ML Strategies Alert

FY2018 Massachusetts Budget Update: The Senate Ways and Means Budget

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BY JULIE COX, STEVE BADDOUR, DAN CONNELLY, CAITLIN BERESIN, MAX FATHY, AND HAEJIN HWANG

On May 16, 2017, the Massachusetts Senate Ways and Means Committee proposed a $40.791 billion FY2018 budget. The budget, which increases spending by 3.3% over FY2017 levels, spends $280 million more than Governor Charlie Baker's proposal and $220 million more than the House budget approved last month.

Following in the steps of the House budget, the Senate budget rejects three commercial insurance market restrictions that Baker recommended in his budget proposal. Instead, the Senate authorizes Baker to choose between implementing a new per employee assessment (fair share contribution) on companies that do not offer health plans to their employees, or increasing an existing fee used to help pay for subsidized insurance plans and medical care for the uninsured.

Without raising existing tax rates, the Senate projects that it could generate an additional $409 million in tax revenue in FY2018 by applying existing taxes to new payers, changing how the state collects some taxes, and taking other steps. These measures include imposing a 5 percent excise tax upon all short-term room rentals and changing how the state collets sales taxes from online retailers, how companies remit sales, room occupancy, and meals taxes to the state, and the threshold at which credit card companies must provide 1099-K forms to individuals. The Senate budget makes strategic, targeted investments while reducing reliance on one-time revenue sources and directs $98.4 million to the Stabilization Fund to continue to build the state's financial safety net. Senators have also filed 1,031 amendments to the budget that are being debated this week. Other budget and amendment highlights include:

Health Care

- In response to the "fair share contribution" proposed by Baker and the House to address rising MassHealth costs, the Senate authorizes the Secretary of Administration and Finance, working with the Commissioner of Revenue, to consider two options to address deficits in the Medicaid program: increase the current Employer Medical Assistance Contribution percentage (EMAC) or implement an assessment on employers, but only after a public hearing process that takes into account a number of factors. The Governor's plan levied a $2,000 per employee assessment on employers who do not contribute $4,950 per full-time employee (FTE) annually or have an 80 percent uptake rate for all FTEs and the House proposed creating a 6 month review process for the Administration to develop an assessment, and did not include an alternative option of increasing the EMAC percentage. The Senate budget also lowers the assumed revenue to be generated by the assessment to the same level as the House – $180 million compared to $300 million predicted in Baker's budget. According to the Chairwoman of the Senate Ways and Means Committee, Senator Karen Spilka, if the administration chooses the employer assessment over the EMAC increase, it could only be applied to companies with 25 or more employees and it would sunset after two years.

The Senate is also recommending an exemption for non-profits. The EMAC applies to all businesses with six or more employees, and any increase would also sunset after two years under the Senate plan.

- The Senate budget includes Baker's proposed new assessment on non-acute hospitals, including inpatient chronic, rehabilitation, and psychiatric facilities. The assessment would be proportional to the amount currently assessed on acute hospitals, resulting in an approximately $15 million assessment. The assessment is required for the state to comply with federal Medicaid rules that specify state provider taxes must be broad-based. The House also included this assessment in its spending plan, though it included some language not included in the Senate plan ensuring that the funding is returned to non-acute hospitals as intended. The Senate budget did, however, include protections ensuring that payments from the non-acute hospital trust fund are not used to pay for current spending and a requirement that payments from the fund are proportional to the respective assessed amounts paid by each class of hospitals.
- The amount of the acute hospital assessment remains the same, but the gross patient service revenue (GPSR) calculation was revised slightly to exclude only Medicare (Title XVIII) and Medicaid (Title XIX) services, whereas today Medicare, Medicaid, ConnectorCare, bad debt, and other government programs are excluded when determining how the $422.8 million is distributed across acute care hospitals. The Executive Office of Health and Human Services (EOHHS) states that this change was made to comply with federal provider tax rules.
- The Senate rejects three commercial insurance market restrictions that Baker recommended in his budget proposal related to growth caps on commercial payments to providers; a statutory provider payment cap for insurance plans serving members of the Group Insurance Commission (GIC); and a directive to the Division of Insurance to eliminate commercial insurance administrative facility fees for services provided in clinics. The House also rejected these proposals in its budget.
- The Senate budget assumes $13 million for disproportionate share hospitals (DSH), which corresponds to the 2017 acute hospital Request for Applications amount for these hospitals that will be paid in FY2018 per MassHealth's new methodology. This funding is assumed in the Governor's budget and the House budget, though the House directs that $13 million be made for these payments. MassHealth's new methodology distributes DSH funding based on concurrent year data and thus 2017 RFA payments are now made in 2018. The new methodology also now uses a fixed funding pool amounting to $13 million, which is $11 million less than what the FY2017 state budget assumed. The budget does not include directive language for MassHealth payments for pediatric hospitals and pediatric specialty units. The funding was included in the House budget proposal.
- Following the House budget, the Senate directs $15 million to be transferred from the Commonwealth Care Trust fund to the Health Safety Net (HSN) fund.
- The Senate budget allows the Health Connector to explore the idea of creating a "public health insurance option" that would allow companies to share costs with MassHealth for eligible low-income employees and expand the viability of group purchasing cooperatives for small businesses.

Public Health & Human Services

- The Senate budget allocates $143 million for a range of substance abuse treatment and intervention services; $1.2 million to continue a pilot program to initiate clients on Extended Release Injectable Naltrexone, which blocks the effects of opioids and reduces cravings for individuals on the path to recovery; and $1 million for the Narcan Pilot Expansion program, supporting the training and purchase of the overdose reversal drug naloxone for first responders and potential bystanders in some of the cities and towns most impacted by the opioid crisis.
- A total of $305.3 million is invested in the Executive Office of Elder Affairs to enhance the health and wellness of seniors.

- The budget invests $1.9 billion in the Department of Developmental Services to support housing, job training, and assistive technologies and health services. This includes $24.2 million to fully fund Turning 22 services to help young people with disabilities transition to the adult services system. The House also invested $1.9 billion in the Department of Developmental Services, which includes $24.2 million to fund Turning 22 services.
- Like the House budget, the Senate budget provides a $2,000 tax credit for each veteran hired by businesses participating in a veterans hiring certification program at the Department of Veterans' Services and directs the Department to develop a comprehensive program to improve employment opportunities among veterans by assisting businesses to attract, hire, train and retain veterans.
- The Senate invests $988 million in the Department of Children and Families. The House invested $975 million.
- The Senate expands access to housing and homelessness prevention resources by investing $100 million for the Massachusetts Rental Voucher Program, providing funding for 350 to 400 new rental assistance vouchers. The House also invested $100 million for the Massachusetts Rental Voucher Program.

Education

- The Senate budget allocates $15.1 million to expand preschool access; a minimum increase of $30 per pupil in aid to local schools; and workforce training programs. It includes $545.9 million for community colleges and state universities, and increases funding for the University of Massachusetts by more than $26 million over 2017 to $534.5 million. The House funded UMass at $513.5 million.

Local Aid

- The Senate budget provides over $4.7 billion for Chapter 70 funding, higher than either the Baker or the House budgets. The investment allows for a minimum aid increase of $30 per pupil over FY2018 for every school district, foundation changes for employee benefits, foundation changes for special education costs, and funds to mitigate the impact for change in low-income student accounting.
- The Senate, like the House, adopts Baker's proposal to provide over $1 billion for unrestricted local aid, a 3.9% increase over the FY2017 level.

Transportation

- Like the Baker and House budgets, the Senate budget provides $127 million to the MBTA, a reduction from FY2017, and includes $314 million for MassDOT, $30 million less than Baker's $344 million.

Taxes and Revenue

- The Senate budget levies a 5% excise tax upon all short-term room rentals through websites like Airbnb and VRBO, which is estimated to generate $18 million in annual revenue. Unlike Baker's proposal to extend the room occupancy tax to anyone who provides 150 days or more of accommodation in a calendar year, the Senate budget calls for the tax to be applied to room rental of any length, generating an additional $6 million in revenue. The Senate budget also allows municipalities to impose a local option tax of up to 6% (6.5% in Boston) on short-term rentals. The House did not include a tax on short term rentals in its budget proposal.
- The Senate expects to collect an additional $7 million in FY2018 by taxing internet-based room resellers, like TripAdvisor or Expedia, that buy hotel rooms in bulk and sell them at a higher price.
- Unlike Baker's and the House proposals requiring third party credit card processors to remit sales,

room occupancy, and meals taxes to the state on a daily basis, the Senate directs the administration to either pursue "an accelerated" sales tax collection or devise a sales tax prepayment system. Either option will generate a one-time lump sum of $125 million in FY2018.

- Like Baker's and the House's proposals, the Senate budget collects sales tax from online retailers who do not have a physical location in Massachusetts, but conduct more than $500,000 in annual sales in the state. This change is expected to yield $30 million in revenue in FY2018.
- Another $20 million in revenue is expected from a Department of Revenue (DOR) change that will require credit card companies to provide a 1099-K form to individuals who earn more than $600 from credit or debit card transactions in a calendar year. The current threshold for a 1099-K form is $20,000 in income from 200 or more transactions in a year. The House budget also gives DOR the discretion to require additional reporting for credit card and third party processor transactions on 1099-K forms.

Economic Development

- The budget provides $600,000 for Regional Economic Development grants to promote economic growth and business development in Massachusetts; $3 million for the Massachusetts Technology Collaborative, including $500,000 for a new initiative to promote and expand the cybersecurity sector; and $4 million for the Workforce Competitiveness Trust Fund.

Energy and Environment

- Funding for the Executive Office for Energy and Environmental Affairs (EOEEA) totals $237.9 million, which includes $52.9 million for the Department of Environmental Protection, including a new investment of $500,000 to ensure compliance with the federal Safe Drinking Water Act and $38.4 million for the Department of Conservation and Recreation state park operations.

Amendments to the Proposed Budget

- A sales tax prepayment amendment (#256) replaces existing language to require that any hotel, motel, bed and breakfast or other lodging operator or vendor, with an annual tax liability of $1,000,000 or more during the preceding 12 months, make estimated monthly tax payments of at least 50% of the liability for the same calendar month of the preceding year. Any operator or vendor that exceeds the actual tax liability for the month in which the liability occurred will be provided a credit for the amount of tax overpaid.
- A public safety amendment (#954) would require a certificate of title for anyone who acquires a snow or recreation vehicle.
- Health care amendments filed include:
    - Amendment (#436) directing the Health Policy Commission to examine the healthcare quality and patient safety impacts posed by insurance industry practices requiring the forced "brown-bagging" and "white-bagging" of cancer and chronic-illness related pharmaceuticals.
    - Amendment (#444) reversing recent MassHealth policies that limit reimbursement paid from MassHealth Managed Care Organizations (MCOs) to acute care hospitals.
    - Amendment (#464) providing enhanced Medicaid supplemental payments to disproportionate share hospitals.
    - Amendment (#536) establishing a Special Commission on the delivery of trauma care.
- Amendment #752 would allow the sale of online and electronic multi-district lottery games other than casino games. The State Lottery Commission is directed to establish rules and regulations for

lotteries conducted online, over the internet, or through the use of mobile applications.

- Two amendments were filed related to the room occupancy tax: (1) amendment #631 would change the definition of "Occupancy" in the provisions on the room occupancy tax to lower the threshold for consecutive calendar days from 90 to 31; and (2) amendment #11 would adopt the Governor's proposal and provides that the existing occupancy 5.7% tax will be applied to any provider of transient accommodations who provides 150 days or more of accommodation in a given calendar year.
- Two amendments related to the Single Sales Factor tax apportionment were filed: one amendment (#23) strikes mutual fund service corporations from being covered by the Single Sales Factor apportionment; and the other amendment (#37) requires the DOR to perform an analysis on the impact of changing to a single sales tax rate factor in the Commonwealth.
- $250,000 is provided in an amendment (#590) for a FinTech study to understand the status of and current trends in the financial technology services sector and the next generation uses of financial data.
- Amendment #596 establishes a system of community benefit districts under which certain designated property owners, including nonprofit entities that are not subject to property tax, be considered in a fee formula for supplemental services and programs as outlined in a management plan
- Amendment #212 would establish a commission to investigate and study college affordability that would be authorized to investigate finances of public and private universities.
- Amendment #184/146 would authorize the Board of Higher Education to enter into interstate reciprocity agreements that authorize any accredited, degree-granting institution of higher education located in MA to voluntarily participate in such reciprocity agreements and to provide distance learning education programs to students in other states under agreements, provided that the Department of Higher Education and the Attorney General execute any memoranda of understanding needed to coordinate the enforcement of applicable requirements, statutes and regulations. This amendment was also included in the House budget.

Next Steps

This week the Senate is debating the 1,031 filed amendments and will produce a final version of the budget. Following Senate passage, a six member Conference Committee, comprised of three House and three Senate lawmakers, will meet to resolve the differences between the final House and Senate versions. Spilka, along with House Ways and Means Chairman Brian Dempsey, will lead the effort to reconcile the two bills. The other lawmakers who will participate in the conference committee have yet to be named. Final spending and revenue decisions for the FY2018 budget may be altered by a $462 million tax shortfall for the first ten months of FY2017 that has lowered prospects for collections in the current fiscal year.

The reconciled budget will then go back to each branch for voting, finally landing on the Governor's desk. The Governor must sign the entire budget or veto parts or all of it before July 1.

ML Strategies will continue to monitor the budget process as we approach the start of the new fiscal year on July 1, and lawmakers further develop their spending plan for FY2018.

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