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ATTORNEYS & ADVISORS

Third Special Session of 2020

On August 7, Governor Walz called legislators back for a third special session beginning Wednesday, August 12. Due to his Peacetime Emergency Declaration, the Governor is required to call the legislature into session every 30 days so that they have an opportunity to vote to end his emergency powers. A resolution to end the peacetime emergency powers passed in the Senate, but the House did not suspend the rules to take up the resolution, leaving the Governor's emergency powers intact for the next 30 days.

The session began the day after the statewide primary election, where 40 separate primary contests took place. This November, all 201 legislative seats are on the ballot, making the actions and outcomes of each session more consequential.

Budget Outlook

Minnesota Management and Budget (MMB) released a budget update on July 31st that predicted a \$4.7 billion deficit for the 2022-2023 biennium. The state has taken a few actions to cut costs, including instituting a state employee hiring freeze and holding a round of layoffs at the Minnesota Zoo and the Department of Corrections. Additional layoffs of state workers are being planned, as well as the closure of two state prisons. The Governor and his cabinet have also taken a 10% pay decrease to demonstrate their acknowledgement of a potentially difficult financial future.

However, last month 47,000 state workers started receiving their planned 2.5% pay increase, which will cost the state an additional \$444.3 million this biennium. The state's reserve account does have \$2 billion in its rainy day fund, but 2020's grim outlook is making legislators hesitant to drain the account in case of future emergencies. Some leaders are also betting that additional federal aid will be sent to Minnesota that will free up funds that can be used to shore up the deficit.

The focus of 2021's regular legislative session will be to pass a biennial budget, which will include finding the cuts necessary to address any shortfalls, as is mandated by the state constitution.

Blackout Period: No Bonding Bill

The legislature had jointly agreed not to pursue a bonding bill during the month of August and to institute a short blackout period on passing any budget-related bills. The state's bond sale took place on August 11th, where a total of \$1.2 billion in general obligation bonds was sold. Minnesota also refinanced \$704 million in existing bonds, which resulted in a savings of \$105 million. During the weeks

leading up to and immediately after the sale, the state's financial situation is not able to change, so no budget or bonding bills can be passed.

Due to the blackout period, the legislature was unable to pass a bonding bill during this special session, and plans on continuing their bonding negotiations during a September special session.

Legislation that Passed

SF 1 (Abeler/Cantrell) Funding for disability providers

During the last two special sessions and the regular session, the House and Senate have attempted to find a compromise on a funding package for home and community-based providers who serve people with disabilities. The House, Senate and Governor were able to come to an agreement for this session to bring aid to these much-needed workers.

The bill provides \$30 million in grants to providers that have been affected by closures and interruptions due to the Coronavirus. The grant amounts are equal to roughly a month's worth of lost revenue for most providers. \$20 million will be available for facilities to pay operating expenses and pay their staff, and \$10 million will be dedicated to helping these businesses reopen with new infection prevention requirements in place.

The bill passed the Senate unanimously and passed in the House with only one vote in opposition: Rep. Jack Considine. He stated that he voted against the bill because it did not provide any additional aide to personal care assistants.

HF 2 (Mariani/Limmer) Technical Changes to Police Excellence Advisory Council and POST Board

This bill contained technical corrections to the police reform package that passed during the July special session. Sen. Limmer stated that the reason HF 2 was necessary was that the police reform package, though passed in July, was drafted in May, so most of the effective dates and starting schedules for the advisory council were already past due.

In the Senate, an amendment was offered by Sen. Eichorn with the intent to keep the Commissioner of the Department of Corrections from closing or moving an adult male Challenge Incarceration Program from the Togo Correctional Facility. The amendment was only offered to highlight the importance and effectiveness of their program and the consequences if the Commissioner chose to cut the program due to the looming budget crisis. Sen. Eichorn withdrew the amendment after conversation ended, and HF 2 is now on its way to the Governor.

Legislation that Did Not Pass

SF 14 (Chamberlain) Veteran Offenders Restorative Justice Guidance to Courts

The only other bill that was debated during the third special session was heard in the Senate. It would have created uniform standards for addressing low-level crimes committed by veterans that are dealing



with a service-related mental health condition. This bill has been brought up in a previous special session, but an incomplete study of the bill's fiscal impact kept the Senate Republican majority from voting on the bill until now. SF 14 was passed in the Senate, but was not taken up in the House of Representatives.

Non-Confirmation of DOLI Commissioner

The most controversial and surprising moment of the third special session took place in the Senate, when Majority Leader Paul Gazelka unexpectedly moved to deny confirmation of the appointment of Nancy Leppink, the Commissioner of the Department of Labor and Industry. As part of the system of checks and balances, the Senate is able to confirm or deny confirmation to Governor-appointed commissioners, which gives them the ability to remove a Commissioner from office. Sen. Gazelka's did not alert the Minority or the Governor of his intentions until the moment he made the motion, sending a text message to a few key leaders telling them what was about to happen.

Sen. Gazelka and other members of the majority ran through a list of complaints against the Commissioner, citing harassment of constituents, an inability to respond to legislative concerns, unusual interpretations of well-known waivers and statutes, and choosing to inhibit businesses instead of working with them. Democrats, stunned by the comments, responded by naming the many recommendations for confirmation the Commissioner has received from labor and business groups, along with praising her intelligence, incredible qualifications, and ability to successfully enact several large-scale policy changes.

The Senate Democrats accused the Republicans of removing the Commissioner simply because they didn't like her, and characterized the motion as an immature reaction to being unhappy with the Governor's continued emergency powers. The motion passed the Senate by a narrow vote of 34-32, with Republican Senator Abeler being the only member that did not vote. Commissioner Leppink was removed from her office.

On average, a commissioner is denied confirmation by the Minnesota Senate about every six years, and the last time that this took place was a decade ago.

Commissioner Frans Moves On

Another Commissioner – Myron Frans of the Office of Minnesota Management and Budget - also made the news during special session by announcing that he has decided to take a job as the Senior Vice President of Finance and Operations at the University of Minnesota. Gov. Walz has appointed Deputy Commissioner Jim Schowalter as his successor, who has previously worked in the Dayton and Pawlenty administrations. The timeline for Frans' transition and departure is still being decided.

End of Session

The House of Representatives were only in session for about 4 hours, and the Senate debated for five. The 3rd special session was the shortest session this year so far, mainly due to the financial blackout period that kept the legislature from debating any budget or bonding bills. The Governor will need to



call the legislature back into session in another 30 days to extend his emergency powers, and both the House and Senate have discussed reopening bonding bill negotiations during that time.

