governor signed the bill on April 23, 2013, and it will take effect on July 1, 2013.

H.95/An Act Relating to Unclaimed Life Insurance Benefits

H.95 requires life insurers to check the Social Security Administration's "Master Death Index" on a semi-annual basis. If there is a match between a person on the index and the insurer's insureds the bill requires insurers to reach out to the relevant beneficiaries and provide them with appropriate claim forms. Once signed, the bill will take effect on July 1, 2013 and, will apply to all life insurance policies, annuity contracts, and retained asset accounts in force on or after the effective date.

Act 31 (H.99)/An Act Relating to Equal Pay

H.99 makes a number of changes to Vermont's statutes concerning employment discrimination. Among other things the bill:

- In cases where an employer pays different wages to men and women the burden that an employer must meet in explaining that the differential is not based on sex is increased.
- Prohibits an employer from forbidding its employees from talking or inquiring about the wage levels of other employees, but does not require an employer to disclose the wage levels of its employees to an employee.
- Strengthens the prohibition against employer retaliation relative to an employee who speaks up about sex based wage differentials.
- Allows an employee to request a flexible working arrangement and requires an employer to discuss and consider such a request in good faith.
- Creates a study committee to review and report on the

issue of providing paid family leave.

The Governor signed the bill on May 14, 2013. It will take effect on July 1, 2013, with the exception of the provision regarding discussing and considering requests for flexible working arrangements, which will take effect on January 1, 2014.

H.169/An Act Relating to Relieving Employers' Experience Rating Records

H.169 relieves employers of eight weeks worth of charges imposed on them under the unemployment compensation system relative to employees who were laid off as a result of federally recognized natural disasters in 2011 (i.e., Tropical Storm Irene). The bill also blocks, until July 1, 2014, the implementation of a Department of Labor rule that provides that newspaper delivery persons are entitled to workers' compensation and unemployment insurance benefits. In the meantime the Office of Legislative Council is charged with studying the issue of providing newspaper delivery persons with workers' compensation and unemployment insurance benefits and must submit a report by January 15, 2014.

H.280/An Act Relating to the Payment of Wages

H.280 strengthens the ability of the Department of Labor to enforce against violations of Vermont's wage payment laws. It also prohibits employer retaliation against employees who participate in such enforcement matters. The bill was signed by the Governor on May 3, 2013, and takes effect on July 1, 2013.

H.299/An Act Relating to Amending Consumer Protection Provisions for Propane Refunds, Unsolicited Demands for Payment, Bad Faith Assertions of Patent Infringement and Failure to Comply with Civil Investigations

H.299 regulates the timing by which a propane dealer has to remove a propane tank from a customer's property after the business relationship between the dealer and the customer has ended. The bill also provides that solicitations to purchase goods and services in a format that looks like an invoice must conspicuously disclose that it is a solicitation and not an invoice. The bill also enhances the Attorney General's Office's powers to conduct civil investigations of potential consumer fraud violations. Finally, the bill contains numerous provisions designed to prevent bad faith assertions of patent infringement. This part of the bill is redundant to similar provisions in S.7, discussed below. Once signed the bill will

take effect on July 1, 2013.

H.377/An Act Relating to Neighborhood Planning and Development for Municipalities with Designated Centers

H.377 makes various changes to Vermont's planning and land use statutes concerning Downtown Development Districts, Designated Village Centers and so-called "Smart Growth" in general. The bill will largely take effect on July 1, 2013.

H.395/An Act Relating to the Establishment of the Vermont Clean Energy Loan Fund

H.395 consolidates various programs involving the financing of renewable energy projects into what will now be called the "Vermont Sustainable Energy Loan Fund." The Fund will be administered by the Vermont Economic Development Authority and the State Treasurer is authorized to establish a \$10 million short term credit facility for the benefit of the Authority. The bill will take effect when the Governor signs it.

S.7/An Act Relating to Social Networking Privacy Protection (and Bad Faith Assertions of Patent Infringement)

S.7 establishes a study committee to review and report, by January 15, 2014, on whether employers should be prohibited from requiring employees or applicants for employment to disclose a means of accessing the employee's or applicant's social network account. In addition, the bill was amended in the House with numerous provisions designed to prevent bad faith assertions of patent infringement. Those provisions are redundant to similar provisions in H.299, discussed above. The bill will take effect when the Governor signs it.

S.14/An Act Relating to Payment of Agency Fees and Collective Bargaining Service Fees

S.14 requires state employees, public school teachers and municipal employees who do not belong to the labor unions representing state employees, public school teachers, and municipal workers, respectively, to pay a so-called "agency fee" to the relevant union. The bill also allows a union that represents unionized private sector employees to charge non-unionized employees of the relevant employer an agency fee of up to 85% of the amount of the union's membership dues. In order to charge such a fee the union must provide the non-union employees with specified information about the union's finances and provide a means to contest the amount of the agency fee. It is important to note, however, that the

provisions regarding private sector employees do not apply to any employer who is subject to the federal National Labor Relations Act. The bill has not yet been delivered to the Governor for his signature. If the Governor signs it the bill will take effect on various dates related to the expiration and renewal of relevant collective bargaining agreements.

S.59/An Act Relating to Independent Direct Support Providers

S.59 allows individuals who provide home or community based services pursuant to various state human services programs to collectively bargain with the state of Vermont relative to compensation, workforce benefits, payment methods and procedures, professional development and training, and the collection and disbursement of dues or fees to the relevant labor organization. The bill will take effect when the Governor signs it.

S.81/An act Relating to the Regulation of octaBDE, pentaBDE, decaBDE, and the Flame Retardant Known as Tris in Consumer Products

S.81 bans two forms (TCEP and TDCPP) of the chlorinated flame retardant Tris in any children's product or residential upholstered furniture. It also provides that a manufacturer shall not replace TCEP or TDCPP (and the previously banned decaBDE) with a known carcinogen. As to retailers, the ban is effective on July 1, 2014. Once signed, the bill will take effect on July 1, 2013.

S.155/An Act Relating to Creating a Strategic Workforce Development Needs Assessment and Strategic Plan

S.155 establishes a "Workforce Development Work Group" consisting of two members of the Senate, two members of the House of Representatives, the Secretary of Commerce and Community Development, and the Commissioner of Labor. The group is charged with inventorying all workforce education and training programs and activities taking place in Vermont and gathering related information about those programs and activities. The group is to provide a report to the legislature by January 15, 2014. The bill will take effect when the Governor signs it.

Health Care Bills

The following bills relating to health care were enacted during the 2013 legislative session:

H.107/An Act Relating to Health Insurance, Medicaid, the Vermont Health Benefit Exchange and the Green Mountain Care Board

As introduced, this [omnibus health care bill](#) provides necessary policy changes to implement Vermont's Health Exchange. However, it was amended during the legislative process to include additional provisions unrelated to the exchange. Significant features of the bill include the following:

- Creation of a new "Office of the Health Care Advocate." The advocate's office will represent individual consumers' interests in matters related to exchange enrollment, and health insurance and Medicaid coverage disputes. The advocate's office will also represent the public at large in regulatory cases before the Green Mountain Care Board such as insurance rate cases, hospital budget reviews and certificate of need cases. The Health Care Advocate's office will be partially funded by "bill backs" to regulated entities via the Green Mountain Care Board's bill back authority.
- A prohibition on requiring off label use of generic prescription drugs as a utilization management tool. Similarly, an insurer that requires so-called step-therapy cannot require failure of the same preferred prescription drug more than once in order to receive coverage for a non-preferred prescription drug.
- The time period by which insurers have to respond to a request for prior authorization is reduced to 2 business days for non-urgent requests.
- The Green Mountain Care board must develop standardized claims forms and edit standards based on those used in the Medicare and Medicaid programs. The Board must provide its standardized claims forms and edit standards to providers and insurers by July 1, 2014, and the Department of Vermont Health Access (DVHA) must use them by January 1, 2015.
- Reconfiguration of the health insurance rate review process. Instead of having the Department of Financial Regulation (DFR) issue a proposed decision that is reviewed by the Green Mountain Care Board, rate review cases will go directly to the board, with DFR providing the board with input on what rates are necessary to protect insurer solvency.
- A requirement that the Green Mountain Care Board implement a pilot study to examine primary care system costs arising from the elimination of prior

authorization requirements for imaging, medical procedures, prescription drugs and home care.

- A requirement that insurance carriers and the Department of Vermont Health Access report data regarding denials of prior authorization requests.
- Changes to Vermont's "prompt pay" statutes to correspond to the fact that the federal Affordable Care Act provides for a three month grace period for the payment of premiums and allows insurers to put on hold provider reimbursement claims during the second and third months of that grace period.
- Language that allows an employer domiciled in another state but with at least 26 employees who work in Vermont to buy a large group policy for those employees.
- Technical changes to the definition of "qualified employer" and "small employer."

H.107 was delivered to the Governor for his review on May 14, 2013. If he does not veto it on or by May 20, 2013 it will become law.

Act 25 (H.136)/An Act Relating to Cost-sharing for Preventive Services

This new law expands the existing coverage mandates for mammograms and colorectal cancer screenings. Specifically, it provides that in the case of mammograms additional views and interpretations are covered, and in the case of colorectal screen services related activity such as tissue removal and lab services are included within the coverage mandate. In addition, the bill repeals the existing provision that allows a \$25 co-pay for mammograms and colorectal cancer screenings. The cost sharing provisions become effective October 1, 2013, while the rest of the bill became effective upon passage.

H.530/FY 2014 Budget

The FY 2014 Budget includes these health policy changes:

- State-funded premium assistance for Vermonters with income up to 300 percent of federal poverty level (FPL). These individuals will receive 1.5 percent of the premium cost from the state.
- State-funded cost-sharing assistance on a sliding scale basis for Vermonters up to 250 percent (FPL).
- A three percent Medicaid provider reimbursement increase starting on November 1, 2013 in an effort to address the "cost shift." The budget bill also requires the

Green Mountain Care board to prepare a cost shift report, evaluating the impact of the Medicaid reimbursements on hospital budgets and health insurance rates.

- Specific requirements regarding accelerated reinvestment of Choices for Care savings.

S.77/An Act Relating to Patient Choice and Control at End of Life

After numerous emotional debates, a compromise version of the **End of Life bill** emerged from the Senate and the House quickly adopted it. The bill puts into place patient safeguards similar to those in an Oregon law before a patient with a terminal illness may obtain medications from a physician for the purpose of "hastening the patient's death." Those safeguards expire on July 1, 2016, so that after that a physician will simply be immune from civil and criminal prosecution as well as professional disciplinary action for prescribing medications to help a terminally ill patient end his or her life.

S.88/An Act Relating to Telemedicine Services Delivered Outside a Health Care Facility

This **bill** authorizes the Department of Vermont Health Access (DVHA) and the Green Mountain Care Board to consider implementing pilot projects that would use telemedicine outside a health care facility in order to expand access to low cost health services. Among the considerations the department and board must analyze when deciding whether to implement a telemedicine pilot project is the possibility of equipping home health agency nurses with the tools needed to provide telemedicine services during home health visits. This bill becomes effective July 1, 2013.

S.152/An Act Relating to the Green Mountain Care Board's Rate Review

This **bill** reconfigures the existing Employer Assessment that was enacted in connection with the Catamount Health Care program so that it will apply to employers who have employees who purchase individual health insurance policies on the health benefits exchanges. (Please note the language of this bill starts on p.2525 of the linked calendar)

Energy

The 2013 session was the first time in nearly a decade that energy policy was not a key issue in the legislature. There were several lower level bills that passed but nothing of the significance of the major energy policies that have been enacted into law since 2005 when the first renewable energy goals were initiated. Despite the media attention that a proposed three year wind moratorium received, the proposal struggled to gain traction.

Most of the attention on energy issues was focused outside the State House on the Energy Generation Siting Commission appointed by Governor Shumlin. The Commission finalized its report and responsibilities in late April. The Commission's report will most likely be the focus of legislation during the 2014 session.

While there was no marquee energy bill, several bills dealing with electric and thermal energy did pass this session including:

H.107/Hospital energy efficiency

This [bill](#) requires by July 1, 2014, that every hospital must provide the Green Mountain Care Board with its energy efficiency plan, which may include energy audits, performance tracking and future goals.

H.405/Cow Power

This [bill](#) clarifies the permitting process for "cow power." projects.

H.520/Reducing energy costs

This [bill](#) prioritizes homes receiving low-income fuel assistance that are high users of fuel and in need of insulation to receive weatherization help.

S.30/Energy generation siting

[S.30](#) requires that the committees of jurisdiction meet six times between now and the start of the 2014 session to discuss the energy generation siting commission report.