

Massachusetts Outlook: The Remainder of the 2017-2018 Legislative Session

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With the end of the 2017-2018 legislative cycle fast approaching, Beacon Hill's agenda for the coming months has begun to take shape. All major policymaking will need to be concluded by the end of formal sessions on July 31, and lawmakers have a long to-do list they hope to complete before that date.

Governor Charlie Baker outlined some of his administration's top priorities in his State of the State speech on January 23. The Governor called for the legislature to pass the CARE Act, the bill he **introduced** in November addressing the state's ongoing opioid epidemic, and move quickly on legislation making it easier to arrest and prosecute fentanyl traffickers. Baker also discussed his administration's work to improve the performance of the MBTA, create new housing units, and increase the state's consumption of renewable energy.

In his annual address to the House of Representatives on January 31, Speaker Robert DeLeo outlined his agenda for the coming year. The Speaker said that the House would tackle health care reform in the coming months and take up legislation continuing the state's investments in the life sciences sector. Aid for students who relocated to Massachusetts from Puerto Rico after Hurricane Maria, early childhood education, children's mental health, and civics education were additional areas of focus the Speaker identified in his speech. The Speaker also said that the FY2019 budget that would come out of the House Ways and Means Committee will contain no new broad-based taxes.

Now under the leadership of Senator Harriet Chandler, the Senate has identified energy, affordable housing, paid family and medical leave, and raising the minimum wage as key priorities for the coming session. The Senate has already enacted comprehensive health care legislation, though it will need to work with the House to enact a compromise version if and when the body approves its own plan.

Below ML Strategies presents its forecast and analysis of the key developments to expect in Massachusetts for the remainder the 2017-2018 legislative session.

Budget

Governor Baker's State of the State speech came the day before he released his **FY2019 budget proposal**, which more clearly details his administration's priorities for the coming year. **The spending plan** totals \$40.9 billion and increases expenditures by 2.6 percent over FY2018 levels. The budget process now shifts to the House Ways and Means Committee, which is holding a series of hearings on the Governor's budget proposal through mid-March before releasing its spending plan in April. The Committee's budget will be the first developed under the leadership of Chairman Jeffrey Sánchez.

Once the House finalizes its plan, the Senate, led by Ways and Means Committee Chairwoman Karen Spilka, will draft its version and debate the bill by the end of May. After the House and Senate finalize their versions of the budget, a conference committee will then negotiate the differences. The final budget must be signed into law before the beginning of the next fiscal year on July 1, 2018.

On February 8, Governor Baker filed a \$159.5 million **supplemental budget** for additional expenditures in the FY2018 fiscal year. This budget includes \$42.2 million for the operation of sheriff's departments across the state, \$1.6 million for family planning services, \$25.6 million for Transitional Aid to Families with Dependent Children benefits, and \$19.3 million for emergency assistance shelter beds.

Health Care

Health care promises to be a major issue throughout the rest of the session as the House crafts legislation in response to the comprehensive bill approved by the Senate last November. The House has indicated that it will draft its own bill, rather than amend the Senate version.

Speaker DeLeo spoke at length in his annual address to the House about health care, saying that Massachusetts has a moral obligation to ensure people have access to high quality, affordable health care. He mentioned priorities for a potential bill: supporting community hospitals and community health centers; shielding patients from rising costs; ensuring that patients have information to make informed

decisions; empowering businesses; and increasing pharmaceutical spending transparency.

The Speaker's comment about pharmaceutical spending transparency portends potential activity on bills related to this issue in the coming months. The legislature held a hearing on bills lawmakers had filed to increase transparency around drug spending and lower rising drug costs last July, but no action has been taken since that time.

Lawmakers will also continue to consider the opioid legislation Governor Baker filed last year and called for action on in his State of the State speech. In January, the Governor and Secretary of Health and Human Services Marylou Sudders testified before the Joint Committee on Mental Health, Substance Use, and Recovery on the bill, which is the second significant piece of legislation he has filed to stem the opioid epidemic in the state.

Ballot Questions

House and Senate leaders have said that they will try to strike a deal to prevent three high-profile initiative petitions – an increase of the state's minimum wage to \$15 per hour, the creation a paid family and medical leave program, and a reduction of the state sales tax to 5 percent – from reaching the ballot this November. These proposals are on track to appear before voters in the fall, but the Speaker and Senate President Chandler have both indicated their desire to craft a legislative solution that would resolve these issues. The legislature will have until May 2 to take action. If the Senate does not act before then, petitioners can place the question on the ballot by collecting collect 10,792 more signatures by early June.

The outcome of an ongoing legal challenge to the proposed "millionaire's tax" will also shape the composition of the ballot. On February 6, the Supreme Judicial Court heard oral arguments in a legal challenge to the millionaire's tax, which would impose a 4 percent surtax, on top of the state's regular income tax, on any portion of an individual's annual income that exceeds \$1 million. Business groups opposed to the measure sued Attorney General Maura Healey for certifying the question as eligible for the ballot. These opponents claim that the tax, which is being pursued as an amendment to the state constitution, improperly allocates funds to both transportation and education spending and undermines the legislature's control over the budget. The SJC typically rules several months after hearing oral arguments. If the court dismisses the challenge, the proposal will appear on the November ballot.

Life Sciences

The legislature has yet to act on Governor Baker's proposal submitted last June to continue the state's life sciences initiative that was launched in 2008. The Governor's five-year, \$500 million proposal called for \$295 million in capital spending and \$150 million in tax incentives for workforce development and job creation. Speaker DeLeo noted in his speech that acting on this proposal will be a top priority of the House in the coming months.

Noncompetition Agreements

The Chairmen of the Joint Committee on Labor and Workforce Development, Senator Jason Lewis and Representative Paul Brodeur, are reportedly close to reaching a deal restricting the use of noncompete contracts in the Commonwealth. Key issues to be resolved in any proposed legislation will be how noncompetes may be applied to lower-paid hourly workers, how long the agreements will be enforceable, and how departing employees may receive payments while their noncompete is in effect. The Committee [heard testimony](#) last October on several bills introduced addressing noncompetes. The House and Senate passed bills to limit their use last year, but negotiations between the branches broke down in conference committee.

Short-Term Rentals

Massachusetts is currently the only New England state that does not permit short-term rental services such as Airbnb to collect and remit room occupancy taxes. Lawmakers will attempt to remove this designation before the end of the session and agree upon a regulatory framework for the industry. Governor Baker's FY2019 budget proposed extending the state's room occupancy tax to short-term rentals by subjecting those renting properties for 150 days or more in a year to the state's 5.7 percent hotel tax.

Speaker DeLeo supports taxing short-term rentals and senators working on this issue are hopeful that a deal will be reached this year. Senator Michael Rodrigues ([SB1616](#)) and Representative Aaron Michlewitz have both proposed legislation ([HB3454](#)), though lawmakers are attempting to craft a new, final framework after receiving input during statewide hearings.

Gaming

The Senate will consider legislation Senator Eileen Donoghue introduced in January establishing a regulatory structure for the daily fantasy sports (DFS) industry in the state. The bill – [SB2273, *An Act to Regulate Online Gaming, Daily Fantasy Sports, and Online Sports Betting*](#) – makes DFS contests legal and charges the Massachusetts Gaming Commission with overseeing the industry. DFS operators would be required to register with the Gaming Commission and pay a 15 percent tax on their gross revenue.

The Gaming Commission would also be tasked with drafting and promulgating regulations to ensure fairness in gameplay, safeguard player data, impose a minimum age requirement of 21, and otherwise govern the industry. The proposal builds upon the findings and recommendations of the Special Commission on Online Gaming, Fantasy Sports Gaming, and Daily Fantasy Sports that met throughout the first half of last year.

Senator Donoghue's bill also creates an eight-person special commission to conduct a comprehensive study and offer proposed legislation relative to the regulation of online sports betting if the Supreme Court deems any part of Professional and Amateur Sports Protection Act (PASPA) unconstitutional in *Christie v. NCAA*. The court recently heard oral arguments in this case, which challenges the constitutionality of PASPA, the federal law that limits sports betting. Massachusetts could be in a position to legalize sports betting if the court rules that states are free to do so.

Criminal Justice

A six-member conference committee will continue meeting to try to merge comprehensive criminal justice reform bills the House and Senate approved last fall. Senators William Brownsberger, Cynthia Creem, and Bruce Tarr and Representatives Claire Cronin, Ron Mariano, and Sheila Harrington sit on the conference committee, which has been meeting privately since December. The House approved its bill (**HB4043**) by a 144-9 vote in November and the Senate bill (**SB2200**) passed 27-10 in October.

Housing

At the end of January, the House passed a \$1.7 billion housing bond bill aimed at supporting housing construction in the state. The bill (**HB4134**) recapitalizes affordable housing programs through the state budget and extends the authorization of tax credits that support affordable housing, including the Massachusetts Low Income Housing Tax Credit, the Community Investment Tax Credit, the Brownfields Tax Credit, and the Housing Development Incentive Program. The bill now moves to the Senate. Enacting housing legislation is a top priority for Governor Baker, who spoke at length about the topic in his State of the State speech.

Energy

On February 12, the Senate released an omnibus energy bill crafted by the Senate Committee on Global Warming and Climate Change that includes a wide range of measures for reducing greenhouse gas emissions. The bill lifts the state caps on net metering, establishes an energy storage target of 1,766 megawatts by 2025, requires the state to set up a carbon pricing system, and sets greenhouse gas reduction requirements for 2030 and 2040, among other provisions. The House is unlikely to take an omnibus approach to energy legislation, however, and is expected to prefer to work on smaller pieces of legislation that come out of the joint committee structure.

Bonding

The legislature and Governor Baker are on track to approve legislation authorizing \$3.5 billion in borrowing to fund repairs to state assets and local improvements. The Senate unanimously approved legislation (**S2279**) on February 8 allocating \$675 million for trial court facility improvements, \$680 million for general state facility improvements, \$500 million for public safety and security facilities, \$475 million for state university and community college campus improvements, and \$475 million for campus improvements across the UMASS system. The House passed its version of the bill (**HB4045**) in November. The bill's passage comes eight months after the state's bond rating was downgraded due to debt-service concerns.

Looking Forward

The passage of Joint Rule 10 day, the February 7 deadline for legislative committees to report out bills filed this session, allows for greater clarity on which bills have a chance at eventually becoming law this session. The vast majority of bills filed in January 2017 received extension orders or study orders making them effectively dead. Bills reported favorably out of the committees in which they had resided will continue to be considered.

After July 31, lawmakers will turn their focus to the November elections and the legislature will meet in informal sessions through the rest of the year. It is rare for major policymaking to take place during this time and legislative activity will not begin again until the start of the next legislative cycle in January.

Authors