



Important Considerations for Regulating Ridesharing in the Commonwealth

by Matthew Blackburn and Brendon Murphy

Background

Earlier this month, the Massachusetts House of Representatives approved H.4064¹, which would regulate Transportation Network Companies (TNCs) like Uber, Lyft, and Fasten. Following passage of the bill, the House referred it to the Senate Committee on Ways and Means for consideration.² The final outcome of legislative deliberations will determine how local and state government regulate TNCs and taxis going forward.

The bill delineates a number of significant proposals. Among its core provisions, if approved by the Senate, would be the establishment of a new ‘Ride for Hire Division’ within the Department of Public Utilities (DPU) charged with overseeing ridesharing firms, issuing removable decals identifying ridesharing vehicles, and ensuring TNCs’ compliance with regulatory requirements, including mandatory levels of insurance coverage for ride sharing vehicles and background checks for drivers. The division would be funded by fees collected from TNCs. In addition to establishing this new division, H.4064 includes the following important provisions:

- TNC vehicles not registered as liverys will be restricted from picking-up passengers at the Boston Convention and Exhibition Center (BCEC) and Logan Airport through 2021;
- TNCs will be prohibited from using “excessive minimum rates or base rates” during periods of high demand for service—a practice known as ‘surge pricing’;
- TNCs must conduct their own background checks for all prospective drivers, to be performed in conjunction with a background check conducted by the new regulatory body. The Ride for Hire Division’s review will include a check with the National Sex Offender Registry, an assessment of the applicant’s driving record to confirm the applicant has no more than three traffic violations over the preceding three years, and a criminal background check to confirm that the applicant has not

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been convicted of any crimes over the last seven years. Fingerprint checks will not be a component of the employee screening process for TNC drivers;

- All TNC drivers must apply to the new regulatory body for a “Transportation Network Driver Certificate” and disclose to their insurance providers that their vehicle will be used for TNC business purposes. Insurance requirements in the bill largely mirror what companies like Uber already employ in coverage for their drivers, including \$1,000,000 in automobile liability coverage per occurrence for any incident that takes place while a prearranged ride is in progress.³

Support for the Taxi Industry

Beyond regulating ridesharing companies, the bill also proposes that the Massachusetts Growth Capital Corporation (GCC) “provide financial products” to help those taxicab companies that qualify as small businesses modernize their business practices to be more competitive with ridesharing companies. This financial assistance would take several forms, including:

- (1) financial assistance that encourages the adoption of new technologies and advanced capabilities for existing taxicab companies in order to improve taxicab service, safety and operations;
- (2) loan guarantees related to medallion financing, vehicle loans, or other equipment loans;
- (3) low or no interest loans for vehicles and other equipment necessary to the industry;
- (4) working capital and lines of credit at low or no interest;
- (5) financial consulting, managerial consulting and technical assistance;
- (6) economic stabilization measures;
- (7) junior or subordinated loans for taxicab medallions; and
- (8) any other financing or credit enhancing devices, as made by the GCC directly or on its

own behalf or in conjunction with other public instrumentalities, private institutions or the federal government.

Under the proposed law, the GCC would also create a ‘Ride for Hire Sustainability Program’ designed to support smaller cab firms with issues related to employment retention and incorporation of new technology into their business practices.

Taking a closer look at the proposals in the House bill

In a September 2015 policy brief, Pioneer urged lawmakers to revisit taxicab regulations and develop a new framework that would allow these companies to be more competitive with TNCs.⁴ The brief also raised concerns about requirements proposed in a previous bill, H.3702 (“An Act relative to passenger safety”), which called for mandatory fingerprinting of all TNC drivers. As a number of Massachusetts officials with backgrounds in law enforcement and public safety have pointed out, fingerprinting requirements would be an unnecessary addition to a comprehensive background check system such as the one included in H.4064.⁵ The previously proposed legislation, H.3702, included both the fingerprinting mandate and a requirement that TNC vehicles, which are typically owned and operated by TNC drivers for private use when not in service as TNC vehicles, maintain commercial liability insurance coverage of \$1 million at all times, including when drivers are not conducting business for TNCs. These two requirements were omitted from the most recent House bill.

The current legislation includes many sensible and fair requirements to protect TNC consumers, including the establishment of reasonable insurance coverage requirements and background checks. In some respects, however, it is designed to protect cab owners from their upstart TNC competitors. In this way, the legislation takes an approach that would not result in optimal outcomes for consumers and for the transportation services market as a whole.

For example, restricting TNC drivers from making pick-ups at the BCEC and Logan Airport creates

a protectionist barrier that provides an unfair advantage to incumbent industry providers and disregards consumers' preferences to have access to TNCs at these locations. The bill's proposal that BCEC and Logan Airport service be opened to Cambridge and Somerville cabs in scenarios where Boston cab availability is limited, while TNCs would be prohibited from picking up passengers at those locations, signals an inherent bias against the TNC industry. Regulations that restrict consumer choice and reduce market competition to protect the vested interests of cab companies do a disservice to consumers.

The bill's provisions regarding the GCC are especially problematic. Created in 2010, the GCC's stated mission is to "preserve and create jobs at small businesses, women and minority-owned businesses, and to promote economic development in underserved, gateway municipalities and low and moderate income communities." The corporation serves as a critical resource to some of the most economically stressed areas of Massachusetts. It is therefore concerning that this legislation mandates that the GCC dedicate annually "not less than 10 percent of the total capital committed by the corporation" to providing financial assistance to cab companies to make them more competitive with TNCs.^{6,7} The bill requires the GCC to provide financial assistance, loans, loan guarantees, working capital, and lines of credit to bolster cab companies in their competition with TNCs, while TNCs would not be eligible for such assistance.

Another provision would authorize the GCC to provide loan guarantees for the purchase of cab medallions. In 2001, medallions were selling for \$100,000, according to the Boston Hackney Carriage Unit, which regulates the Boston taxicab industry.⁸ As revealed by the *Boston Globe* Spotlight team in its comprehensive investigative series of reports on the Boston taxicab industry, taxi medallions were trading privately among cab owners at prices up to \$625,000 apiece in 2013. As the *Globe* notes, taxi riders in Boston paid some of the highest fares in major cities across the U.S that year.⁹

Because medallions provide an exclusive right to conduct business in a commercial market where government sets and enforces limits on the number of medallions available, many owners have profited enormously by selling their medallions in the private market. With the introduction of TNCs like Uber and Lyft into the marketplace, the supply of transportation vendors has increased, thereby diminishing the value of taxi medallions.¹⁰ An official from the Boston Hackney Carriage Unit shared with Pioneer that medallions sold for approximately \$700,000 as recently as March 2014; by August of that year, prices had dropped to approximately \$350,000. The proposed bill seeks to bolster the value of taxi medallions by providing government loan guarantees for the purchase of existing medallions, as well as for vehicle loans.¹¹ When the government guarantees a loan, taxpayers are made responsible for paying off the debt if the company that borrowed the money goes under. This raises serious concern that taxpayers will be left on the hook for these loans if medallion values increase too much and the current trend of broadening use of TNCs continues. The requirement that the GCC establish a loan guarantee program would in this way require the public to assume the risk in the purchase of privately owned taxi medallions.

Another troubling provision of the bill would establish "potential methods for allowing taxicabs and other ride for hire vehicles to engage in 'surge pricing'". The legislation calls for a commission to study this proposal. Under the current system of taxi cab regulation in Massachusetts, maximum meter rates for operators with government-issued cab medallions are set by municipalities. The bill's suggestion of surge pricing for cabs would increase government-regulated charges to consumers for cab rides. In effect, this suggests that government-controlled cab rates should potentially be increased to sustain the economic viability of cab operators in the face of competition from TNCs. This proposal, along with the bill's proposal for government-funded financial assistance to cab owners and prohibition of TNC pick-ups at Logan and the BCEC, would inherently increase consumer costs for cab transportation, which is antithetical to the goal of making such transportation more affordable for Massachusetts

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residents. These proposals seek to protect the existing industry from market competition brought on by innovative, lower-cost providers.

Another problem with the bill concerns limits on surge pricing by TNCs. So long as the proposed 'Ride for Hire Division' establishes well-defined and reasonable limits, this measure would help protect consumers from financial shocks in transactions during periods of high demand. Fare hikes can be egregious—one Uber passenger disclosed he was charged \$1,110 for a ride he took on New Year's Eve, when many others reported paying almost 10 times the normal fare.¹² The bill's language about TNC surge pricing is nondescript and should be clarified to make legislative intent more clear.

Recommendations

As the Senate reviews the regulations proposed in H.4064, it should consider the following:

- 1) The success of companies like Uber and Lyft has demonstrated that medallion-based cabs, the supply of which is controlled by government regulators, is an outdated approach to transportation services. Instead of expending funds through the GCC to back loans and provide interest-free loans to cab owners, **the state should consider reforming its medallion system to authorize a new class of cab permits that would provide new entrants flexibility and low start-up costs, like what was introduced in New York City several years ago.**¹³
- 2) While it makes sense to put limits on unreasonable TNC surge pricing to ensure that consumers don't get fleeced, lawmakers need to ensure that these limits are well-defined and clearly stated in the legislation. **Policymakers should amend the legislation to define more specifically what they mean by directing the 'Ride for Hire Division' to prohibit "excessive minimum rates or base rates" and clarify what it means by prohibiting the use of surge pricing during a "state of emergency".** In theory this prohibition would ensure that passengers won't face exorbitant

fares during events such as snowstorms when other options are limited. In practice, however, the absence of a reasonable premium for driving in hazardous conditions may reduce the number of TNC drivers willing to work during such periods. **Lawmakers should assure that the legislation does not limit availability of TNCs during "a state of emergency". In addition, the legislature should clarify what is meant by a "state of emergency" and what is meant by "excessive minimum or base rates".**

- 3) The restrictions on TNC pick-ups at the BCEC and Logan Airport prohibit service options that consumers have demonstrated they prefer while not enhancing public safety outcomes. This restriction continues a protectionist policy at odds with the notion of establishing a "level playing field". **Lawmakers must give more consideration to consumer preferences in these high-volume areas and carefully weigh how these restrictions could limit supply and drive up the cost of transportation services available at these locations.**

Endnotes

1. As mentioned on the MA legislature’s website, House bill No. 4049 was “changed by the House committee on Bills in the Third Reading”, and was “amended and passed to be engrossed by the House” on March 9 as bill H.4064.
2. For more info on bill H.4064 see: <https://malegislature.gov/Bills/189/House/H4064/History>.
3. The legislation would also mandate that all TNC drivers carry a plan offering \$50,000 of coverage per individual for bodily injury, \$100,000 of total coverage for bodily injury, and \$30,000 of coverage for property damage.
4. Blackburn, Matt, “An Uncertain Future for Ridesharing Services in Massachusetts.” Pioneer Institute for Public Policy Research, September 2015. Available at: <http://pioneerinstitute.org/download/an-uncertain-future-for-ridesharing-services-in-massachusetts/>.
5. Both the Secretary of the Executive Office of Public Safety and Security, Daniel Bennett, and Former Boston Police Commissioner, Ed Davis, have publicly expressed that background checks currently employed by TNCs—which do not include fingerprinting requirements—sufficiently meet public safety requirements.
6. As of June 3, 2015 the GCC has assisted companies with customized working capital financing commitments totaling over \$74,600,000.
7. “MassDevelopment, Mass Growth Capital Introduce TDI Microloan Program for Small Businesses.” MassDevelopment News & Media Relations, June 3, 2015. Available at: <http://www.massdevelopment.com/news/massdevelopment-mass-growth-capital-introduce-tdi-microloan-program-for-sma/>.
8. Email from the Boston Hackney Carriage Unit to author on March 31, 2016, 2:43 PM.
9. Saltzman, Jonathan, Bombardieri, Marcella, “An empire built on ambition and a very hard line.” *The Boston Globe*, 1 April 2013. Available at: <http://www.bostonglobe.com/metro/2013/03/30/spotlight/9eVWW7Y6RaOIqI62n2XII/story.html>.
10. Toussaint, Kristin, “Uber is causing taxi medallions to decline in value.” *Boston.com*, 30 July 2015. Available at: <http://www.boston.com/news/business/2015/07/30/uber-is-causing-taxi-medallions-to-decline-in-value>.
11. While this could be construed as an initiative to complement Uber’s finance program, Xchange, government loan guarantees go far beyond the assistance Uber provides its drivers.
12. Kulp, Patrick, “No one was happy about Uber’s surge pricing on New Year’s Eve.” *Mashable*, 2 January 2016. Available at: <http://mashable.com/2016/01/02/uber-riders-new-years-eve/#vWgJQ7Lnxgq8>.
13. For more information on how NYC’s permitting system could be implemented in Massachusetts, see: <http://pioneerinstitute.org/bgc-2013-winners/2013-bgc-runner-up-freeing-entrepreneurs-from-overreaching-government-regulations/>.



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