

March 18, 2012

Hello All,

Beautiful weather this weekend has us all thinking more about spring than winter. I hope you have been able to enjoy some time outside. Ruth and I walked down to the waterfowl area yesterday to see if the mergansers were there and they were. They are beautiful and unusual ducks that we only get to see this time of year as they migrate north.

The week after Town Meeting was extremely busy in the legislature as this week was the deadline to vote bills out of committee that we have been working on since January. Some of the bills are major pieces of legislation and others are more modest in scope, but all require due diligence, testimony from all sides and best effort to make sure the words are accurate, meaningful and represent positive steps forward for Vermonters. I believe Vermonters send their representatives to their legislature to work together, find good compromises, and give their best to make improvements, redress grievances and find efficiencies for them. My Commerce and Economic Development Committee finishes work on five bills this week and passed them all unanimously with strong bipartisan support. I will write more about them as they come up on the floor of the House and are voted on in that body. Here are brief notes on the bills from all committees that passed the House since I last wrote. If you would like more information on any of them please let me know. All new bills now go to the Senate for further consideration.

H. 577 An act relating to public water systems

This bill authorizes loans from the pollution control revolving loan fund for all of the costs of some overflow abatement projects. It also allows loan forgiveness of some loans from agency revolving loan funds. The bill also changes the length of time for an operating permit for a public water system but allows for operating permits for existing public water systems that are working to come into compliance with standards if there is no immediate threat to public health and the owner lets people on the system know the system is out of compliance.

H. 756 An act relating to the sales and use tax exemption for packaging equipment

This bill clarifies that there is an exemption from sales tax for equipment used in secondary packaging equipment as long as the secondary packaging is part of an integrated process. As manufacturing processes become more sophisticated, definitions need to evolve. This helps Green Mountain Coffee with their K-Cup product. There was some confusion over the status of the K-Cup packaging so the Ways and Means Committee clarified the law.

H. 558 An act relating to fiscal year 2012 budget adjustment

The budget adjustment act was finalized in a vote to accept the conference committee report. This bill adjusts the current year budget passed last May to reflect changes since then in the projections of revenues and expenses. Some of the biggest adjustments dealt with Tropical Storm Irene. Here's an important section of the bill for municipalities.

Sec. 77a. STATE MATCH FOR TROPICAL STORM IRENE OR SPRING FLOODING; FEMA PAYMENTS TO MUNICIPALITIES

(a) Notwithstanding 20 V.S.A. § 45(d), the secretary of administration may establish criteria and procedures governing payments from the emergency relief and assistance fund, as authorized by 20 V.S.A. § 45(a), in order to provide municipalities with up to the full state and local share of match required by Federal Emergency Management Agency (FEMA) public assistance grants for Tropical Storm Irene or spring 2011 flooding federal disaster relief. Criteria established by the secretary of administration shall reflect levels of damage, as approved by FEMA, and the ability of municipalities to provide matching funds that would otherwise be required.

The state did this by saying it would help all towns with their match of FEMA approved projects by making sure no town had to pay more than three cents on their grand list towards the municipal match. This helps but the further problem is that some towns committed funds to projects that may not be approved by FEMA though they understood those projects could possibly qualify and they acted immediately to address problems to protect citizens.

H. 485 An act relating to establishing universal recycling of solid waste

This bill does not go into effect immediately as it addresses a growing problem with disposing solid waste. First, the bill requires the agency of natural resources "to assess the current capacity, cost, and efficiency of solid waste collection in Vermont and to report to the general assembly. The bill also requires solid waste certified facilities and transporters to offer to collect mandated recyclables and leaf and yard waste separate from other solid waste at no additional charge.

The bill also bans landfill disposal of mandated recyclables and leaf and yard waste.

The bill also has producers of more than 104 tons of organic material to separate the waste from other waste and arrange for its disposal in a compost facility. This will impact large producers of organic waste. Over time producers of smaller amounts will be included. This bill is an important step in waste management and was fully supported by all perspectives as Vermont is rapidly filling its remaining landfills while consumer trash creation continues to grow. Here is a link to the bill as it passed the house. <http://www.leg.state.vt.us/docs/2012/bills/House/H-485.pdf>

H. 469 An act relating to potable water supply and wastewater system isolation distances

The House acted to further address the situation of what happens when the isolation distance for a well or a wastewater system impacts a neighbor. The bill requires “an applicant for or a permittee holding a potable water supply and wastewater system permit that has an isolation distance that extends onto property other than the property for which the permit is sought to notify by certified mail any landowner affected by the proposed isolation distances. The bill also provides that an as-built system cannot be installed until 14 days after a landowner affected by a proposed isolation distance is notified by certified mail. The bill also requires that a permit with an isolation distance that extends onto property other than the property for which the permit is sought shall be indexed as affecting the title to real estate of any property to which the isolation distance extends. In addition, the bill authorizes any landowner affected by an isolation distance to request that the secretary of natural resources review the proposed permit to determine if the potable water supply or wastewater system can be located in a manner to eliminate or minimize the extension of an isolation distance onto property other than the property for which the permit is sought.”

H. 765 An act relating to the mental health needs of the corrections population

This bill would improve mental health service delivery “to incarcerated individuals with a serious functional impairment and collect information regarding incarcerated individuals with a mental illness or disorder.”

H. 764 An act relating to health insurance brokers’ fees

This bill makes the fees paid to brokers for health insurance purchases transparent to the consumer.

H. 37 An act relating to telemedicine

Telemedicine is becoming an important practice and this bill makes sure all health plans, including Medicaid, cover telemedicine services the same as in person services. Telemedicine is important for diagnostic services as well as being important for some procedures.

H. 523 An act relating to revising the state highway condemnation law

When the state condemns property for transportation needs it should do so in a way that includes and respects the property owner. Here’s the intent language for the bill.

§ 500. INTENT

The purpose of this chapter is to ensure that a property owner receives fair treatment and just compensation when the owner's property is taken for state highway projects, and that condemnation proceedings are conducted expeditiously so that highway projects in the public interest are not unnecessarily delayed.

H. 524 An act relating to the regulation of professions and occupations

Every year the Government Operations Committee reviews on a rotating basis regulations for licensed professions. This year the committee looked at the following: chiropractors, dentistry, nursing, land surveying, radiology, psychology, clinical social work, dietitians, naturopaths and boxers. In doing so, the committee works on recommendations brought to the committee by the stakeholder boards that oversee each profession.

H. 600 An act relating to mandatory mediation in foreclosure proceedings

Mediation was required by federal law in foreclosure proceedings due to the problems arising from the recent sub-prime mortgage banking crisis. This bill extends the practice beyond the expiration of the federal Home Affordable Modification Program.

H. 272 An act relating to maintenance of private roads

The House Commerce Committee has worked on the problem of people living on private roads being disadvantaged when it comes to financing their homes if they don't have a written road maintenance agreement. This week we finished work in committee on a unanimous 11-0 vote and brought to the floor for a unanimous 139-0 vote a simplified measure that we think will positively remedy the situation. Here is the entire bill:

§ 2701. INTENT

The intent of this chapter is to state the responsibilities for the maintenance of a private road, in the absence of an express agreement or requirement governing such maintenance responsibilities, in accordance with the Vermont supreme court decision of *Hubbard v. Bolieau*, 144 Vt. 373 (1984), which draws upon established principles of Vermont law. This chapter will only apply to resolve conflicts regarding maintenance of private roads in the absence of an express agreement or requirement. The provisions of this chapter are not intended to abridge, enlarge, or modify any right provided under *Hubbard* and the common law of Vermont.

§ 2702. PRIVATE ROAD MAINTENANCE

In the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road, each person shall contribute rateably to the cost of maintaining the private road, and shall have the right to bring a civil action to enforce the requirement of this section.

Many people have written to me about H.722, the genetically engineered food labeling bill. Here is an article from House Agriculture Committee Chair Carolyn Partridge on the bill.

This week, the House Agriculture Committee took testimony on H.722, an act relating to consumer affairs, food labeling, and genetic engineering. After hearing testimony from our Legislative Council and the Attorney General's office, it is clear that this is a very complicated issue, to say the least. This will be the first of several columns on this subject as we work on H.722.

Commonsense tells us that consumers should have a right to know what is in their food, however that right alone is not borne out in court when factual information about a product does not exist. According to Dr. Michael Hansen, Senior Staff Scientist at Consumer Reports, the Food and Drug Administration (FDA) has accepted the testing done by the biotech companies regarding their own products and offers no opinion on it. Historically, there have been no requirements for safety assessments for genetically engineered (GE) products, while even food additives have been subjected to such assessments.

In 1996, the Second Circuit Court of Appeals ruled against the State of Vermont in the International Dairy Foods Association (IDFA) v. Amestoy case after Vermont passed a law requiring the disclosure of recombinant bovine somatotropin (rBST) use in the production of milk. rBST, also known as recombinant bovine growth hormone (rBGH) is a genetically engineered drug that, when injected into a cow, increases milk production. In other words, the State of Vermont required by law that milk containers be labeled if rBST was used to produce the milk.

When a court rules on an issue of commercial speech, part of its decision depends on what the state offers as its "substantial interests." These include consumer protection from potentially deceptive advertising, environmental concerns, and economic development, to name a few. What Vermont offered as its substantial interest in the IDFA v. Amestoy case was "strong consumer interest and the public's 'right to know.'" The Court ruled that "these interests are insufficient to justify compromising protected constitutional rights" and that "consumer curiosity alone is not a strong enough state interest to sustain the compulsion of even an accurate, factual statement."

How the court rules potentially depends on which First Amendment "test" it applies. The two that are applicable in this case are the more lenient "Zauderer" test for government regulations that compel purely factual and uncontroversial commercial speech and the stricter "Central Hudson" test for regulations that restrict accurate commercial speech.

In the case of IDFA v. Amestoy, the court applied the Central Hudson test, which was interesting because Vermont statute was compelling speech (by requiring labeling), not restricting it. Also, as mentioned earlier, in order for there to be substantial interest, the labeling would have had to be required due to “a reasonable concern for human health or safety or some other sufficiently substantial governmental concern.” At the time, there was little or no evidence that rBST produced milk was different from milk produced without it.

It is important to understand the details regarding the IDFA v. Amestoy case because they bear similarities to the labeling of GE food.

What is clear is that the first state that passes this legislation will be brought to court like Vermont was brought to court in the IDFA v. Amestoy case. It is hard to predict which test – Zauderer or Central Hudson – might be applied. We would rather not repeat the IDFA v. Amestoy experience because it is expensive and if we were to lose, we would potentially pay for the winner’s legal costs.

Currently, in Vermont, New Hampshire, and Maine, milk is being produced without the use of rBST and most containers include labeling indicating that fact. Time has passed and studies indicate that milk produced with rBST is different and has higher levels of the insulin –like growth hormone IGF-1, lower nutritional quality when produced at certain points in the cow's lactation cycle, and higher somatic cell counts.

What is interesting to note is that in a recent MSNBC poll, 96% of those polled expressed a desire to know if their food contained GE ingredients. There is a movement to petition the FDA to require labeling of GE foods. If you are interested in signing the petition, go to www.justlabelit.org – more than 900,000 people have already signed on.

On March 12, Sen. Barbara Boxer (D-CA) and Congressman Peter DeFazio (D-OR) sent a letter to the FDA urging them “to require the labeling of GE food so that consumers can make informed choices about what they feed their families.” The entire Vermont delegation signed the letter.

The House Agriculture Committee will continue to work on H.722. An exception from the crossover rule was requested and granted by Speaker Shap Smith and Senate President Pro Tem John Campbell.

If you would like to read any of the bills we work on, here’s a handy web link. <http://www.leg.state.vt.us/docs/billtext.cfm> . Just enter the bill number in the window.

I hope everybody enjoys a very good week.

Stay in touch,

Bill

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