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The Honorable William Botzow II
Chairman, Vermont House Committee on Economic Development
(bbotzow@leg.state.vt.us)

Dear Chairman Botzow:

I am general counsel for the Association of Equipment Manufacturers (AEM). AEM representative Nick Yaksich offered testimony in person to your Committee at its hearing concerning S 224, held on Wednesday, April 6, 2016. S 224 would enact numerous substantive changes to the Vermont Machinery Dealerships statute, Title 9a, V.S.A., Chapter 107.

As presently drafted, the provisions in S 224 would apply - retroactively - to *existing* dealership agreements that have been signed by suppliers and their Vermont dealers. (See S 224, Section 3, Applicability to Existing Dealer Agreements). Several Committee members inquired about the fact that these statutory changes would apply to existing dealership agreements. Proponents of this bill, (including the Northeast Equipment Dealers Association and several of its members) strongly support retroactive effect on existing agreements. Opponents (including AEM and its members) have opposed retroactive application, reasoning:

1. Existing dealer agreements should not be revised, retroactively, by the Legislature in an attempt to “level the playing field” between the parties, long after the ink is dry.
2. Doing so raises a serious question as to the act’s constitutionality under the U. S. Constitution’s Contracts Clause, Art. I, Sec. 10, Clause 1.

The legal reasoning for the Constitutional issue above is forcefully stated in the attached petition filed in the U.S. Supreme Court on March 28, 2016. (*Deere & Company, et al. v State of New Hampshire*, No. 15-1213). This case involves a challenge to state legislation that in effect retroactively renegotiated private contracts among equipment manufacturers and their dealers, in order to “level the playing field” between the parties to those contracts and protect dealers.

The brief provides additional information for Committee consideration on the constitutional question implicated by the proposed retroactive application of S 224 to existing dealer agreements.

Respectfully submitted,

George W. Keeley

Attachment

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