FAEGRE BAKER DANIELS

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Minnesota Legislative: Update Recapping the 2019 Session

The 91st biennial session of the Minnesota Legislature convened on Tuesday, January 8, 2019, with a newly elected DFL Governor, former Congressman Tim Walz, and the only divided Legislature in the nation. The DFL also controlled the Minnesota House, picking up 15 seats in the November 2018 elections and swearing in 34 new members. The Minnesota Senate, which was not on the ballot in 2018, remained in Republican control with a slim two-seat majority.

The main business before this year's Legislature was setting the state's FY 2020-2021 biennial budget. With a billion-dollar projected budget surplus, members were hopeful the session would finish on time and with more transparency than in the past. Since 2001, every budget session but one has required a special session for the Legislature to complete its work.

By the Legislature's constitutionally required May 20, 2019, adjournment, a smooth and transparent session ending was not to be. By May 17, only 39 bills had been passed by the Legislature and presented to the Governor for his signature, the second lowest in 30 years. The Governor and legislative leaders, Speaker Melissa Hortman (DFL-Brooklyn Park) and Republican Majority Leader Senator Paul Gazelka (R-Nisswa), spent nearly a week behind closed doors negotiating a global budget agreement. This agreement was reached on May 19, the day before the Legislature was required to adjourn. As a result, almost all conference committees were unable to complete their work on time, necessitating a special session. Only the Higher Education conference committee report was finalized and passed during the regular session.

Over the next week, conference committees, which became working groups once the Legislature adjourned, met entirely behind closed doors to negotiate appropriations and language. Only after these agreements were reached were informational hearings held to let the public know what had been decided.

The Governor called a one-day special session for Friday, May 24 and, in a marathon 24-hour session, the Legislature passed the bills required to implement the state's biennial budget.

The Minnesota Legislature will convene again on Tuesday, February 11, 2020. The following recap reviews Legislature activity on the budget, taxes and federal conformity, transportation and transit, workplace mandates, energy and environment, and health and human services.

Budget

When the Legislature convened in January, Minnesota's most recent budget and economic forecast projected revenues of $48.3 billion and a $1.5 billion surplus for FY 2020-2021. This projected surplus accounted for a statutorily required deposit of $491 million into the state budget reserve, raising the amount of the reserve to $2.075 billion. By February, revenue collections were projected to be lower due to a slower economy, a tightening labor market, and uncertainty regarding the impact of the Tax Cuts and Jobs Act of 2017 (TCJA) on Minnesota taxpayers. The state's February budget and economic forecast reduced the FY 2020-2021 surplus by $492 million, projecting total revenues of $47.9 billion and a surplus of $1.052 billion. This forecast also projected a slight deficit for the FY 2022-2023 biennium.

Governor Walz proposed an inaugural biennial budget of $49.5 billion, an 8.6% increase over the previous biennium. The Governor's priorities included significant investments in transportation and transit, education, health care and local government aids. To pay for these priorities he included a number of tax increases, including a $.20 gas tax increase for road and bridge funding, a one-eighth cent metro-wide sales tax for transit, an increase in car registration fees, an extension of the two percent provider tax, a reinstatement of the annual inflator on the statewide general levy on commercial, industrial, and seasonal property, tobacco tax increases, new taxes on repatriated foreign income for corporations, and data center sales tax exemption limits.

The Governor also proposed a $1.27 billion capital investment package focused on transportation and transit, housing, and water infrastructure. The Governor's proposals were focused on asset preservation and projects with statewide impact.

The House DFL's "Minnesota Values Budget" mirrored in many respects Governor Walz' budget proposal. The budget proposed $47.8 billion in spending, including significant increases in E-12 funding and a tuition freeze for students at the University of Minnesota and state colleges and universities. It also provided increased funding for health and human services, public safety and local government aids. Like the Governor, the House DFL proposed a $.20 gas tax increase, a metro-wide sales tax, a continuation of the 2% provider tax, increases in the statewide general levy for commercial industrial properties and tobacco taxes, and increased taxes on business, including taxes on repatriated foreign income, to pay for their spending priorities.

The House DFL also proposed $1.5 billion in capital investment spending. The House proposal focused on many local projects and immediate needs as well as larger road, bridge and higher education projects.

In contrast to the House and Governor, Senate Republicans proposed a budget that funded their priorities without raising taxes. Their budget proposal totaled $47.63 billion. Key investments included increases for E-12 and higher education funding and several tax cuts, including reducing the individual income tax rate for the second tier from 7.05% to 6.8% and reducing the state general levy for commercial, industrial and seasonal property by $50 million.

Senate Republicans opposed all of the transportation and transit taxes and fees proposed by the Governor and House DFL, instead they continued to advocate for increased general fund revenue and bonding to address transportation needs. The Senate did not propose a bonding bill.

The bipartisan budget agreement reached by the Governor and legislative leaders spends roughly $48.3 billion, a 6.2% increase over the previous biennium. About half this increase goes to E-12 education. The budget agreement does not include any new transportation or transit related taxes or fees. It does include eliminating the sunset on the provider tax and reducing the rate from 2.0% to 1.8%. It also reduces the state general levy for commercial, industrial and seasonal property by $50 million and spends $492 million from the budget reserve. A copy of the budget agreement details can be found here.

A $500 bonding bill was also agreed to in negotiations, with $60 million earmarked for housing bonds. However, neither the House nor Senate minority leaders signed off on the budget agreement or the bonding bill. Because of the three fifths majority vote requirement, minority votes are almost always needed to pass bonding bills in Minnesota. Even though House and Senate negotiators and leadership worked until early Saturday morning attempting to reach agreement on a bonding package that could reach the 60% threshold an agreement could not be reached. Ultimately, the Legislature authorized only $60 million in housing infrastructure bonds. These bonds may be used for affordable housing for seniors, people with behavioral needs, individuals or families experiencing or at risk of homelessness, and federally subsidized rental housing. View more information here.

Taxes and Federal Conformity

After failing in 2018, the Legislature again attempted to conform Minnesota's tax code to changes contained in the TCJA. Governor Walz's tax proposal conformed to the vast majority of the TCJA including deemed repatriation and taxing foreign earnings. The Governor used the increase in revenues to increase and expand the Working Family Credit, increase funding for local government aids and create a buffer credit. Apart from conformity the Governor proposed several other tax increases, including removing the sunset for the provider tax and restoring the inflator on the statewide general levy on commercial, industrial, and seasonal property and tobacco taxes.

The House's approach was similar to Governor Walz's and conformed to the TCJA revenue provisions. Their proposal, however, did not conform to the TCJA's Global Intangible Low Tax Income (GILTI) provisions, instead opting to subject all income to apportionment. The House proposal also imposed a capital gains tax of 3% on earnings over $500,000 and froze the rate for commercial/industrial properties at the current value. The House fully conformed to the larger federal standard deduction amount for individual income tax filers, providing administrative simplicity for approximately 92% of Minnesota taxpayers.

The Senate took a more business friendly approach to the TCJA by not conforming to taxes on GILTI or Foreign Derived Intangible Income (FDII). Their proposal included reducing the individual income tax second tier from 7.05% to 6.8%, reducing charitable gambling rates, and reducing the commercial/industrial and seasonal recreation property taxes by $50 million.

All three proposals changed the starting point for filing Minnesota taxes to Federal Adjusted Gross Income (FAGI). All three proposals also reduced taxes on social security benefits, conformed to Section 179 expensing and increased funding for the Angel Investment Credit.

The final tax bill, which was negotiated between House and Senate Tax Chairs, Governor Walz, the Speaker and Majority Leader, significantly conforms to the TCJA, while excluding GILTI and FDII provisions. This bill provides tax relief including a reduction of the second-tier individual income tax rate from 7.05% to 6.8% and conforming to the federal standard deduction amount. Other provisions include restoring funding for local government aids to the 2002 levels, reducing taxes on social security benefits, reducing the commercial/industrial and season recreation property tax by $50 million, and conforming to the federal amounts for bonus depreciation and Sec. 179 expensing, while retaining the 80% add back. The bill also does not contain the capital gains tax increase and reduces the budget reserve by $491 million.

A copy of the tax bill can be found here and the summary here.

Transportation and Transit

Governor Walz's transportation and transit proposal raised nearly $1.9 billion annually to fund roads, bridges and transit. The revenue came from several tax increases, the most controversial of which was a $.20 gas tax increase phased in over two years. This increase alone would have raised about $600 million in constitutionally dedicated transportation funds over the biennium.

The Governor also proposed a 0.375% increase in the motor vehicle sales tax, a 0.25% increase in the motor vehicle registration tax, increasing the base license tab fees to $45 and modifying the vehicle depreciation schedule. In addition to additional funding, the Governor requested the Legislature authorize $2 billion in trunk highway bonds between 2022 and 2030.

For transit, the Governor proposed a one-eighth cent metro-wide sales tax. This increase would help eliminate the structural deficit in the regional bus system, build out 10 Bus Rapid Transit Lines (BRT), increase service in the busiest transit corridor by 40% and begin the electrification of the regional fleet by adding 150 electric buses.

By in large, the House omnibus transportation bill mirrored the Governor's proposal. The House proposal had a slower phase in of the gas tax and increased the sales tax in the metro-area for transit by ½ cent instead of the Governor's 1/8th cent. The House also increased the base tab fee from $10 to $20. Finally, the House authorized $2 billion in trunk highway bonding, of which $300 million was appropriated to the Corridors of Commerce program.

Arguing that current law included a $530 million funding increase for transportation over the last biennium the Senate did not propose increasing any of the transportation and transit related taxes and fees proposed by the Governor and the House. Instead, the Senate appropriated $125 million annually to the trunk highway fund for state road construction with an additional $25.5 million each year for program delivery and a one-time appropriation of $38 million for work on Trunk Highway 212.

Senate Republicans prevailed in budget negotiations and successfully prevented any increases in transportation and transit related taxes and fees proposed by the Governor and House. The Omnibus Transportation Finance bill maintained the status quo on transportation and transit funding with a slight increase of approximately $93 million. This bill contains $55 million for the Minnesota Licensing and Registration System (MNLARS) replacement system, $13 million for Deputy registrar reimbursement, $50 million for the Corridors of Commerce program and $23 million in funding for Metro Mobility in FY 2020.

A copy of the Omnibus Transportation Finance bill can be found here.

Workplace Mandates

Several workforce mandate proposals were debated this year, including wage theft, paid family leave, earned sick and safe time, and preemption. Of the four, the House and Senate could only reach a compromise on wage theft which was included in the Omnibus Jobs and Economic Development, Energy and Climate and Telecommunications Policy and Finance bill passed during the Special Session.

Here is a summary of proposed workforce mandates:

Wage Theft

The House and the Senate took different approaches to address wage theft. The House proposal increased penalties on employers who engage in wage theft, including criminal penalties in some instances and gave the Minnesota Department of Labor and Industry (DOLI) the power to issue subpoenas. The Senate approach also created criminal and other penalties against violating employers; however, before such penalties could be implemented, employees would be required to provide employers with a written notice stating their concerns. The Senate provisions also required a 10-day waiting period before DOLI could start an investigation and it would have to be proven that there was intent for wage theft.

The final compromise included language from both the House and Senate bill as well as language agreed upon in conference committee including making wage theft a felony, penalizing retaliation against employees who report wage theft and allowing for enforcement by the Minnesota Attorney General. A summary of the final legislation can be found here.

Paid Family Leave

The House DFL's Minnesota Values Budget included the creation of a family and medical benefit insurance program that partially reimburses wages lost when workers take medical or family leave. The proposed program mandated 12 weeks of medical leave with partial wage replacement and/or 12 weeks of family leave for maternity, paternity, bonding and caregiving purposes. Employers would be charged a yearly premium based on employee wages with the ability to charge an employee up to 50 percent of the premium amount. A summary of the House proposal can be found here. The Senate did not hold a hearing on or move a paid family leave proposal.

Because of Senate inaction, the House DFL included its paid family leave proposal in their Omnibus Jobs bill. While House conferees pushed hard for inclusion of both paid family leave and earned sick and safe time in the conference committee report. The Senate did not budge, and the provisions were not included in the final Omnibus Jobs bill.

Earned Sick and Safe Time

The House DFL proposed a provision allowing employees to earn a minimum of one hour paid earned sick and safe time for every 30 hours worked, which could be used for illness or preventative care of the employee or family members, absences related to domestic abuse or sexual assault, employee work closures, and certain other situations. Like Paid Family Leave, the Senate did hold a hearing on this bill and the language was not included in the Senate Omnibus Jobs Finance bill. A summary of the House's earned sick and safe time proposal can be found here.

Earned sick and safe time was not included in the final compromise of the Omnibus Jobs bill.

Preemption

The Senate focused their efforts on passing legislation preempting local governments from imposing workplace mandates through ordinance. The Senate proposal would have prohibited local governments from adopting or enforcing any ordinances requiring employers to pay higher than the state's minimum wage rate, requiring paid or unpaid leave, regulating the hours or scheduling of work time that an employer provides an employee, or requiring an employer to provide an employee a particular benefit or term of employment. It would have grandfathered any previously adopted city ordinances such as Minneapolis, St. Paul, and Duluth where certain labor ordinances are in affect.

The House did not hold a hearing on this bill and did not include it in the House Omnibus Jobs bill. The Senate's attempt to include this provision in the final Omnibus Jobs bill was not successful.

Energy and Climate

In March, Governor Tim Walz unveiled his plan for a 100% carbon-free Minnesota by 2050, asking that any new power projects in the state be renewable. At the heart of the Governor's proposal was a desire to reduce greenhouse gas emissions in an effort to address climate change. The Governor's ambitions were met with praise from environmental groups but faced opposition from Republicans who called the renewable energy standard extreme. Despite objections from the other side of the aisle, it was a push that House Democrats were eager to get behind with Rep. Jamie Long (DFL-St. Paul) carrying the mandate as the Clean Energy First Act, a bill that was ultimately laid over for inclusion in the House Omnibus Energy and Climate bill.

The House Omnibus Energy and Climate Finance and Policy bill (HF1986) included studies on climate and energy storage, authorization of third-party energy data sharing and grants, and the development of a community solar garden program aimed at subsidizing the cost of solar energy in low-income communities. The bill language was rolled into the Omnibus Jobs bill and sent to conference committee. Among the provisions that survived the negotiations were solar energy incentives, a solar storage pilot program, and the creation of a stakeholder group to study utilities' workforce diversity. The Governor's renewable energy standard, community solar gardens, conservation improvement program expansion, and other House provisions aimed at expanding clean energy and slowing climate change were not included in the final bill.

Health and Human Services

ONECare MN

Gubernatorial and legislative candidates heard from voters about rising health care costs during the 2018 November elections. The newly elected Governor and House members worked to pass sweeping policy changes to reduce health care costs in the 2019 legislative session particularly related to prescription drugs.

As part of his One Minnesota budget recommendations, the Governor proposed a state health care buy in option plan for the individual health care market called ONECare MN. In addition to the health care buy-in option, the ONECare MN plan provided for Department of Human Services to begin administering all prescription drug benefits for state run health programs. The House joined the Governor's push for the ONECare MN buy in and state-run drug and dental benefit.

The Health and Human Services budget compromise did not retain the ONECare MN buy-in option or a state-run prescription drug benefit program.

Opiate Epidemic Response

Early in the 2019 legislative session, legislators of both parties and the Governor put forward plans to address the opioid addiction crisis in Minnesota. These initiatives followed a disappointing end to the 2018 legislative session for advocates when funding for additional opioid addiction related programs was vetoed in the final hours.

The legislators hoped to finalize a bill and send it to the Governor by the Easter/Passover Break. In the House, Rep. Liz Olson

(DFL-Duluth) and Rep. Dave Baker (R-Willmar) led the charge as authors of House HF400, and Sen. Julie Rosen (R-Vernon Center) again carried the legislation in the Senate, SF 751. Despite the authors' efforts to pass legislation early in session, the Legislature was not able to reach agreement until the last days of session. A copy of the bill and the summary can be found here and here.

A new Opiate Epidemic Response account was created to fund addiction related programs. To raise the $20 million annually for the Opiate Epidemic Response Account, the new law imposes fees on drug manufacturers and distributors. The funding mechanism in the new law closely reflects the Senate position – an annual registration fee on wholesale distributors of $5,260 and $250,000 fee on large opiate manufacturers and $55,000 on small opiate manufacturers. The new law allows a sunset of the higher fees on manufacturers once the Opiate Response Account reached $250 million through settlement dollars and fees paid. Once the sunset is triggered, but not prior to 2024, registration fees for manufacturers, distributors and wholesalers will be reduced to $5,260 across the board. The bill was passed as amended by conference in both bodies with bipartisan support.

Pharmacy Benefit Managers

Prescription drug pricing was a burning topic during the 2019 legislative session. Legislators spent many hours debating the best way to get at the perceived high cost of prescription drugs. Drug manufacturers, often referred to at the Legislature as "Big Pharma" was a frequent target. The other industry the Legislature focused on were Pharmacy Benefits Managers (PBMs).

The Minnesota Pharmacy Benefit Manager Licensure and Regulation Act passed the Legislature during the regular session. The new law requires PBMs to be licensed by the Department of Commerce (DOC). Prior to passage of the new law, PBMs were registered with the state as Third-Party Administrators and had little state oversight.

The new law provides the DOC with regulatory authority to administer a registration and reporting process for PBMs operating in the state. Many aspects of the new authority will be provided for in Minnesota Rules to be promulgated by the DOC.

Education

E-12

The Legislature passed a $20.1 billion E-12 Education Finance Omnibus bill that includes $543 million in new spending. $388.8 million of the new spending goes toward a 2% increase in the general education per pupil formula each year of the FY 2020-2021 biennium. Other appropriations include $46.79 million to extend the 4,000 voluntary pre-kindergarten slots for two more years, and $90.7 million in special education cross-subsidy aid.

Both the House and Senate pushed for increased funding for early education, but the bodies differed greatly in their early education priorities. The House aimed to increase funding for voluntary pre-K programming and the Senate focused their efforts on the expansion of early childhood scholarships. House proposals that weren't included in the final compromise were adopting a new comprehensive sexual health education model, requiring districts to adopt non-exclusionary disciplinary policies and practices, and teacher licensure system changes.

Higher Education

The Omnibus Higher Education Finance and Policy bill was the only budget bill passed during the regular session. The bill spends $3.41 billion for the upcoming biennium and was a compromise between the original appropriations proposed by the House, Senate and Governor. Of the $3.41 billion, the Minnesota State Colleges and Universities system will receive approximately $1.45 billion and the University of Minnesota system will receive around $1.35 billion. The bill splits $150 million in new funding three ways between the University of Minnesota, Minnesota State Colleges and Universities and the Office of Higher Education. The state grant program, aiming to help low and moderate-income students, received $18 million in new funding.

Other Issues

Beyond the budget the Legislature and Governor discussed and were able to reach consensus on a number of proposals this session. These proposals include:

Minnesota Licensing and Registration System (MNLARS)

While much of this session's transportation debate centered on the gas tax increase, the Minnesota Licensing and Registration System, (MNLARS) was in the spotlight as well after its failed launch in the fall of 2017. The Governor's Blue-Ribbon Council on the issue recommended scrapping MNLARS and transitioning to a packaged software solution from a private vendor. While the Council considered three different software packages, they did not select one. The Senate, House and Governor embraced the Council's recommendation and agreed to appropriate $55.67 million to the replacement of MNLARS in the Omnibus Transportation Finance bill. Also part of this agreement was a $13 million appropriation to provide financial relief to deputy registrars facing revenue losses as a result of the failed MNLARS system.

Distracted Driving Legislation

After a number of years of debate, the Legislature was able to find common ground around the issue of distracted driving, implementing new restrictions on cell phone use while driving. Prior to the passage of this legislation only texting while driving was a punishable offense, allowing Minnesota drivers to use social media, gaming apps, and video chats while behind the wheel. The Minnesota Department of Public Safety estimates that about 20% of all crashes in the state are caused by distracted driving. Under this change all handheld device usage is prohibited, such as making cell phone calls, accessing apps on a device and streaming audio and video content. Hands free usage of wireless devises is still permitted. Minnesota is the 18th state in the nation to enact hands free legislation.

These prohibitions become effective August 1, 2019.

Flame Retardants/Chemical Regulation

A number of bills regulating chemicals made their way through the legislative process this session.

There was bipartisan support in both the House and Senate to ban the chemical trichloroethylene, TCE, when state regulators discovered a manufacturer in White Bear Lake Township was polluting the air illegally with the potentially harmful industrial solvent. However, even though both bodies passed a prohibition of TCE, the ban did not become law because it was not a part of the final agreement between the Governor and legislative leaders. The House and Senate conference committee instead allocated $786,000 toward researching the impact and use of TCE.

The House passed legislation banning the use of a number of classes of flame-retardant chemicals in mattresses, fabric and children's products. This legislation aimed to help protect firefighters from health risks associated with these chemicals when they burn. While the Senate did not pass a stand-alone bill, a compromise was negotiated in the final weeks of session banning the organohalogenated class of flame retardants subject to certain exemptions and exceptions. The bill was signed into law by Governor Walz on May 22, 2019. A copy of the bill can be found here.

The House passed a provision granting the Department of Agriculture authority to delegate duties relating to the use, storage, and disposal of pesticides to the four cities of the first class: Minneapolis, St. Paul, Rochester, and Duluth. The Department is unsure if they have this authority to delegate pesticide regulations to cities. The provision was included in the House Omnibus Agriculture Policy bill but did survive conference committee. The Department will meet with city stakeholders this summer to better understand their concerns about pesticide use.

Sexual Harassment Legal Standard

For the second year in a row, the Legislature wrestled with whether or not to change the long-standing definition of discriminatory sexual harassment in Minnesota. Arguing that the severe and pervasive standard is too high a bar resulting in many instances of sexual harassment being summarily dismissed the House bill amended Minnesota's Human Rights Act to clarify that the harassing conduct or communication does not need to be severe or pervasive in order to be discriminatory. It also specifies that the conduct or communication must be subjectively harassing to the individual and objectively harassing to a reasonable person in a similar situation. The Minnesota Department of Human Rights supported this change. A summary of the House bill can be found here.

The Senate introduced a separate bill that sought to reject problematic federal case law, by clarifying that the "severe or pervasive" standard may be met with one significant instance of harassing conduct or communication or a series of harassing conduct. It reaffirmed that legally actionable sexual harassment in Minnesota must be both objectively and subjectively harassing. It also provided protections to employers where they exercise reasonable care to prevent or promptly correct sexual harassment or where the employee unreasonably fails to take advantage of preventative or corrective opportunities provided by the employer. A summary of the Senate bill can be found here.

The House included its version of the sexual harassment language in their Omnibus Public Safety Finance bill but was not agreed to by the Senate.

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