

**In Massachusetts, Formal Legislative Sessions End,
But Political Dramas Linger**

August 6, 2010

As of around midnight on Saturday, July 31, the Massachusetts Legislature *appears* to have concluded its formal sessions for the rest of the calendar year.

Why “appears”? Because in ordinary times the Legislature, by rule, downshifts now into informal sessions, allowing individual legislators to refocus on their campaigns for re-election.

But these are not ordinary times.

This year July ended with a three-way tussle over competing proposals to introduce casino gaming to the Commonwealth, with Senate President Therese Murray trying to mediate between Speaker of the House Robert DeLeo and Gov. Deval Patrick. Patrick opposes slot machines, except at resort casinos; DeLeo, who has two struggling racetracks in his district, hopes to throw them a lifeline by allowing them to evolve into “racinos,” *i.e.*, racetracks with slots.

For a while it looked like compromise was possible. In the end, however, DeLeo and Patrick both dug in, resulting in a stalemate that kills the issue for the year *unless* the Legislature bends its rules and resumes formal deliberations on this and perhaps other matters.

Most observers, including Senate President Murray, think that is unlikely. So this is probably a good time to step back and look at what this legislative session did and did not accomplish, and to assess how that might impact the busy election season ahead.

The Saturday Shuffle

This year the July 31 deadline fell on a weekend, resulting in rare Saturday sessions for both the House and Senate. Because the Legislature operates on a two-year cycle, Saturday midnight became an effective deadline for many of the more than 7,500 bills filed since December 2008.

In the weeks leading up to this deadline, however, almost nothing moved. Instead, the gaming debate sucked all the air out of the State House and seemed to cause other major issues to be held hostage to the negotiations between the House and Senate, and with the governor. In years past, July has been marked by strings of late-night legislative sessions, where bills occasionally sprang to life and sprinted to passage, sometimes before House and Senate members realized what they were voting on. This year, however, an unusual but uneasy calm

settled over Beacon Hill for most of July, as all eyes turned to gaming and to the rapidly fraying relationships among the state's all-Democratic political leaders.

For a few days last week it appeared that compromise was possible, and that a gaming bill might emerge that everyone could rally behind. First DeLeo dropped his insistence that the state license *four* racinos, as it became increasingly likely that the two tracks in his own district, Suffolk Downs and Wonderland, would probably instead band together to seek a single resort casino license. Murray then dropped her opposition to racetrack slots, agreeing to back the legislative compromise for *two* racinos instead of four. Patrick signaled that he would bend a little, agreeing to support *one* slots-only facility, provided that bidding for this valuable monopoly was not restricted only to racetracks. (To the governor, restricting the franchise to racetracks was tantamount to awarding a no-bid contract.)

Then things fell apart. Though they hoped to open a full casino, Suffolk Downs and Wonderland would not rule out competing for slots licenses. DeLeo would not back down any further, and rallied the House behind 3 casino-2 racino formula. Significantly, he broke the bill into two separate pieces of legislation ([HB 5000](#) and [HB 5001](#)), a maneuver that effectively stripped Gov. Patrick of a line-item veto of the slots proposal. The Senate then pointed out that a certain “shall” had somehow become a “may” in a crucial section that many thought could have given the governor political cover, letting him sign the bill while awarding fewer racino licenses than the law allowed. But Patrick was not satisfied. Instead of signing the [casino legislation](#) or vetoing it outright, he withdrew his compromise offer and returned both bills with proposed amendments, eliminating racinos entirely. To trump the governor, the Legislature would now need to come back into formal session twice – no problem in the House, but unlikely in the Senate, where gaming supporters are two votes shy of the number needed to suspend its rules to take up the issue again.

Still, as the week ended the illusion of progress on gaming was enough to free up some other issues and let them move forward. The Senate president's signature issue of the year – controlling increases in the cost of health insurance, especially for small businesses – had languished for months, and seemed to have “zero chance” of passage after the House released a version on July 22 that took a very different approach to this issue. But with Murray suddenly cooperating with DeLeo on the gaming bill, House and Senate conferees, meeting for the first time on Thursday, July 29, found enough common ground between their versions to craft what legislators described as a [compromise first step](#) toward controlling health care costs.

Likewise, one of the governor's key legislative initiatives, reforming the state's criminal records practices, also benefited from last-minute compromises. Here progress had been stalled over disagreement on certain criminal sentencing provisions, which the Senate had inserted into the bill, but which the House had never debated. After several days in conference, a [bill](#) emerged that was approved by both chambers with just over an hour to spare. Another set of

compromises produced a last-minute economic development [bill](#), which also was enacted and sent to the governor.

Left At The Altar

On the other hand, all the attention to gaming robbed other issues of the push they needed to win approval before time ran out. Among the casualties:

- Easier siting of wind energy projects – an environmental priority for the Gov. Patrick, it fell one procedural vote shy of passage.
- Automotive “right to repair” – would have created the nation's first law requiring that independent mechanics have access to car repair manuals, but it died amid heavy lobbying by automakers.
- Pandemic preparedness – this year's dual flu scare failed to push this bill across the finish line, amid disagreement over the scope of powers to be given to public health officials in the event of a disastrous pandemic.
- Transgender antidiscrimination – though it counted a majority of both houses among its supporters, this bill outlawing discrimination against transgendered individuals in housing and employment (and derided by critics as a “bathroom bill” amid fears that it would allow more transgendered persons in women's bathrooms) was never brought up for final votes in either chamber.
- Gun control – amid the casino negotiations, Speaker DeLeo failed to follow through on a promise to Gov. Patrick to let the House debate a bill that aimed to curtail crime by restricting gun buyers to one gun a month.
- Pharmaceutical gift ban repeal – Before Senate President Murray signed onto the casino compromise, the House suddenly fired a warning shot with a proposal to repeal Massachusetts' strict restrictions on the marketing of pharmaceuticals and medical devices, which Murray herself had pushed through just two years ago.

Late in the session many also predicted passage of one of several controversial environmental initiatives. Johnson Haley and its allies in the business community were again able to convince the Legislature to sideline a so-called “Safer Alternatives” proposal, which would have introduced state-specific regulation of an ever-growing list of chemical *hazards du jour*. But some feared that lawmakers would then feel obliged to advance certain other bills to assuage environmental activists, most notably legislation to create an expanded bottle-deposit law and to require electronics manufacturers to “take back” and recycle televisions, computers, printers, and other devices. In the end, however, neither measure picked up enough steam to escape getting caught behind gaming in the late-July backlog.

Implications for November

In light of this year's elevation of state senate back-bencher Scott Brown onto the national stage, everything the Legislature does this year is analyzed every which way for its implications for the November elections. An unusually high number of legislative seats – two-thirds of the Senate and more than one-half of the House – are in play this year, and no one knows how hard the restive electorate will be this year on incumbent legislators, or on Gov. Patrick, who faces a re-election fight of his own.

It rather defies conventional wisdom, but our early take is that this year's end-of-session bottleneck actually *strengthened* most incumbents. The high-profile gaming debate raised the visibility of individual lawmakers, who as a rule stood strong for their constituents' interests. Those with racetracks in their districts rallied behind racinos; those with lunch-bucket constituencies backed labor's position; and those from more liberal and upscale regions mostly echoed their own constituents' skepticism of expanded gaming in the state.

Gov. Patrick, too, scored points for standing up to the Legislature, a position that echoed the anti-Beacon Hill platform that got him elected in the first place in 2006. His opposition to Speaker DeLeo and organized labor (which wanted the jobs that gaming should bring to the state) might cost him among conservative Democrats, but they are more likely to defect to State Treasurer Tim Cahill, a former Democrat running against Patrick as an independent, than to the governor's Republican challenger, Charles Baker. Ironically, most observers see Patrick prevailing in a three-man race, so anything the governor does to build up Cahill's candidacy – now a distant third behind Patrick's and Baker's – probably serves to improve his own chances of re-election. Meanwhile, Baker has mostly been marginalized in this debate (he supports only a single casino, and no racetrack slots), while Cahill's position seems to have shifted too much and too often to resonate strongly with any particular constituency.

That leaves only one big question, whether the end-of-session rancor feeds a general distrust of government and incumbency to such an extent that it lifts the boats of challengers generally. That's the hope of the Republican Party, which currently holds no statewide offices or congressional seats in Massachusetts, apart from Scott Brown's U.S. Senate seat, and controls only about 10% of the Legislature. But voter memories are short. While demographic trends suggest that the GOP will eventually rebound from its current abysmally small role in state politics, the fortunes of its candidates at the polls probably are tied far more closely to the state of the economy come November than to any disputes or disappointments of midsummer.

What Happens Now

The Legislature is now in “informal session” until a newly elected body takes office in January 2011. In informal session, the House and Senate continue to meet, usually twice a week, and to

operate with much the same authority as in formal sessions. Attendance at informal sessions is typically low, however, with matters advancing primarily on voice votes.

During informal session, any member of the House or Senate can act to block action on any bill. That typically means that only noncontroversial measures advance, since any alert and determined legislator who opposes a bill can show up, day after day, and prevent it from advancing.

This year may be different, however. The backlog at the end of session, particularly in the House, may leave legislative leaders feeling pressured to advance more legislation during informal session than customarily gets through. It could also lead to deals being struck through which legislators who would normally block measures stand aside in return for expediting bills that they support.

Then there's the possibility that one or both chambers will resume formal sessions. To override Gov. Patrick on the casino bill, the House and Senate would have to vote to return twice in formal session (once to consider the governor's proposed amendments, and again to override his expected veto). The House has already pledged to do just that, but in the Senate the pro-casino caucus needs to corral two votes more to reach the threshold needed to suspend the rules. For now, therefore, another formal session looks unlikely – but turning two votes on a procedural matter may not prove as daunting as it seems.

If the House and Senate do return to formal sessions, the docket will most likely be dedicated to the gaming issue – but not necessarily. Even if the Senate balks, the House could go through the motions of holding formal sessions itself, in which case any legislation that cleared the Senate but not the House (the auto “right-to-repair” bill, for example) might spurt through the gate and onto the governor's desk.

And in one final twist, the Legislature may in fact *need* to hold a special formal session before year's end to approve one or more supplemental state budgets. The Legislature went home in July without approving a final “supp budget” for FY 2010 to allow the state to tie up loose ends for the fiscal year just ended. And this month Congress appears poised to approve a bill under which Massachusetts would receive an additional \$655M in Medicaid funding. The state initially crafted its FY 2011 budget on the assumption that this federal appropriation would be extended, but Republicans in the Senate threatened filibuster, forcing Massachusetts to make radical cuts in its own budget for the new fiscal year. Now Gov. Patrick will no doubt submit an FY 2011 supp budget to restore the cuts made when these federal funds were in limbo.

Vigilance therefore is key. Even in quiet years legislation pops up and gets passed between August and December, and if history is any guide, the rest of this year will not necessarily pass quietly. For this reason, Johnson Haley will keep monitoring closely all the bills left stranded at the end of July, to prevent and address any surprises that might pop up now that the klieg lights have been shut off and turned elsewhere. We will also keep working to advance other bills that benefit our clients and that are poised to move amid the relative quiet of informal session.