



Professional Fire Fighters of Massachusetts

Affiliated with the International Association of Fire Fighters AFL-CIO CLC

July 16, 2020

Honorable Aaron M. Michelwitz
Chairman
House Committee on Ways & Means
State House, Room 243
Boston, MA 02133

Honorable Claire Cronin
Chairwoman
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Dear Chairman Michelwitz and Chairwoman Cronin:

On behalf of the over 12,000 active members and 222 locals of the Professional Fire Fighters of Massachusetts (PFFM), I write to express our concerns relative to **S. 2820 *An Act to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.***

We believe, and have expressed since the outset, the ongoing nationwide discussions about police, race and community relations present an unprecedented opportunity to improve police training and standards. We, along with the Massachusetts Law Enforcement Policy Group and Black and Latino Legislative Caucus, support the promotion of diversity, bans on chokeholds and excessive force, standardized training of procedures and protocols, and an independent body including law enforcement experts to oversee accreditation and certification.

However, we are concerned with the scope of S. 2820 and the precedent it could set for the rights and protections of not only public safety employees, but all public employees.

Specifically, the PFFM has concerns with the following policies contained in S. 2820:

1. The Lack of Due Process & Attack on Collective Bargaining

All public employee unions, including PFFM locals, negotiate language that requires any discipline or discharge to be supported by just cause. No public employee union is forced to accept an employer's discipline as the final word because of how frequently disciplinary decisions are incorrect, unsupported, or retaliatory. Every single Union has the right for any discipline to be reviewed by a neutral, experienced labor relations expert known as an arbitrator. Many public employees have an alternative right to seek review of discipline at the Civil Service Commission. The arbitrator or Civil Service Commission ensures the discipline was fair and consistent, and that the employer provided due

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process and conducted a reasonable and objective investigation. Even teachers, following the Education Reform Act, have the right to arbitration if terminated for poor performance.

This bill eliminates that due process for police officers and creates a dangerous precedent for other unions. Section 6 of the Bill proposes to add Sections 220-225 of Massachusetts General Laws, Chapter 6. Proposed Section 225(a) states that the police officer standards and accreditation committee “shall revoke an officer’s certification if: (ix) “sustained complaint of misconduct based upon conduct consisting of” for a variety of serious offenses, including unjustified deadly force, a hate crime, intimidating a witness, tampering with an official record; perjury; or failing a materially false police report. Meanwhile, proposed Section 225(b)(ii) permits suspension or loss of certification if the officer has “repeated sustained complaints of misconduct, for the same or different offenses.” Proposed Section 220 defines “sustained complaint of misconduct” as a “finding by an appointing authority or the committee, after the exhaustion of all rights to appeal *within the appointing authority* or the committee....”(emphasis added). Arbitration and civil service are appeals without or beyond the authority. As such, this legislation removes many forms of discipline from collective bargaining and civil service.

In the case of *City of Boston v. BPPA*, SJC-12077 (2017), the Supreme Judicial Court upheld an independent arbitrator’s determination that an African American police officer was falsely accused by a white citizen to have used excessive force. The Arbitrator determined that the police officer and others were truthful and that the force used was not excessive. The SJC affirmed the right of police departments to determine the types of force considered excessive, without having to bargain the decision with a police union first. Had S. 2820 been in place at the time, the officer would have lost his job and certification and his case could not go to arbitration or civil service and any such decision would have no effect.

2. The Expansion of Civil Liability to All Public Employees

Sections 9-11 of S. 2820 propose to make multiple amendments to the Massachusetts Civil Rights Act (M.G.L. c.12, Section 11H). Currently, MCRA allows individuals to sue public and private employers, and public and private employees who violate someone’s rights “by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion.”

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Section 9 creates a new claim for individuals (Section 11H1/2) to sue public employers and agents for (a)(i) law enforcement officer deprivation of rights; and (ii) discrimination based upon protected characteristics. The latter would appear to apply to all employees. Section 10(b) adds Section 12 to the MCRA that allows individuals to sue if they feel their rights have been interfered with or attempted to be interfered with. All public employees are subject to this change. The proposed Section 12(c) then limits qualified immunity for all employees to a standard that is more favorable to plaintiff's attorneys than the federal standard.

In sum, we expose the creation of new causes of action against all public employees that holds them to a standard that provides us with fewer protections than under federal law.

The indemnification laws do not sufficiently protect public employees. Section 9 of Massachusetts General Laws Chapter 258 states "Public employers *may* indemnify public employees,..." up to \$1 million. The Massachusetts Appeals Court ruled that such discretion on a case-by-case basis is a managerial right that is not subject to collective bargaining or interest arbitration. Elected officials, especially at the local level, are increasingly facing pressure to limit, if not end, indemnification for public employees.

3. The Bill Creates One of the First, if Not The First, Licensing Agency that is Not Composed of a Majority of Professionals.

Chapter 13 contains a variety of licensing or certification agencies for various professions. All, or nearly, all of them are overseen by boards whose membership are themselves in the trade or profession being regulated, whether nurses, dieticians, optometrists, electricians, pharmacists, and so on. Typically, a minority of each Board are representatives of the general public.

S. 2820 tips the scales against trained, educated or experienced law enforcement. Section 6, proposed Section 221 of S. 2820 creates a committee of 15 members. The 14 members appointed by the governor include representatives of: State Police; MBTA police; City of Boston Police; Mass Police Chiefs Assn; MAMLEO, ACLU; NAACP (2); Lawyers Committee for Civil Rights; retired judge; Massachusetts Black & Latino Legislative Caucus (2); veteran of criminal justice system; and one trooper or patrol officer. The 1 member appointed by the AG must be from a group advocating for communities with disproportionately high instances

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of police interaction. In other words, trained police officers will make up *no more than* six positions on the 15-member board.

The PFFM urges you and the Massachusetts House of Representatives to remove these policies from S. 2820 and revisit these specific issues with a special commission.

Additionally, we recommend that all language relative to qualified immunity be removed and S. 2820 be amended with the following language:

"A special Commission will be convened to study qualified immunity, consisting of four (4) legal experts in the relevant areas of qualified immunity and its impacts on public safety appointed by the Governor, the Senate President, the Speaker of the House, the Chairs of the Ways and Means Committees, and the House and Senate minority leaders, and a designee of the Supreme Judicial Court. The Commission shall study the issues of qualified immunity and file a report with the House and Senate Clerks within 180 days from its creation."

These commissions will enable a full legislative and public hearing process to ensure the opinions of all public employees are heard and robustly debated on these matters to avoid any unintended consequences and adverse legal precedent that could arise to the detriment of public employees, the backbone of our municipalities and the Commonwealth.

Massachusetts has a strong history protecting its workforce. Public employees and the labor movement have fought long and hard for the benefits we currently have. The PFFM and our brothers and sisters in public safety and labor, will not sit idly by as these benefits are eroded without our voices being heard.

Thank you for your consideration during these unprecedented times and I am available at your convenience to discuss these matters further.

Sincerely,

Richard MacKinnon, Jr.
President

cc: Massachusetts House of Representatives

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