



## House, Senate Pass \$541 Mil Spending Bill

*Matt Murphy | 12/12/19 12:57 AM*

STATE HOUSE, BOSTON, DEC. 12, 2019.....House and Senate leaders broke a weeks-long impasse over a more than \$1 billion surplus spending bill on Wednesday night, cutting a deal that dropped a controversial corporate tax change that would have financially benefited Massachusetts businesses and set aside \$32 million for repairs on the MBTA, which is less than the \$50 million sought by Gov. Charlie Baker.

The vote on the compromise budget bill to close the books on the fiscal year that ended back in June capped a tumultuous day during which Comptroller Andrew Maylor backed off a threat to sweep the entire surplus into reserves by mid-afternoon if the Legislature couldn't resolve its differences.

And before the deal was finalized, House counsel Jim Kennedy got involved in a back-and-forth with Maylor over the breadth of his legal authority, with Kennedy challenging Maylor's assertion of power to sweep the surplus and leave deficits in certain accounts, including MassHealth.

The total spending in the final version of the budget clocked in at \$541 million, which was significantly less than previous iterations of the bill that ranged from \$723 million to \$853 million. Instead of spending more of the surplus, the budget bill proposed to deposit \$587 million into the state's "rainy day" fund, pushing the balance of the reserve account to \$3.45 billion.

House Ways and Means Chairman Aaron Michlewitz said the compromise reflected a increased level of caution that leaders felt was appropriate after passing a major \$1.5 billion, seven-year education funding overhaul and hearing last week from economists about the risk of an economic slowdown in 2020 and beyond.

"Those two factors weighed heavily," Michlewitz said.

The corporate tax provision was widely viewed by those trying to read into the negotiations between the branches over the past several weeks as a major sticking point, and the decision by the House to drop it completely from the compromise came after some liberal Democrats were threatening to hold up any deal that included it.

The provision would have decoupled Massachusetts from the federal tax code, and allowed businesses to avoid paying about \$37 million in new taxes as a result of the 2018 Republican tax reform law signed by President Donald Trump that capped the amount of interest a corporation could deduct on debt built up in order to invest in the company. While proponents saw it as a way to foster job growth and capital investment, critics slammed it as an unnecessary corporate tax giveaway.

"To get the budget done, we tried to find appropriate areas of compromise to make sure we got this done," Michlewitz said, about the decision to drop it.

Senate President Karen Spilka, who spoke to reporters just after midnight, sounded a similar note when asked about the corporate tax outcome, which reflected the Senate's preference. "All bills have compromise," she said.

On Twitter, progressive Democrat Rep. Mike Connolly declared victory, thanking his colleagues Reps. Lindsay Sabadosa, Maria Robinson and Tami Gouveia for speaking out against the provision. "It's not everyday that we defeat the big corporate lobby on Beacon Hill....," Connolly tweeted.

Spilka said there was "some disappointment" that all of the priorities legislators would have liked to spend surplus money on were not ultimately funded, but described those decisions as part of the "give and take of negotiations" and "a tension" between wanting to build up the "rainy day" fund and spend the money.

"There was a lot within this budget. A few years back we had to cut almost a billion. This year we had a billion. It doesn't always make it that much easier," Spilka said.

One area where conference committee negotiators cut was in funding for the MBTA, which was reduced from \$50 million to \$32 million to help pay for Gov. Baker accelerated repair program. The reduction came just days after an outside panel hired by the Baker administration to review the MBTA system identified significant gaps in safety.

"With the House focused on an upcoming transportation revenue debate, we provided \$32 million to the MBTA for an immediate infusion of funds. The appropriation will help the T address its interim needs while we await clearer and more consistent information on the Administration's spending plans," House Speaker Robert DeLeo said in a statement.

DeLeo said the administration had initially told him it needed the funding for a "flex force" to work on both the capital and operating side of the MBTA operation and enable the agency more quickly deliver infrastructure improvements.

He interpreted the governor's comments this week that the money was needed for enhanced safety as a shift in that reasoning, though at the time Baker made the request in June he did also say the money would allow the MBTA to increase the frequency of its train inspections and preventive maintenance.

"While we seek more precise information on the needs of the T, the House recommits itself to a transportation revenue debate in the coming months," DeLeo said.

Spilka did not elaborate on the decision to scale back the appropriation for the MBTA, or say whether she shares the speaker's uncertainty with how Baker plans to spend the money.

"I believe that the T needs some funding and that's something that we're talking about. Again, through the give and take of negotiations, that's where we ended up," she said.

House and Senate negotiators also eliminated the targeted assistance funding sought by Gov. Baker for grants to improve the performance in underperforming school districts. Baker had initially requested \$50 million, but cut that ask down to \$30 million last week.

The completion of the budget came more than a month after Comptroller Maylor's statutory Oct. 31 deadline to close the books on fiscal 2019 and publish an annual financial report. While the fiscal year ended on June 30, Baker did not file the original closeout budget until Sept. 9 and the Democrat-controlled legislature has been at odds ever since over how to spend the surplus.

The bill does establish and fund a period of early voting ahead of the March 3 presidential primaries, but it does not create an early voting window as recommended by the Senate before the 2020 state primary, which the bill scheduled for Sept. 1. The final version also omits language that would have allowed farmers to use agricultural conservation land for hemp cultivation, even though both the House and Senate have now passed versions of that provision in separate bills.

Wednesday began with a 3 p.m. deadline set by the comptroller hanging over the activities at the State House, but as it became clear that legislative negotiators were going to blow through that deadline, Maylor said he would temporarily back off his threat to sweep the funds into the state's "rainy day" account because he had learned of "substantial progress" in negotiations between the House and Senate.

Maylor said that if the Legislature did not make "clear progress toward final enactment" on Wednesday, he would be ready to transfer the funds on Thursday morning, but he did not set another firm deadline.

But even as those talks continued, House counsel Jim Kennedy wrote a two-page letter to the comptroller's office challenging Maylor's legal standing to transfer the surplus without direction from the Legislature.

The letter seemed to escalate the stakes of the negotiations and raised questions about whether the Legislature and the comptroller could be on a legal collision course that would have to be cleaned up by the courts.

Kennedy, in his note to General Counsel and Assistant Comptroller Amy Nable, said that Maylor would be acting "ultra vires," or beyond one's legal authority, by unilaterally transferring the surplus. The House's top lawyer took issue with the sections of general law cited by Maylor as giving him the authority to act, and suggested that doing so would be "repugnant to the Constitution," which requires a balanced budget.

Kennedy also said that if Maylor transfers the entire surplus into the stabilization fund while some funds are deficient, he will be causing a deficit in certain accounts, violating his governing statute.

Maylor responded by saying that while he didn't want to "litigate this issue in the press" he continued to disagree with Kennedy's legal interpretation, and gave a warning about what might happen next year if the closeout budget is late again.

"It is our hope that the Fiscal Year 2019 closeout process was a true anomaly and that the opinion of House Counsel does not foreshadow the reaction to future fiscal year closes, and the associated net

surplus transfers which the Comptroller has already stated will happen no later than the statutory deadline," Maylor said.

Maylor cited as supporting evidence for his authority to transfer the money on his own the fact that the chairs of the House and Senate Ways and Means Committees called him ""directly" on Wednesday and made a "personal request" that he give them more time. House officials disputed this account, and said it was Maylor who reached out to them first. When Michlewitz called him back, the comptroller was given only an update on the status of talks between the branches, according to the officials.

"We made no such request," one House official said, requesting anonymity to share details of a private conversation.

While Baker must still sign the budget accord, House Minority Leader Brad Jones said prior to the announcement of an agreement that "there should be little or no cause for celebration or congratulations or adulation that this has been resolved."

"It's not the way it should work. The thing we can't have happen has become the new normal," Jones said, comparing a closeout budget accord so long after the Oct. 31 deadline to "turning a term paper in long after a semester is over."

While bipartisan cooperation is often touted on Beacon Hill as favorable compared to the climate in Washington D.C., Jones worries that the inability of House and Senate Democrats to agree on issues may bleed into next year, making progress on other key issues more difficult.

"I don't think it sends a real good message about state government," he said. "Instead of asking DC to emulate us, we're close to emulating DC."

[Michael P. Norton and Katie Lannan contributed reporting]

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