



2018 LEGISLATIVE REPORT

May 24, 2018

Political Overview

The 2018 legislative session was marked by a disconnect between the Scott administration and the legislative leadership. The Republican Governor had no overarching agenda beyond holding the line against any new or increased taxes and fees, while the Democratically controlled legislature continued its long-standing penchant for passing bills reflecting progressive policies such as a \$15/hour minimum wage, paid family leave, and a slew of consumer protection bills. Many of those bills have, as of the date of this report, been vetoed by the Governor.

As was the case last year towards the end of the session the Governor ratcheted up his opposition to the increase in the state's education property taxes in FY2019 that will happen as a matter of course under the state's complex education financing system. He is insisting he will veto the budget bill and its related tax bill—which as of the date of this report have been delivered to him but he has not yet acted on—unless the legislature uses large sums of “one time” monies to “buy down” the education property tax rate. The legislature wants to use the one-time money for other purposes, such as closing the actuarial gap in funding the teachers' retirement system. The legislature adjourned sine die early in the morning on May 13 without bowing to the Governor's

demands. As a result, he called the legislators back for a special session beginning on May 23. As of the date of this report that special session is still on-going.

The difference between the Governor and the legislature over education financing will be the special session's central issue. However, several bills were on the verge of passage but left hanging when the regular session adjourned early last Sunday morning. Even though bills will have to go through the entire legislative process, the bills left hanging have been reintroduced and are going through the process during the special session.

Accordingly, while the regular session is officially over, in some respects as a practical matter it continues in the form of the upcoming special session.

Specific Bills of Interest

While the special session is on-going as of the date of this report, several bills relevant to VATC and its members passed during the regular session and have already been signed by the Governor. Those bills are as follows:

H.300/Tax Sales

H.300 makes changes the procedure for providing notice to a property owner of a tax sale involving his or her property, and the time in which a person can contest the validity of the tax sale. Specifically, the bill amends 32 V.S.A. § 5252 to provide that notice of a tax sale must be sent to the property owner, and to mortgagees and lien holders, by certified, and not registered mail, and that if the certified mailing is returned as being unclaimed, the notice must be sent by first class mail or personally delivered per V.R.Civ.P. 4. The bill also amends 32 V.S.A. § 5263 to shorten the limitations period for bringing an action against a grantee of a tax collector's deed from three years to one year from when the cause of action accrued. Finally, the bill amends 9 V.S.A. § 2293, which is part of the statutory chapter relating to fraudulent conveyances, to provide that a claim brought under that chapter with respect a tax sale must be brought within two years after the tax collector's deed is delivered to the purchaser at the tax sale. Governor Scott signed the bill into law as Act 117 on May 2. It takes effect on July 1, 2018.

H.526/Notaries

H.526 completely changes the statutory scheme governing the commissioning of notaries by transferring the authority for doing so from the Assistant Judges to the Secretary of State's office.

In order to be commissioned as notaries most people will have to take a basic examination. However, attorneys, law enforcement personnel and certain employees of the judiciary are exempt from the examination requirement. Under the new system notaries will be commissioned for two-year terms, as opposed to the four-year terms provided for in existing law. To be commissioned or to renew a commission one will have to pay a \$15 fee. To renew one's term as a notary a person will have to have earned two hours of continuing education credit; however, attorneys, law enforcement personnel and certain employees of the judiciary are also exempt from this requirement.

The bill requires the person seeking a notarial act to personally appear before the notary, and the notary is obligated to verify the person's identity by means that are specified in the bill. It is specified that personal appearance means being physically present, although it is also provided that the personal appearance requirement can be satisfied by way of a communication link that satisfies protocols and standards specified in rules promulgated by the Secretary of State.

Notarial acts are to be evidenced by a certificate containing specific information, and the bill sets forth short form certificates that can be used for that purpose. Notably, the certificate must include an official stamp or, at a minimum, the notary's name must be clearly printed or typed on the certificate along with the notary's commission number. However, it is expressly provided that failure to follow these requirements will not impair marketability of title or otherwise invalidate a notarial act, and a document that was improperly notarized can still be recorded in the land records.

The bill repeals 27 V.S.A. § 379 regarding the validity of acknowledgements performed in another jurisdiction, but has provisions addressing that issue and notarial acts performed in foreign countries and under federal authority.

The Secretary of State is authorized to promulgate rules to implement the various parts of the new statutory scheme, include rules regarding remote notarization. In that regard it should be noted that a representative to the Secretary of State's office indicated that that office will not propose rules concerning remote notarization until and unless the National Association of Secretaries of State adopts standards concerning remote notarization. In adopting rules the Secretary of State is to consult with two appointed advisors, one of whom must be an attorney picked from three nominees submitted by the Vermont Bar Association.

The Governor signed the bill into law on May 22, and it becomes effective on July 1, 2019. However, the Secretary of State's Office may promulgate rules in advance of that date, and it will take over the application and commissioning process on December 1, 2018 to be able to commission people as notaries when existing commissions expire on February 15, 2019. The examination and continuing education requirements take effect on February 1, 2012. Any commission in effect as of July 1, 2019 will continue to be effective until its expiration.

H.859/Lease Land

H.859 sets up a process for the wholesale extinguishment of municipal interests in many types of so-called lease land. The bill applies to lands which municipal legislative bodies have the care of under 24 V.S.A. § 2401, and which are subject to a perpetual lease. It provides that fee simple title to such lands shall vest in the current lessees of such lands on January 1, 2020 unless prior to that date the relevant municipality's legislative body votes to retain its interest in some or all of the perpetual lease lands within the municipality. In addition, at any time municipal legislative bodies can affirmatively vote to relinquish, on a wholesale basis, the municipality's interest in some or all of the perpetual lease land within the municipality. Thus, a municipal legislative body can vote, prior to January 1, 2020, to retain the municipality's interests in lease land, and then later vote to relinquish its interests in some or all of the lease land in the municipality. Additionally, if a municipal legislative body votes prior to January 1, 2020 to "keep" the municipality's interest in perpetual lease land it may still release its interest in a given parcel of land on a case by case basis under 24 V.S.A. § 2406. Lastly, the bill amends 24 V.S.A. § 1061 to provide that in conveying its interest in a specific parcel of lease land a municipal legislative body need not post and publish notice of its intent to do so. The Governor signed the bill into law on May 21, and it takes effect on July 1, 2018.

H.899/Recording Fees

As passed by the House H.899 would have raised the fee for recording instruments in the land records from \$10 per page to \$25 for the first page and \$8 for the subsequent pages. The fee for filing transfer tax returns would be raised from \$10 to \$25. However, in the Senate, after going through two Senate committees with the fee increases still in place they were taken out in the Senate Appropriations Committee. This action was done at the behest of the bill's proponent, the Vermont Municipal Clerks and Treasurers Association, which realized that Governor Scott would likely veto the bill due to its steep fee increases. As a result, the final version of the bill establishes a triennial process, beginning with the 2019 legislative session, for recording fees to be reviewed and possibly increased by the legislature. The Governor signed the bill into law on May 21.