Illinois 2022: New Year, New Laws

The first year of the 102nd General Assembly officially adjourned on September 13, 2021. It has been one of the most interesting General Assemblies in recent memory for the following reasons:

1. A new House Speaker was elected for the first time in 40 years and the leadership structure was completely revamped;
2. The nation, including Illinois, was reeling from social disruption;
3. The State was easing its way out of a complete COVID-19 shutdown and has recently started to retreat again as Omicron fears manifest;
4. The State was/is facing unprecedented levels of unemployment as a result of the COVID-19 shutdown;
5. The General Assembly tackled the largest energy bill since deregulation;
6. Lawmakers were tasked with redistricting;
7. 2022's legislative primaries were pushed from mid-March to June 28th.

All of the aforementioned issues impacted the General Assembly and the legislative measures. The following bills have either already become law or are set to become law on January 1, 2022.

BUDGET

Entering into this session, the voter's lopsided rejection of the progressive income tax, anticipated reduced revenues resulting from the pandemic, and additional spending created a deficit that was staggering even by Illinois standards. Early in the session, a report from the Governor's Office of Management and Budget showed that without significant new revenue, spending cuts or a combination of both, the state would face a budget deficit of $3.9 billion in the current fiscal year and continuing deficits of $4 billion or more in each of the next five fiscal years. It also projected that the state's backlog of unpaid bills could grow to as much as $33 billion by fiscal year 2026, up from the current backlog total of about $7.8 billion.

Subsequently, the federal government provided states with a bailout within the American Rescue Plan Act (ARPA). This included providing Illinois with a one-time payment of $7.65 billion dollars. The state planned on using the money to pay down the backlog and repay the federal government over $3 billion dollars. Illinois was the only state to request a loan from the federal government.

Additionally, during his Budget Address, Governor Pritzker outlined a proposal to close 'corporate loopholes' to help fund the budget. These loopholes included over $900 million dollars and included:

1. Cap On Net Operating Loss Deductions ($314 Million)
2. Reduced Accelerated Equipment Depreciation ($214 Million)
3. Biodiesel Exemption Expiration ($107 Million)
4. Cap On Retailers' Discount ($73 Million)
5. Manufacturers' Purchase Credit ($56 Million) And
6. Reinstate Corporate Franchise Tax ($30 Million)
7. Tax Credit For Private School Scholarships

8. Re-Aligning The Tax Treatment Of Foreign-Source Dividends With Domestic-Source Dividends ($107 Million)
9. Eliminate Blue Collar Jobs Act ($16 million)

In the final budget, the General Assembly utilized just over $1 billion in ARPA monies to fund additional infrastructure improvements and took away several corporate tax credits totaling $665 million. Those included:

1. Decoupling from federal government policy on net operating loss ($314 million);
2. Decoupling from federal government policy on accelerated depreciation ($214 million);
3. Decoupling from federal government policy on foreign source dividends ($107 million); and
4. Suspending repeal of the corporate franchise tax ($30 million).

These are four of the nine credits or reimbursements Governor Pritzker had sought to take away totaling $665 million of the $932 million that all nine were estimated to generate.

The decoupling provisions noted above mean that while businesses receive the credits against their federal income taxes, those credits must be added back in to establish the base income number against which state income taxes are applied. The suspension of the repeal of the corporate franchise tax was a particularly thorny issue given it was part of the agreement between Governor Pritzker and House Republican Leader Jim Durkin on the 2019 capital program. Leader Durkin rightfully saw it as the Governor reneging on a deal.

The budget bills were signed into law as P.A. 102-0017 and P.A. 102-0016.

ENVIRONMENT

Wipes Labeling Act: SB 294 (Sen. Cristina Castro, D/ Rep. Daniel Didech, D) requires “Do Not Flush” logos on non-flushable wipes, with language to specify the size, placement and contrast of the logo. The legislation comes at a time when utilities are becoming increasingly concerned about the flushing of wipes and other consumer products that do not break apart as quickly as toilet paper. The spread of COVID-19 resulted in more disinfection of surfaces with wipes and substitution of toilet paper with other products due to toilet paper shortages. As such, some utilities are seeing more clogs from wipes and other flushed products.

Similar laws have been passed in Washington and California. The legislation was amended to reflect the Washington law. The legislation passed the Senate by 57-0 vote and the House by 112-0 vote. It was signed into law as **P.A. 102-0286**.

EFFECTIVE DATE: JULY 1, 2022

Energy Tax—A provision in state law prohibits units of local government from imposing a tax on energy. That provision was scheduled to sunset this year. At the urging of MHA and many other entities, that sunset was pushed to January 1, 2023. Local government and environmental groups are eager to be allowed to impose these taxes. Local governments because they want more tax revenue. Environmental groups want to make the price of fossil fuels prohibitively expensive. This sunset will be debated again next spring.

EFFECTIVE DATE: JANUARY 1, 2022

LABOR

Testing and Vaccination: The Governor's office introduced language in SB 1169 House Floor Amendment #3 (Senate President Don Harmon, D- Oak Park/Rep. Robyn Gabel, D- Evanston) to amend the Illinois Health Care Right of Conscious Act to remove a person's ability express their right of conscious to receiving a COVID-19 test or vaccination. The measure was unable to secure the super-majority support necessary to take effect immediately so it was amended to take effect July 1, 2022. In the meantime, the Governor's office is hoping that courts will take into consideration the General Assembly's changes in current legal cases where employees have sought the protection of the Act. Should they so choose, the General Assembly can also take up the measure again in January when they would only need 60 votes to make it effective immediately.

The legislation was signed into law as **P.A. 102-0667**

EFFECTIVE DATE: July 1, 2022

LGBTQ Corporate Directors Reporting: Two years ago the General Assembly passed legislation that required publicly traded corporations to report on the number of minorities on the board of directors and the self-identified gender each board member. According to the collected data, board members that identify as women make up more than 20% of the average board, and those that identify as racial and ethnic minorities make up roughly 15%.

Following up on this law and report, Sen. Emil Jones/Rep. Daniel Didech introduced SB 1730 that would require publicly traded companies to report the self-identified sexual orientation of each director and the self-identified gender identity of each director. Concerns were expressed that this would require a person to publicize his or her sexual orientation against his or her will. The response from proponents from the legislation was that an individual is not required to respond to questions. It was pointed out that if directors were not required to provide information, the corporation would not be able to provide an accurate accounting of the make-up of the board. Therefore the public report to the Secretary of State would not reflect the LGBTQ representation on publicly traded companies' boards in Illinois. In an age of trial by media clicks, this in turn could create a report that could publicly harm corporations even though the report is not accurate. These concerns were dismissed.

The legislation passed the Senate by a vote 37-18 and the House by a vote of 69-43-1. It was signed into law as **P.A. 102-0223**.

EFFECTIVE DATE: January 1, 2022

Secure Choice Savings Program: In 2016, the General Assembly passed legislation that required businesses to deduct anywhere from 3%-6% from an employees' wages and send the deduction to the state to be invested on behalf of the employee. It was implemented in 2018. The law only applied to companies with 25 or more employees. At the time of passage MHA had warned lawmakers that both of these would be expanded in the near future.

Three years after implementation, the changes MHA warned the General Assembly about were introduced. While HB 117 (Rep. Will Guzzardi, D/Sen. Robert Martwick, D) was filed, there was little appetite from the General Assembly to put additional burdens on businesses during the pandemic. This changed when the Illinois Chamber offered compromise language. The language includes: Dropping the employer threshold from 25 to 5; and Include automatic increased deductions on employees up to a maximum of 10% of the employees' pay.

The Sponsors readily accepted the offer and the legislation passed the House by a 106-2-2 vote and the Senate by a 42-15 vote. It was signed into law as **P.A. 102-0179**.

EFFECTIVE DATE: January 1, 2022

Shareholder Meetings: SB 116 (Sen. Julie Morrison, D/Rep. Bob Morgan, D) allows corporations to have remote shareholder meetings as long as the corporation shall implement reasonable measures to provide the shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders. It also allows corporation to implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder.

The legislation passed the Senate by a vote of 56-1 and the House by a 100-15-1 vote.

It was signed into law as **P.A. 102-0282**.

EFFECTIVE DATE: January 1, 2022

Business Data Transparency: HB 115 (Rep. Will Guzzardi, D/ Sen. John Connor, D) requires the Secretary of State to publish data required to be maintained by the Secretary about businesses in a machine-readable form that is freely available to the public. Under existing law, this information is already available by request.

HB 115 passed the House by a vote of 108-0 and the Senate by a vote of 57-0. It was signed into law as **P.A. 102-0049**.

EFFECTIVE DATE: January 1, 2022

Wage Theft-Damages Amount: HB 118 (Rep. Will Guzzardi, D/ Sen. Karina Villa, D) provides that an employee is entitled to recover damages of 5% (rather than 2%) of the amount of any underpayments in wages for each month following the date of payment during which such underpayments remain unpaid.

HB 118 passed the House by a vote of 68-44 and the Senate by a vote of 40-15. It was signed into law as **P.A. 102-0050**.

EFFECTIVE DATE: July 1, 2021

Human Rights-Disability Definition: HB 1838 (Rep. Theresa Mah, D/ Sen. Ram Villivalam, D) provides that discrimination based on disability includes unlawful discrimination against an individual because of the individual's association with a person with a disability.

HB 1838 passed the House by a vote of 112-0 and the Senate by a vote of 59-0. It was signed into law as **P.A. 102-0419**.

EFFECTIVE DATE: January 1, 2022

PRIVACY

Video Interview Demographic: HB 53 (Rep. Jaime M. Andrade, Jr., D/ Sen. John Connor, D) provides that employers that rely solely upon artificial intelligence to determine whether an applicant will qualify for an in-person interview must gather and report certain demographic information to the Department of Commerce and Economic Opportunity. It requires the Department to analyze the data and report to the Governor and General Assembly whether the data discloses a racial bias in the use of artificial intelligence.

HB 53 passed the House by a vote of 112-5 and the Senate by a vote of 43-0. It was signed into law as **P.A. 102-0047**.

EFFECTIVE DATE: January 1, 2022

TAXES

Marketplace Fixes: MHA led the effort to enact marketplace legislation in 2019 that leveled the playing field for sales tax purposes between remote sellers and brick-and-mortar retailers. It was the largest change to Illinois sales tax law since the rewrite in 1992 and literally saved the budget of the state and units of local government last year.

In 2020, marketplace facilitators were required to collect and remit the Use Tax (6.25%) on any transaction through their marketplace. However, the Illinois Department of Revenue (IDOR) interpreted the law to also require Illinois sellers selling through a marketplace to remit the full sales tax (6.25% + any locally imposed tax) even though someone selling thru a marketplace is not handling the transaction. While the consumer was not double-charged, the seller wound up paying 6.25% that they had not collected from the consumer. IDOR further decided that they could not implement a credit mechanism via administrative rule to resolve the error. SB 2066 contains language to create a retroactive credit mechanism. Without this change, the law would be subject to legal challenge as double-taxation is illegal.

The second correction impacts Illinois auctioneers. IDOR interpreted the law such that they considered auctioneers to be marketplaces. This interpretation threatened to upend the entire auction industry and was not what was intended. MHA was asked by legislative leadership to work with IDOR to resolve the issue. SB 2066 clarifies that auctioneers licensed under the Illinois Auction License Act are not marketplaces. This change is also retroactive and will ensure the manner in which they have collected and remitted sales tax remains unchanged.

SB 2066 (Sen. Cristina Castro, D/ Rep. Michael J. Zalewski, D) passed the Senate by a 56-0 vote and the House by a 113-0 vote. It was signed into law as P.A. 102-0634.

EFFECTIVE DATE: August 27, 2021

Net Operating Loss—As part of an economic incentive package designed to help the state try and attract electric vehicle battery manufacturers to Illinois, Illinois' net operating loss deduction was amended. For tax periods ending on or after December 31, 2021 and for any net loss incurred in a tax year ending on or after December 31, 2021 for which the statute of limitations has not run, entities claim the NOL credit over a 20-year period vs. a 12-year period. However, the amount that can be claimed in a given year is still capped at $100,000. The $100,000 cap is set to expire December 31, 2024. The Assembly has previously extended that cap and it remains to be seen if it will be extended again. The provision is found in Senate Amendment #4 to HB 1769 (Rep. Dave Vella, D- Loves Park/Sen. Steve Stadelman, D- Rockford).

HB 1769 was signed into law as **P.A. 102-0669**.

EFFECTIVE DATE: November 16, 2021

TELECOMMUNICATIONS

Small Cell: HB 3743 (Rep. Larry Walsh, Jr., D- Joliet/Sen. Michael Hastings, D-Frankfort) extends the Small Wireless Facilities Deployment Act for five years. MHA testified in support of this important legislation earlier in the session. The last year of the pandemic proved how these networks provide essential connectivity that we need to work and live our lives – and these networks are helping Illinois retailers of all types and sizes deliver for their customers:

1. Retailers are using wireless internet networks to receive and fill remote orders for grocery items, health care needs and prescription medicine. That has been especially important for seniors and our most vulnerable citizens;
2. Retailers are using wireless internet networks for video meetings to train employees and schedule shipments with suppliers;
3. Retailers are also using wireless internet networks to help people schedule an appointment for a vaccination; and
4. Retailers are relying on these networks to serve customers now – and after we move through the pandemic, our members still will rely on wireless internet networks to compete with retailers globally and meet customer expectations.

The current law is working for retailers, and it is working for our customers. The investments made prior to the pandemic have proven to be extraordinarily timely. Many retailers were required to quickly ramp up expanded delivery, curbside and in-store pick-up options. Without a robust 5G network in place, these same retailers, their employees, and the customers they serve would have been even more negatively impacted than they already have been.

HB 3743 was passed by overwhelmingly by both chambers and was signed into law as P.A. 102-0009.

EFFECTIVE DATE: June 3, 2021

UNEMPLOYMENT INSURANCE

Employer groups and employee groups reached an agreement on unemployment insurance language. HB 2643 (Rep. Jay Hoffman, D- Belleville/Sen. Linda Holmes, D-Aurora) contains the agreement. HB 2643 passed the Senate by a vote of 59-0 during the last day of regular session but was not called for concurrence in the House due to an oversight. The General Assembly reconvened in early June in an attempt to pass energy legislation. During this time the House passed the unemployment insurance agreed bill.

As a recap, in addition to administrative changes requested by the Illinois Department of Employment Security (IDES), the following provisions were agreed to:

1. Non-educational employees will be temporarily entitled to benefits until September 4th. These are employees of educational institutions who do not receive 12-months of pay; and
2. Individuals who received UI benefits would not be required to pay the monies back so long as they received the monies through no fault of their own and repayment would be against equity and good conscience. They will have 45-days from the date of a letter issued by IDES to apply for a waiver.

These combined provisions are estimated to cost between $65 and $100 million. In order to avoid adding further strain to the trust fund, the Assembly utilized $100 million of the $8.1 billion in federal monies the state received under the American Rescue Plan Act (ARPA). This is what made the agreement possible.

While this agreement puts no further strain on the UI Trust Fund, the Fund is $3.1 billion in debt from last year and is expected to experience another $5 billion for a total of $8 billion by the end of this year. To date, pleas to utilize a significant portion of the ARPA monies to relieve this deficit, as many other state have done, have gone unanswered. Without such assistance, the state faces $50-$60 million in annual interest payments, employers face a significant increase in their UI taxes, and employees face significant benefit cuts. While the Governor’s office holds out hope for additional relief from the federal government, that appears unlikely given the fact that so few states remain in as severe a deficit situation as Illinois. Nevertheless, Illinois only utilized $2.5 billion of the $8.1 billion it received from the federal government under ARPA. This means there is approximately $5.6 billion that could be utilized to restore the UI Trust Fund to solvency and avoid severe benefit cuts for laid off workers and taxes for employers. As part of this year’s agreement, labor agreed to communicate jointly with the Governor and the four legislative leaders of the imperative to utilize a substantial portion of the remaining ARPA funds to restore solvency to the Trust Fund.

HB 2643 was signed into law as **P.A. 102-0026**.

EFFECTIVE DATE: June 25, 2021