

MASSACHUSETTS  
**HIGHTECHNOLOGYCOUNCIL**

*Dedicated to Growth... Committed to Action*

**Public Policy Update**

**July 21, 2016**

**Legislative Activity**

As the Massachusetts legislative session winds down, movement on a number of key initiatives—both positive and negative--has been ramping up. The Legislature will cease to meet formally after July 31, putting pressure on lawmakers to enact legislative priorities and necessities. The Council has been working to advance and influence a number of priority bills.

Below please find updates on the current status of these bills and our continued efforts to shape them. We'll report on the final outcome of these issues in early August.

**Economic Development Bill**

The House and Senate have each passed omnibus economic development legislation and a conference committee has been named to reconcile the differing versions. These bills present a potential vehicle to advance several Council priorities including improvements to the State's Economic Development Incentive Program, increased state funding for matching grants to support the pursuit of federal National Network for Manufacturing Innovation grants by local commercial-academic consortia; improvements to key commercial transportation infrastructure; a clarification that daily fantasy sports (a high growth industry in Massachusetts) is permitted under state law; and the creation of a state income tax deduction for contributions to college savings plans.

See the [Council's July 12 letter](#) to Senate members advocating for these key provisions and view the full text of the House bill [HERE](#) and Senate version [HERE](#). The Council is continuing to advocate with legislative conferees to ensure these and other priority provisions remain in any compromise bill that emerges.

**Employee Non-compete Agreements**

Proposals to reform, restrict, or even ban the use of employee non-compete agreements in Massachusetts have been percolating on Beacon Hill for several years. In recognition of the nuances of this issue, the Council has played a leading role in efforts to advance a balanced solution that would mitigate the potential negative impacts of overly restrictive agreements, while preserving the right of employers to appropriately use non-compete agreements to protect legitimate business interests. As reflected in our [June 2015 testimony](#), the Council opposed the imposition of an outright ban, while supporting the adoption of reasonable new restrictions and employee protections.

The House and Senate have recently passed widely varying versions of non-compete legislation. (See the House bill [HERE](#) and Senate version [HERE](#).) The House version of the bill includes significant new restrictions and employee protections and is poised to have significant support from the state's larger business groups as a reasonable compromise.

The House bill would:

- Limit the duration of any non-compete agreement to 12 months;
- Condition enforcement of a non-compete on the ongoing payment of at least 50% of prior salary (“garden leave”) or other mutually agreed upon compensation;
- Prohibit the enforcement of a non-compete against certain employees, including any employee who is: laid off or terminated without cause; under 18 years of age; “nonexempt” under FLSA; and
- Expressly permit judges to reform or “blue pencil” a non-compete agreement in dispute, consistent with current law.

The Council recently joined with several other leading business groups to encourage the Senate to adopt legislation similar to the House. (See our joint letter to the Senate [HERE](#).) Unfortunately, the Senate passed a far more extreme bill which would:

- Limit the duration of any non-compete agreement to just 3 months;
- Condition enforcement of a non-compete on the ongoing payment of at least 100% of prior salary (“garden leave”) or other mutually agreed upon compensation of equal value;
- Prohibit the enforcement of a non-compete against certain employees, including any employee who is: laid off or terminated without cause; under 18 years of age; “nonexempt” under FLSA; or earns less than 2 times the average state wage; and
- Eliminate provisions of existing law which would allow a judge to reform or “blue pencil” a non-compete agreement in dispute.

The Senate bill has raised significant concerns among Council members and the broader business community and has been described as “worse than a ban” by several members. The Council believes that the House bill, while not perfect, is a reasonable compromise that balances the interests of various stakeholders and reflects significant input from concerned employers.

The Council is continuing to partner with other business groups to encourage members of the legislative conference committee to adopt the House bill and encourage the Governor to veto legislation that goes further. See the Council’s July 19 letter to conferees [HERE](#).

### **Gender Pay Equity**

The House and Senate have both passed legislation regarding gender pay equity. The Council has maintained a consistent position supporting strict compliance with (and strict enforcement of) existing federal and Massachusetts laws that already prohibit gender-based pay discrimination. Because of

these existing prohibitions, the Council believes that the legislation currently under consideration is unnecessary.

While several other business groups have expressed support for the legislation per a [July 13 Boston Globe story](#), the Council's assessment is that this legislation provides little or no additional protection for employees but instead creates a presumption that any pay differential between employees of different genders is the result of discriminatory action by an employer. Any employer could be accused of pay discrimination and be forced to affirmatively prove that pay differentials are permitted under one of the new law's specified "safe harbors". Such a presumption would impose unfair, unnecessary and significant new risks and costs on Massachusetts employers acting in good faith and would damage the Commonwealth's competitive environment.

We appreciate the effort of legislators and other proponents and their sincere desire to address gender pay gaps. The legislation currently under consideration, however, is not the way to achieve those goals. The Council believes real and meaningful solutions to gender pay differentials cannot be limited to public policy and we are committed to supporting broader initiatives beyond statutory and regulatory changes. While it seems likely that some version of the legislation will become law, the Council is encouraging legislators to adopt the House version as the less onerous of the two bills. See the House bill [HERE](#) and the Senate version [HERE](#).

### **Energy Costs**

House and Senate conferees are also trying to hammer out the variations between differing versions of energy legislation. According to data in the [Massachusetts Technology, Talent and Economic Reporting System \("MATTERS"\)](#), electricity costs in Massachusetts are higher than those in 44 other states. The Council has continued to express concern that the Commonwealth's energy policy has become too focused on the expansion of renewable energy mandates and subsidies with too little attention paid to reducing costs. A recent [SJC decision](#) held that existing mandates to reduce greenhouse gas emissions must be satisfied by renewable energy produced within Massachusetts. The decision has cast doubt on the potential benefits of one prominent effort to bridge the renewable-cost divide, namely proposed changes to state law that would encourage the use of lower cost hydropower from outside of Massachusetts. In a [recent letter to legislators](#), the Council recently called on legislators to renew their focus on the cost side of the equation.

### **2016 Ballot Questions**

In 2015, Massachusetts citizens filed more than 30 proposed initiative petitions that would amend or create new state laws through the direct vote of the people. Over the past year, the vast majority of those proposed questions have failed to meet one or more legal requirements and have fallen by the wayside. Last week, the Mass. Secretary of State confirmed that just 4 questions have satisfied all applicable legal requirements and will appear before the voters in November.

Council members had identified several ballot questions of particular interest and concern. Below please find updates on two of those key questions that will be on the 2016 ballot.

#### Question 2: Expansion of Charter Schools (Support)

The Council has been an early and consistent backer of charter schools and efforts to expand them, including this 2016 ballot question. The question would authorize state education officials to approve the creation of additional charter schools in communities where traditional public schools are particularly low performing.

**Council Position:** At our December 10, 2015 Board of Directors meeting, the Board voted to support the question and directed Council staff to play a leading role organizing business community support for the question. Council staff are participating in weekly meetings of a senior level campaign steering committee to shape the development and implementation of campaign strategy.

#### Question 4: Legalization of Marijuana (Oppose)

This question would change Massachusetts law to permit citizens to grow, possess and use marijuana for recreational purposes. (Massachusetts has permitted marijuana use for medical purposes since 2012.) In addition to various social and public health issues, the ballot question raises some concerns for employers including impacts on workplace safety and productivity as well as conflicts between employer policies, state marijuana laws and federal employment laws. These concerns may be particularly acute for federal contractors and grantees who are subject to the federal Drug Free Workplace Act.

At our May 24 Board of Directors meeting, Council staff briefed Board members about the question, and its potential impact on employers. Subsequently, the Board approved a Council staff recommendation that we join a growing coalition of business groups opposed to the question.

**Council Position:** The Council opposes this question and will work with the Campaign for a Safe and Healthy Massachusetts to educate employers about the impacts of the question and encourage citizens to vote "No".