

April 19, 2018

The Legislature has adjourned, but has not quite finished its work for the session

It has been a busy few days at the Statehouse, and if you have been following the proceedings, you know that the legislature has adjourned – but not quite finished its work for the session. While it may appear certain issues of importance to the business community are dead, please be assured that is not the case! There is time and interest from all parties in finalizing many of these critical public policy debates, and our expectation is that most, if not all, will find adequate closure before final adjournment.

That said, the Advocacy team here at the Maine State Chamber wanted to give you an update and our best assessment as to where we stand today, and where we may be headed in the days to come.

The final days of the Legislative session always have the possibility of ending in – well, disagreement – and this year appears to be one of those sessions.

More often than not, the Maine Legislature votes in favor of any legislative extension, thereby extending the leg-

islative session for the necessary number of days (the statute says five is the maximum) beyond statutory adjournment that is required for legislators to complete their business. Statutory adjournment for the 2018 legislative session was midnight on Wednesday, April 18.

This year, the order for extension was for the full five days, but its approval required a two-thirds vote in both the Senate and the House of Representatives. The Senate voted unanimously in favor of the extension, while the House divided mostly along on party lines, with most House Republicans rejecting the extension order. House Republicans based their refusal to extend on a number of issues, including their unhappiness with the logistical management of the overall session and its workflow, and because of some of the inability of the body to agree on the more controversial bills remaining to be debated and voted on, including tax conformity, Medicaid expansion, and

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Legislature approves marijuana bill

Despite broad support, a promised veto looms

By a two-thirds' margin in both the Maine House and Senate, lawmakers have approved legislation that would provide a regulatory framework for the sale of recreational marijuana in Maine. All this after nearly a year and a half since the ballot question was approved at the ballot box in 2016.

LD 1719, *An Act to Implement a Regulatory Structure for Adult Use Marijuana*, represents months of work, discussion, and debate on how best to implement legalized recreational marijuana in Maine. Sponsored by Rep. Teresa Pierce (D-Falmouth), the bill is the Legislature's attempt to create a workable framework for the licensing, sale, taxation, distribution, enforcement, and use of recreational marijuana in the face of the poorly-drafted Marijuana Legalization Act (MLA), which was narrowly approved by referendum in 2016.

It is important to note that this is the second time the Legislature has attempted to address the issue through its work. In 2016, the committee's first try resulted in

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PUBLICATION SCHEDULE CHANGE: *The Maine Legislature is working toward adjournment, dealing with its remaining significant pieces of legislation. At this time, our Advocacy team is following key legislation as it continues through the legislative process. After final legislative adjournment, our team will produce and distribute our Final Legislative Summary edition of Impact, tentatively scheduled for late May or early June. This edition marks the return of our monthly Impact publication schedule; our weekly publication schedule will resume when the legislature convenes in January 2019. If you have any questions prior to the next publication, feel free to contact our Advocacy team: <http://www.mainechamber.org/advocacyteam.php>. □*

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About the Maine State Chamber of Commerce: Since 1889, the Maine State Chamber has been fighting to lower your cost of doing business. Through our Grassroots Action Network and OneVoice program, we work with a network of approximately 5,000 companies statewide who see the value in such a service and provide the financial support that keeps our access, advocacy, and assistance efforts going strong. As Maine's Chamber, we make sure that the business environment of the state continues to thrive. The Maine State Chamber of Commerce advocates on behalf of their interests before the legislature and regulatory agencies and through conferences, seminars, and affiliated programs.

Adjournment Looming...

(Continued from Page 1...)

according to numerous parties on the third floor, the *slowing down* of the minimum wage increase.

In an unusual move, just past midnight the House and Senate passed an order that would table the dozens of remaining bills and *carry them over into a special session*. A special session can be called by consensus between all members of the House and Senate or by the Governor. It is important to point out that, at this point, other than through rumor, there is no planned special session date set for later this year.

Finally, the Presiding Officers will also reconvene the full legislature for "Veto Day," taking up any bills that the Governor has vetoed. The expected date to take up vetoes, and any other business the legislature can fit into its schedule that day, is sometime 10 days from today.

The Legislature still has a significant amount of work left to complete, and as we said at the beginning of this update, all is not lost. It will take compromise from both Republicans and Democrats in both legislative chambers. We remain hopeful that our legislative leaders will continue to meet and negotiate outcomes relating to tax conformity, Medicaid expansion, and the other remaining bills, before returning to Augusta for Veto Day and any Special Session.

Below are some other remaining outstanding public policy debates left for discussion:

- ♦ Tax conformity;
- ♦ The bond package;
- ♦ An extension of the Pine Tree Development Zone program that provides tax incentives to businesses in exchange for the promise of new jobs;

- ♦ A Governor's bill to help shield elderly homeowners from tax-related foreclosures;
- ♦ An emergency measure to ensure state police can transport ballots to Augusta for a ranked-choice voting tabulation during the June primaries;
- ♦ Legislation that would allow judges to order individuals deemed a risk to themselves or others to temporarily relinquish their guns;
- ♦ \$3.8 million to pay the administrative costs of Medicaid expansion; and,
- ♦ More than 100 bills approved by both chambers, but requiring funding authorization from the budget committee, as well as more than \$700 million in requests for bonds.

You should know that the Maine State Chamber's Advocacy team was at the Statehouse late last evening and will continue to remain in close contact with legislative leaders as we continue our work with both Democrats, Republicans and the Governor's office to ensure our position on issues important to our members remain relevant as compromises are reached.

If members have questions, they should contact the Maine State Chamber's Advocacy team for updates by emailing them at:

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- ♦ Ben Gilman:
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The debate continues on proficiency-based diplomas

On Friday, April 13, the Joint Standing Committee on Education and Cultural Affairs went back and forth until after 7:00 p.m. on proficiency-based diploma systems and the three bills relating to the proficiency-based system that remain in its possession.

The committee did eventually vote unanimously against **LD 1898**, *An Act To Amend Maine's High School Diploma Standards and Ensure Maine Students Meet State Standards upon Graduation*. This bill was submitted and written by the Department of Education and would have replaced the current proficiency-based diploma law, after making a number of substantial changes.

The remaining two bills, **LD 1666**, *An Act To Ensure the Successful Implementation of Proficiency-based Diplomas by Extending the Timeline for Phasing in Their Implementation*, and **LD 1900**, *An Act To Repeal Proficiency-based Diplomas*, were voted out of the committee with divided reports. The minority report on both LD 1666 and LD 1900 are the exactly the same and amend both original bills. The minority report would delay the timeline for the implementation of proficiency-based diplomas for one year. The amendment also makes several changes to the implementation of the proficiency-based system, including refining the provisions regarding the exceptions for students with disabilities to be awarded a proficiency-based diploma, and strengthening the provisions for career and technical education students to meet the proficiency-based diploma requirements within the context of the career and technical education curriculum. The amendment also requires that the Department of Education to provide technical assistance to school administrative units in implementing proficiency-based systems.

The majority report on LD 1666 is an amendment that replaces the bill to provide that the statutes related to the proficiency-based diploma standard and transcript provisions in the Maine Revised 12 Statutes, Title 20-A, section 4722-A, *may* be implemented by schools, thereby allowing schools to choose to implement the proficiency-based system. The majority report on LD 1900 is "ought-not-to-pass" on the full repeal of the proficiency-based system.

Statutory adjournment has come and gone. LD 1900, the bill that would repeal the current proficiency-based system in schools, was voted unanimously in the House "ought-not-to-pass." The fate of LD 1666 remains unknown. The Maine State Chamber remains opposed to allowing schools to choose not to implement the proficiency-based system. The Maine State Chamber believes that the same standards should apply to all Maine students, no matter where they live, no matter who their teacher is, and no matter how much money is spent on their education. If proficiency-based diplomas become optional, equity would be eliminated.

For additional information or questions, please contact Megan Sanborn by calling (207) 623-4568, ext. 108, or by emailing msanborn@mainechamber.org. □

Tax conformity and extension of the Pine Tree Development Zone program still on table as Legislature adjourns

Both issues very important to business community

When the legislature adjourned late last night, two issues remain unfinished. The tax conformity bill and the Pine Tree Development Zone bill were still on the calendar under unfinished business in the Senate and the House respectively.

Tax Conformity...

Rumor has it that legislators were very close to a bipartisan deal on tax conformity late last night (April 18). This is a huge step forward, as the two divided reports coming out of the taxation committee were very different. On April 5, the Joint Standing Committee on Taxation finally voted **LD 1655**, *An Act to Update References to the United State Internal Revenue Code of 1986 contained in the Maine Revised Statutes*, out of committee and to the full legislature for their consideration. An emergency bill sponsored by Sen. Dana Dow (R-Lincoln), LD 1655 would conform Maine's income tax laws to the federal code. However, the two reports divided along party lines (7 to 6) and were very different in scope. Apparently, the rumored deal contained parts of both reports.

The Republicans' report included the language proposed by Governor Paul LePage, which would conform Maine to the federal code and included language to mitigate any negative tax implications to Mainers or Maine businesses. The Democrats' majority "ought-to-pass" report, on the other hand, was a very progressive report that contained, among other things, a proposal to discard the most important business provision in the Governor's amendment, namely bonus depreciation. If the legislature does nothing with tax conformity this session, Maine would revert back to the 2016

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Marijuana Legalization... **(Continued from Page 1...)**

LD 1650, *An Act To Amend the Marijuana Legalization Act*. While passing in both bodies of the Legislature, LD 1650 was vetoed by Governor Paul LePage, and his veto was sustained. Just as in that instance, the Governor has indicated that he will veto LD 1719, therefore the issue remains in doubt.

In its initial work on the MLA back in January 2017, the Joint Select Committee on Marijuana Legalization Implementation (MLI) – the legislative committee tasked with addressing the MLI’s shortcomings – implemented a moratorium on the MLA. One of the first bills passed by the 128th Legislature was LD 88, which stayed the law until February 1, 2018. The intent was to give the MLI committee the needed time to work with stakeholders to develop a more workable MLA. After the defeat of LD 1650 in 2016, the committee began its work anew, working hard to meet the February 1 deadline, but acknowledging

that the moratorium may need to be extended to the end of the session. This point would turn out to be extremely important for employers, and a source of ongoing concern absent the passage of LD 1719.

Much of LD 1719 is taken up by the rules, regulations, and policies that will integrate the legalization of recreational marijuana in Maine law and practice. As such, unless your company has a direct stake in the sale of marijuana in our state, you may not be interested. However, the committee made an important change in the MLA that should be of concern to every employer in the state – one that is strongly supported by the Maine State Chamber.

In its work both in 2017 and again this year, Peter Gore, vice president of government relations for the Maine State Chamber, indicated to the MLI committee that the existing language in the MLA provided little, if any, guidance to Maine employers when it came to marijuana in the workplace. Gore also acknowledged that the MLA contained language that prevented an employer from discriminating, for hiring purposes, against someone who used recreational marijuana. This particu-

lar point was of significant concern to the Maine State Chamber and employers in general. As a general rule, the Maine State Chamber and employers oppose the creation of a new protected class for purposes of employment. The idea of creating a protected class of *marijuana users* seemed unreasonable and preposterous to businesses. No other group – drinkers of alcohol, for example – enjoys such protections when it comes to hiring.

The MLI committee – in LD 1650 and again in LD 1719 – agreed with the employer community and removed the protected class status of marijuana users from the law, as well as explicitly stating the employers are entitled to a drug free workplace, and able to take action when an employee is at work impaired.

Problems arose in mid-January 2018, when the House refused to go along with legislation to extend the moratorium on the existing MLA, despite strong support and urging from the business community, specifically the Maine State Chamber. The moratorium extension received

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Workplace Marijuana Education Initiative

We are excited to announce a new free program that is being offered to Maine employers as they grapple with the challenge of marijuana use by their employees. The law firm, Brann & Isaacson, working in partnership with business groups, including the Maine State Chamber of Commerce and the Retail Association of Maine, will offer Maine employers guidance on managing marijuana in the workplace. Services include:

- ◆ Telephone consultations;
- ◆ Access to sample drug policies;
- ◆ Workshops across the state; and,
- ◆ Bulletins on new development.

If you want more information about tricky topics such as drug-testing for marijuana, dealing with an impaired employee, understanding the differences between employee use of medical versus recreational marijuana, this initiative will offer you legal resources and education.

For information about this program, please contact Peter Lowe by calling (207) 786-3566 or by emailing plowe@brannlaw.com. You may also want to visit Peter’s webpage at brannlaw.com. □

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**Regional Business
 Breakfasts**

from 7:30 a.m. to 9:00 a.m.

The Maine State Chamber works to bring together business leaders on a regional level through its Regional Business Breakfast Meetings. Local business leaders provide valuable insight that is instrumental to this open dialogue about business issues that affect your business, your community, and your state.

To register for this *FREE* event, please contact Kelsey Morrell by calling (207) 623-4568, ext. 104, or by emailing kmorrell@mainechamber.org. **To sponsor** this event, please contact Melody Rousseau by calling (207) 623-4568, ext. 102, or by emailing melodyr@mainechamber.org.

Lewiston Area
Tues., April 24
 Fish Bones
 American Grill,
 Lewiston

Bangor Area
Wed., May 23
 Jeff's Catering,
 Brewer

Portland Area
Tues., May 29
 Anthem Blue Cross
 and Blue Shield,
 South Portland

Presque Isle Area
Wed., May 30
 University of Maine
 at Presque Isle

Tax Conformity...

(Continued from Page 3...)

income tax laws.

Elements in the Democrats' Proposal...

Among other things, the Democrats' amendment would:

- ♦ Reject the proposal to increase the estate tax threshold;
- ♦ Reject conformity to full bonus depreciation (just maintains current Maine Investment Tax Credit);
- ♦ Initiate a paid family medical leave credit for employers (language to be determined);
- ♦ Reject the repeal of the Alternative Minimum Tax;
- ♦ Lower the child care credit from \$500 to \$300;
- ♦ Reject the decrease in the corporate income tax rate;
- ♦ Increase the earned income tax credit from 5% to 15%; and,
- ♦ Provide a credit under the income tax and insurance premium tax equal to the federal credit for employer-paid

- family and medical leave;
- ♦ Maintain the deductibility of distributions from the IRS, section 529 college savings accounts by not conforming to the federal expansions that allow the funds to be used for elementary and secondary public, private or religious schools;
- ♦ Make several corporate income tax changes to the regarding mandatory repatriation of deferred foreign income under the Federal Tax Cuts and Jobs Act of 2017, the taxation of dividends, and global intangible low-taxed income;
- ♦ Place additional money into the property tax fairness credit, increasing the cap for taxpayers over 65 from \$900 to \$1,000 and the cap for taxpayers under 65 from \$600 to \$750.

Republicans' Proposal...

Among other things, the Republicans' proposal would:

- ♦ Accept the proposal to increase the estate tax threshold;
- ♦ Repeal the Alternative Minimum Tax;
- ♦ Eliminate personal exemption, but

enact a zero-percent tax bracket and establish a child care credit of \$500 to mitigate elimination;

- ♦ Conform to full 100% bonus depreciation for business and conform to international provisions; and
- ♦ Conform to changes in treatment of net operating losses, limit the amount of interest a business can expense but decrease corporate income tax rate from 8.93% to 8.33 percent beginning in year 2020 to mitigate the impact the two above provisions would have on Maine businesses.

The Maine State Chamber supports conforming to the federal tax code. The organization believes that failure to adopt tax conformity measures would be an administrative nightmare for Maine businesses, and opens door for fraud, with Maine potentially losing millions of dollars of revenue.

In addition to the excessive administrative burden with non-conformance that will be placed on Maine businesses, there are a number of other issues that will

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Marijuana Legalization... **(Continued from Page 4...)**

strong backing from the Maine State Senate; nonetheless, House Republican leadership and a sufficient number of that caucus refused to give the MLI committee the time it needed to finish its work before the poorly-drafted MLA became law. The MLA, as enacted by the voters, became law on February 1, 2018.

As such, the part of the law that provided protected class status to marijuana users also became law. The result: employers who conduct pre-employment drug testing may not use any positive tests for marijuana as a reason *not* to hire a prospective job applicant, except *perhaps* in certain safety sensitive positions. Obviously, for safety reasons, this development is extremely troubling for business across the state. Employers want the ability to do all they can to ensure a safe worksite, and that includes preventing an impaired worker from injuring themselves or a fellow worker. The use of pre-hire drug testing is one way to help ensure this goal. At the moment, at least when it comes to marijuana use, that tool is not readily available to businesses in Maine.

The enactment of LD 1719 can change the current situation. It is important to note that the bill received strong bipartisan support in both the House (122-34) and in the Senate (24-10). In theory, both of those votes are sufficient to override a gubernatorial veto. However, stranger things have happened this session.

If LD 1719 does finally become law, it eliminates the existing and unnecessary protected class of marijuana users and would allow employers to reinstate a comprehensive pre-hire drug testing program that would help improve workplace safety. The Maine State Chamber supported the passage of LD 1719, and urges legislators from both parties to override any attempt to veto the bill. The failure of LD 1719 to become law means a return to the flawed statute enacted by voters – and will result in a less safe workplace.

For additional information or questions, please contact Peter Gore by calling (207) 623-4568, ext. 107, or by emailing pgore@mainechamber.org. □

Tax Conformity... **(Continued from Page 5...)**

result if Maine fails to conform to the federal code. Specifically, if Maine conforms to the code, businesses will be allowed to take 100% bonus depreciation on assets. This will free up cash that could be used to reinvest in equipment or in employees. If other competing states adopt this bonus depreciation measure and Maine does not, it will place Maine companies at a competitive disadvantage when competing for capital. In addition, the alternative minimum tax would be repealed.

With respect to the international provisions, the federal code transitions the U.S. from a worldwide to a territorial tax system. The idea was to bring investment back to the U.S., whereas now companies hold assets outside the U.S. because of high tax rates in this country. The changes in the federal code lower the corporate tax rate to 21%, putting the U.S. on a level playing field with other countries. The federal code requires businesses to pay a one-time tax on cash, cash equivalents, and non-cash assets that are

“deemed repatriated” back to the U.S. These assets are currently overseas. Maine stands to gain \$31 million in tax revenue from this “deemed repatriation.” If Maine fails to conform to the federal tax code, Maine loses that \$31 million.

In addition, there are a number of other problems that will impact Maine if we do not conform. First, Maine Revenue Services (MRS) will lose the support of the federal government to audit personal exemptions. MRS depends largely on the feds to audit returns for fraud. If Maine does not conform to federal tax laws, filing would essentially be done on the “honor system,” and Maine will stand to lose thousands, if not millions, of dollars because MRS will not have access to the expertise of the IRS to verify taxpayer data.

The Maine State Chamber has encouraged its members and their employees to please contact their legislators and urge them to vote YES on tax conformity and support the minority report. We hope that when the legislature convenes again, these discussions will continue and that legislators – particularly the Taxation committee chairs, Sen.

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2018 Making Maine Work: Issues and Answers Forum

Tuesday, June 26 ♦ Maple Hill Farm, Hallowell

The Maine State Chamber of Commerce will host its **2018 Making Maine Work Issues and Answers Forum** on **Tuesday, June 26** at **Maple Hill Farm**. The major gubernatorial candidates have been invited to speak independently, one at a time.

This event is by invitation only, and will include Board of Director members of the Maine State Chamber, Educate Maine, and the Maine Development Foundation, as well as our sponsors. We strive to engage high-level management people from the business community, who understand and are involved with legislative activity.

Events of this caliber are made possible largely through the sponsorship support of members like you. This is an opportunity to showcase your company to an audience of the state’s business leaders, as well as support a program that examines the positions of the 2018 gubernatorial candidates on key business issues and discusses critical business issues in an effort to develop a vision for a stronger Maine economy. Please consider one of our sponsorship opportunities to showcase your company at this event. Sponsorships are sold on a first come, first served basis, especially in cases where one exclusive sponsorship is available.

We encourage you to seriously consider showcasing your company to Maine’s prominent legislative and business leaders. **To reserve your preferred sponsorship**, please contact Melody Rousseau by calling (207) 623-4568, ext. 102, or by emailing melodyr@mainechamber.org. □

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For More Information:

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INNOVATION FOR A HEALTHIER PLANET

Tax Conformity...

(Continued from Page 6...)

Dana Dow and Rep. Ryan Tipping and legislative leadership – can come back to the table and to foster bipartisanship to craft a tax conformity bill for the benefit of Mainers and Maine businesses.

Pine Tree Zones...

The Pine Tree Development Zone (PTDZ) bill is also remains unfinished. Sponsored by Sen. Troy Jackson (D-Aroostook), the Pine Tree Zone bill – **LD 1654, An Act to Protect Economic Competitiveness in Maine by Extending the End Date for Pine Tree Development Zone Benefits** – received a nearly-unanimous report coming out of the Joint Standing Committee on Labor, Commerce, Research and Economic Development (LCRED). The committee voted 12-1 “ought-to-pass” on LD 1654. As originally drafted, the bill proposed to extend the Pine Tree Development Zone program by five years as it is expiring at the end of December 2018.

The bill was amended to do several

things. First, the amended version would extend the PTDZ program by three years, not five. Performance measures that would be added for the evaluation of the PTDZ program include, but would not be limited to, change in number of jobs, amount of qualified investment, comparison of business tax burden in this state as compared to other states, measures of industry competitiveness for businesses receiving benefits, measures of fiscal impact and overall economic impact to the state, and an aggregate listing of the benefits received from other state incentive programs. Beth Ashcroft, director of the Office of Program Evaluation and Government Accountability (OPEGA), told the LCRED committee that the release of a company’s information to OPEGA, when the agency conducted company interviews in its quest for data, would be *voluntary*, not mandatory.

The amended version would also put into law information already gathered from businesses participating in the PTDZ program by the Maine Department of Economic and Community Development (DECD). This information would include total number of Maine

employees and payroll, number of new hires, incremental investments made at certified location, or qualified business activity, in aggregate the total value of PTDZ benefits received. The bill would also require that the commissioner of DECD report to the Joint Standing Committees on Taxation and LCRED aggregate statistics about names of certified businesses (already public), aggregate amount of PTDZ benefits received by these businesses, and aggregate statistics on average income, access to health insurance and retirement benefits, employment levels, and amount of investment. The PTDZ business must create at least one new job before they receive reimbursement for sales tax exemptions.

It is important to point out to our members that there remains time for the legislature to successfully reach a positive closure on both of these critical public policy issues before final adjournment later next month. If you have any questions, please contact Linda Caprara by calling (207) 623-4568, ext. 106, or by emailing lcaprara@mainechamber.org. □

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Save yourself a seat at this special (free) event!

***Internet Data Privacy and Net Neutrality:
What Does Internet Data Mean for Maine Businesses and Maine Consumers?***

Tuesday, May 22, 2018 | 8:00 a.m. to 10:00 a.m. | Senator Inn, Augusta Maine

With legislative action at the federal and state levels under considered this year, learn more about what this issue means for the Maine business community. This is a free event but seating is limited so pre-registration is a must. To register or for more information, please visit www.MaineChamber.org. □