



ML Strategies Alert

2017-2018 Legislative Session: Wage Theft Update and Boston Common Shadows

07.13.2017

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Massachusetts lawmakers continue to debate legislation this summer affecting employers and developers in the Commonwealth. Bills aimed at preventing wage theft by employers and further regulating shadows cast by new construction on Boston Common were the subject of committee hearings in late June. This alert summarizes the recent debate on these bills.

Wage Theft

Wage theft legislation ([S.999/H.1033](#)) backed by workers' rights advocates and labor leaders was the focus of a Labor and Workforce Development Joint Committee hearing on June 20th. The legislation, titled "An Act to Prevent Wage Theft and Promote Employer Accountability," seeks to prevent wage theft, which is generally a business's underpayment, non-payment, or denial of benefits to a worker. The bill allows the Attorney General or the Director of the Department of Unemployment Assistance to issue a stop work order against wage violators requiring the cessation of all business operations, gives the AG the power to bring wage theft cases to court for civil damages as an alternative to initiating criminal proceedings, and subjects a lead contractor to joint and several civil liability and provides that the lead contractor will share civil legal responsibility for any wage theft violation (See ML Strategies' [previous alert](#) analyzing the contents of the legislation).

Representative Aaron Michlewitz, the House bill's main sponsor, cited in his testimony the estimated \$700 million in wages that have been stolen from Massachusetts workers in recent years. He explained that the bill grants the Attorney General additional tools to hold accountable employers who withhold wages from their employees.

Cynthia Mark, Chief of the Fair Labor Division at the Attorney General's office, expressed support for the legislation on behalf of Attorney General Maura Healey. Mark explained that her Division has fielded 16,000 calls (70 per day) this year with complaints of wage theft and has ordered employers to pay \$5 million in restitution and \$2 million in penalties. She said that her office received most wage theft complaints from restaurants and the construction industry, but doctors, nurses, and cleaners, among others, have also been affected.

The legislation received widespread support from labor groups, with representatives from the AFL-CIO, Massachusetts Building Trades Council, Community Labor United, New England Regional Council of Carpenters, Brazilian Women's Group, Brazilian Workers Center, and MassCOSH Workers Center all offering testimony. These proponents argued that the bill will lessen the prevalence of wage theft in the Commonwealth and ensure that workers receive a timely payment for stolen wages. Supporters also argue that these measures, by ensuring workers receive their wages, will generate additional tax revenue for the state.

Testimony from business groups reflected their opposition to the legislation. Representatives of Utility Contractors of New England, Greater Boston Real Estate Board, Associated Subcontractors of MA, Associated General Contractors, Associated Builders and Contractors, Construction Industries of Massachusetts and the NAIOP testified in opposition to the bill. These organizations took issue with the bill's "vicarious liability" provision, whereby a lead contractor could be held liable for a subcontractor's violation. Representative Joseph McKenna asked the NAIOP representative whether a compromise might be found by limiting the bill to *one step* liability, where a contractor is only liable for the actions of a subcontractor one step below them. She said that such a compromise may be possible, but that she would need to confer with her organization.

Opponents also argued that the wage theft bills unfairly punish law-abiding companies for the actions of a handful of "bad actors," the Attorney General already has the authority to enforce wage theft laws, and additional resources would enable her staff to use the tools currently in place. They conceded that wage theft is a problem that must be remedied, but they believe the bill will not do anything to resolve the problem or expedite resolutions. Business groups opposing the legislation, including the Associated Industries of Massachusetts, the Greater Boston Chamber of Commerce, the Retailers Association of Massachusetts, and several of the groups that provided testimony at the hearing, signed on to a letter submitted to the committee expressing these points.

This is the second consecutive session the legislature has considered a wage theft bill. Similar legislation passed the Senate by a 38-2 vote at the end of formal sessions last year, but it did not make it out of the House Ways and Means Committee. This session's bill has received additional support from the House, as over 100 Representatives have signed on as cosponsors compared to 76 for last session's House bill. The bill has maintained strong support in the Senate, with 26 Senators currently signed on as co-sponsors.

Boston Common Shadows Legislation

The Boston City Council and Mayor Marty Walsh have joined together with community leaders and real estate developers to promote a home rule petition aimed at both strengthening Boston Common's protections against new shadows and exempting the Millennium Partners project at 115 Winthrop Square from these protections. Introduced by Representative Michlewitz, the bill ([H.3749](#)), titled "An Act Protecting Sunlight and Promoting Economic Development in the City of Boston," is currently pending in the Joint Committee on Municipalities and Regional Government. New shadow—generally shadow cast by buildings on the Public Garden, Copley Square Park, and Boston Common—is defined in the bill as all shadows that will be cast by structures on areas that are not regularly in shadow (due to existing structures or as yet unconstructed structures that have been granted a building permit or local zoning entitlement) at the time that the application for the structure that will cast them is made to the Boston Zoning Commission, Boston Zoning Board of Appeal, or Boston Planning and Development Agency (BPDA).

The bill continues the 1990 and 1992 Shadow Laws' protections for the Public Garden and expands the protections for Boston Common by eliminating the Boston Common shadow bank. Previously new construction around Boston Common was allowed a maximum of one acre of new shadow from the shadow bank. Under Michlewitz's bill, this limited allowance would no longer be available for new projects. The bill does still allow shadows cast by antennas, fences, flagpoles, signs or other similar structures atop a building as well as shadows cast on an area that would be cast in shadow by a hypothetical building conforming to height limits allowed by the Boston Zoning Code as of March 31, 2017.

The bill contains a unique exemption for the Millennium Partners project at 115 Winthrop Square and future construction at that address. Any building constructed at 115 Winthrop Square will be permitted to cast new shadow on the Public Garden for no more than 45 minutes after either 7am or sunrise, whichever is later.

Copley Square Park is defined and has its new shadow protections strengthened in the bill. The bill forbids the construction of buildings within the Stuart Street District (Back Bay) that would cast new shadow for more than two hours from 8:00am until 2:30pm from March 21st through October 21st on Copley Square Park. Any planned

construction that was part of the Stuart Street District Master Development Plan or that received local zoning entitlements through the Zoning Board of Appeals on or before March 31, 2017 is grandfathered in by the bill and exempted from the updated new shadow restrictions.

The bill also requires the BPDA to begin a planning initiative for Midtown Cultural District (Financial District) within six months of the bill's passage and publish a report within the next three years. This final report must include recommendations regarding historic preservation, impacts of development on the environment, adaptability to climate change and shadow impact on open and public spaces as well as development guidelines that facilitate economic development and community benefits. In particular, these guidelines will serve to balance area enhancement and the needs of current residents.

A similar bill ([H.2129](#)) introduced earlier this year by Representatives Jay Livingstone and Byron Rushing stalled in committee after facing staunch opposition from the BPDA and the NAIOP. That bill had a broader scope than the current bill and sought to increase new shadow protections for the Charles River Esplanade, Christopher Columbus Park, Commonwealth Avenue Mall, Copley Square Park, Magazine Beach Park, and the Back Bay Fens.

The home rule petition bill has received strong support from Mayor Walsh. Millennium Partners has agreed to pay the City of Boston \$153 million for the city-owned Winthrop Square garage upon which the Millennium Tower will be built. The Walsh administration has pledged to spend much of this sum on affordable housing, funding for the city's Franklin Park, and donations to the Friends of the Public Garden. Millennium Partners also promised to build 100 new affordable housing units in Chinatown. The City of Boston has also sought to leverage the design of the tower to the public benefit in a manner consistent with the city's overall approach to private projects. In April, the city told Millennium Partners to improve plans for the "Great Hall" that would be the street-level centerpiece for the tower. The BPDA wrote that the Great Hall could be "an important civic – and perhaps cultural – space in downtown Boston."

The Franklin Park Coalition and Downtown Boston Business Improvement District Corporation have come out in support of the bill. They emphasized the substantial cash injection that the Millennium project represents for Franklin Park and the city and the benefits of redeveloping Winthrop Square.

Critics, including City Council President Michelle Wu, charge that the BPDA misrepresented the Millennium project to the City Council and that, in its current form, the Millennium project does not merit entirely rewriting the city's shadow laws. Wu has argued that the bill will give other developers grounds to argue for their own special exception to the city's shadow laws, undermining the bill's purpose. The Boston Preservation Alliance similarly opposes the bill due to concerns that it would encourage future administrations to sell exemptions from other city laws and environmental regulations.

The Joint Committee on Municipalities and Regional Government held a hearing on the bill on June 27th. At that hearing, Secretary of State William F. Galvin expressed his skepticism towards altering the laws that have protected Boston's parks for more than 25 years. He warned that changing the shadow laws would set an unwelcomed precedent, saying "We can't say that because someone is going to make a buck, we should look the other way." He asked the committee to delay any decision on the bill for at least two weeks in order to allow his office to fully review the bill, and the chair of the committee agreed to the proposed delay.

On Tuesday July 11th, Galvin wrote letters to the Chairs of the Joint Committee asking them to postpone further consideration of the legislation. "Consideration of this bill is premature since the full extent of all the environment impacts of the tower have not yet been studied or publicly disclosed," Galvin wrote. Brian Golden, the head of the BPDA, pushed back against Galvin's criticism, saying that his concerns are being addressed through an environmental review process and the city's own review. Golden said that the legislation does not approve the Winthrop Square project, but rather it "allows the comprehensive review process to move forward and the discussions involving both the benefits and concerns regarding this project to continue."

On July 12, the Committee favorably reported the bill, which will now continue to proceed through the legislative process.

ML Strategies will continue to monitor and report on these bills and other issues relevant to employers periodically throughout the session.

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