

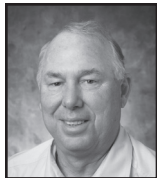
# Larkin Hoffman's Government Relations Department



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Karin received a U.S. Fulbright Scholarship to study in Norway and obtained her master's degree in international business from the Norwegian School of Economics and Business Administration in Bergen, Norway. Karin received her B.A., *cum laude*, from St. Olaf College where she majored in political science. ■



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## EDITOR'S CORNER ■ Continued from Cover

The Legislature also took important, though modest, steps on health care reform and climate change legislation. We expect these topics to be at center-stage in future legislative sessions.

As we have for 40 years, our Government Relations team covered the 2008 session gavel to gavel. This edition of

*CapitolWatch* summarizes notable issues from the session. We invite your questions and comments. If you wish to receive future issues of *CapitolWatch* via email, please forward your address to [info@larkinhoffman.com](mailto:info@larkinhoffman.com).

Enjoy this issue of *CapitolWatch*!



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# Larkin Hoffman ATTORNEYS CAPITOLWATCH

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END OF SESSION • 2008

## Are We Ready for Groundbreaking Energy Policy?

Karin Holt

**What do you get when you mix an environmentally-friendly Legislature with a "green" Governor? The DFL-controlled Legislature and Governor Pawlenty set themselves up for some heavy lifting when they adopted the Next Generation Act in May 2007, which calls for new standards to reduce state-wide carbon emissions, increased renewable energy use, and encourages more energy conservation to reduce the damaging effects of climate change. Adoption of the Act has not gone unnoticed. The National Conference of State Legislators ranks Minnesota as the second-most ambitious energy policy state next to California. One of the challenges that comes with being an environmental trendsetter, however, is avoiding overly restrictive standards that compromise competitiveness.**

The Next Generation Act established the Minnesota Climate Change Advisory Group (MCCAG), composed of legislators, industry leaders, interested citizens, and scientific experts. The MCCAG was charged with developing a plan by February 2008 to reduce greenhouse gas emissions by 15 percent by 2015; 30 percent by 2025; and 80 percent by 2050. Throughout the past year, the Climate Change Advisory Group and its multiple subcommittees, referred to as Technical Working Groups (TWG), met on a regular basis to flesh out these recommendations. After much debate, MCCAG was unable to reach consensus. Rather than adopting new standards, they settled on making recommendations for Governor Pawlenty to bring to the Midwest Governor's Association, as this organization develops new energy policy for the Midwest region.

Governor Pawlenty also signed the Next Generation Energy Initiative, which encourages energy utility companies to provide 25 percent renewable electricity by 2025 and dedicates \$35 million to bioenergy and biofuels research.

One of the hot topics at several of the MCCAG meetings was whether the state should adopt a "cap and trade" system for carbon emissions, whereby a "cap" is arbitrarily set for all emissions across the state. Companies would be forced to either abide by their emission allowance or trade emission allowances with smaller polluters to become compliant. There has been much debate as to whether these emission allowances should be allotted by the government or bought and sold in the free market. Another question is whether the cap and trade system should be imposed state-wide or whether we should wait for a similar system to be imposed regionally or even nationally.

Representative Kate Knuth and Senator Ellen Anderson introduced the Green Solutions Act of 2008 to provide guidelines for the cap and trade system. There was disagreement among the MCCAG members about the mechanics of the system, so the bill was turned into a governance study which directs the University of Minnesota to analyze the benefits and drawbacks of the cap and trade system and report back to the MCCAG by January 1, 2009. Governor Pawlenty signed the study bill into law on May 19, 2008.

The Omnibus Energy Bill (S.F. 3337) also imposes requirements upon manufacturers to report all purchases of 500 metric tons or

## EDITOR'S CORNER

Peter Coyle

As we enter the balmy months of summer, it's easy to forget that a mere four months ago, the Minnesota Legislature began its 2008 session in the dead of winter, full of hope and optimism. Then reality set in. One reality was a projected budget deficit approaching \$1 billion. Another reality is the continued chatter about whether Governor Tim Pawlenty will be tabbed as the running mate for GOP presidential candidate, John McCain. A third reality is that the entire House of Representatives is up for re-election in November. These factors combined to place a brake on the session, especially on tax and spend items, in spite of the stated intentions of the elected participants.

Regardless of the background factors, the 2008 Legislature accomplished some important work. Notably, the Legislature enacted the first increase in the state's gas tax in 20 years, over the veto of Governor Pawlenty; this tax increase, together with a patch-work of other tax changes, sowed the seeds for funding a multi-billion dollar commitment to roads, bridges and transit. Following on the heels of the transportation funding legislation, the Legislature and Governor Pawlenty agreed to "must have" funding for the next phase of light rail--a connection between Minneapolis and St. Paul, via the University of Minnesota campus.

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# Transportation Funding ... And More

Peter Coyle

**Put down 2008 as the year in which the Minnesota Legislature was finally able to enact a comprehensive package of tax increases designed to pump more than \$2 billion into transportation and transit improvements across the state over the next decade. The path to final adoption was neither easy nor pretty; it involved multiple gubernatorial vetoes over several years, culminating in a legislative override. The result is a broad funding package, creating new state and local resources, that enjoyed the support of a coalition of government agencies, transportation contractors and businesses, including notably the Minnesota Chamber of Commerce.**

Efforts to override the Governor's veto in 2007 stalled for a lack of Republican support; House DFL leadership courted six (6) Republican legislators over the ensuing months to ensure the required number of votes for the override. In spite of opposition from House Republican leaders and Governor Pawlenty, the 6 Republicans, along with their Democratic counterparts, prevailed on the override effort.

The first attempt to enact a comprehensive funding package began several years ago, when Republicans were in the majority in the House of Representatives; this early version, like every other version passed in recent years (including the 2008 product) was vetoed by Governor Pawlenty because of increased taxes, notably the proposed increase in the gas tax. The gas tax had not been increased for more than 20 years. Notwithstanding the Governor's opposition, the House and Senate were able to override the 2008 veto, allowing the legislation to take effect immediately.

**The approved transportation funding package includes the following:**

- Appropriates \$284 million to state agencies for transportation improvements;
- Authorizes \$1.8 billion in bonding for state highway projects, along with an additional \$60 million for local roads and bridges;
- Phases in a five cent gas tax increase, two cents effective April 1, 2008 and three cents by October 1, 2008;
- Authorizes metro-area wheelage taxes to fund local and regional transportation projects (several counties have already approved their wheelage tax, while several have already declined).

*"...the Legislature also enacted a victims' compensation fund for families and survivors of the I-35W bridge collapse."*

The political ramifications, if any, resulting from the veto override are mixed; House Republican leadership removed the override supporters from any leadership positions they held, largely ceremonial positions; at least one Republican legislator who supported the override has decided not to run for re-election rather than deal with opposition from within her party; several other Republican legislators have been denied endorsement because of the unrest caused by the veto override.

**In addition to adopting the funding package, the Legislature adopted a number of transportation policy initiatives in the closing days of the 2008 session. These include:**

- Prohibiting text messaging with a wireless device while operating a motor vehicle (certain built-in devices, such as mapping systems, are exempted);
- Limiting the number of non-family passengers in the car with new drivers (no more than 1 non-family member under the age of 20 within first 6 months; no more than 3 non-family members under the age of 20 for second 6 months; for first 6 months, no vehicle operation between midnight and 5am (unless work related));
- Modifies the requirement to operate a motor vehicle at least one lane away from emergency or public safety vehicles parked alongside the road to include maintenance; amended language now includes maintenance or service vehicles and crews.

Aside from transportation funding and policy legislation, the Legislature also enacted a victims' compensation fund for families and survivors of the I-35W bridge collapse. The fund was established with an appropriation of approximately \$40 million; individual claims are capped at \$400,000, unless special circumstances are present justifying a supplemental award. Recipients from the fund are required to waive any claims they may have against the State of Minnesota (the waiver does not extend to third parties). Claims will be evaluated and approved by a three-member panel appointed by the Minnesota Supreme Court. ■

# Health Care Update

Marnie Moore-Lindman

**The 2008 legislative session ended with the successful passage of a "health care reform bill." After an initial veto by Governor Pawlenty, a budget deal was struck that included a compromise over use of dollars from the Health Care Access Fund. Created in 1992 and funded in part by provider taxes on hospitals, surgical centers and other health care providers, the Health Care Access Fund while established as a "sick tax" primarily to subsidize MinnesotaCare, has evolved in times of financial crisis to a source of untapped state money. Governor Pawlenty initially proposed taking \$250 million from this fund to help balance the budget. Under the agreement reached in the final days of session, the state will be able to utilize the Health Care Access Fund for a one-time \$50 million loan made to the state's General Fund. The loan will be repaid by savings generated from health care reform.**

The health care reform bill is the result of work that began last summer and continued through the fall during lengthy rounds of meetings by the Legislative Commission on Health Care Access and the Health Care Transformation Task Force.

Under this new legislation, community health boards will have access to competitive grants aimed at reducing the use of tobacco and the percentage of Minnesotans who are obese or overweight. Participants in state health care programs with complex or chronic conditions will be encouraged to select a primary care clinic with clinicians who have been certified as health care homes. The concept of a health care home encompasses the belief that patients benefit from a comprehensive care plan that is patient-centered and highly coordinated. Participating clinicians will receive a per-patient monthly payment. Providers will also be eligible for quality incentive payments under a payment system that will be developed by January 1, 2011, to reward high-quality, low-cost providers.

Health insurance purchasing and affordability reform is anticipated through several mechanisms. By July 1, 2009, the Commissioner of Health will establish uniform definitions for "baskets of care" for select conditions including diabetes, coronary artery and heart disease, asthma, and depression. Providers would then have the option of establishing a set price for each basket.

Effective July 1, 2009, all employers with 11 or more current full-time equivalent employees will be required to establish and maintain a Section 125 Plan to allow their employees to purchase individual market or employer-based health coverage with pre-tax dollars. This in no way requires employers to offer or purchase group health coverage for their employees. However, employers who either offer a group coverage health plan, provide self-insurance, or have no employees eligible to participate in a Section 125 Plan will be exempt from this requirement. Further, any employer may opt out of the requirement by simply returning a "check-the-box" form to the Commissioner of Commerce certifying that the employer has received education and information on the advantages of Section 125 Plans. This form will be available on the Minnesota Department of Commerce website by April 1, 2009. Grants will also be made available to eligible small employers to assist them in establishing Section 125 Plans.

Reform will continue through the creation of several work groups including one formed to make recommendations on the design of an essential benefit set providing coverage for a broad range of services and technologies using evidence-based standards. In addition, a Health Care Reform Review Council will be established to review the implementation of the health care reform bill.

Reflecting on this past session, it is fair to say that some progress was made toward true health care reform, with the door now left open for further action in future sessions. ■

# Are We Ready for Groundbreaking Energy Policy?

Continued from Cover

more of greenhouse gases (hydro fluorocarbons, perfluorocarbons, and sulfur hexafluoride) in addition to requiring all manufacturers to report the leakage rate of refrigerant each year for new motor vehicles or mobile air conditioners after January 1, 2009. This bill was signed into law on May 12, 2008.

Another way to make Minnesota more "green" is to monitor automobile emissions. When the Legislature convened last January, Representative Melissa Hortman sponsored H.F. 863 which included language that would have imposed new air quality standards by September 30, 2009. The bill passed through several House committees, but was not taken up for a vote on the House floor, so it did not become law.

During committee discussion on the auto emissions bill, Representative Al Juhnke sponsored an amendment which called for a study to determine how the new standards should be implemented. A portion of the study is dedicated to analyzing why flexible fuel vehicles (FFVs) are not tested on E85 and the lifecycle emission impacts associated with E85 use. The bill language required the study to be submitted to the Legislature by February 1, 2009. As currently drafted, the standards would apply to vehicles with a model year of 2013 or later.

The companion bill, authored by Senator John Marty, was heard by the Environment and Natural Resources Committee (passed without recommendation), Government Operations (passed without recommendation), Transportation (amended and recommended to pass), but ultimately was defeated in the Business, Industry, and Jobs Committee in a 7-10 roll call vote.

In sum, even though the cap and trade bill and the California emissions standards bill ended up as studies rather than imposing new standards, we are likely to hear more about them next year. ■