

CONFIDENTIAL
Legislative Bill Review Form: 2016

Bill Number: H.873

Name of Bill: An act relating to making miscellaneous tax changes

Agency/Dept: Tax

Author(s) of Bill Review: Candace Morgan, Michael Costa

Date of Bill Review: 05/11/2016

Related Bills & Key Players: Department of Labor, DVHA, Ambulance Providers, Banks, Fuel Dealers, DCF, VALA, VLCT, Office of Health Care Advocate, Burlington, VEPC

Status of Bill: As passed by both

Recommended Position: Support

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

Much of the bill is technical in nature and includes the Tax Department's recommended changes for tax administration purposes. The revenue and more substantial policy choices are towards the end of the bill.

REVENUE/OTHER PROVISIONS

Sec. 9. Milton TIF timing. Allows the auditor of the Milton TIF to be postponed one year to allow for completion of their first annual municipal audit.

Sec. 9a. Burlington Waterfront TIF. Extends time for three parcels within the Burlington Waterfront TIF an additional 6.5 years. Includes language that says the extension is subject to Burlington's submission to VEPC of an executed construction contract of not less than \$50M.

Sec. 10. Holden Home changes. This section makes changes to 1892 session law that prohibited the Holden Home from incurring debt. This was requested by Sen. White.

Sec. 19. Increases the appropriation for the Fire Service Training Council.

Sec. 21. "Airbnb" Agreement Language. Finance made a small change to the language, asking us to "pursue negotiations" to enter into agreements with Internet platforms who offer short-term rental of property for occupancy. This was estimated by JFO to bring in \$1M in new revenue (rounded up from \$970K).

Sec. 21a. Information Reporting for Meals and Rooms Tax. Requires Tax to collect information about the rentals made on an Internet-platform. This section could be problematic in our negotiations with Airbnb; the type of reporting being requested is the type that they have fought other jurisdictions over and won. The description that the legislature used for "platforms" subject to the reporting are vague and overly broad (potentially reaching online classifieds, Craigslist, etc.). The Department will need to get regulations passed if these reporting requirements have any hope of being upheld in court when Vermont is inevitably sued. The description used for "operator" is actually overly narrow, and may be used by online travel companies to dismiss our ongoing administrative action to recover back taxes. The legislature was warned of these results. This is effective the earlier of July 1, 2017 or when CO has implemented their noncollecting vendor reporting requirements.

Secs. 25-26. These next two provisions are an attempt to address sales tax on sales in Vermont made by vendors without a physical presence in the state. Secs. 25-26 have similar language to Colorado's reporting requirement for non-collecting vendors. The conference committee report strikes out subsection (c) in Sec. 26 - the reporting of purchases to the Tax Department. This was the most noxious provision requiring the reporting or purchases by individuals to the Department. However, the remaining provisions (reporting to

consumers) will likely still trigger a lawsuit against Vermont. The Colorado law has not been enforced during protracted litigation (from 2010). These two sections, along with Sec. 21a, are effective on the earlier of July 1, 2017, or when the CO reporting requirements are implemented by Colorado.

Sec. 27. Economic Nexus. This is the second of the provisions related to sales tax for report vendors. The Senate chose to make the effective date the later of July 1, 2017, or when Quill is overturned. With that change, this language is good to have in place so we are ready as soon as we are able to implement economic nexus for sales and use tax.

Sec. 28. Billback Authority for Office of Health Care Advocate.

Sec. 28a. Office of the Health Care Advocate Report. Requests a few additions to the Health Care Advocate's annual report.

Sec. 35-36. Changes the structure of the FGR. On the retail sale of heating oil, propane, kerosene, and other dyed diesel fuel there is a charge of \$0.02/gallon. There is a gross receipts tax of 0.75 on natural gas and coal and of 0.5 on electricity. FGR is reauthorized until 2019. Also includes language for natural gas companies to do rate setting to make up the increase rate. This is effective July 1, 2016.

Sec. 36a. Analysis of Admin Cost study. Requests for JFO to do an analysis of the admin costs associated with the crisis fuel and weatherization programs in Vermont. Report is due December 15, 2016.

Secs. 37-39. These three sections change the filing frequency of Bank Franchise Tax, Telephone Tax, and Fuel Gross Receipts Tax to monthly instead of quarterly. Raises about \$2.8M in GF and \$0.85M in weatherization fund for FY2017 (one time revenue).

Sec. 39a. Allows for itemization on the bills of fuel dealers, as long as the itemization includes a statement about where the funds for the tax go.

Sec. 40. Tax Expenditure Report.

HEALTH CARE PROVISIONS (from Michael Costa and Robin Lunge):

The Miscellaneous Tax bill contained five health care sections. The Administration did not take an official position on any of the provisions. None provides a reason to oppose the bill; however, each requires some action by DVHA going forward.

Sec. 30 and 31. AMBULANCE AGENCY ASSESSMENT

Sections 30 and 31 create an ambulance agency provider tax. Each ambulance agency would be assessed a 3.3% tax on its revenue. The revenue would be used to increase provider reimbursement rates and draw down additional federal matching funds.

The tax creates an administrative burden on DVHA in two ways. First, the Legislature created a new class of provider tax without providing any resources to administer the assessment. This means that DVHA will need to collect the proper information, calculate the tax, and bill and receive assessments with existing staff. DVHA asked for three positions and \$200,000 annually to administer the tax.

Second, the implementation of the tax will require substantial outreach and a special collection schedule in year 1 (FY 2017) to avoid a severe cash flow problem for ambulance agencies. Specifically, DVHA should do the following:

- Assess the tax based on state fiscal year 2016
- Vary the payment schedule per 33 VSA 1959(c) to make sure the agencies avoid a cash flow problem to the extent possible during the transition
- Collect the annual tax for FY 17 in three monthly installments due April, May, and June of 2017, allowing ambulance agencies the maximum time to collect revenue to pay the tax while keeping the FY 17 budget whole

DVHA and the ambulance agencies will need to work together in a robust stakeholder process to develop a mutual understanding of administrative issues, review instructions for the tax, and determine the proper payment schedule for FY18 and beyond for this tax to be implemented successfully.

Sec. 32. HOME HEALTH AGENCY ASSESSMENT FOR FISCAL YEARS 2017 AND 2018

Section 32 changes the tax base for the Home Health Agency Assessment from "core home health care services" to net patient revenue. The new tax base is easier to administer for DVHA and is likely less susceptible to gaming by providers. Additionally, the tax assessment can be made with information provided to DVHA today, meaning the change does not place a new administrative burden on DVHA or providers. While the law changes the distribution of the tax, it generally makes the large for-profit agency pay more and most other agencies pay less. Overall, the provision is likely a positive policy change.

Section 32 is only effective for FY 17 and FY 18. Accordingly, a future Administration will need to address this issue again, as contemplated by the Home Health Agency Assessment Working Group report passed in Section 33 of H.873.

Sec. 33. HOME HEALTH AGENCY ASSESSMENT WORKING GROUP; REPORT

Section 33 requires DVHA to convene a working group comprising nonprofit and for-profit home health agencies and other interested stakeholders to determine whether a net patient revenue based Home Health Agency Assessment represents the most appropriate and equitable model for the home health provider tax. Essentially, the study will attempt to identify, and build consensus for, the best way to structure and implement a home health assessment and report back to the Legislature by December 15, 2016. The study is largely redundant to a study passed in the previous budget, Act 58 of 2015. That study required the following:

Sec. E.306.1 HOME HEALTH AGENCY ASSESSMENT REVIEW (a) By November 15, 2015, the Visiting Nurse Associations of Vermont, in consultation with Bayada Home Health Care, shall study and develop recommendations regarding the home health agency assessment as established in 33 V.S.A. § 1955a. The study shall include a review of the tax base currently used to calculate the assessment under 33 V.S.A. § 1955a, recommendations for revisions to the assessment which are equitable to all home health agencies, and a legal analysis of such recommendations to ensure compliance with 42 C.F.R. § 433.68.

The home health groups that participated in the 2015 study could not reach a consensus recommendation. There are winners and losers in every tax change. Accordingly, there is little reason to believe that this same group will arrive at a different conclusion. DVHA should be careful regarding the resources it devotes to this effort.

TECHNICAL CHANGES (as requested by Tax):

Sec. 1. Creates additional exemptions to our confidentiality statutes for Burlington's charter taxes, DFR for administering captive insurance tax, and to VSAC for the accounts created under Act 45 of 2015.

Sec. 2. Adds similar language around immunity to our administrative garnishment provision that exists for banks in the attachment section. Seemed like this was an oversight during the drafting of 3207 and 3208 last session.

Sec. 3. Changes the date for the Current Use Advisory Board's public hearing from August to October 15.

Sec. 4. Codifies annual agricultural certification from last year's Act 57. As enacted, this section was only session law. We've asked for it to be codified in the eligibility section for Use Value Appraisal.

Sec. 5. Changes when we need to notify AAFM and FPR about development of land in UVA.

Sec. 6. Changes framework for lister education. Instead of paying municipalities to educate assessing officials, PVR will receive the money and put on free educational opportunities. Has the support of VALA and VLCT.

Sec. 7. Changes the section heading for the property hearing official from "property tax" to "property valuation."

Sec. 8. A property hearing officer is no longer required to inspect a property prior to making a determination, but instead may inspect the property. The Senate version passed, which includes the option for either party to request an inspection. It also went one step further and said that PVR must notify a property owner of their ability to request an inspection.

Sec. 11. Annual update of income tax link to IRC.

Sec. 12. Changes the due dates for payment of withholding taxes to line up with a business's federal schedule for timing and changes W-2 due date to combat fraud.

Sec. 13. Repeals a section that conflicts with federal conformity required by 32 V.S.A. 5910.

Sec. 14. Links due date for S corporation returns to federal due dates.

Sec. 15. Allows Commissioner the authority to ask for zero returns for solid waste tax filers.

Sec. 16. Corrects the definition of "homestead" to reference the correct deadline for homestead declarations. Not a substantive change.

Sec. 17. Directs landlords to furnish a landlord certificate directly to the Department of Taxes in addition to the renter. Enables easier electronic filing.

Sec. 18. Specifies that the interest and penalty provisions of section 3202 will apply in lieu of penalty provisions in chapter 151.

Sec. 20. Deletes provision that is no longer necessary because all food and beverages sold by a vending machine are now taxable meals (Act 57 of 2015).

Secs. 22-24. Retailer election language. Fixes an issue that was discovered to impact fuel dealers after the Bouchard language passed in 2014. Essentially the language undoes that change and instead allows retailers and manufacturers who are also contractors to choose to remit the sales tax at a different point in the transaction. They would need to make an election with the Tax Department, which is binding for at least 5 years. The fuel dealers support this language. Finance seemed to think it was overly complicated, but we will work with them to understand it actually helps lessen the complications.

2. Is there a need for this bill? Please explain why or why not.

Yes. This is one of the must pass bills of the session. If nothing else passes, we need the annual update of income tax link to the IRC found in Sec. 9. Additionally, this bill raises the revenue needed to balance the FY2017 budget.

3. What are likely to be the fiscal and programmatic implications of this bill for this department?

There will be small administrative costs of implementing a variety of these changes, both the ones asked for by Tax, and the ones included by the legislature. The programming costs should be minimal since much of the taxes impacted live in our new VTax system. However, we will need to create a new schedule of forms/payments for FGR, Bank Franchise, and Telephone Tax. Additionally, we will need to recode our system for the increase rates and changes to FGR.

The "New Economy" provisions establishing economic nexus (level of sales rather than physical presence) and reporting requirements raise serious constitutional issues. The Department will likely expend resources going through the regulation process, notifying far flung businesses, educating the public, and defending lawsuits.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

DVHA will need to implement the ambulance provider tax, which they have indicated will require 2 FTEs.

5. What might be the fiscal and programmatic implications of this bill for others and what is likely to be their perspective on it? (e.g., public, municipalities, organizations, business, regulated entities)

Banks, fuel dealers, and telephone companies will need to adjust to a new billing cycle. Fuel dealers will see a change/increase in how they pay the FGR. There are a few small changes for the lister community, but they are all supportive of those changes.

6. Other Stakeholders

6.1 Who else is likely to support the proposal and why?

The home weatherization/low income advocacy folks are supportive of the FGR increase since it is fully funding the weatherization fund. Ambulance providers appeared supportive of the provider tax since they will see higher reimbursement rates as a result. Bricks and mortar businesses and traditional inns.

6.2 Who else is likely to oppose the proposal and why?

Fuel dealers and some ambulance providers (those with a low Medicaid population). Internet platforms for short term rentals (Airbnb, Homeaway, etc.) and remote vendors (everyone from big players like Amazon, to smaller players).

7. Rationale for recommendation: *Justify recommendation stated above.*

The items identified as revenue, from the Tax Department's perspective, are relatively easy to administer and not overly controversial.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

We continue to be worried about Sec. 21a (information reporting of short term rentals). We plan to ask for a repeal of that next session.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? *This is simply expanded language to indicate whether the bill would also add or remove appointees to existing board or commission, under the administration's control.*

N/A

Secretary/Commissioner has reviewed this document. Name: Mary Peterson

Date: 05/17/16