

JAMES H. DOUGLAS  
Governor



State of Vermont  
OFFICE OF THE GOVERNOR

June 1, 2009

The Honorable Donald G. Milne  
Clerk of the House of Representatives  
State House  
Montpelier, VT 05633

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H.441, *An Act Making Appropriations for the Support of Government*, without my signature because of my objections described herein.

The task of building a balanced, responsible and sustainable budget that addresses the needs of Vermonters and their ability to afford their government is the most important duty of the General Assembly. Today, we find ourselves in the midst of a global recession making this task more difficult than in previous years. The path we choose will have a dramatic effect on future years. We cannot and must not sacrifice fiscal prudence and long-term sustainability to patch together a budget that leaves Vermont and Vermonters exposed to the perils of this recession.

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In a few short months my Administration will begin work on the fiscal 2011 budget and by this time next year, legislators will have again cast their votes on a spending plan. According to the Legislature's Joint Fiscal Office (JFO), H.441 will leave a \$67 million General Fund deficit that must be addressed at that time. Further, JFO estimates an even greater \$141 million deficit for fiscal 2012 – when federal stimulus dollars will no longer be available to help fill the hole. Together, the fiscal 2011 and fiscal 2012 deficits account for a staggering \$208 million shortfall if H.441 becomes law.

As early as January, when the American Recovery and Reinvestment Act (ARRA) was being debated in Washington, I warned of the risks of an over-reliance on federal recovery money. While these funds are intended to preserve services and avoid state and local tax increases, we cannot allow them to be an excuse to pass business-as-usual spending plans. Indeed, we are in unusual economic times.

I warned lawmakers that using federal money to pass a budget that keeps spending on an upward trajectory would lead to huge challenges when ARRA funds run out. Unfortunately, H.441 does just that. Under this budget, spending increases by over 3% – well above the current rate of inflation – using one-time federal stimulus money. Spending in human services grows by nearly \$150 million, or 5.6% – though we already have the most generous social safety net in the nation, according to a recent *New York Times* study.

I cannot support a budget that increases spending and, thereby, leaves such large shortfalls in future years, which Vermonters know will have to be filled by deeper cuts, higher taxes or a combination of both. And I cannot support a budget that shifts our challenges to tomorrow, when the consequences of our decisions will be even greater.

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In addition to large deficits, the tax increases contained in H.441 compound the already significant struggles facing the people of our state. Vermonters are among the most heavily taxed people in the nation and it has often been observed that we have little capacity for higher taxes. Vermont native David Hale, a highly respected global economist, said in a recent news report that Vermont should, "... avoid tax increases that would undermine [the State's] ability to compete for jobs, compete for investment, compete for business." Yet, this budget asks Vermonters to contribute over \$26 million in higher taxes – \$9.3 million in higher income taxes on senior citizens, small business owners, farmers and loggers – from a combination of changes in how we tax capital gains, the elimination of the state and local tax deduction and other measures.

I support a change in our capital gains exemption to treat earned and unearned income the same for tax purposes. However, I have been clear that any proposal must be revenue neutral and used to lower our very high marginal income tax rates – not to support increased government spending. The Legislature's plan fails to meet this test as it does not use every dollar from changes to the capital gains exemption to lower income tax rates. Further, it does not exclude seniors who depend on capital gains in their retirement or farmers and loggers who take capital gains as a course of business. And it makes these changes retroactively, with no advance notice or warning, changing our tax structure after Vermonters have already made decisions about their money.

What is so concerning about these tax proposals is that many of the changes did not receive a public hearing and will result in consequences that many lawmakers, and most Vermonters, do not fully understand. Changes to the capital gains exemption and the elimination of the state and local tax deduction will hit small businesses and farms particularly hard. In fact, more than 2,000 businesses will see an average income tax increase of more than \$3,000. At a time when small businesses are struggling to make ends meet, these taxes will be devastating for them and their employees.

Changes to the estate tax are also worrisome. This tax increase will have a dramatic impact on Vermont agriculture. Farmers seeking to pass their farms to their loved ones may be forced to sell a large portion of the farm to pay the higher death tax.

The tax increases in H.441 are counter to Vermont's successful emergence from this recession. These increased taxes hurt those we depend on for a robust economic recovery – farmers, small businesses and working Vermonters. I will not support increased taxes on our people so that state government can grow at an unsustainable rate.

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As Vermont seeks to emerge from this recession it is critical that we make serious investments in economic development. Unfortunately, the Legislature failed to act on important initiatives and investments that are needed to create jobs and ensure a quick and strong recovery. In this economic crisis, there is no greater social welfare program than a good-paying job to give a struggling family hope and economic independence.

Through ARRA, \$17.1 million was made available to Vermont for flexible uses from the State Fiscal Stabilization Fund (SFSF). Earlier this year, I proposed spending these funds, over a two-year period, exclusively on economic development initiatives as part of a program called *SmartVermont*. I outlined a plan to spend the maximum amount available for fiscal 2010, \$11 million, and the remaining \$6 million in fiscal 2011. The SFSF dollars can leverage over \$150 million in economic activity and job creation. H.441 dedicates only \$4.1 million for job creation and, instead, uses \$4.4 million of this one-time money to fund ongoing expenditures of state government – building up base spending that will exacerbate our challenges in the coming years.

As we strive to bolster our economy and compete for jobs in the 21<sup>st</sup> century, we need a highly educated and trained workforce. In recent years we have made substantial investments to meet this objective. H.441, however, takes us backward in our efforts to provide workforce training and higher education opportunities to the people of our state. This budget reduces workforce training funds, jeopardizing up to \$7.2 million in federal stimulus funds, and zeroes out Next Generation scholarships for over 600 Vermont students – tomorrow's nurses, engineers, police officers and inventors. Approximately \$500,000 was cut from the Agency of Commerce and Community Development's Vermont Training Program, which will eliminate training opportunities for over 2,200 Vermonters and deny the state an important economic development tool.

H.441 also reduces funding for the Vermont Telecommunications Authority (VTA) by \$500,000 – effectively shutting down the VTA by September. I will not support a budget that leaves this important economic development work unfinished. To provide economic opportunities for Vermonters in every corner of our state, we must continue to work toward the goal of universal broadband and cell phone coverage by the end of next year.

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This budget fails to address the significant deficits we face in our Unemployment Insurance (UI) Trust Fund. There is broad consensus that the need to address the downward trajectory of the fund is urgent. While employers are understandably concerned about increased unemployment insurance taxes, especially in these difficult economic times, they recognize that a balanced approach that also makes reasonable adjustments to benefits is in the best long-term interest of all Vermonters. Failure to take action leaves a \$160 million deficit in the fund by the end of next year. Vermont will be forced to borrow more money from the federal government that will have to be paid back with interest from the General Fund – placing another burden on the backs of Vermonters and Vermont businesses.

Any plan to address UI must be balanced and comprehensive. It is not enough to raise taxes on businesses and not make a reduction in our incredibly generous benefits structure. While some have suggested that freezing the maximum weekly benefit is a good start, that will not be enough. We must ask benefit recipients to take a modest \$16 reduction in their maximum weekly benefit from \$425 to \$409, helping us begin to bend the curve and shore up this fund.

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H.441 contains language that threatens the separation of powers among the branches of government and unduly burdens the Executive Branch as it carries out its constitutional responsibilities.

One of the most troubling language additions interferes with the relationship between the Administration and the Vermont State Employees Association (VSEA). Legislative micro-management impairs the State's ability to carry out the necessary work that Vermonters demand and deserve of their government.

H.441 prevents the Administration from implementing reductions in force without the approval of a legislative committee of 10, should negotiations be unsuccessful. It is the obligation of the Executive branch and its department heads to use their expertise and familiarity with their departments to manage the workforce and to make reductions in the least disruptive manner possible. The budget language impedes this responsibility to carry out the Executive's constitutionally-assigned function.

H.441 also requires the Administration to conduct an incredible 40 new studies and reports, more than double the 17 required last year. Each of these reports and studies requires hardworking state employees to take time away from the programs they administer and the people they serve. Additionally, there are 4 legislatively-led studies that will require a minimum of 15 legislators to continue their work into the summer. Not only do these reports and studies take staff away from more pressing work, but they will cost Vermonters tens of thousands of dollars.

In an effort to increase legislative control over the Vermont Housing and Conservation Board, language unrelated to the budget has been added that will change the composition of the

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board and eliminate economic development involvement. Such a policy change should be vetted through the normal committee process so that all legislators can understand the implications of this action.

Further, within these very sections is a provision that ostensibly became effective "upon passage by the house and senate." This is either a blatant disregard for, or a fundamental misunderstanding of, the Vermont Constitution that requires, "[e]very bill which shall have passed the Senate and House of Representatives shall, before it becomes a law, be presented to the Governor...."

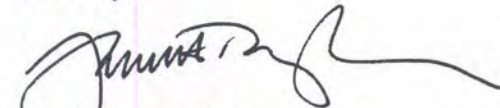
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H.441 is a budget that fails the most basic test: it is not in the best interests of Vermonters. It needlessly increases taxes, it does not adequately address our economic development needs, and, perhaps most importantly, creates a more than \$200 million deficit in future years. For those reasons and others, I cannot allow H.441 to become law with or without my signature.

If this veto is overridden, legislative leaders shall carry the responsibility of this bill's effects squarely on their shoulders. Because my Administration must begin work on the fiscal 2011 budget shortly and because we still must address a more than \$200 million deficit in the next two years, I will request from the Speaker of the House and the Senate President Pro Tempore their plan to address these shortfalls.

If this veto is sustained, I will continue to listen to the ideas and concerns of lawmakers so that we can find common ground to craft a compromise budget in the coming days that meets the very real needs of Vermonters.

Sincerely,



James H. Douglas  
Governor

JHD/dc

## **Governor's Veto Overridden**

### **H. 441, 2009**

The Governor's Veto was overridden in the House:

**Yeas: 100 Nays: 50**

The Governor's Veto was overridden in the Senate:

**Yeas: 23 Nays: 5**

\*Note: The veto is overridden by two-thirds majority in both the House and Senate.

Sources:

2009 Special Session –

*Journal of the House*, June 2, 2009 [page 5 - 15 (online)];

*Journal of the Senate*, June 2, 2009 [ page 45 – 46 (online)].