

STATE HOUSE NEWS SERVICE

STATE ECO-DEV CHIEF WARNS MASS. BIZ HARMED BY NON-COMPETE LAWS

By Colleen Quinn
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STATE HOUSE, BOSTON, SEPT. 15, 2011...Business leaders and the state's economic development chief stand on opposite sides of the fence surrounding non-compete agreements that some companies require employees to sign, limiting for a length of time where they can work once they leave their jobs.

Opponents of limiting non-competes argued bills before the Legislature threaten companies' intellectual property and trade secrets. Even under current law, the bill's critics said, employers in Massachusetts do not believe their trade secrets are adequately safeguarded.

But Housing and Economic Development Secretary Gregory Bialecki, an appointee of Gov. Deval Patrick, told lawmakers on the Labor and Workforce Development Committee that non-compete clauses have a negative effect on technology workers, and adversely affect the state's "innovation economy."

Lawmakers are considering bills that limit non-compete clauses companies can enforce, and heard testimony on those proposals Thursday morning at the State House.

Rep. Lori Ehrlich (D-Marblehead), vice-chair of the committee, said a bill she co-sponsored (H 2293) seeks to "rein in overreaching agreements that wind up preventing people from working in their fields for lengthy periods, and often leave them no choice but to leave the state to seek employment."

The bill, co-sponsored by Rep. William Brownsberger (D-Belmont), would make non-compete agreements enforceable up to one year. Ehrlich said she has heard of agreements that run for three years. The bill also seeks to limit the geographic scope of the agreements.

"Job creation in the innovation economy often occurs in sudden large bursts. At their moments of greatest growth Google and Facebook each hired literally thousands of workers in a short period of time," Bialecki testified before the committee. "Providing the talent needed to support such explosive growth may be considerably more difficult if employees are legally unable to move between jobs in the innovation economy."

If tech companies are unable to grow quickly in Massachusetts, they will grow elsewhere, Bialecki said.

Bialecki said the governor applauds the efforts and added "there is a pressing need for change." If the Legislature is unwilling to adopt changes, the state should consider whether to "outright eliminate non-competees," Bialecki said. California, North Dakota and Oklahoma have banned non-compete agreements.

"Our request this morning is to really get around the table," Bialecki said. "Let's figure out a way we can make the change that is constructive and addresses these concerns."

Associated Industries of Massachusetts opposes the bills, although representatives from the business organization did not testify at the hearing. Bradley MacDougall, the business group's associate vice president of government affairs, called the bills "bad public policy" and wrote on an AIM blog that the hearing coincided with a report that a former employer of a Devens company disclosed proprietary wind turbine technology information to a Chinese competitor. MacDougall said Massachusetts companies' ability to protect their intellectual property would be jeopardized should the legislation pass.

Others who represent businesses disagreed, arguing changing the scope of the agreements would help companies.

Attorney Andrea Kramer, with the law firm Hirsh Roberts Weinstein, said non-compete clauses are often "overbroad" and make it difficult for companies to hire qualified employees because they have agreements with their previous employers.

Changes would still protect a company's "goodwill, confidential information, and trade secrets, while requiring companies to make reasonable agreements that would have less of a chilling effect on employees who want to pursue different jobs and employers who want to hire," she said after the hearing.

Andrew Botti, chairman of the Smaller Business Association of New England, said small business owners are concerned the bill, if approved, would "cloud" intellectual property rights, and create an atmosphere of unpredictability. Botti said in the current economic climate, it is a bad idea to pass a law that could affect businesses' ability to compete.

"At this point in time in the Commonwealth's history we don't need this type of regulation," he said.

Jack Salerno, the president of Agiltron Inc. a Woburn-based technology company, called the bill too aggressive and said it will be onerous on small technology companies like his that "bootstrap" their businesses. Lengthy

development times make non-compete agreements necessary, and any changes to the laws could jeopardize his company's intellectual property, Salerno said.

"We spend a long time developing our products. It may take us five years to develop our products," he said. "We need to protect our intellectual property. We need that protection."

Senate Committee Chair Daniel Wolf (D-Harwich) said it was tough to find a balance of protecting intellectual property, while ensuring that employees do not feel like "indentured servants."

This is the second legislative session that Ehrlich has filed a bill. She said when drafting the bill they invited business organizations to the table. The bill "recognizes there is a legitimate business interest to protect," she said.

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