

Week 20 - May 30, 2019

THE VERMONT **STATEHOUSE INSIDER**

Weekly politics & analysis
of the issues in Montpelier



ENDGAME

The Vermont General Assembly wrapped up the 2019 legislative session on May 29, when the Senate approved an adjournment resolution to reconvene on January 7, 2020. The House approved the same resolution on May 24, making 2019 the first time in the modern era both legislative chambers failed to adjourn on the same day. The disjointed adjournment caps the bizarre final chapter of a legislative session that was for the most part lacking in political drama and intrigue.

Backing up a few weeks to late April, the Democratically-controlled legislature was preparing for the final push to close out the money bills and get their priorities to the finish line. Policy committees began to shut down for the year, making way for

conference committees to take over. The Senate Finance and Appropriations Committees were in the middle of putting the final touches on their revenue and spending bills. Republican Governor Phil Scott maintained ongoing concerns with some Democratic priorities - particularly bills to raise minimum wage, create a mandatory paid family leave program and establish a tax and regulate system for adult use cannabis - but insisted he intended to work with Democrats to get the budget squared away for a timely adjournment.

Democratic leaders had expressed confidence coming out of the 2018 election that their super majority in the Senate and effective super majority in the House would allow them to drive their agenda regardless of the governor's position. But as the calendar turned over into May statehouse observers (and certainly some detractors) began to vocally speculate that Democrats may be unable to deliver on their stated agenda, particularly the cannabis, minimum wage and paid family leave bills. The cannabis bill was stalled out in the House and there were ongoing disagreements between the two chambers on the labor bills.

Despite the skeptical buzz floating around the statehouse the House and Senate ultimately passed competing versions of the minimum wage and paid family leave bills, which advanced them to the point of final negotiations between the two chambers. The cannabis bill did not make it so far, as House Speaker Mitzi Johnson announced during the second week of May that the bill would be delayed for final passage in the House until 2020.

With the conference committees on the budget and revenue bills moving along quickly it looked, for a short time at least, as though the legislature might adjourn on time, at the end of the 18th and final week of the regularly scheduled session. There was disagreement with the governor about how to pay for water cleanup, but it was a relatively small amount of money and with revenue projections coming in nearly \$50 million higher than expected in April, the budget did not appear that it would prolong the session like it did during the 2017-2018 biennium.

But by the end of Week 18 it was clear the House and Senate would not reach an agreement on the paid family leave and minimum wage bills. Speculation

skyrocketed that the legislature might adjourn without these two bills. Democratic leaders opted to return for an additional week in hopes they could hammer out an agreement.

By the middle of Week 19 the budget and revenue bills were finalized in a form the governor is expected to sign. That left only a few bills, namely paid family leave and minimum wage, but also bills relating to data privacy and employee misclassification, hanging in the balance. On Thursday it seemed as if House and Senate leaders were close to a deal but the legislature extended another day. By Friday it was clear negotiations had broken down when House Speaker Johnson issued a letter to Senate President Pro-Tem Tim Ashe with the best and final offers on both bills from the House. Speaker Johnson said Senator Ashe had until noon to either agree to terms or the House would adjourn.

Clock struck 12. Clock struck one. And a little after two o'clock Speaker Johnson emerged from a meeting with Senator Ashe to announce the two chambers could not reach a deal, and that the House was going home. Senator Ashe insisted there was still time to reach a deal, but Speaker Johnson and the House approved the budget and passed the adjournment resolution to come back in January. The Senate passed the minimum wage bill and the paid family leave bill and sent them back over to the House and adjourned until May 29, in hopes the House would relent. By May 29 it became clear the House would not return, and so the Senate adjourned for the year as well.

FALLOUT

When it was clear the legislature was going home without paid family leave and minimum wage, explanations of what happened and accusations on who was to blame began to pour out from all sides of the political spectrum. Some claim victory for the House, saying the Senate position on the bills was unworkable, and that the House had to stand up to the Senate. Some say the Senate was in the right, that they ultimately passed both bills and were willing to stick around to get the work done. Almost all acknowledge that the governor is the beneficiary of the infighting between Democrats in the House and Senate. He will not have to take any action

on two bills he was expected to veto, and thus avoids any test of the supermajorities in the legislature and any criticism he would receive for the vetoes.

Other priorities did pass that Democrats can hang their hats on, namely a bill requiring a 24-hour waiting period for handgun purchases and a bill to protect abortion rights. It's unclear whether the governor will veto the former and he has said he will allow the latter to become law. Lawmakers did not schedule a veto session so if the governor vetoes a bill lawmakers cannot come back to try to override the veto until January unless the Governor calls for a special session.

Emotions are likely to subside in the coming months and the legislature gets another shot at passing their priorities before the next election as all bills in question carry over to 2020. The big question for Democrats is whether the House and Senate can find a path to a more productive relationship.

The dynamic between the House and Senate will be something to watch during the off-session and will be the biggest question at the beginning of the 2020 session. In the meantime, lawmakers are home for the year. Stay tuned...

BILLS THAT PASSED THE HOUSE AND SENATE IN 2019

BUDGET AND TAXES

H.542 - STATE FY20 BUDGET

The \$6 billion state FY20 budget bill (H.542) passed with overwhelming support this year. By the end of April, general fund tax revenue projections for FY19 were a whopping \$50 million more than projected. Lawmakers decided to dedicate a portion of the rooms and meals tax to the clean water fund and backfill the hole with the projected surplus funds rather than raise new taxes. Key areas of investment in the budget include early childhood education, workforce and economic development and programs to combat climate change.

- [Budget Conference Committee Report](#)
- [Budget Highlights](#)

H.514 - MISCELLANEOUS TAX

The Miscellaneous Tax Bill (H.514) makes various administrative changes to state tax laws that are estimated to raise \$170,000 in revenue in FY20. The bill includes a provision clarifying that auto parts used by auto dealers to recondition used vehicles for resale will continue to be exempt from the sales tax. H.514 also revises the way, for the purposes of the state's corporate income tax, income earned by companies that provide services in multiple states is to be allocated to Vermont. Currently Vermont uses the "cost of performance" methodology whereby income is allocated to the state where the company incurs the most costs in providing services. Under H.514, Vermont will switch to a "market based sourcing" methodology, that looks at the amount of sales made in the state. This change is likely to benefit Vermont-based service providers and increase the corporate income tax liability of out-of-state service providers.

[Here is a link](#) to the fiscal note for H.514 with more detail.

H.541 - REVENUE BILL

The revenue bill (H.541) makes changes to Vermont's tax laws and is estimated to generate \$4.83 million in state revenue in FY20. Some key provisions in the bill include limiting the capital gains exclusion, creating a new deduction for limited medical expenses within the personal income tax, increasing the estate tax exclusion over two years from \$2.75 million to \$5 million by January 1, 2021 and imposing taxes on travel agencies such as Expedia.

[Here is a link](#) to the Fiscal Note for H.541 with more detail.

H.536 - EDUCATION FINANCE

H.536 is the Education Finance bill, which sets statewide education property tax yields and the nonresidential rate. The bill establishes the yield for FY20 at

\$10,591, the income dollar equivalent yield at \$13,015 and the nonresidential rate at \$1.598 per \$100 of equalized education property value.

H.536 also requires so called “marketplace facilitators” to collect and remit the state’s sales tax. Marketplace facilitators are companies that facilitate the sale of goods by third party vendors. While those third party vendors are supposed to collect and remit the state’s sales tax, if they sell to Vermonters via a marketplace facilitator then the marketplace facilitator will be required to do so instead.

TELECOMMUNICATIONS

H.513 - BROADBAND

One priority shared by the governor and legislature this year was to pass a bill aimed at driving broadband expansion across Vermont. [H.513](#) was passed by both the House and Senate and includes a number of policies intended to expand access to broadband. The bill raises the Universal Service Fund fee from 2.0 percent to 2.4 percent (and requires retailers to collect and remit the fee in connection with selling prepaid calling plans). The resulting \$1.2-1.4 million in additional annual revenue would largely go to the Connectivity Initiative, which provides grants for the deployment of broadband infrastructure. The bill also appropriates almost \$1 million from the General Fund for studies concerning the feasibility of contemplated new intermunicipal Communications Union Districts similar to EC Fiber, for Connectivity Initiative Grants, and for studying the idea of electric utilities providing broadband connectivity. Another significant feature of the bill, and one that came from the administration, is the creation of a loan program managed by the Vermont Economic Development Agency (VEDA) to provide loans of up to \$4 million to both existing and start up internet service providers. Finally, H.513 establishes a PEG Access Study Committee charged with considering changes to the State’s cable franchising authority and developing alternative regulatory and funding mechanisms to support public, educational, and government (PEG) access channels.

HEALTH CARE

H.57 AND PROPOSITION 5

Two historic measures to strengthen abortion rights in Vermont successfully passed the legislature this year. [Proposition 5](#) proposes to amend the Vermont Constitution to enshrine the right to “personal reproductive autonomy”. As amending the constitution is a four-year process, the legislature also passed [H.57](#), which immediately codifies existing rights to access legal abortion. The Governor has indicated that he will allow H.57 to become law.

H.524 - ASSOCIATION HEALTH PLANS

[H.524](#) makes a variety of changes to Vermont’s health insurance laws. For the most part those changes replicate provisions in the federal Affordable Care Act as a safeguard against changes in the federal law. One notable exception is the bill’s treatment of Association Health Plans (AHPs). Due to concerns about the impact of AHPs on the market for individual health insurance policies the House version of H.524 imposed a “look through” requirement that prevented the aggregation of employees of AHP members for the purpose of qualifying as large group plans. Such a look through requirement would negate the benefit of AHPs and likely eliminate them altogether. However, due to pressure from employers and business groups the Senate took the look through provision out. The ensuing House-Senate conference committee settled on language that blocks the creation of new AHPs and prohibits the two existing AHPs in the state from enrolling new employer members.

EDUCATION

S.40 - LEAD

After intense negotiations, the House and Senate reached a compromise on a bill to mandate lead testing and remediation for schools and child care centers. The agreement includes a four parts per billion threshold to trigger remediation, with sampling beginning in all schools and child care facilities on December 31, 2019.

The bill also provides reimbursement rates for the replacement of water systems - \$1,800 for drinking fountains and ice machines, \$650 for outlets used for cooking and for all other outlets \$350 for schools and \$400 for child care providers.

The committee of conference report can be found beginning on page 1581 of the [Senate Journal from May 22, 2019](#).

TRANSPORTATION

H.529 - TRANSPORTATION BILL

The annual transportation bill or “T-bill” was approved without much controversy in 2019. The controversy from 2018 that almost killed the T-bill over whether to make failure to wear a seatbelt a primary offense surfaced briefly but did not hold up final passage. The bill authorizes a FY2020 transportation program of nearly \$620 million. Some key policy provisions in the bill include the creation of a \$2 million Vehicle Incentive and Emissions Repair Program that provides low income Vermonters with incentives to purchase more efficient vehicles and vouchers to repair certain vehicles that fail emissions testing. The bill also makes changes to the Automated Vehicle Inspection Program by exempting any vehicle more than 16 model years old from emissions testing.

[Here is a link](#) to the bill as it passed the House and Senate.

S.149 - DMV MISCELLANEOUS

S.149 contains various amendments to Department of Motor Vehicle laws. Notably, the bill creates an automated vehicle testing permit program in Vermont. The bill also gives motor vehicle dealers up to 30 days after the sale of a used vehicle to submit paperwork to DMV under certain circumstances where the title is held by a lien holder. The bill also makes it clear that DMV is subject to the federal Driver’s Privacy Protection Act with respect to its provision of records concerning drivers and their vehicles.

BUSINESS

S.37 - MEDICAL MONITORING

S.37 creates a legal cause of action for “medical monitoring” if a person is exposed to toxic substances and has a greater risk of contracting a latent disease. The cause of action is against owners or operators of “large facilities.” “Large facilities” is defined as a facility engaged in specified types of activities, such as mining and manufacturing that employs ten or more persons.

S.18 - UNCONSCIONABLE CONTRACTS

S.18 addresses so-called “unconscionable” contract provisions and is largely a do-over of S.105 from the 2017-2018 biennium, which Governor Scott vetoed. The bill provides that four types of contract provisions, if used in a non-negotiated contract between a business and an individual, are presumptively unconscionable. If there is a dispute between the parties that ends up in court and the business invokes one of the contract provisions (for instance, a waiver of one’s right to seek punitive damages), the court can determine that the provision is in fact unconscionable. The court can then also find that the business committed an unfair and deceptive trade practice in violation of the consumer protection statute and impose a \$1,000 penalty for each unconscionable contract provision, award the plaintiff his or her attorney’s fees, and impose other remedies available under the consumer protection statute.

H.533 - WORKFORCE DEVELOPMENT

An extensive workforce development bill, H.533, passed with widespread support. The bill adopts numerous policies to increase Vermont’s workforce including a New Worker Relocation Incentive Program, directs the Department of Labor and the Agency of Commerce & Community Development to take steps necessary to support employers and New Americans in the workforce and creates study of Vermont Technical College degree programs at career technical education centers. The conference committee report may be found starting on page 2028 of the [House Journal for May 24](#).

H.13 - ALCOHOL

H.13 makes amendments to miscellaneous alcohol and tobacco laws. The bill lowers the tax on spirits from 25 percent to 5 percent, which will primarily benefit Vermont's growing distilleries. The bill also reverses a liquor board interpretation that a manufacturer's "premise" means any "premise" a manufacturer owns rather than just their manufacturing facilities. The board's ruling would have allowed a distiller to own a bar that only serves spirits they made known as a "tied house". This sunsets in a year to allow more time to work on it. The bill also revises Vermont's alcohol festival and special events permits.

S.131 - INSURANCE

[S.131](#) authorizes the Department of Financial Regulation to create a "regulatory sandbox" (that term is actually in the bill) whereby insurance products that do not meet the traditional requirements of Vermont law can be introduced to the marketplace on a two year trial basis. Certain types of insurance are not eligible for "sandbox" treatment and there are limits on the laws DFR can waive. Nonetheless, S.131 represents a continuation of Vermont's reputation for having a cutting edge insurance regulatory system.

ENVIRONMENT

S.55 - CHEMICAL REGULATION

The legislature passed S.55, a bill that revises the way chemicals are regulated in children's products. S.55 refines the criteria within Act 188, a program within the Department of Health that monitors the manufacture of children's products. The bill defines what kind of data must be used by the department to regulate children's products and further defines how risk-assessment is conducted by the department.

S.113 - PLASTICS/EPR

S.113 imposes a statewide ban on single-use plastic bags in stores and food establishments and prevents the same from providing single-use plastic straws

unless requested by the customer. The bill also prohibits a store or food service establishment from selling food or beverages in an expanded polystyrene food service product. Finally, the bill creates a Single-use Products Working Group with a wide ranging charge including considering whether an expanded producer responsibility (EPR) system should be created for manufacturers or distributors of single-use products in Vermont.

[Here is a link](#) to the conference committee report.

MISCELLANEOUS

S.11 - SENATE DISTRICTS

[S.11](#) addresses the upcoming legislative reapportionment which will occur during the 2021-2022 biennium. The bill requires the [Legislative Apportionment Board](#) to propose a Senate reapportionment plan with not more than three members in each Senate district. This only impacts the Chittenden County Senate district, which is currently represented by six senators. The district could be divided up into two three-member districts, three two-member districts or six one-member districts.

S.16 - 24-HOUR WAITING PERIOD

One year after Vermont enacted monumental gun safety legislation the legislature passed [S.169](#), a bill that mandates a 24-hour waiting period before all handgun purchases in the state. Governor Scott supported the measures passed last year but has expressed general opposition to new gun laws. It remains to be seen what he will do once the bill is delivered to his desk.

REGULATION OF VAPOR PRODUCTS

The Vermont legislature approved three bills that create a regulatory and tax structure for e-cigarettes and other vapor products. H.47, H.26 and S.86 respectively impose a 92-percent excise tax (initially proposed by Governor Scott in his budget address), ban internet sales of vapor products and raise the smoking age to 21.

LEGAL CLAIMS FOR CHILDHOOD SEXUAL ABUSE

The legislature passed two bills that remove the statute of limitations for claims arising from childhood sexual abuse. [H.330](#) allows a victim of childhood sexual abuse to bring a civil action against an abuser, and an organization that had a legal duty to prevent the abuse, at any time. Current law provides that such claims must be brought within six years of the abuse or the date when the victim discovered the harm it caused. The bill also expressly provides it is retroactive in its application and thus allows claims to be brought even if they would be time barred under the law applicable at the time of the abuse or the discovery of the harm it caused claim. However, damages in a retroactive claim against an entity that had a legal duty to prevent the abuse can only be awarded upon a finding of gross negligence on the part of the entity. [H.511](#) removes the 40 year statute of limitations for criminal charges for the sexual exploitation of a minor. Governor Scott signed H.330 into law on May 28 and is expected to also sign H.511 into law.

BILLS THAT DIDN'T MAKE IT ACROSS THE FINISH LINE IN 2019

ACT 250 OVERHAUL

The House Natural Resources, Fish and Wildlife Committee spent much of the session developing a bill making sweeping changes to Vermont's statewide land use law, Act 250. The controversial changes being contemplated by the committee address, among other things, climate change, forest fragmentation and the removal of grandfathered status for slate quarries. The committee was not able to finalize and introduce a bill before adjournment, and will return to the matter in the 2020 session.

S.54 - CANNABIS

Early in the session the Senate passed [S.54](#), a bill that would create a regulated market for cannabis in Vermont. S.54 established a Cannabis Control Board charged with rulemaking and administration of licences for cannabis establishments. It also gave municipalities the ability to "opt-out" of hosting

cannabis establishments. S.54 as passed by the Senate also created many guidelines for what a regulated market for cannabis would look like in Vermont. The House Government Operations Committee made a number of [changes](#) to the bill before it moved on to the House Ways and Means Committee. In the second-to-last (scheduled) week of the session Speaker Mitzi Johnson announced that the House would not complete its work on S.54 in 2019 and would revisit the issue again in January. This is the fourth time that a tax-and-regulate bill has passed the Senate but stalled in the House since 2015.

H.107 - PAID FAMILY LEAVE

H.107, a bill that proposes to create a mandatory paid family leave program, and a top priority for House Democrats did not make final passage this year. Although the governor vetoed a similar bill last year, Democratic leaders indicated early in the session they believed they could override a veto this year. But the House and Senate were unable to negotiate a deal on the bill and it currently sits on the [House calendar](#) (page 2027), where it can be taken up in January.

MINIMUM WAGE

S.23, a Senate bill similar to one vetoed last year that would gradually increase minimum wage to \$15 by 2024, didn't make it across the finish line this year. As with the paid family leave bill, it seemed at the end of the session that the two chambers were close to an agreement. The House offered \$12.15 by 2021 and the Senate asked for \$12.20. But similar to last year this bill was inextricably linked to negotiations with the House on paid family leave. With both chambers dug in on their respective priorities, S.23 also sits on the [House calendar](#) (page 2068), where it can be taken up in January.

H.39 - ACT 46 DELAY

One of the more contentious issues in the legislature this year was whether to issue a one-year delay to school districts being forced to merge under the school consolidation law known as Act 46. The [House proposal](#) would have given a delay to some districts but not to others based on steps already taken toward merging. Senators countered with their own [proposal](#) that would offer a delay to all districts contingent on the district forming a merged board first to vote on whether or not to

take the delay. Although the two sides initially began working on a compromise, talks fell apart quickly and the conference committee eventually stopped meeting. It is unclear what will happen to school districts that remain unmerged after July 1 as they will be considered out of compliance.

S. 110 - DATA PRIVACY

A Senate [data privacy bill](#) based on recommendations made by the Attorney General's Office ended up stuck in a committee of conference where it remains until it can be taken up again next year. The bill includes provisions to update the state's data breach notification law and create a PreK-12 student online privacy law. While the two sides seemed poised to reach an easy agreement on the data privacy portion, the [House had attached](#) a controversial automatic contract renewal provision on which the two sides could not find a compromise.

H.327 - AUTOMATIC RENEWAL

Early in the session the House passed [H.327](#), which makes changes to a law passed last year dealing with automatically renewing contract provisions. Current law prohibits consumer contracts from automatically renewing unless, in addition to accepting the contract, the consumer takes an additional affirmative action to opt into the automatic renewal provision, essentially requiring a "double opt-in". H.327 would align Vermont law with California law by streamlining consumer contracts and ensuring notification of automatic renewal of contracts before they expire. Despite the House passing H.327 early in the session, the Senate Economic Development, Housing and General Affairs Committee did not support the bill. In an effort to get the language from H.327 across the finish line, the House added it to S.110, the data privacy bill, though ultimately the Senate refused to support any language removing the double opt-in and both H.327 and S.110 did not pass this year.

PROPOSITION 2 - SLAVERY CONSTITUTIONAL AMENDMENT

The Senate passed [Proposition 2](#), an amendment to the Vermont Constitution that proposes to remove all mentions of the word "slavery" from the Vermont Constitution. The Vermont Constitution currently states that no person 21 or older should serve as a slave unless bound by their own consent or "by law for the

payment of debts, damages, fines, costs, or the like.” In order to amend the Vermont Constitution, the amendment must be approved by two consecutively elected legislatures and then approved by a majority of voters in a statewide referendum. After taking testimony on Proposition 2, the House Committee on Government Operations determined that there was little consensus between stakeholders on a path forward. The committee plans to convene a range of groups over the summer to try to resolve disagreements although the provision passed by the Senate can no longer be amended, only voted up or down by the House.

S.108 - MISCLASSIFICATION

Among other things, S.108 would have given the Attorney General's Office (AGO) the authority to take enforcement action against the misclassification of employees for purposes of workers' compensation coverage. Currently the Department of Labor has the sole authority to enforce state law concerning the classification of employees, and the bill would give the AGO authority to take enforcement action only with respect to cases referred to it by DOL. However, the conference committee appointed to reconcile the differences between the two chambers' versions of the bill was not able to reach an agreement before the end of the session.