

NEW LAWS

128th Legislature – Second Special Session

Effective dates. Emergency legislation became effective on the date it was signed by the Governor unless otherwise noted. If the new law was an emergency measure, it is so-noted before the Public Law (PL) citation. Non-emergency legislation becomes effective 90 days after adjournment of the legislative session in which it was enacted. The effective date of non-emergency legislation enacted in the Legislature's second special session will be December 13, 2018.

Mandate preamble. Legislation enacted with a "mandate preamble" contains the following language: *"This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two-thirds of all of the members elected to each House have determined it necessary to enact this measure."* If the new law was enacted with a mandate preamble, it is so-noted along with the Public Law citation.

Agriculture, Conservation & Forestry

LD 1809 – An Act To Amend the Laws Governing the Issuance of Burn Permits. (Sponsored by Sen. Saviello of Franklin County) **Emergency Enacted; PL 2017, c. 449 (7/9/18)**

This emergency Act allows municipalities to use software created by a private party to issue burn permits. The software must be approved by the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry and meet standards established by state agency rulemaking. The Act also limits, to two, the number of private party burn permit software programs that may be approved and in operation in the state. The Act further prohibits the vender from assessing a software user fee to the municipality or charging a burn permit issuance fee to an applicant.

Appropriations & Financial Affairs

LD 925 – An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government. (Sponsored by Rep. Gattine of Westbrook) **Emergency Enacted; PL 2017, c. 460 (7/9/18)**

This emergency Act makes supplemental allocations and appropriations in the second year (FY 2019) of the current biennial state General Fund budget. Of municipal law enforcement interest, the Act: (1) upon request, allows funds from the sales of forfeited property to be assigned to a law enforcement agency that provides case management and other social services to persons with substance use disorders; (2) makes aggravated trafficking of a scheduled drug a Class A crime when the drug is a contributing factor in the death of another person or a Class B crime in a situation where the drug contributes to the serious bodily injury of another person; and (3) makes the aggravated trafficking of more than 6 grams or more than 269 individual units (e.g., bags, folds, packages, envelopes, etc.) of fentanyl powder a Class A crime.

LD 1815 – An Act To Authorize a General Fund Bond Issue To Improve Multimodal Facilities, Highways and Bridges and Municipal Culverts. (Sponsored by Sen. Hamper of Ox-

ford County) **PL 2017, c. 467**

This Act sends out to the voters a proposed \$106 million bond issue for transportation purposes. \$80 million of the bond revenue is dedicated to the construction, reconstruction and rehabilitation of Priority #1, #2 and #3 state highways, the municipal partnership initiative, and to replace and rehabilitate bridges. \$20 million is dedicated to capital improvements to ports, harbors, marine transportation, aviation, freight and passenger railroads, and bicycle and pedestrian trails. \$1 million is dedicated to making improvements to the Maine Maritime Academy's water front pier in Castine. The bond proceeds are estimated to leverage \$137 million in federal and other funds. An additional \$5 million, which does not leverage any federal funding, is dedicated to a competitive grant program matching local funding for upgrading municipal culverts at stream crossings in order to improve fish and wildlife habitats and increase community safety.

Criminal Justice & Public Safety

LD 1490 – An Act To Stabilize Funding for County Jails. (Sponsored by Sen. Cyrway of Kennebec County) **PL 2017, c. 450**

This Act appropriates \$6.21 million in the second year (FY 2019) of the current biennial state General Fund budget to support county jail operations. Specifically, a one-time allocation of \$3 million is made available to reimburse county and regional jails that incurred unusually high operations costs during the fiscal year ending on June 30, 2018. For FY 2019, the state appropriation for county jail operations is increased from \$12.2 million to \$15.2 million, with \$1.7 million of the \$3 million increase dedicated to funding community corrections programs. An additional \$120,000 is allocated to fund the Kennebec County Criminogenic Addiction Recovery Academy program in FY 2019.

Education & Cultural Affairs

LD 1286 – An Act To Facilitate Compliance by School Employees with Criminal History Record Check and Fingerprinting Requirements. (Sponsored by Sen. Millett of Cumberland County) **Enacted; PL 2017, c. 426**

Beginning on January 1, 2019 and every quarter thereafter, this Act requires all school systems in the state to submit to the Department of Education (DOE) a list of the names of all employees subject to criminal history record check and fingerprinting requirements, indicating the date the person most recently commenced employment with the school administrative unit. The DOE must immediately notify the school system if it is determined that a person on the list does not comply with any applicable criminal history record check or fingerprinting requirement. The Act also appropriates approximately \$13,000 in FY 2019 to reimburse school units for 90% of the costs associated with the state mandate.

LD 1666 – An Act To Ensure the Successful Implementation of Proficiency-based Diplomas. (Sponsored by Rep. Kornfield of Bangor) **PL 2017, c. 466**

This Act makes a school administrative unit's implementation of proficiency-based diplomas voluntary rather than mandatory.

LD 1845 – An Act To Provide Incentives To Attract Trained Firefighters to Maine and To Retain Trained Fire-

fighters by Expanding the Provision of Live Fire Service Training. (Sponsored by Rep. Herbig of Belfast) **PL 2017, c. 444**

This Act establishes the Live Fire Service Training Facilities Fund providing eligible municipalities with grants for the construction, repair or replacement of regional live fire service training facilities. The Maine Fire Protection Services Commission is charged with developing eligibility criteria, awarding grants and directing the Maine Fire Service Institute, housed within the Maine Community College System, to make grant payments to municipalities. The Institute is prohibited from issuing grants after June 30, 2021, unless explicitly authorized by the Legislature to do so. A one-time \$500,000 appropriation is provided to capitalize the grant program.

LD 1869 – An Act To Establish the Total Cost of Education and the State and Local Contributions to Education for Fiscal Year 2018-19. (Sponsored by Sen. Langley of Hancock County) **Emergency Enacted; PL 2017, c. 446 (7/8/18)**

This emergency Act appropriates \$1.1 billion as the state share of K-12 education in FY 2019 as calculated by the Essential Programs and Services (EPS) school funding model, as well \$181.5 million in state contributions to the unfunded actuarial liabilities of the Maine Public Employees Retirement System attributable to teachers, retired teacher health insurance and retired teacher life insurance. The total amount of money – both state and local – the model identifies as necessary to fund K-12 education, and including teacher related unfunded actuarial liability costs, is \$2.431 billion, which puts the state share at 53.3 percent. (When the unfunded actuarial liability costs are excluded from total expenditures, the state's share of K-12 education is 49.6 percent.) To meet the minimum local share (\$1.13 billion), the mill rate is set at 8.48 mills, an increase of 3.5 percent from the FY 2018 mill rate of 8.19. This increase is due, in large part,

to the fact that 100% of EPS costs are now recognized in the funding formula.

Health & Human Services

LD 238– An Act To Amend the Maine Medical Use of Marijuana Act. (Sponsored by Sen. Brakey of Androscoggin County) **Emergency Enacted; PL 2017, c. 447 (7/9/18)**

This emergency Act replaces the limited municipal school setback and dispensary regulatory authorizations in the pre-existing Medical Use of Marijuana Act with express recognition of home rule authority to comprehensively regulate medical marijuana primary caregivers, dispensaries, and testing and manufacturing facilities. Two limitations are imposed on home rule: municipal bans on primary caregiver activities, as well as limitations on the number of primary caregivers authorized to operate within a municipality, are not allowed.

The new law also provides for accredited third-party testing of medical marijuana, authorizes the manufacture of medical marijuana products using non-hazardous extraction and concentration processes, and requires processors who utilize hazardous substances to be certified as safe by a state-licensed professional engineer. The manufacture of medical marijuana products using both hazardous and non-hazardous extraction and concentration processes is authorized for all persons, subject to any existing limitations and forthcoming state rules, with “tier 1” processors authorized to possess up to 40 pounds of harvested marijuana, and “tier 2” processors authorized to possess up to 200 pounds of harvested marijuana.

Note: The term “primary caregiver” in the Act will be replaced with “registered caregiver” when LD 1539 takes effect on Dec. 13, 2018.

LD 1539 – An Act To Amend Maine’s Medical Marijuana Law. (Sponsored by Rep. Sanderson of Chelsea) **PL 2017,**

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c. 452

This Act re-writes much of Maine's Medical Use of Marijuana Act. Amendments made to the Act as a result of this legislation include the following:

Local Control. The Act's pre-existing municipal school setback and dispensary regulatory authorities are replaced with express recognition of the comprehensive home rule authority to regulate registered medical marijuana caregivers, dispensaries, and testing and manufacturing facilities. Two general limitations are imposed on home rule: municipal prohibitions on registered caregivers, as well as limitations on the number of registered caregivers authorized to operate within a municipality, are not allowed. Another limitation, described below, grandfathers caregiver retail stores operating with municipal approval on the effective date of this law while applying a municipal opt-in requirement to storefronts aiming to open after the effective date.

Municipal Opt-in Requirement and Grandfathering. Registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities not operating on the effective date of the law are prohibited from operating in a municipality until its legislative body has voted to adopt or amend an ordinance or approved a warrant article allowing such entities to operate. Municipalities are not authorized by the terms of this law, however, to prohibit those entities already operating *with municipal approval* prior to the effective date.

State Verification for Code Enforcement. When requested by the code enforcement officer, state officials are required within two business days to verify the validity of a person's state-issued registration identification card and whether the card-holder's conduct is authorized, as well as the location at which the conduct is authorized if necessary to verify the card to the code enforcement officer. The code enforcement officer, or other municipal officer in municipalities without code enforcement officers, are required to keep the information received confidential.

Qualifying Patients. Six key changes are made with respect to patient activities:

1. Patients will be able to receive written prescription certifications to use medical marijuana for any medical condition their physician believes may be alleviated by the patient's use of marijuana;
2. The maximum per-patient prescription limit is expanded from 2.5 ounces to up to 2 pounds, and the amount that may be possessed by patients is expanded from 2.5

ounces to up to 8 pounds;

3. Each patient may grow a maximum of 6 mature plants, 12 immature plants, and unlimited seedlings;
4. Patients may share seeds and plants with one another;
5. Patients may use medical marijuana in certain assisted living and residential care facilities provided the use is consistent with facility policies; and
6. Patients may designate multiple primary caregivers rather than only one caregiver.

Caregivers. Six key changes are made with respect to caregiver activities:

1. The term "primary caregiver" is replaced in the Act with a new distinction between un-registered and registered caregivers. Caregivers who only serve two households or family members are not required to register with the state. All other caregivers are required to register with the state and are referred to in the new law as "registered caregivers;"
2. Registered caregivers are authorized to operate retail stores provided that the municipality has opted to allow the activity;
3. Each caregiver may grow a maximum of 30 mature plants, 60 immature plants, and unlimited seedlings;
4. Caregivers are allowed to employ any number of assistants (under the pre-existing Act employees were capped at one person per designated patient served);
5. Caregivers may transfer products between one another (under the pre-existing Act caregivers were only allowed to transfer products to dispensaries); and
6. Tracking and reporting on seed and plant sourcing and sales is required of registered caregivers and dispensaries.

Dispensaries. This law authorizes the state to issue six additional dispensary certifications (in addition to the existing eight) until 2021, after which time there will be no cap on the number of dispensary certificates issued statewide. The law also removes the previous requirement that dispensaries operate as non-profits.

Inspections. State inspection authority is limited to registered caregivers, dispensaries, testing, and manufacturing facilities. Such inspection is authorized on demand of the Department of Health and Human Services, but is disallowed in areas where marijuana-related activities are not taking place and,





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in the case of registered caregivers, when the caregiver is not present. Two or more absences on the part of the caregiver are grounds for state revocation of their certification.

Immunity. The pre-existing immunity for dispensary employees and directors is extended to registered caregivers and their employees as well as to hospitals and long-term care facilities and their directors, employees or agents.

Testing. Accredited third-party testing of medical marijuana is authorized.

Extraction and Concentration. The same language included in LD 238, authorizing the manufacture of medical marijuana products using non-hazardous extraction and concentration processes for all persons, subject to any forthcoming state rules, is included in this Act as well. "Tier 1" processors are authorized to possess up to 40 pounds of harvested marijuana, while "tier 2" processors are authorized to possess up to 200 pounds of harvested marijuana. The same limits apply to processors utilizing hazardous substances for extraction, provided they are certified as safe by a state-licensed professional engineer and have notified the state in advance of their intent to engage in marijuana extraction using inherently hazardous substances.

Taxation

LD 1629 – An Act To Protect Homeowners Affected by Tax Lien Foreclosures. (Sponsored by Rep. Espling of New Gloucester) **Enacted: PL 2017, c. 478**

This Act creates new pre-foreclosure and post-foreclosure tax lien processes. Under the terms of the law, tax collectors will now be required to use the "demand notice" currently required under Title 36, §942 to inform a delinquent property taxpayer, who is receiving the homestead exemption, of the right to apply for a poverty tax abatement and of the ability to contact the state's Consumer Credit Protection Bureau for assistance to

avoid tax lien foreclosure. The additional information required to be included in the demand notice will be provided by the state to the Maine Municipal Association for distribution to municipal officials.

As enacted, the law also creates a new process for disposing of the tax acquired property previously owned by qualifying homeowners.

Special Process. If the municipality decides to sell the tax acquired property and the previous homeowner meets the qualifications specified below, the community is required to try to sell the property on the open market. As provided in the law, a municipality must enter into a six month contract with a real estate broker to sell the property at its fair market value or at a price at which the property is anticipated to sell within six months. If the contracted broker is unable to sell the home within six months or if after contacting three real estate brokers the municipality is unable to retain the services of a broker to sell the tax acquired home, the municipality is authorized to dispose of the property in the same manner that all other tax acquired property is sold.

Qualifications. To qualify for this new process at least one of the owners must be 65 years of age or older on the date the tax lien certificate is recorded and have received the homestead exemption. In addition, the former owner or owners must demonstrate to the municipal officers (or officers' designee) that their previous year's adjusted gross income was less than \$40,000, after medical expenses, and that the value of liquid assets is less than \$50,000 for an individual or \$75,000 for multi-person household.

Determining Eligibility. To determine eligibility for the new process, at least 90 days prior to listing the property for sale, the municipal officers (or officers' designee) must notify the former owner, by first-class mail, of the right to require the special sale process. The municipality must include in the notice an application form with instructions and submission information neces-

Meet our Attorneys Dan S. Pittman



Dan Pittman is a member of our municipal finance team. He has acted as bond counsel for towns, cities, counties, sanitary districts and other governmental entities to help them find creative and effective ways to build and maintain public infrastructure, including roads, schools, water and sewer systems, municipal buildings and capital equipment. He has also advised tax-exempt educational and charitable institutions about how to partner with their local communities to issue tax-exempt bonds. He also advises tax-exempt bond issuers regarding their ongoing compliance responsibilities, and helps them navigate the complex tax rules surrounding arbitrage and rebate.

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sary for the municipality to determine eligibility. The former owners must be provided at least 30 days, from the date the notice is mailed, to submit the required form and information. Within 30 days of receiving the application, the municipal officers must determine whether the applicant is eligible for the special process and, if denied, inform the applicant of the right to appeal the decision through the Maine Rule of Civil Procedure, Rule 80B process. The State Tax Assessor is directed to prepare the application forms, notices and instructions that must be used by municipalities. All applications or information submitted in support of an application, files and communications related to the application and the determination of eligibility are confidential records.

Return of Net Proceeds. If the previous homeowner meets the qualifications and the home is sold through a contracted real estate broker, all proceeds of the sale of the home, less taxes owed, the property taxes that would have been assessed if not acquired by the municipality, all accrued interest, fees and any other expenses incurred by the municipality in selling or maintaining the property, must be returned to the qualifying former owner(s).

The law also includes a fiscal note obligating the state to reimburse municipalities for 90% of the costs associated with implementing the new mandate.

Finally, the bill amends the Homestead Exemption law by providing that a person who loses their home due to a tax lien foreclosure and subsequently regains ownership of the homestead from the municipality remains eligible for the homestead tax exemption benefit.

LD 1655 – An Act To Conform to the United States Internal Revenue Code of 1986 and Provide Tax Relief to Maine Families. (Sponsored by Sen. Dow of Lincoln County) **Emergency Enacted; PL 2017, c. 474 (9/12/18)**

This emergency Act adopts changes to Maine's income tax

codes in an effort to conform with several of the changes enacted at the federal level. Of specific municipal interest, the law increases the property tax fairness credit cap to \$750 for individuals under age 65 and to \$1,200 for filers 65 years of age or older.

Transportation

LD 1916 – Resolve, To Name a Bridge over the Saco River in the Town of Fryeburg the Nathan Desjardins Memorial Bridge. (Sponsored by Rep. Wadsworth of Hiram)

Resolves 2017, c. 58

This Resolve directs the Department of Transportation to designate Bridge 2121 on Route 5, which crosses the Saco River in the Town of Fryeburg, the Nathan Desjardins Memorial Bridge.

Veterans & Legal Affairs

LD 1204 – An Act Regarding Absentee Voting by Residents of Nursing Homes and Other Residential Care Facilities. (Sponsored by Rep. Timberlake of Turner) PL 2017, c. 433

This Act requires the municipal clerk to post notice in the town or city office of the date and time when absentee voting will be conducted at the various licensed nursing homes or assisted care facilities where on-site absentee voting opportunities are required by law. The municipal clerk must also provide the notice to each licensed facility. The Act further requires those licensed facilities to provide notice, either by email or by electronic newsletter, to the contact person or persons, if any, for each resident of the facility noting the date and time when absentee voting will be conducted at the facility.

LD 1865 – An Act To Increase Transparency in the Direct Initiative Process. (Sponsored by Rep. Luchini of Ellsworth)

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PL 2017, c. 418

This Act prohibits a notary public or other person generally authorized to administer oaths or affirmations from administering oaths or affirmations to a petition circulator if the notary public or person is also providing services to initiate that petition or promote the measure. The Act also defines a “major contributor” as an entity, other than an individual, that makes contributions aggregating more than \$100,000 to a ballot committee or political action committee for the purpose of initiating or in-

fluencing a direct initiative or people’s veto referendum. Major contributors must file campaign financing reports with the Commission on Governmental Ethics and Election Practices that: (1) disclose the name of the organization making the contribution and the amount and date of each contribution; (2) identify the five largest sources of revenue in the 18-months prior to filing the report; (3) indicate whether the organization is tax-exempt; and (4) specify if the organization has filed campaign finance reports in other jurisdictions in the past 12 months. ■

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