



ML Strategies Alert

2015-2016 Massachusetts Legislative Session Ends

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After a mad scramble to take action before their midnight deadline, Massachusetts lawmakers closed the 2015-2016 legislative session by passing five of the “Big Six” bills on their agenda. Beacon Hill saw a flurry of activity in the final weekend of July as lawmakers rushed to make up for months of little action. Now, Governor Charlie Baker has 10 days to review the legislation he received.

Governor Baker, Speaker Robert DeLeo, and Senate President Stan Rosenberg had determined a group of the “Big Six” bills they wanted to pass before the end of the session. Five of these six passed late Sunday night, as lawmakers approved bills related to economic development, energy, municipal modernization, and ride-sharing. Pay equity legislation had passed on July 21, which Governor Baker signed into law last week. The legislature fell just short of its goal by failing to take action on noncompete legislation, which died without an agreement.

This advisory covers recent highlights from the 2015-2016 legislative session and analyzes issues that may resurface in the 2017-2018 legislative session.

Economic Development

Economic Development Bill Seeks to Promote Job Creation and Infrastructure Improvements

The compromised economic development package ([H.4569](#)) aims to promote job creation, workforce development, and infrastructure improvements through approximately \$1 billion in capital spending for targeted investments. While a number of provisions from the House and the Senate were included, some highly contentious language failed to survive the conference. The bill does not include an expansion of a tax incentive aimed at helping low-income workers, nor does it authorize the state lottery to expand into online gaming. Most notably for nonprofit organizations, an advocacy effort from MHA and allied groups successfully defeated language that would have imposed property taxes on nonprofit charitable corporations and public charities for four years after a property purchase. The final version also dropped a tax on short-term private room rentals, including those booked through the online site Airbnb.

MassWorks Infrastructure Program

The economic development bill authorizes \$500 million for MassWorks Infrastructure Program. This program provides infrastructure grants for municipalities and eligible public entities seeking funding to support economic development. This work includes, but is not limited to, sewers, parking facilities, water treatment systems, and community revitalization.

National Network for Manufacturing Innovation Funding

This bill also authorizes \$71 million to match grants so that Massachusetts colleges and universities can participate in the National Network for Manufacturing Innovation (NNMI) initiative. This federal initiative seeks to bring together manufacturers, university engineering schools, federal agencies, non-profits, community colleges, and regional and state organizations to invest in industrial and unique manufacturing technologies.

Transformative Development Initiative

The Transformative Development Fund, administered by MassDevelopment, received \$45 million to make equity investments in major development projects in Gateway Cities. The authorized funding will also help provide necessary technical assistance for these municipalities.

Workforce Skills Capital Grants

As the House and Senate aim to promote job creation, this bill authorized \$45 million to purchase and install equipment and building improvements for career technical education and training programs. The Workforce Skills Cabinet recently started the Workforce Skills Capital Grant Program to align state education, workforce, and economic development strategies.

eHealth Cluster Growth

Of particular note for the health care industry, the economic development bill adds a new section to chapter 40J that authorizes the Massachusetts e-Health Institute of the Massachusetts Technology Collaborative, along with the Secretary of the Executive Office of Housing and Economic Development and other advisors, to assist the growth of the e-health cluster through a set of initiatives. As telemedicine continues to grow, this institute is the designated state agency for promoting Health IT innovation to improve the safety, quality, and efficiency of health care.

Fantasy Sports Legalization

In a victory for the daily fantasy sports industry and Boston-based DraftKings, the economic development bill formally legalizes the DFS industry. While the bill does not regulate daily fantasy sports, language legally allows any fantasy sports operator to offer contests with cash prizes through July 31, 2018, so long as the contests are in accordance with the Attorney General's regulations. Fantasy sports are excluded from the state definition of gambling under the new legislation.

Modernization of Municipal Government

The 250 section compromise bill ([H.4565](#)) aims at modernizing municipal government functions across the state. Some of the provisions update obsolete laws, such as allowing electronic police ticketing, while others give cities and towns greater flexibility and authority. The central purpose of the bill is to make it easier for local officials to run their municipalities. Compromise language does not include changes favored by Governor Baker to give local officials control over how many liquor licenses to approve.

Streamlining Municipal Government Procurement and Operations

The bill reforms the process for procuring construction contracts, making it easier to select companies for small projects in municipalities. Cities and towns also gain the ability to set their own speed limits at 20 or 25 miles per hour in certain areas. The bill streamlines the process for accurately accounting for state-owned land, and modifies taxes and assessments. For example, former prisoners of war are exempt from paying the vehicle excise tax.

Municipal Funds and Commissions

Under the new legislation, municipalities have the authority to create various funds and commissions. For example, cities and towns could establish a trust fund to cover unanticipated special education costs or set aside money to pay for future retiree health insurance. Municipalities can also borrow money for certain purposes through

established time frames, such as five-year bonds to cover energy audits.

Local Education and Affordability

The bill includes initiatives to lower the costs of textbooks in K-12 and public higher education, setting up frameworks for cities and towns to pool together resources. Through this mechanism, the state will be able to buy school textbooks in bulk. New language also includes some zoning changes, such as establishing a framework for municipalities to develop workforce housing or affordable housing through tax incentives. The Legislature failed to pass a more comprehensive zoning reform bill.

Energy, Environment & Clean Technology

Commitment to Offshore Wind Power

After an end-of-session stalemate, the House and the Senate reached a compromise ([H.4568](#)) calling for the state's utilities to negotiate contracts for 1,600 megawatts of offshore wind and approximately 1,200 megawatts of clean energy. The offshore wind procurement reflects a compromise between the House's proposed 1,200 megawatts and the Senate's 2,000 megawatts. The clean energy number matches the House proposal, whereas the Senate proposed 300 megawatts more. These procurements will primarily come from Canada, potentially alongside onshore wind. This bill is the first to include offshore wind provisions at a scale that will create a sustainable market in the US, and is also the largest state commitment to offshore wind power in the country.

Increased Efficiency Measures

The bill, "An Act to promote energy diversity," is designed to address the state's increasing energy needs with greater efficiency. Any hydropower and land-based wind power contract solicitations must be determined a "cost effective mechanism for procuring low cost renewable energy on a long-term basis" by the Massachusetts Department of Public Utilities. Provisions will also enable waste-to-energy plants and fuel cells to earn "alternative energy credits" valued at approximately \$20 per MW hour for their energy production. The compromise bill includes a number of details that will directly affect the operations of utility and energy companies in Massachusetts.

Further details can be found in a [recent ML Strategies advisory](#) covering the clean energy legislation.

Ride Sharing

The Uber Bill

Lawmakers passed a compromise bill ([H.4570](#)) regulating ride-sharing companies such as Uber and Lyft, with an outcome seen as good news for the industry. Known as the Uber legislation, the bill mandates background checks and calls for the companies to pay a 20-cent surcharge per ride. The proceeds will split amongst municipalities for their transportation structure, the Massachusetts Department of Transportation, and to a MassDevelopment grant program to help the taxi and livery industry. The first two charges sunset after 10 years, while the last sunsets after only five years.

Background Checks

The Uber bill sets up a two-tiered background check system, one of which must be completed by the company and another by the state Department of Public Utilities (DPU). Drivers are also required to get an inspection of their vehicle, while the companies must get insurance coverage for their employees. The bill does not require fingerprinting of drivers. It would also allow drivers to pick passengers up from the Boston Convention & Exhibition Center and—for drivers with the right permits—Logan International Airport. Spokesmen from both Uber and Lyft have applauded the bill and the Legislature's process, and Governor Baker signed the bill into law on August 5.

Health Care

Increasing Access to Immunizations

The House advanced a bill ([H.3895](#)) authorizing certified medical assistants to administer immunizations under the direct supervision of a primary care provider. Through this simple provision, primary care providers can more easily meet the demand for immunizations, particularly in busy community health centers. This measure is supported by the Massachusetts Medical Society, which deemed promoting immunizations a “vital component” of the state’s public health.

Expanding Respiratory Therapy

A Senate bill ([S.1150](#)) expands the category for those who may perform the delivery, set-up, and maintenance of positive airway pressure (CPAP) equipment for home care patients with obstructive sleep apnea. The new language establishes that any employee working for a Massachusetts durable medical equipment company with a minimum of 500 hours of related training under a Massachusetts licensed Respiratory Therapist may perform this setup.

Long-Term Lyme Disease Treatment

A controversial House bill ([H.4491](#)) requires commercial insurance companies to provide coverage for the long-term antibiotic treatment of Lyme disease. While Governor Baker vetoed the bill, the Legislature overrode the veto to make this bill law.

Public Coverage of HIV-Associated Lipodystrophy Treatment

Senator Mark Motigny’s bill (D-New Bedford) requires certain health insurers to provide coverage for medical or drug treatments to correct or repair disturbances of body composition caused by lipodystrophy syndrome. The legislation ([S.2137](#)) would apply to health insurance policies administered by the Group Insurance Commission, indemnity policies, non-profit hospital service corporations, medical service organizations, health maintenance organizations, and the Office of Medicaid.

Administration of Controlled Substances

This legislation ([H.4489](#)) would have amended the Controlled Substances Act by re-defining “administer” to permit a registered pharmacist, acting at the direction of a prescribing practitioner in the court of the practitioner’s professional practice, to administer mental health and substance abuse medications. The Legislature was unable to override Governor Baker’s veto, moving the legislation to the next Session.

Employment

Equal Pay Law

Less than a day after the legislative session ended, Governor Baker signed a groundbreaking equal pay law ([S.2119](#)) that mandates equal pay for equal work for men and women. The law makes Massachusetts the first state to forbid businesses from requiring job applicants to disclose their salary history before offering them a job. By doing so, the state will help ensure historically lower wages and salaries do not continue for women and minorities throughout their entire careers. Language also defines the “equal pay for equal work” clause, which takes education, seniority, training, and performance into account.

Noncompete Agreements

Noncompete Bill Fails

As lawmakers scrambled to follow through on the “Big Six,” they fell short by failing to reach a compromise on restricting the use of noncompete agreements. A big disappointment for the local startup community, the unpassed legislation leaves the contentious debate between employers and start-up companies unresolved. Noncompete agreements, which are designed to prevent employees from leaving companies and working for competitors immediately, have gained criticism for limiting the creation of start-up companies as Massachusetts strives to match the technology hub of Silicon Valley.

Contention Over Garden Leave Provision

The House and Senate each passed their own versions of noncompete legislation ([H.4434](#), [S.2418](#)), aimed at limiting who can be subject to a noncompete, eliminating their use for students, interns, employees under 18 or those who have been fired. Differences between the two versions related to how long a noncompete could be in effect, who would be exempt, and how much a business would be required to compensate former works during a so-called “garden leave.” The garden leave clause caused the final disagreement between the two sides, preventing negotiators from reaching an agreement before the midnight deadline. This marks the second Legislative session in which noncompete legislation has failed after former Governor Deval Patrick’s proposes to limit the use of noncompetes. The conversation will continue into the next legislation session.

For a more complete description of the Massachusetts Legislature’s discussion of noncompete agreements, please see a [prior ML Strategies advisory](#).

Budget Vetoes, Overrides & Outcomes

Baker’s vetoes

Of the \$38.92 billion budget ([H2](#)) Governor Baker signed off on, he vetoed \$256 million in spending. His most significant vetoes were made in what his Administration states was an effort to balance the budget, cutting \$72 million from Health and Human Services, \$59 million from the Administration and Finance, \$32.6 million from Education, and \$21 million from Housing and Economic Development. See a [previous ML Strategies advisory](#) for more detail on the Governor’s vetoes.

Legislative Response

Vetoes were sent back to the legislature for possible overrides. Lawmakers restored about \$100 million spending, reinstating funds to boost salaries for early education and preschool teachers, pay for voting programs, and reverse cuts for various state agencies. In an effort to invest in education, one vote restored \$7.5 million to hike pay for educators in government-sponsored preschool programs. The House and Senate restored \$1.2 million in election funding, including funds for an inaugural “early voting” program for the presidential election in November. They also voted to reinstate \$23.5 million for cash benefits for low-income families with children, and \$32,297 for specialty drug courts that help the state combat the opioid crisis.

Looking Ahead

As the last formal session of the Massachusetts Legislature concluded, lawmakers will now focus on the upcoming November elections. The upcoming 2016-2017 session, which commences January 3, 2017, will likely include reconsideration of previously filed legislation throughout this ML Strategies advisory. We can expect to see a continuation of the contentious debate over noncompete agreements between employers and the startup community.

The legislature can still pass bills during informal sessions; however, any lawmaker has the ability to block bills, and veto overrides and land-taking require roll call votes, meaning they cannot be handled during informal sessions.

As the legislature continues to meet informally, ML Strategies will monitor the progress of notable developments in the Commonwealth, including the upcoming elections and the four statewide ballot measures. In November, Massachusetts voters will decide whether to (1) expand slot machine gaming; (2) approve up to 12 new charter schools across the state; (3) ban “extreme” methods of farm animal confinement; and (4) legalize marijuana for recreational use.

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