



BULLETIN #1/2021 JANUARY 6, 2021

A FEW HOURS SEPARATE THE LAST LEGISLATIVE SESSION FROM THE NEXT - 192ND MASSACHUSETTS GENERAL COURT TO BE SWORN IN THIS MORNING

CFPB TASKFORCE PROMOTES ADOPTION OF NADA FAIR CREDIT PROGRAM

The returning members of the Massachusetts General Court will squeeze in a quick catnap this morning to kick off the 2021-2022 legislative session after closing out the 2019-2020 session at 4:41 this morning. The House and Senate went well past the midnight deadline to finish up work on lingering matters, including two major packages regarding economic development and transportation project bonding.

Gov. Charlie Baker will administer the oath of office to lawmakers this morning via a combined outdoor and virtual swearing-in process. The Senate, including two new Democrats in the 40-member body, will be sworn in at 11:00 a.m. The 160-member House will welcome 17 new members – 15 Democrats and 2 Republicans – at its 11:30 a.m. swearing-in.

The House is expected to re-elect Ron Mariano (D-Quincy) as speaker. Speaker Mariano was initially elected to lead the House last week with the resignation of then-speaker Robert DeLeo. The Senate is expected to re-elect Karen Spilka (D-Ashland) as president of that body.

Legislators need to have their bills for the upcoming session filed by 5:00 p.m. on January 15. Next steps for the House and Senate, at a date to be set in the near future, will be the adoption of rules. Then, the speaker and president will appoint the chairs and composition of the numerous legislative committees. Not until then will we have any sense of when committee hearings will commence, most likely in March.

Below are two articles, courtesy of *State House News Service*, describing the economic development and transportation bond bills. Due to the fact that legislators, the press, and the public had very limited time to review the documents prior to final votes, the stories speak of certain items in very broad terms.

The final transportation bill reported by the conference committee this morning did not include our legislative proposal addressing the issuance of temp tags, which was included in the final Senate bill this Spring but was not in the House's version.

Finally, as time expired, the Legislature did not pass Gov. Baker's proposed rate relief for businesses on UI assessments, which are expected to increase substantially in 2021 due to considerable layoffs during the on-going Coronavirus pandemic.



Legislature Agrees to \$626 Mil Economic Development Bill

With many businesses on the brink after months of scraping by through the pandemic, the Legislature struck a late-night deal Wednesday morning to inject hundreds of millions of dollars into the economy in an effort to spur job growth and keep businesses afloat.

The \$626.5 million economic development bill ([H5250](#)) came together in the closing hours of the two-year legislative session after more than five months of private negotiations between House and Senate leaders.

While the compromise bill scrapped a House-backed plan to have Massachusetts join other New England states in legalizing sports betting, it did include a version of Gov. Charlie Baker's long-stalled housing production proposal to lower the threshold for local boards to approve zoning bylaw changes to a simple majority.

Baker has pushed for years for the change as one that is essential to meet his goal of creating 135,000 new units of housing by 2025 to ease the housing crunch, especially around Greater Boston.

The bill also included \$50 million in funding for transit-oriented housing, \$30 million for a loan program similar to the federal Paycheck Protection Program for businesses hurt by COVID-19, and funding for job training, tourism, technology and advance manufacturing.

"I think it's a great bill. It covers a lot of ground, will help the commonwealth with job creation over the next few months and years," Senate President Karen Spilka said, adding that it also prioritizes racial, geographic and economic equity where possible.

The bill passed the House 143-4 at 4 a.m. and cleared the Senate 40-0 at 4:15 a.m.

The bottom-line on the bill grew from the roughly \$450 million legislators were eyeing back in July.

Sen. Eric Lesser, a Longmeadow Democrat, said the bill would help Massachusetts "chart a path out of the recession we are in" and address the "explosion" of social and economic injustice that has been exposed in some communities by the pandemic by prioritizing funds for those communities' business owners.

The bill includes \$35 million in loan funding for community development lending institutions to extend capital to small businesses, with a focus on minority- and women-owned businesses that have historically had trouble accessing financing and have been disproportionately impacted by the pandemic.

It would also seal no-fault eviction records, Lesser said.

There is \$52 million set aside for science and technology research, \$20 million for economic development in small, rural communities, \$14 million for tourism, and \$6 million to support artists and local museums.



And if signed by Baker, the low-income housing tax credit program would double to \$40 million.

The talks were led by House Ways and Means Chairman Aaron Michlewitz and Lesser, the Senate chair of the Committee on Economic Development and Emerging Technologies. They were joined on the conference committee by Reps. Ann-Margaret Ferrante and Donald Wong and Sens. Michael Rodrigues and Patrick O'Connor.

Massachusetts had the highest unemployment rate in the country at 16.1 percent in July when the House and Senate debated and passed competing versions of the bill that was finalized Tuesday night.

But while the job market has rebounded and the state's 6.7 percent unemployment rate now matches the national average, economists remain uncertain about the strength of that recovery and whether the ongoing surge in COVID-19 infections could spark public officials to revert to tight restrictions on businesses.

To prepare for what's to come after the pandemic, the bill would create a "Future of Work" commission to study how to promote sustainable jobs with fair benefits and workplace safety standards across industries.

There are also commissions that would be created to study the negative impact of changes in media on local journalism and how to help the arts community recover from the pandemic.

And lawmakers also agreed on a "student loan bill of rights," which is an issue Lesser has been pushing for multiple sessions. The bill would make sure borrowers are educated about their responsibilities and borrowing rights and student loan servicers that take advantage of students could be fined and forced to repay student borrowers.

The infusion of money for economic development and job creation comes on top of a new round of federal stimulus and a \$668 million small business recovery fund Gov. Baker launched last month to help small employers hurt by COVID-19 restrictions cover rent, payroll, debt and other expenses.

Late Tuesday afternoon, new Speaker Ron Mariano called it "a shame" the two branches couldn't reach a deal to legalize betting on sports.

Baker filed a proposal to legalize betting on professional sports back in January 2019, and had hoped to sign a law before the start of the NFL season late that summer. The House included college sports in its bill that would have allowed for betting through mobile apps.

Mariano pointed the finger at the Senate for not wanting to negotiate the issue, but said he hopes to return to the topic early in the new session to make sure a home-grown company like DraftKings doesn't uproot and take jobs somewhere else, like New Hampshire, where sports betting is legal.

"If I could, we'd have a deal," Mariano told Bloomberg radio.



The House had proposed to use nearly a third of the \$50 million in revenue it projected from legalized sport betting to create a new fund for distressed restaurants, with qualifying restaurants eligible to receive up to \$15,000 in relief.

Restaurants have been some of the hardest hit small employers in the state by the pandemic, and have been lobbying to limit the delivery charges as more customers are choosing to stay home.

The final compromise bill capped the fees third-party delivery services can charge restaurants for their services at 15 percent of the price of the online order for the duration of the COVID-19 emergency. The cap also only applies to restaurants with fewer than 25 locations.

Lawmakers Send Baker \$16.5 Billion Transportation Bond

House and Senate Democrats forged a late-night compromise on a \$16.5 billion transportation bond bill, salvaging consensus in the dying moments of the lawmaking session on a multi-year plan to pay for infrastructure improvements while also raising fees on ride-hailing services.

A final compromise between House and Senate leaders emerged shortly after midnight Wednesday after months of private negotiations, leaving members only a few hours to read the updated version of the 63-page bill ([H 5248](#)) before approving it 146-0 in the House and 39-1 in the Senate. Sen. Ryan Fattman, a Sutton Republican, cast the lone dissenting vote around 3:20 a.m.

The bill now on Gov. Charlie Baker's desk authorizes billions of dollars in bonds for highway and bridge maintenance, train modernization, and major capital projects such as a Red Line-Blue Line Connector, the extension of commuter rail service to the South Coast, and the approaches to the two Cape Cod bridges.

In a surprise move, the bill calls for increases to the flat per-ride fees charged on app-based services such as Uber and Lyft, a measure the branches addressed in separate legislation but not in either versions of their bond bills.

Another measure requires the MBTA to implement a low-income fare program, which has long been a priority of transit advocates, and those who fail to pay T fares would no longer be subject to arrest.

"The COVID-19 pandemic has created really unprecedented changes to the ways we commute, but this does not mean the ills of our transportation system do not persist," said Sen. Joseph Boncore, who co-chairs the Transportation Committee and led the Senate's negotiations. "Massachusetts needs a new deal on transportation, but included in this bill is a strong foundation to continue that conversation."

With their late-night vote, legislators punctuated the end of the 2020-2021 session by returning to a topic that had dominated debate on Beacon Hill early last year. Still



virtually untouched, though, is a related package of tax and fee increases that cleared the House in the spring but died in the Senate without a vote.

Baker filed his [original](#) \$18 billion transportation bond proposal in July 2019. Governors tend to seek the borrowing authorizations in multi-year increments, and Baker cautioned Monday that the long delay from lawmakers imperiled the upcoming construction season.

"We literally are almost out of transportation bond authority, and we need that bill for the spring construction and summer construction season, and we also need it to sign multi-year agreements that involve federal reimbursement," Baker said. "You have to actually demonstrate to the feds that you have the authorization to pay for a federally supported project, which in many cases take a couple of years to actually have the feds sign off and say, 'yes, you can spend the money.'"

Several provisions Baker sought in his first draft of the bill did not make it into the version on his desk, such as a tax credit for employers who encourage working from home.

The bill lands in a vastly different climate than when Baker first proposed it. Commuting patterns evolved significantly during the pandemic, with ridership on public transit cratering -- and a massive budget headache erupting at the T as a result -- and some employers indicating they may keep remote work options in place for the foreseeable future.

The House approved its \$18 billion bond bill in March, one day after it authorized a package of tax and fee increases -- including the first state gas tax increase in seven years - - that Democratic leaders said could raise as much as \$600 million annually to invest in crumbling infrastructure and aging public transit.

In the Senate, however, the revenue bill faltered without a vote as lawmakers bristled at the idea of hiking taxes during a pandemic-fueled recession, frustrating House leaders who felt they had taken a tough vote.

One major element from the House's tax package, ride-hailing fee increases, made it into the borrowing bill.

Under the compromise bond bill, the assessments charged for trips on platforms such as Uber and Lyft would increase from \$0.20 per ride of any type to \$0.40 per shared ride, \$1.20 per non-shared ride, and \$2.20 per non-shared ride in a luxury vehicle.

Boncore said on the Senate floor that the increases are intended to "change commuter behavior by incentivizing commuters to request a shared ride for a lower fee or use public transit."

Negotiators spliced that language into the compromise even though neither underlying bond bill tackled transportation network company, or TNC, fees. The House included similar increases in its tax bill, while the Senate adopted an amendment containing a new fee structure to its version of the fiscal year 2021 budget.

Baker previously [suggested](#) raising the fees on the companies to \$1 per ride, warning that



their growing presence on Massachusetts roadways contributed to worsening traffic. It is not clear if he will view the Legislature's proposed hikes, which are likely to generate pushback from the companies, as excessive.

The bill would create a commission to study congestion pricing, a strategy that would alter tolls at different times to incentivize off-peak travel, and it would create violations for drivers who park their vehicles in designated bus lanes.

Several other notable provisions approved in either the House or Senate bills did not make it into the final compromise, including authorization for cities and towns to pursue their own revenue-raising regional ballot initiatives and "value capture" models to collect funds from real estate development near highways or transit.

Unlike the original House bill, which called for adding two members to the MBTA Fiscal and Management Control Board, the conference committee's proposal does not expand the T's oversight panel.

Baker now has 10 days to decide the bill's fate, which, in a reflection of the pandemic's unprecedented upheaval, will play out entirely during the brand-new lawmaking session that begins Wednesday.

John Pourbaix, executive director of the Construction Industries of Massachusetts group, said the bill's success will help keep workers who might have faced steep cuts afloat.

"Passage of this bill allows MassDOT and the MBTA to continue procuring the vast list of capital projects which will preserve thousands of jobs for the hard working men and women in the transportation construction industry and, in turn, will help the state's economic recovery and improve public safety," Pourbaix said.

CFPB Taskforce Promotes Adoption of NADA Fair Credit Program

In January 2020 Consumer Financial Protection Bureau Director Kathy Kraninger appointed a taskforce on Federal Consumer Financial Law comprising five senior financial services experts to explore and make recommendations on ways to improve consumer protection in the marketplace. After extensive stakeholder input, analysis, and deliberation, the taskforce yesterday unanimously issued a [comprehensive report](#) that sets forth a sweeping set of recommendations to protect consumers.

The report includes several recommendations that NADA and the National Association of Minority Automobile Dealers (NAMAD) [jointly submitted](#) to the taskforce last June. Most notably, the recommendations urge the CFPB and the Federal Reserve Board to establish that "good faith implementation of the [NADA/NAMAD/AIADA] Fair Credit Compliance Program or comparable program constitutes one method of preventing discrimination in pricing offered by retail sellers." This recommendation, coupled with the American Bar Association's similar recommendation last August, represents the latest in a growing number of calls from diverse groups for government to recognize a dealer's faithful adoption of the optional NADA/NAMAD/AIADA Fair Credit Compliance Program as a safe harbor against pricing discrimination claims.



Among other recommendations specific to auto dealers, the taskforce recommended that (i) the CFPB not attempt to address concerns about credit discrimination by auto dealers indirectly through enforcement actions against dealer finance sources, but rather enter into a memorandum of understanding with the Federal Trade Commission that recognizes FTC oversight over dealers in this area and (ii) to streamline the adverse action notices consumers receive when their applications for credit are rejected, dealers not be required to issue such notices when each third-party finance source that rejected the consumer's application issues to the consumer its own adverse action notice.

NADA applauds the CFPB for initiating this effort and the taskforce for providing recommendations that, if adopted, would further promote consumers' fair, efficient and affordable access to credit.

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