MURTHA CULLINA

The Capitol Update

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"An Empty Bag Cannot Stand"
- Irish Proverb

An update on Connecticut State Government and Politics from The Government Affairs Group of Murtha Cullina LLP.

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Ending with more of a groan than a whimper, the members of the Connecticut General Assembly concluded a difficult 2016 session on June 2. Members left Hartford after confronting for the third time in six years State budget difficulties that clouded the delivery of State services and forced tax hikes roundly criticized by the business community. As an indication of the level of fatigue and frustration created by these almost non-stop State budget difficulties, more than twenty sitting legislators have announced they will not seek re-election. These retirements are reminiscent of the mass exodus of over fifty legislators who left the General Assembly in 1992 following the grueling battle to institute a personal income tax in Connecticut.

CONNECTICUT GENERAL ASSEMBLY - 2016

The 2016 session of the Connecticut General Assembly convened on February 3, 2016 with House Speaker Brendan Sharkey addressing his colleagues with a sense of foreboding. The Speaker cautioned his members to remember, "We find ourselves now in a new, unfamiliar world … We must accept our new fiscal realities and undergo a fundamental transformation in the way we construct our budget." So began the "short" legislative session which sought to confront a host of social and business issues while dealing with a looming $933 million deficit for FY17. More than 1,000 bills were introduced by House and Senate members and over 200 were sent to Governor Malloy for his consideration.

MAJOR BILLS APPROVED

Aside from the continuing budget battles pitting the ever-growing cost of state government against diminishing revenues, the legislature considered and approved a number of major bills impacting commerce and the welfare of the citizens of this state.

BUSINESS AND COMMERCE

Seeking to support new start-up business, promote entrepreneurship and assist growth-stage business, the General Assembly created a subsidiary within Connecticut Innovations, Inc. called CTNext. This new quasi-public entity is authorized to spend $50.5 million over the next five years for innovation grants, higher education entrepreneurship grants, grants to growth-stage companies, new assistance programs designed by CTNext and funding to establish a Technology Talent Advisory Committee within the Department of Economic and Community Development to develop pilot programs addressing employee shortages in specific technology sectors. The bill also authorizes $10 million in venture capital funding for Connecticut Innovations, Inc. to invest in out-of-state businesses that want to relocate to Connecticut (SB 502).

RETIREMENT SECURITY PROGRAM

With a tie in the Senate, broken by an affirmative vote from the Lieutenant Governor, and a close partisan vote in the State House, Connecticut became one of few states mandating an employee retirement program (HB 5591) for private-sector workers whose employers do not offer a retirement savings option. The new program applies to private sector employers that employ at least five people, requires that initial payroll deductions be deposited in a Roth IRA and contains a critical "opt out" provision which automatically enrolls qualified employees in the program. Following passage of this bill, Governor Dannel

Malloy weighed in threatening a veto unless elements of the bill were changed. In a subsequent bill (SB 502), the legislature acceded to the Governor's wishes by giving him additional appointment authority to the program's governing board, requiring multiple third-party vendors for more investment options and mandating the development of a website to provide information to participants on approved vendors.

PAYROLL CARDS

In a move toward our technology future, a consensus bill passed both chambers of the legislature (SB 211) allowing employee's wages to be paid using "payroll cards" if the employee consents. Payroll cards will be similar to debit cards and can be used with merchants, service providers, bank branches or ATMs. Employers are required to have a system that allows employees to check balances and deductions and gives the employee the option to switch from a payroll card to direct deposit or check with a fourteen day notice. The bill prohibits employers from passing the cost of using payroll cards to employees.

ALSO RANS

There were a number of significant business and commerce bills that made it out of the starting gate, but failed to finish.

Tesla – For the second year in a row, Tesla, which produces high-end, all-electric vehicles, failed to obtain legislation allowing the company to sell directly to the public, bypassing Connecticut's existing auto franchise law. General Motors, the Connecticut Automotive Retailers Association, the Alliance of Automobile Manufacturers and the United Auto Workers opposed the carve-out for Tesla which would have negatively impacted the state's 270 auto dealers.

Minimum Bottle – The latest effort to abolish Connecticut's minimum pricing for the off-premise sale of alcoholic beverages failed again this year. Connecticut law prohibits selling any kind of alcoholic beverage at package stores below cost and prescribes how "cost" is determined. The one exception allows retailers to sell one alcoholic item a month below cost, but not for less than 90% of cost. Wine and spirit wholesalers and most package store owners believe this law protects them from predatory opportunities by larger package stores.

Bottle Redemption- Also failing to gain traction this year was a last minute effort to extend the state's bottle redemption law to wine and liquor containers. As outlined in an Environment Committee bill (SB 384), the concept was to use additional escheated funds from unreturned wine and liquor bottles (valued at 15¢ per container) to support funding for state parks. As budget negotiations entered their final phase in early May, the focus of this measure turned from funding the maintenance of state parks to just another revenue item ($11 million) for the General Fund. The final budget compromise bill did not contain this new redemption requirement and revenue source.

Wage Bills – The legislature considered but failed to pass a series of bills impacting wage requirements in this state. Senate Bill 391 would have required employers with over 500 employees and franchise operators which collectively have 500 or more employees, who pay an average wage of less than $15 an hour, be assessed a "low wage employer fee" up to $1 per employee on a quarterly basis by the State Labor Department. Funds raised by the fee were to be deposited in the General Fund. The legislature also considered and rejected a measure to increase the prevailing wage threshold on public works projects and certain construction-related projects supported by Connecticut Innovation, Inc. and the Department of Economic and Community Development (HB 5377). The legislature also failed to act on a bill to increase the state's minimum wage requirement to $15 dollars per hour by January 1, 2022 through yearly increments (HB 5370). In 2014, at the behest of Governor Malloy, the legislature approved a series of increases to the state's minimum wage law reaching $10.10 per hour on January 1, 2017 (PA 14-1).

ENERGY

Following several years of expansive energy legislation, the legislature's Energy and Technology Committee, this session, considered and voted on a relatively modest number of bills.

VIRTUAL NET METERING

In a near unanimous vote, the State House and Senate passed legislation that permits twelve municipalities to move forward with the continued development of renewable energy projects that were "stranded" due to monetary credit limits in the existing law. Virtual net metering allows individual municipalities to share billing credits obtained through renewable projects with multiple energy accounts. Most of the municipalities in line for these renewable projects contemplate solar located on closed landfills.

NUKE BILL FAILS

Senate Bill 344, "An Act Requiring a Study of the Adequacy of Energy Supplies in the State," as amended, passed the State Senate late in the session 33 to 0, but failed to be considered by the State House. The amended bill was an effort by Dominion, one of the nation's largest producers of energy, to gain long-term purchase power contracts with the state's two electric distribution companies – Eversource and United

Illuminating. Dominion owns and operates the Millstone nuclear plants in Waterford. The company told legislators these facilities cannot be financially maintained and operated in the existing low-price energy market. Company officials believe long-term agreements with adequate pricing would solve this problem. Skeptics abound.

MDC/NIAGARA

Another bill (SB 422) that drew more heat than light was the high profile fight to prohibit water companies from selling water to licensed water bottlers at rates lower than water rates for residential customers. The bill was the result of a controversial deal between the Metropolitan District Commission and Niagara Bottling to purchase up to 1.8 million gallons of water per day and bottle the water at a proposed facility in Bloomfield, CT.

A compromise amendment approved by the Senate called for a water diversion permit from the Department of Energy and Environmental Protection anytime a water company planned a sale of more than 500,000 gallons per day to any entity. This measure was never taken up by the House.

Collateral damage from the MDC bill brought down a bill (SB 87) which would have provided the South Central Connecticut Regional Water Authority with additional powers to invest in commercial operations for the purpose of stabilizing future water rates.

PUBLIC HEALTH

For a short session of the General Assembly, the legislature's Public Health Committee was quite active, reporting sixty-seven bills to the floors of the House and Senate. Some of the more significant bills are reviewed below.

Medical Marijuana for Minors – Connecticut has joined 23 other states and the District of Columbia permitting the use of medical marijuana for qualified patients under age 18. The bill (HB 5450) allows a minor to use marijuana for end-of-life care and palliative care treatment for irreversible spinal cord injury, cerebral palsy, cystic fibrosis, severe epilepsy and other medical conditions approved by the Department of Consumer Protection through regulation. Additionally, the bill allows medical marijuana research programs and the dispensing of medical marijuana to hospices and health care facilities under guidelines establish by the Department of Consumer Protection.

Opioids and Overdose Reversal Drugs – The Legislature unanimously passed a bill to restrict the length of prescriptions for opioid drugs to adults for outpatient use and minors (HB 5053). The bill further requires municipalities to equip and train first responders to administer opioid antagonists i.e., Evzio and Narcan, and prohibits certain health care insurance policies from requiring prior authorization for these opioid antagonists.

Physician Non-Compete Agreements – SB 351 places limitations on physician non-compete agreements in Connecticut including a one-year limit on the agreement, a fifteen-mile distance restriction from the primary site of a physician's practice and employer termination clause in the employment contract or agreement. The bill also allows the Health Care Cabinet to study and make recommendations on the licensure of urgent care centers and certain health clinics and establishes additional disclosure rules for medical foundations.

HIGHER EDUCATION

The legislature's Higher Education and Employment Advancement Committee approved two significant changes to the State's financial assistance program for residents who attend public or private colleges and universities in this state (HB 5332) and established a hiatus from academic program approval by the Office of Higher Education for independent institutions of higher education that meet certain criteria (SB 24). Both measures, detailed below, were overwhelmingly approved in both legislative chambers.

Governor's Scholarship Program – The financial assistance program was renamed the "Roberta B. Willis Scholarship Program" in honor of State Representative Willis, a long-time advocate of higher education, who is retiring this year. The bill increases maximum award amounts for full-time and part-time students, provides flexibility in the need-based portion of the program and caps the need-merit funding to 30% of the total available funds.

Program Approval – This bill provides a two-year exemption to the Office of Higher Education's program approval process for independent colleges and universities that meet certain criteria. The bill further requires this agency to report back to the legislature and the Governor not later than December 31, 2017 on the appropriate role of this agency under the State's strategic master plan for higher education.

ENVIRONMENT

A modest number of bills potentially impacting the environment were reviewed by a number of legislative committees this year. The Environment Committee acted on legislation to designate the Housatonic River as a wild and scenic river (SB 81), increased the administrative authority of the Connecticut Marketing Authority (SB 140), provided protection for pollinators (SB

231) and approved a bill to study methods to reduce consumer-based packing materials. Two bills that were not approved by the legislature were measures to label baby food, infant formula and children's food containing genetically engineered ingredients (HB 5300) and the phase-out of single-use plastic bags used at retail stores (SB 226).

THE STATE BUDGET

Shadowing all the activities and accomplishments of the 2016 session of the legislature was the need to again deal with a $900 plus budget deficit projected for FY17. Loathe to raise taxes, especially in a legislative election year, members of the General Assembly voted to reduce State General Fund programs by $821 million, the Special Transportation Fund by $33 million, and raise proposed end-of-year lapses totaling $189 million. The legislature also revised its estimates to show anticipated revenue decreases with new totals for FY17- personal income tax ($9.5 billion), the corporation tax ($839 million), the insurance company tax ($245 million) and the public service tax ($283 million). The FY17 sales and use tax is projected to increase- new total ($4.3 billion). These revenue estimates are based largely on a stable economy. Any hiccup in the financial markets could drastically change these projections since 67% of the State's personal income tax is paid by the top 1% of earners in Connecticut. Further complicating matters, are projections from the legislature's Office of Fiscal Analysis predicting deficits ranging from $1.2 to $1.5 billion in each of the next three fiscal years. As the Irish proverb goes, "an empty bag cannot stand" and so may future State budgets.

BAIL REFORM

In one of its final actions, the General Assembly failed to take a vote on Governor Malloy's bail reform legislation. The Governor's bill to eliminate bail for many misdemeanors ran into election year headwinds with most Republicans and a significant number of Democrats questioning the public's support for pretrial release of defendants that had prior convictions. An earlier version of this bill included statutory changes to raise the age of adult criminal to age 21 for most crimes other than serious felonies. Responding to this lack of legislative support, the Governor cut $22 million in aid to municipalities, community health centers and the Connecticut Humanities Council by line-item vetoing those appropriations. In his veto message, the Governor indicated he took this action to offset costs related to the rejected bail reform measure.

ELECTION 2016

Many sports analysts consider alpine racing competitors, pound-for-pound, the strongest athletes in the world. Racing down-hill at 85% grades, these daredevils have gravity pulls of 3.5 Gs, similar to astronauts at launch. The world of politics may feel the same to candidates for office this November. All 187 seats in the General Assembly, the five Congressional offices, the U.S. Senate seat held by Richard Blumenthal, and, of course, the Presidential contenders will be on the ballot.

With clouds still lingering over the state from the 2008 recession, candidates will have to navigate difficulties with the State budget (both tax increases and spending cuts), credit agency downgrades, the psychological fallout of General Electric's move to Boston, low approval ratings for Governor Malloy and future budget deficit projections.

A clear indication of the troubling times ahead is the voluntary retirement of two-term Speaker of the House J. Brendan Sharkey. In making his announcement, Sharkey indicated the grueling battles to approve massive tax increases and the stress of cutting budgets have taken a toll on his family and career. For a man who has loved politics since he was an intern in Governor William O'Neill's Washington, D.C. office, the decision to leave has to be bittersweet.

While the Democrat majority in both the State House and Senate are absolutely in play, Democrats can take solace in the fact that the top of the ticket will have Senator Richard Blumenthal and five strong Democratic Congressional incumbents. This should be a strong firewall for the Democratic Party in this "Blue" state. But a closer look at the presidential race suggests an unsettled voter. In the latest Quinnipiac poll (June 7) of Connecticut voters, Democrat Hillary Clinton leads Republican Donald Trump by 45% to 38%. The survey of 1,330 voters reveals weaknesses in both candidates that mirror national polls. Voters in the "Q poll" view Clinton as untrustworthy vs. trustworthy (67% to 33%) with similar weak numbers for Trump (63% to 33%). Surveyed on the ability to understand the needs of the state's residents, responders felt both candidates were out of touch (Clinton- 51% negative, Trump- 60% negative). Yet, on the question of who is better prepared to be president, Clinton overwhelms Trump 61% to 30%. Clearly, rank-and-file voters in our state have mixed feelings on both presidential candidates. Come November, with Hillary and the Donald, it sounds like it will be "hold your nose and vote" time in Connecticut.

QUESTIONS & CONTACT

If you have questions regarding any issues discussed within this publication, please contact one of the members of our Government Affairs Group:

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Ms. Murphy's expertise in state and municipal government is coupled with her extensive experience with community groups and in public interest negotiations. From 1990 to 1994, she served as Senior Legislative Aide to the Senate President Pro Tempore of the Connecticut General Assembly. Previously, Ms. Murphy had been a Legislative Assistant to the State Senate Majority Office and served as staff to the Legislative Task Force on Manufacturing. She has served as a grant seeker with the United Connecticut Action for Neighborhoods, a housing consultant with Imagineers, and a community organizer with Hartford Areas Rally Together. In 2014, Ms. Murphy was elected as President and Chair of State Law Resources, Inc. ("SLR"), an international network of independent law firms selected for their experience in government relations at the state and national level. Murtha Cullina LLP has been the SLR member firm for the State of Connecticut since 2000. Ms. Murphy holds a Bachelor's degree in political science from Holy Cross College.

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Mr. McQuade's extensive experience in state and federal legislative procedure has served private and public interests for more than 25 years. He is an expert in local, state and federal government administrative functions and has extensive experience in advocacy before public interest and community groups. From 1991 to 1994, Mr. McQuade served as Chief of Staff for the Senate Majority Office of the Connecticut General Assembly. He served seven years under Governor William A. O'Neill as Chief of Staff and as Administrative Aide for Policies and Programs. Previously, Mr. McQuade had been Manager of Governmental/Regional Policies for the Greater Hartford Chamber of Commerce. He served in the Office of Congressman William R. Cotter as Chief District Aide and Press Secretary and continues to maintain excellent media contacts. Mr. McQuade began his career in 1973 in the General Assembly's Office of Legislative Research. He holds a Bachelor's degree from George Washington University and a Master's degree in political science from the University of Connecticut.

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Mr. Martone has a strong background in state and federal government and politics. Prior to joining Murtha Cullina LLP, he was the political director of a successful gubernatorial re-election effort. He also served a gubernatorial administration as a legislative program director at the Department of Economic and Community Development from 1997 to 1998, as director of constituent services from 1995 to 1997. Mr. Martone has also served as director of constituent service for a Congressional Office from 1985 to 1991. He holds a Bachelor's degree in history from Quinnipiac College and has continued graduate studies at Southern Connecticut State University.

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Ms. Gemski has over 10 years of experience in federal and state government affairs working in Washington, DC, Massachusetts, Rhode Island and Connecticut. Previously, Ms. Gemski was State Vice President of Health and Advocacy Initiatives for the American Cancer Society in Rhode Island where she was responsible for state-level planning, implementation and evaluation of health initiatives, as well as government affairs programs. Ms. Gemski received her B.A. from Clark University and interned at the Office of Greville Janner, Queen's Court, Member of Parliament in London, England.

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The Capitol Update is a publication of the Government Affairs Group of Murtha Cullina LLP. For further information or assistance, please contact Jane Murphy at 860.240.6143 or jmurphy@murthalaw.com.