

When the sun rose Wednesday morning, Maine's 128th Legislature had so far been defined by political fireworks, questions that tested the limits of procedure and the legislative process, and wrangling over the prerogative of implementing citizen's initiatives. When the clock struck midnight, signaling the onset of the Second Regular Session's statutory adjournment date, those defining features proved present as ever. While the 128th Legislature may still be a long way from adjourning sine die ("without day", or finally), we can be certain that it will go down as an especially memorable era in Maine political history.

Last November's passage of Question #2, a citizen's initiative to expand MaineCare, has been a central conversation since the Second Regular Session convened in January. Early on, Governor LePage laid out a series of criteria under which expansion could be made palatable to him but legislative Democrats found it strayed too far from their own designs. With the coming change in gubernatorial administration and a political environment that could be favorable to them, Democrats instead opted over the last several weeks to focus on the \$3-4 million that would be needed to fund expansion infrastructure, namely the hiring of several hundred employees in the Department of Health and Human Services.

Meanwhile, the LePage administration introduced a proposal to conform to recently adopted tax laws at the federal level. The Governor and Republican leadership insisted strict conformity would be a key tenet of the session for them. However, Democrats were not inclined to acquiesce as conformity had little policy implications of interest to them while having scant political impact in the short term. Competing committee reports from the Taxation Committee kept the proposed package in limbo during the last several weeks.

On Monday (April 16), legislative leadership and members of the Appropriations and Financial Affairs Committee met, recognizing the imperative of reaching agreement before the statutory adjournment date of April 18. During the afternoon, leadership believed they had reached a deal that would adopt aspects of tax conformity, allocate for MaineCare expansion positions, and fund bills dealing with direct care and nursing home reimbursements, among others. However, that agreement proved brief as House Republicans began to object to it by day's end.

Ultimately, Tuesday and Wednesday saw the House and Senate moving through a moderate amount of calendar work while negotiations continued around health care provider reimbursements and what role tax conformity and MaineCare expansion would play in an eventual deal, if at all. Wednesday afternoon the Appropriations Committee appeared for a work session in which they publicly discussed the situation for the first time and aired competing visions of how to proceed: most members, reflecting the Senate and House Democrats' perspective, preferred to strike a grand bargain while House Republicans were more interested in line-by-line votes on Special Appropriations Table bills.

With the statutory adjournment deadline fast approaching, the Senate worked throughout the evening slowly readying a joint order to extend the session, which it passed unanimously. However, this joint order failed to receive the required 2/3 vote in the House. In that body, the GOP called for the session to expire at midnight, citing a failure to act sufficiently up until that point as a waste of taxpayer dollars. This was a major point of presumed leverage in their negotiating strategy, which seemed designed to exact a minimum wage increase slowdown in return for MaineCare expansion positions and the opportunity to vote on Special Appropriations Table bills.

Following two failed votes on the extension in the House, the Senate crafted two more joint orders that would provide for an eventual veto day and preserve all pending bills during that time, keeping them in stasis so they might later be acted upon. The Senate had adjourned for the evening by the time the House took up these joint orders, a few minutes short of midnight. The House Republican caucus questioned the purpose of the pair of orders extensively, allowing the clock to run out on the calendar day and the clock struck midnight. When a member of that caucus objected to the House continuing to act after a failure to extend the statutory deadline, Speaker Sara Gideon responded that the House had “extended it by implication.” Former House Speaker and parliamentary wizard John Martin supported Speaker Gideon’s ruling, citing Mason’s Manual of Legislative Procedure.

Much confusion ensued and much remains. 136 bills remain on the Special Appropriations Table, bonds have not been addressed, chamber calendars still include business, and vetoes have yet to receive override votes. Crucially, two bills to at last create an appropriate regulatory structure for marijuana use since it was approved by a 2016 referendum hang in limbo. LD 1719, legislation that would formalize the adult-use market, was enacted by veto-proof majorities and sits on Gov. LePage’s desk while LD 1539, a bill to better regulate and stabilize the medical cannabis industry, has yet to be enacted by the House and Senate. In total, more than 250 bills have yet to receive a final disposition.

The Legislature has by joint order given itself the opportunity to return for a legislative day that will likely include action on vetoes, the Special Appropriations Table, and bonds, while also formalizing their ability to call for a special session. The next few weeks are likely to be a holding pattern of sorts, where respective legislative leaders, as well as the Governor, will be exploring options both legal and procedural. There will likely be several days of session throughout the rest of the spring and early summer. The only certainty is that Preti Flaherty’s legislative team will be there for all of it, ready to provide you with extensive coverage of State House activities and the best political and legal analysis in Maine government affairs.

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