

Massachusetts Senate Adopts Budget Amendment Barring Compensation of Directors of Public Charities Without Approval from the Attorney General

Written by Kevin C. Conroy

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The Massachusetts Senate voted this week to adopt an amendment to the budget to prohibit the compensation of directors, independent officers and trustees of public charities without approval from the attorney general of the Commonwealth. The amendment also authorizes the attorney general to review the compensation of any officer or senior manager of a public charity, and to offer recommendations to the Senate and House of Representatives about excessive compensation in a report to be filed by December 31, 2012.

We had previously reported on a similar amendment offered earlier this week by Senator Mark Montigny (D-New Bedford). The amendment adopted by the Senate was a revised version of this prior draft.

The amendment bars public charities from compensating independent officers, directors or trustees for their service, without the prior approval of the director of the attorney general's Non-Profit Organizations/Public Charities Division. Public charities seeking to compensate independent officers, directors or trustees may apply for an exemption to the Non-Profit Organizations/Public Charities Division. If such an exemption is granted, compensation will be limited to the amount the public charity reasonably determines is necessary to accomplish the purpose for which the compensation is paid. The amendment allows for the Non-Profit Organizations/Public Charities Division to adopt guidelines for reviewing requests for exemption.

While the prior version of the amendment placed a specific cap on the compensation of officers of public charities, the amendment adopted places no such cap, but does allow the attorney general to review the compensation of officers and senior managers of public charities. The amendment calls on the attorney general to issue a report by the end of the year to the Senate and House of Representatives on excessive executive compensation at public charities, and to offer recommendations to curtail the practice.

As this amendment was not included in the budget bill previously passed by the House of Representatives, the amendment will be considered in a joint conference committee. Foley Hoag will continue to track this legislation and is available to advise public charities on its potential implications.

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