

DAILY NEWS CLIPS

June 20, 2012

SEN. KEVIN WITKOS: CAPITOL CONNECTION: RETURNING FOR SPECIAL SESSION

Opinion by Senator Kevin Witkos
Foothills Media Group (CT)
June 19, 2012

Last week, the General Assembly reconvened for a one-day special session originally designed to implement the state's budget that was passed at the end of the regular session in May. Unfortunately, this was also another opportunity for legislators to bring up some old business and attach it onto new legislation. Each bill was filled with dozens of other proposals that failed to gain support only a little more than a month ago. Since these bills did not receive a public hearing, I wanted to share some of my concerns with you.

Believe it or not, these two bills totaled over 600 pages and were dropped on our desks only a couple of hours before the session would begin. It was certainly a tall task to review the language in all of these pages for one long night of debating and voting. Both were introduced by emergency certification, meaning that there would be no chance for the public to weigh in. This is a legislative term describing "a procedure by which the speaker and president pro tempore jointly propose a bill and send it directly to the House or Senate, floor for action without any committee referrals or public hearings."

In fact, according to the nonpartisan Legislative Commissioner's Office, there were 111 different concepts in the larger bill alone, 40 of which have never received a public hearing. The two bills under consideration were House Bill 6001, "An Act Implementing Provisions Of The State Budget For The Fiscal Year Beginning July 1, 2012," weighing in at 468 pages and Senate Bill 501, "An Act Implementing Certain Provisions Concerning Government Administration," weighing in at a smaller yet still daunting 190 pages.

The legislation included much more than simple budget implementation. Additional subjects included eliminating minimum trooper staffing levels, creating new departments, merging agencies, detailing education initiatives and many other issues.

Among them, I would like to highlight two specific provisions, including forgotten promises and further spending for failing school districts.

First, this bill included several fee and tax increases. In 2011, after the largest tax increase in state history was passed, Governor Malloy promised no future tax increases. However, this legislation raised licensing fees and taxes on the roll-your-own tobacco shops. It is projected to increase revenue by \$3.1 million annually. After the state lost a series of court cases on this matter, the legislature decided to simply change the law. This issue has certainly gained much attention in recent weeks.

Second, it increased education spending for Bridgeport. Education Commissioner Stefan Pryor will now be able to loan \$3.5 million to the city in return for the state's ability to choose its superintendent. This potentially forgivable loan comes in addition to the over \$168 million in state funding that was already appropriated for the Bridgeport school district during the next fiscal year. While we must fix failing school districts, we cannot continue to simply throw money at the problem and expect it to be solved.

At the end of the day, both bills passed in the Senate along partisan lines. While I cannot say that I was surprised at the process, it is clear that we need greater balance in Hartford. I believe it is wrong to tack dozens of other issues onto a budget implementer bill without giving members of the public an opportunity to review and share their input. If you would like to learn more about these massive pieces of legislation, please visit the Connecticut General Assembly website at www.cga.ct.gov and search for H.B. 6001 and S.B. 501.

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PROBABLE CAUSE HEARING ON 5TH DISTRICT CAMPAIGN FINANCE DIRECTOR ARREST POSTPONED

By Mary E. O'Leary
The Register Citizen (CT)
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Robert Braddock, Christopher Donovan's former campaign finance director, has agreed to put off his probable cause hearing on charges of concealing the identity of donors to Donovan's 5th District congressional race.

The arrest and firing of three staff members after the arrest has roiled the campaign as Donovan heads to a Democratic primary on Aug. 14 in a race against Dan Roberti and former state Rep. Elizabeth Esty for the nomination.

Republicans have their own troubles with a grand jury sitting in New Haven looking into the ties between former Gov. John G. Rowland's consulting work and the Lisa Wilson-Foley campaign in the 5th District as she heads for a primary against state Rep. Andrew Roraback, R-Goshen, Michael Greenberg and Justin Bernier for that nomination.

Braddock, who was arrested without an indictment, was due for a federal probable cause hearing on Thursday, but has waived his right to a hearing through July 20. His attorney, Frank Riccio II, could not be reached for comment.

The arrest, according to a court affidavit, is centered on donations allegedly trying to influence a bill that would tax roll-your-own smoke shops, which has since been adopted.

Donovan has not been charged and denies any knowledge about the alleged scheme. The longtime state representative from Meriden, who is currently speaker of the House, has said he did nothing wrong.

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LATE NIGHT ANTICS: BAD GOVERNMENT IN HARTFORD

By Lisa Bigelow

Weston-Redding-Easton Patch (CT)

June 20, 2012

Late night legislation, last-minute calls from the FBI and vetoed campaign finance reform make up the late spring agenda in Hartford.

Readers, I'm going to loan you the first two books from the Fifty Shades of Grey trilogy. Can you have it back to me by tomorrow morning?

What's that, you say? You don't have time to read two page-turning sensations in 24 hours? Well, too bad – no Christian for you.

That's essentially what happened in Hartford last week, as the Connecticut House of Representatives met in a special session to approve two jam-packed budget implementation bills. Minority Republicans claimed they had no stake in drafting the legislation and no time to review the final products, which incorporated 100-plus bills—some of which failed during regular session—into more than 600 total pages of dense legalese.

Not exactly flashlight-under-the-covers reading.

Republican leaders challenged Democrats—or anyone, for that matter—to step forward and describe the bills' contents. House Majority Leader Brendan Sharkey (D-Hamden) noted that our legislators didn't really know what passed following last month's adjournment, resulting in the special session. Democrats also noted that Republicans had ample time to dissect their contents.

I feel so much better about this now, don't you?

But wait—that's not all! In an ironic twist, House Speaker Chris Donovan got a not-so-friendly call from the FBI last week informing him that his campaign finance manager allegedly diverted contributions illegally. The FBI arrested Robert Braddock Jr. for conspiring to kill legislation that would have eliminated a new tax on roll-your-own smoke shops.

Donovan told the New York Times, "no one ever made a deal with me as a quid pro quo."

Super.

Even better, the state decided to retaliate against the city of Bridgeport following a State Supreme Court ruling that its takeover of Bridgeport's Board of Education, conducted without public comment, was illegal. The new bill states that the city of Bridgeport won't get a \$3.5 million state loan unless the state has a say in selecting Bridgeport's new Superintendent of Schools.

I think Senate Minority leader John McKinney said it best:

"Instead of being the most transparent administration, maybe it should be 'we're-going-to-do-it-because-we-can administration.'"

Here is why these issues matter: in the smoke shop case, one store owner estimates that she will lose 80 percent of her customers. And while there are only 15 home-rolling stores in Connecticut that translates to 140 jobs.

Few—especially fiscal conservatives—would argue that greater taxation equals greater prosperity. And while attempting to kill bad legislation through legitimate means is admirable and part of the Democratic process, taking illegal contributions to do so is not.

The end result? Legislators don't want to help the smoke shop owners for fear of being tainted by the FBI investigation. Representative John Piscopo (R-Thomaston) suggested that the House remove the language from the bill, ask for public comment and discuss it during the next session. After all, how much revenue does the state really get from 15 smoke shops?

Tough noogies, said Representative Patricia Widlitz (D-Guilford). Owners who invest in a business whose tax laws are up for discussion in the state Capitol "enter that business at [their] own risk," she said.

Fair enough, but shady back-room dealings, party-line voting and retaliatory action against a voter-approved Board of Education spells trouble for Nutmeggers.

In related news, Gov. Dannel P. Malloy vetoed what would have been the strongest campaign finance reform law in the country. Politics does indeed make strange bedfellows: both the American Civil Liberties Union and the Connecticut Business and Industry Association opposed the bill, which they said would trample our private right of association as guaranteed in the U.S. Constitution.

One can only hope that our legislators try again. We have only begun to discover what lies in Hartford's late-night antics.

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NEW EYMAN INITIATIVE LOOKS TO EXTEND 2/3 REQUIREMENT FOR NEW TAXES IN OLYMPIA

By C.R. Douglas

Q13 Fox News—Seattle, Washington

June 19, 2012

Initiative guru Tim Eyman is back on the street collecting signatures for another new anti-tax measure.

“There’s no doubt that down in Olympia they do not like the idea of making it tougher to raise taxes,” said Eyman.

This year’s effort, Initiative 1185, is essentially the same as the one Eyman successfully pushed 2 years ago, requiring that new taxes receive at least 2/3 majority in the state legislature.

That 2010 initiative is still in place, but, like with all initiatives, the legislature can scrap it after two years. Eyman’s new measure would ensure that the supermajority requirement is good for at least another two years.

Critics are blasting Eyman for the money he’s getting from big oil companies. Of the nearly \$1 million he has raised so far to pay signature collectors, \$450,000 has come from companies such as BP and Shell. He’s also gotten \$500,000 from the beer and wine industry.

“It’s not a surprise that the business community is like every other taxpayer in the state,” said Eyman. “We’re in the middle of a recession, we can’t afford higher taxes.”

When it comes to the oil money, longtime Eyman critic Adam Kline, a State Senator from Seattle, says the industry fears new taxes not just on gas and oil, but on things like brake and transmission fluids. It’s an idea that Olympia has considered.

“One of the things we discussed was simply making the oil industry pay its own way in terms of the cost of cleaning up after themselves,” said Kline. “Well, we didn’t do it, and now they are deathly afraid that we will.”

Eyman has until early July to collect 250,000 valid signatures for his new measure.

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TOBACCO SHOP FILES LAWSUIT AGAINST STATE

KMAS New Radio—Mason County, Washington

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Several roll-your-own tobacco shops have filed a lawsuit over a new state law that seeks to impose new taxes on roll-your-own cigarettes. The lawsuit filed Friday names the state Department of Revenue and the state Liquor Control Board as defendants. The lawsuit was filed in Franklin County by Dana Henne;

1/2 Price Smokes, Inc. and RYO Machine, LLC. They contend the new taxes violate Initiative 1053, which was passed in 2010 and requires a 2/3rds vote of the state Legislature to raise taxes. The state has about 65 independent roll-your-own tobacco stores.

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PROVIDENCE, RI: A LEGAL BATTLEGROUND OVER FLAVORED TOBACCO PRODUCTS, COUPONS AND PROMOTIONS

By Thomas A. Briant
CSPNet.com
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An important legal battle over a retailer's ability to sell flavored tobacco products, accept tobacco product coupons, and offer promotionally-priced tobacco products is being waged in U.S. Federal District Court in Rhode Island. This litigation battle began when the Providence, Rhode Island City Council adopted two ordinances on January 5, 2012.

One of the ordinances bans the sale of virtually all flavored cigars, smokeless tobacco, and pipe tobacco products in the city. The other ordinance bans adult consumers from redeeming tobacco product coupons and also prohibits retailers from offering certain promotionally-priced tobacco products, such as "buy-one, get-one free" offers. Both of these ordinances were scheduled to take effect on March 1, 2012, but the implementation of these laws has been delayed due to the pending lawsuit.

NATO, the Cigar Association of America, Inc. (CAA), along with Lorillard Tobacco Company, R.J. Reynolds Tobacco Company, American Snuff Company, Philip Morris USA Inc., U.S. Smokeless Tobacco Manufacturing Company LLC, U.S. Smokeless Tobacco Brands Inc. and John Middleton Company filed a federal lawsuit seeking to overturn both ordinances.

The outcome of this litigation is very important because the court decision could either prevent other cities considering similar restrictions or set a precedent for local governments to introduce the same kind of local tobacco product and promotion prohibitions.

As a part of the litigation, the industry plaintiffs have filed a joint motion for summary judgment and a preliminary and permanent injunction against implementation of both ordinances. A summary judgment motion is a procedural step used during civil litigation to promptly dispose of a case without a trial and is appropriate when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.

From the industry's perspective, the flavor ban ordinance is unconstitutional because it severely limits how retailers and manufacturers may provide product information to consumers and describe the taste or aroma of these tobacco products. The right of Free Speech extends to commercial speech that encompasses product descriptions in advertisements and on packaging.

Likewise, the ban on coupons and promotionally priced tobacco products is unconstitutional because it limits the ability of retailers and manufacturers to communicate tobacco product prices to adult consumers and is pre-empted by federal law because the ordinance attempts to regulate the advertising and promotion of cigarettes. Also, the ordinance violates the Rhode Island Constitution because it improperly attempts to regulate tobacco retailers, an authority which is reserved exclusively to the state.

In response to the industry's motions, the City of Providence has filed its own motion for summary judgment. In its motion documents, the city supports its ban on the sale of flavored tobacco products by claiming that tobacco manufacturers "remain perfectly free to communicate whatever they want to whomever they want about their flavored tobacco products, as long as they do not actually sell, or offer to sell, the lethal products in the City of Providence, outside of a smoking bar."

The city uses a similar argument to claim that the ban on coupons and promotionally priced products is legal. Specifically, the city claims that the "Price Ordinance simply regulates particular commercial activity by a tobacco retailer. It in no way affects the ability of the Plaintiffs...to continue to disseminate price reduction instruments and multi-pack offers in Providence. The ordinance merely prohibits their redemption in the City."

In addition, two organizations and a state agency have submitted Amicus Curiae briefs ("friend of the court" briefs) supporting the Providence ordinances. These briefs have been filed by the American Academy of Pediatrics, the Tobacco Control Legal Consortium, and the Rhode Island Department of Behavioral Healthcare.

A hearing on the summary judgment motions should take place by July 30, 2012.

Originally published here: <http://www.cspnet.com/news/tobacco/articles/providence-ri-legal-battleground-over-flavored-tobacco-products-coupons-and-pr>

CALIFORNIA TOBACCO TAX TRAILS BY RAZOR-THIN MARGIN

By Hannah Dreier
The Associated Press
June 19, 2012

Two weeks after California elections, a closely-watched effort to impose a new tax on tobacco in the nation's most populous state remains too close to call.

With 400,000 ballots outstanding as of Tuesday, the measure that would add a \$1-a-pack cigarette tax is trailing by 17,500 votes, according to data compiled by the secretary of state.

Through a barrage of campaign ads, tobacco companies were able to cut support for the tax plan spearheaded by champion cyclist Lance Armstrong. Backing for the measure dwindled from a two-thirds majority in March down to a dead heat on Election Day.

Opponents raised \$47 million to fight the proposal, dramatically outspending supporters, who raised \$12 million.

Since the June 5 voting, the measure known as Prop 29 has seemed headed for defeat by razor-thin margins, generally trailing by less than a percentage point.

In election night returns, the proposal, which would in part fund cancer research, was losing by tens of thousands of votes, prompting many to assume it was dead. But supporters have refused to concede defeat.

"Last week, someone was thinking about having a press conference and conceding, and everybody else said, 'Are you out of your mind?'" said Stan Glantz of the University of California, San Francisco's Center for Tobacco Control Research and Education.

Glantz has been running statistical analyses of the returns since the polls closed and said the chances of a reversal are "unlikely but not impossible."

"At this point, everybody's just biting their fingernails," he said.

Tobacco tax opponents are also watching returns, but with a more optimistic eye.

"We're not expecting any huge swings, and we are anticipating that our lead will hold," said Beth Miller, spokeswoman for the No on 29 campaign.

In order for the tax squeak through, 54 percent of the remaining ballots would have to favor the measure, said Contra Costa Registrar of Voters Steve Weir.

Weir added that if the margin continued to tighten, it was conceivable that California would hold its first statewide re-count for a ballot measure.

"For there to be less than a half a percent spread, that's very, very unusual," he said.

Observers around the nation have also been watching the contest. Smoking foes say that Big Tobacco's success in branding the tax as a government boondoggle could reverberate in other states.

Election officials have until July 6 to report final results. Another California tobacco tax measure lost by a similarly thin margin in 2006.

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UTAH'S REVENUE PROJECTIONS LOOKING GOOD...MAYBE

By Bob Bernick
Utah Policy
June 20, 2012

Congratulations, State of Utah.

New revenue estimates say the current budget year should end with either a \$30 million deficit or (more likely) a \$60 million surplus.

These are only estimates, and will be updated in November, when Gov. Gary Herbert puts the final touches on his budget recommendations to the Legislature.

The current fiscal year ends June 30, in just a few weeks.

If the estimates are on the positive side, after some mandatory siphons (like to the Rainy Day Fund), lawmakers and Herbert will have those monies to spend or save in the 2013 Legislature.

While the governor's and Legislature's budget offices work in ranges on revenue updated estimates (in this worst case \$30 million in the red or \$60 million extra) in recent years as Utah's economy rebounds from the Great Recession the updates have turned out to be in the positive range – maybe not as much as updates predicted on the top end, but still providing more cash for lawmakers and the governor to spend or save.

The June revenue update says: "The economic recovery continues to take hold, although momentum from the previous year's expansion is fading as evidenced by employment growth."

Job growth grew by 2.9 percent earlier this year, but is expected to drop to 2.2 percent for the rest of the year, the analysis says.

While Utah housing starts are up, state economists still worry about the possibility of federal tax hikes (the Bush tax cuts come up for renewal later this year), less demand for U.S. goods in Europe, where several countries' economies are staggering, and the "fickle nature" of consumer confidence in America, the report says.

Some important predictions:

-- The state's General Fund, where most non-education spending takes place, should be either down \$15 million or up \$15 million.

-- The Education Fund, driven by personal and corporate income taxes, should be down \$15 million or up \$45 million.

-- Sales tax is up. February collections were up an impressive 17 this year over last.

-- Severance tax collections, which really boomed last year, are "under-performing." That's mainly because there has been so much natural gas production throughout the U.S. that the price has gone down from \$13.30 per 1,000 cubic feet to \$2.20.

-- Cigarette and tobacco taxes are also coming in below estimates. Those tax collections have never rebounded as predicted after a \$1-per-pack tax hike of several years ago.

The big tax hike has resulted in some Utah smokers traveling to buy their cigarettes in Idaho, Wyoming, Colorado and Nevada, proven by increases tobacco sales in those states, state economists say.

Legislative economist Thomas Young said the state is losing about \$4 million a year in tobacco tax to surrounding states.

Of the drop in tobacco revenues, about 70 percent comes from Utahns either stopped smoking or cut down in smoking, about 30 percent from out-of-state purchases by Utahns.

-- Finally, Happy Birthday to the Utah State personal and corporate income taxes, who turn 80 this year. (Yes, few Utahns can even remember a time when they didn't pay state income taxes.)

How times have changed. When first imposed in 1932 (to fund public education in light of the Great Depression's crushing of education budgets) the gross income tax burden of all Utahns was \$248 million.

Today that personal income tax burden is \$2.4 billion.

Of course, wages are up as is population.

The personal income tax take is expected to increase above estimates this year.

Corporate income tax is also 80 years old this year. In 1932 the burden was \$112 million, today it is \$230 million.

Rep. Brian King, D-Salt Lake, noted that while the report shows that Utah's corporations are showing profit growth – 13 percent up last year, 11 percent this year -- the taxes they pay are about flat, no growth. Why? He asked.

Legislative chief economist Andrea Wilko said there is a disconnect between corporate profit growth and corporate tax collections because of how the tax is applied and other factors.

"That gap should narrow over time," she said.

Unfortunately, the state road fund is likely to be down by up to \$20 million this year.

Utah has a per gallon gas tax. As the price of gas goes up, said Young, Utahns drive less. As more fuel-efficient cars come into use, road miles may go up, but the tax revenue down.

In short, the days of Utah's per-gallon gas tax is dying.

Herbert and lawmakers have no interest in raising the state gas tax in an election year like 2012, when Herbert is up, all 75 House members and half other 29-member Senate.

Something may be done about the Transportation Fund revenues come 2013, a non-election year for the governor and lawmakers.

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