

**Special Legislative Commission to Study and
Examine the Civil Service Law, Personnel
Administration Rules, Hiring Procedures and
By-Laws for Municipalities not Subject to the
Civil Service Law and State Police Hiring
Practices**

Final Report

March 30, 2022

Note from the Chairs

In addition to the dedication and commitment of the Commissioners, the Chairs of the Special Legislative Commission to Study and Examine the Civil Service Law, Personnel Administration Rules, Hiring Procedures and By-Laws for Municipalities not Subject to the Civil Service Law and State Police Hiring Practices (“the Commission”) take this opportunity to thank the staff of the Joint Committee on Public Service (“the Committee”), without whom this Report could not have been timely completed. The staff noticed, recorded, and maintained records of all Commission meetings. They assembled all material shared with the Commission and retained recordings of all its members. The staff worked with witnesses that appeared before the Commission, and greatly contributed to the Final Report.

The Commission could not have met its statutory charge without the efficient, insightful, and hard work of the Committee’s Staff Director, Cody Case, Counsel, Elizabeth Donovan, Research Director, Jessica Foley, and Researcher, Fiona Bruce-Baiden, nor without the input of Senate Chief of Staff Alfred DeGirolamo and Legislative Director Donna LoConte.

The Commission would not have been able to have addressed the complexity of its investigation into issues included in its charge without the hard work of the Subcommittees formed at its first meeting. We thank Subcommittee Chairs Representative Natalie Higgins, Senator Michael Moore, Representative Patricia Haddad, and Representative Chynah Tyler for their contributions.



Rep. Kenneth I. Gordon
Co-Chair



Senator Michael D. Brady
Co-Chair

Commission Membership

- **Representative Kenneth I. Gordon**, House Chair
- **Senator Michael D. Brady**, Senate Chair
- **Marcella King**, Governor Appointment, Correctional Officers' Union
- **Michael Papagni**, Governor Appointment, Firefighters' Union
- **Tom Reddy**, Governor Appointment, Police Officers' Union
- **Sophia Hall**, Designee of the American Civil Liberties Union of Massachusetts
- **Neil Osborne**, Designee of the National Association for the Advancement of Colored People New England Area Conference
- **Lawrence Calderone**, Chair of the Massachusetts Law Enforcement Policy Group
- **Chief Christopher D. Delmonte**, Designee of the Massachusetts Chiefs of Police Association
- **Chief James Vuona**, Designee of the Fire Chiefs' Association of Massachusetts
- **Jeffrey Lopes**, President of the Massachusetts Association of Minority Law Enforcement Officers
- **Major Stephen Gabriel**, Designee of the State Police
- **Robert Quinan**, Designee of the Civil Service Commission
- **Eric Atstupenas**, Designee of Secretary of Public Safety and Security
- **Ronald Renaud**, Designee of Secretary of Administration and Finance
- **Richard Sweeney**, Designee of the Massachusetts Bar Association
- **Tom Lyons**, Designee of the Massachusetts Veterans' Service Agents Association, Inc.
- **Sec. Cheryl Lussier Poppe**, Secretary of Veterans' Services
- **Jesse Flynn**, Designee of the Disabled American Veterans Department of Massachusetts
- **Jen Breaker**, Designee of the Massachusetts Municipal Association
- **Kimberly Parr**, Designee of the Attorney General Office
- **Representative Chynah Tyler**, Chair of the Black and Latino Caucus
- **Representative Maria Robinson**, Designee of the House Asian Caucus
- **Representative Natalie Higgins**, Speaker of the House Appointee
- **Representative Patricia Haddad**, Speaker of the House Appointee
- **Representative Tim Whelan**, House Minority Leader Appointee
- **Senator Michael Moore**, Senate President Appointee
- **Senator Edward Kennedy**, Senate President Appointee
- **Senator Bruce Tarr**, Senate Minority Leader

Table of Contents

***Introduction*5**

***Commission’s Charge*6**

***The Work of the Commission*9**

***Overview of the Massachusetts Civil Service System*.....10**

***Chapter 31 and Civil Service Agencies*.....10**

***Municipalities Begin to Leave Civil Service*12**

***CONCLUSIONS AND RECOMMENDATIONS*.....19**

I. TIME FRAME FOR COMMISSION WORK 19

II. INVESTING IN THE SYSTEM AND DIVERSITY ENHANCING INITIATIVES WITH NEW REVENUE 20

A. Correcting Underfunding of the Unit and Weaning Its Reliance on Exam Fees..... 20

B. Expand Eligibility for Examination Fee Waivers and Implement a Cap on Examination Fees..... 21

C. Extend publicly-funded Diversity Scholarship Offerings to Fire Science Programs and Create a Diversity Pipeline Initiative Linking Community Colleges to Municipal Fire Departments..... 23

D. To Establish a Diversity Scholarship Program 26

E. Establishment of Office of Diversity, Equity and Inclusion with Outreach Budget 26

III. AMEND LEGISLATIVE COMMITTEE RULES 28

IV. RECOMMENDATIONS REQUIRING LEGISLATIVE OR ADMINISTRATIVE ACTION..... 30

A. Examine Amendments to Chapter 31A..... 30

B. Examine Adjustments to Residency Requirements for Prospective Candidates 34

C. To Adjust the Formula for Creating Entry-Level Hiring Certifications 35

D. To Allow Flexibility in Civil Service Exam Frequency 37

E. To Allow Appointing Authorities to Consider Highest Exam Score 37

F. To Amend Chapter 31 to Allow an Applicant to Take an Entrance Exam Prior to Turning the Minimum Age Necessary to Hold the Particular Civil Service Position 38

G. Enhance Flexibility in Use of Selective Certifications..... 38

H. Clarify and Enhance the Authority of the Civil Service Commission..... 39

I. Remove and update outdated language from the civil service law 42

***Appendices*44**

Introduction

This Report was drafted by the Commission created by the Act Relative to Justice Equity and Accountability in Law Enforcement in the Commonwealth, codified as Chapter 253 of the Acts of 2020 (“the Act”). The Legislature charged this Commission with reporting back to it with its recommendations and findings regarding the Commonwealth’s civil service laws. As will be set forth herein, more than 30 hearings, including sub-committee meetings, were conducted by the Commission and its sub-committees. The Commission found that criticism among municipalities of the civil service system organized to oversee, manage, and enforce the Commonwealth’s civil service laws, codified as G.L. c. 31 (“Chapter 31”), is consistent and widespread. Among the Commonwealth’s public safety workforce and potential job applicants within the jurisdiction of the civil service law, however, reliance on the fair treatment that is at the heart of civil service laws is just as closely guarded.

The Commission found, in short, that any shortcoming of Massachusetts’ civil service system may likely be overcome with: modest revisions to existing laws; a reliable, secure, and consistent source of funding, allowing for a budget empowering the Human Resource Division’s Civil Service Unit to better advertise, communicate, and market opportunities for careers in public service; a cap on reduce examination fees and expansion of fee waiver eligibility; and for the Civil Service Commission to continue to provide an independent and objective process for resolving appeals and disputes. The recommendations of this Report are designed to assist the Legislature in strengthening the civil service system, making it more attractive to municipalities that are in civil service to remain there, and providing a reason for municipalities that have left civil service to return.

Several municipal public safety departments have left civil service in recent years, and several more have filed legislation to do so. The Commission is concerned that once a municipal department falls outside the civil service system, equal opportunity protections for groups that traditionally have been disadvantaged in securing public sector employment have not been adequately enforced; and protections and intended hiring preferences for veterans and other groups as provided by Chapter 31 have not been guaranteed. This Commission found and recommends that with the adjustments set out herein, including the oversight and continued study, the Commonwealth will continue to provide a civil service framework beneficial to both public safety employers and the men and women who serve in important public safety roles.

Commission's Charge

The Special Legislative Commission to Study and Examine the Civil Service Law, Personnel Administration Rules, Hiring Procedures and By-Laws for Municipalities Not Subject to the Civil Service Law and State Police Hiring Practices (hereinafter "the Commission") was established by the Act. And is set forth as follows:

SECTION 107. (a) Notwithstanding any general or special law to the contrary, there shall be established, pursuant to section 2A of chapter 4 of the General Laws, a special legislative commission to study and examine the civil service law, personnel administration rules, hiring procedures and by-laws for municipalities not subject to the civil service law and state police hiring practices.

(b) The commission shall consist of 29 members; 3 members appointed by the governor, 1 of whom shall be a member of a police officers' union, 1 of whom shall be a member of a firefighters' union and 1 of whom shall be a member of a correctional officers' union; 1 of whom shall be the executive director of the American Civil Liberties Union of Massachusetts, Inc. or the executive director's designee; 1 of whom shall be the president of the National Association for the Advancement of Colored People New England Area Conference or the president's designee; 1 of whom shall be the chair of the Massachusetts Law Enforcement Policy Group, Inc.; 1 of whom shall be the president of the Massachusetts Chiefs of Police Association Incorporated or the president's designee; 1 of whom shall be the president of the Fire Chiefs' Association of Massachusetts, Inc. or the president's designee; 1 of whom shall be the chair of the Massachusetts Association of Minority Law Enforcement Officers, Inc. ; 1 of whom shall be the colonel of state police or the colonel's designee; 1 of whom shall be the chairman of the civil service commission or the chairman's designee; 1 of whom shall be the secretary of administration and finance or the secretary's designee; 1 of whom shall be the president of the Massachusetts Bar Association or the president's designee; 1 of whom shall be the secretary of public safety and security or the secretary's designee; 1 of whom shall be the president of the Mass. Veterans' Service Agents Association, Inc. or the president's designee; 1 of whom shall be the secretary of veterans' services or the secretary's designee; 1 of whom shall be the commander of the Disabled American Veterans, Department of Massachusetts, Inc., or the commander's designee; 1 of whom shall be the executive director of the Massachusetts Municipal Association, Inc. or the executive director's designee; 1 of whom shall be the chair of the Massachusetts Black and Latino Legislative Caucus or the chair's designee; 1 of whom shall be the chair of the Massachusetts House Asian Caucus or the chair's designee; 4 members of the house of representatives, 2 of whom shall be appointed by the

speaker of the house of representatives, 1 of whom shall be the house chair of the joint committee on public service or the chair's designee and 1 of whom shall be appointed by the minority leader of the house of representatives; 4 members of the senate, 2 of whom shall be appointed by the senate president, 1 of whom shall be the senate chair of the joint committee on public service or designee and 1 of whom shall be appointed by the minority leader of the senate; and the attorney general or the attorney general's designee. The speaker of the house of representatives shall appoint 1 co-chair from the house appointees to the commission and the senate president shall appoint 1 co-chair from the senate appointees to the commission.

(c) The commission shall study the employment, promotion, performance evaluation and disciplinary procedures for civil service employees, including, but not limited to: (i) the hiring and recruitment processes for civil service positions; (ii) the use of civil service eligible lists, the statutory merit preference status and the hiring from those eligible lists; (iii) all current civil service examinations and the use of the examinations for hiring and promotions; (iv) collective bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to civil service employees; and (vi) identifying any barriers that exist in hiring, recruiting or promoting civil service employees.

(d) The commission shall study the employment, promotion, performance evaluation and disciplinary procedures of municipalities not subject to the civil service law, including, but not limited to: (i) the hiring and recruitment procedures and by-laws for municipalities; (ii) all examinations administered by municipalities and the use of the examinations for hiring and promotions; (iii) the use of minimum eligibility guidelines and hiring qualifications or preferences; (iv) collective bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to municipal employees; and (vi) identifying any barriers that exist in hiring, recruiting or promoting municipal employees.

(e) The commission shall study employment, promotion, performance evaluation and disciplinary procedures of the department of state police, including, but not limited to: (i) hiring and recruitment laws and procedures; (ii) the requirements of chapter 22C of the General Laws; (iii) all examinations used by the state police for hiring and promotions; (iv) collective bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to officers of the Massachusetts state police; and (vi) identifying any barriers that exist in hiring, recruiting or promoting officers of the department of state police.

(f) The commission shall evaluate the feasibility of creating a statewide diversity office within the executive office of administration and finance to establish affirmative action plans and guidelines for municipalities, oversee the implementation of these plans and guidelines and monitor noncompliance. The commission shall examine the feasibility and cost of hiring or appointing a diversity officer for every city or town with a municipal police or fire department.

(g) The commission shall make recommendations for changes to the civil service law to improve diversity, transparency and representation of the community in recruitment, hiring and training of civil service employees, including, but not limited to, any changes to civil service exams, merit preference status, eligible lists and appointment from eligible lists by hiring authorities. The commission shall make recommendations to improve diversity, transparency and representation of the community in recruitment, hiring and training for municipalities not subject to the civil service law and for the department of state police.

(h) The commission shall hold its first meeting not later than 30 days after the effective date of this act and shall meet at least monthly thereafter. The commission shall submit a report of its study and any recommendations, together with any draft legislation necessary to carry those recommendations into effect, by filing the same with the governor, the speaker of the house of representatives and the president of the senate and the clerks of the house of representatives and senate on or before September 30, 2021.¹

¹ The Commission's reporting deadline was extended to March 30, 2022, by Section 19 of Chapter 76 of the Acts of 2021.

The Work of the Commission

To fulfill its obligations under Section 107, the Commission convened 13 full hearings beginning on May 5, 2021. Due to the public health emergency brought on by COVID-19, hearings were conducted via virtual meeting platforms. The agenda for each hearing of the Commission may be found on the Massachusetts Legislature’s website.² Recordings of the Commission’s hearings may be found via www.malegislature.gov or on the Joint Committee on Public Service’s YouTube Channel.³ In addition to hearing from invited witnesses, more than 30 members of the public testified on various issues pertaining to the Commission’s charge on January 30, 2022.⁴

To facilitate the Commission’s work, Commissioners voted to approve the formation of subcommittees relative to each of the four questions put before it. The subcommittees were tasked with conducting research and hearing from witnesses, identifying and soliciting input from relevant stakeholders, and developing recommendations for the Commission’s review designed to inform the Commission’s findings outlined in this report. Collectively, the Commission’s subcommittees met on some 20 occasions. The four subcommittees are as follows:

- Subcommittee on Municipalities Subject to the Civil Service Law (chaired by Senator Michael Moore)
- Subcommittee on Municipalities Not Subject to the Civil Service Law (chaired by Representative Natalie Higgins)
- Subcommittee on the State Police (chaired by Representative Patricia Haddad)
- Subcommittee on Diversity, Transparency, and Representation (chaired by Representative Chynah Tyler)

Presentations coordinated by Commissioners included representatives from relevant state and municipal departments, labor unions, veterans’ groups, civil rights organizations, and other interested stakeholders. The Commission recorded each presentation for public viewing and compiled hundreds of pages of documentation relative to the Commission’s charge. This report will lay out issues of further consideration and provide recommendations relative to the charge established by the Act.

² The agenda for each of the Commission’s meetings can be found on the Massachusetts Legislature’s website, <https://malegislature.gov/Commissions/Detail/544>.

³ The Commission’s meetings, other than the first two, which can be found on the MA Legislature website, are available on the Joint Committee on Public Service’s YouTube page, <https://www.youtube.com/channel/UCBkEVBJogMeY0aSQ6udwvw/videos>.

⁴ The Commission solicited testimony from members of the public for the 10th meeting on January 28, 2022, <https://youtu.be/tN0SPI5Z9dg>.

Overview of the Massachusetts Civil Service System

Prior to the establishment of civil service systems in the United States, elected officials and members of political parties provided public sector jobs to their supporters and family members under what was referred to as the “spoils system”.⁵ The so-called spoils system allowed for a practice in which government appointments were given to supporters and taken away from opponents following changes in administration. Critics of the spoils system claimed that because appointments were not merit based, the system was inherently corrupt. In police departments, reformers looking to replace the spoils system with a merit-based system focused on sworn police personnel, with the intent of “structurally isolat[ing] police officers from politicians”.⁶ Some municipalities “added a middle-level of management to their organizational charts; changed the geographic lines of police precincts so they would no longer be contiguous with political wards; and created special squads to perform specific duties within the departments.”⁷

Federal civil service reform began when President Chester A. Arthur signed the Pendleton Civil Service Reform Act of 1883. The Pendleton Act required the hiring of government employees through a Civil Service Commission, which would ensure that positions would be granted based upon ability and merit “without regard to politics, religion, race, or national origin.”⁸ The Commonwealth quickly followed suit by passing its own civil service law, signed by Governor Dexter Robinson, in 1884.⁹ The civil service law has been amended numerous times since its inception. Several Special Commissions have been convened by the Legislature to study the civil service law, including those in 1938, 1967, 1979, and 1996.

Chapter 31 and Civil Service Agencies

General Laws c. 31 (“Chapter 31”) provides the framework for Massachusetts’ civil service system. Chapter 31 establishes the powers and duties of the Civil Service Commission (“CSC”)¹⁰ and of the Chief Human Resources Officer (“CHRO”).¹¹ Included within its provisions are procedures relative to appointment, examinations, performance evaluations, promotions, eligible lists, and preferences for certain public employees. It is important to note here that the Civil Service Unit (“the Unit”) of the Commonwealth’s Human Resources Division (“HRD”) and the Civil Service Commission (“CSC”) are separate entities under the umbrella of

⁵ “Spoils System”, *Encyclopedia Britannica*, 2020, <https://www.britannica.com/topic/spoils-system>.

⁶ Potter Gary, “The History of Policing in the United States, Part 5”, *Eastern Kentucky University*, 2013, <https://ekuonline.eku.edu/blog/police-studies/the-history-of-policing-in-the-united-states-part-5/>.

⁷ Potter Gary, “The History of Policing in the United States, Part 5”, *Eastern Kentucky University*, 2013, <https://ekuonline.eku.edu/blog/police-studies/the-history-of-policing-in-the-united-states-part-5/>.

⁸ “The Pendleton Civil Service Act”, *Encyclopedia Britannica*, 2017, <https://www.britannica.com/topic/Pendleton-Civil-Service-Act>.

⁹ “The Massachusetts Civil Service Law: Is it necessary to Destroy the Current System in Order to Save it?”, *Hein Online*, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/newlr40&div=58&id=&page=>.

¹⁰ See Massachusetts General Laws, Chapter 31 Section 2.

¹¹ See G.L. c.31, § 5.

the Executive Office of Administration and Finance (“A&F”) with defined roles and responsibilities under Chapter 31.

The CHRO,¹² acting through the Unit, carries out the operational functions of the civil service system. The CHRO is authorized to establish Personnel Administration Rules (“PARs”), which regulate the recruitment, selection, training, and employment of certain civil service positions in the 142 municipalities with public safety agencies subject to the civil service law. In addition to those cities and towns whose police and/or fire departments are regulated by Chapter 31, other public safety-related agencies within state government appoint and promote individuals pursuant to Chapter 31, including Department of Correction (“DOC”), the Environmental Police, the Massachusetts Parole Board, and the MBTA Police Department. The State Police (“MSP”) are not subject to the provisions of Chapter 31, except in limited fashion,¹³ but may participate in the Unit’s entry level exams.¹⁴ Acting under the authority of Chapter 31 and the PARs, the Unit administers and enforces compliance with civil service laws and rules and, additionally, regulates the recruitment, selection, training, and employment of civil service positions. The Unit develops, administers, and certifies public safety examinations, creates hiring lists of candidates in accordance with statutory preferences, determines classification plans for civil service positions, approves or disapproves of specifications and qualifications submitted by an appointing authority for a civil service position, evaluates the qualifications of applicants, establishes standards for civil service positions, maintains records, establishes recruitment programs, and administers physical abilities testing for municipal police academy candidates.

Among the duties and obligations of the Unit is to manage the system that oversees employment in public safety careers such as municipal police, fire service, and similar departments. When a municipality seeks to fill a civil service vacancy, a request is provided to the Unit for a certification of names (the “certification”) drawn from the list of eligible candidates (the “eligible list”). The eligible list is made up of candidates who passed a civil service examination, as will be explained throughout this Report. The eligible list ranks candidates for employment in a particular order that takes into account not only the score of the candidate on the civil service examination, but whether the candidate is subject to certain “preferences”, or advantages, due to various enumerated statuses set forth in Section 26 of Chapter 31 (“Section 26”). Section 26 provides that the names of all persons who have passed the most recent civil service examination will be placed on the eligible list in the following order: (1) disabled veterans; (2) veterans; (3) spouses or parents of veterans who were killed in action; (4) all others. Placed even ahead of a disabled veteran is the child of a police officer, firefighter,

¹² Today the head of HRD holds the title of “Chief Human Resources Officer” but Chapter 31 still refers to this position as the “Personnel Administrator.”

¹³ Section 13 of G.L. c. 22C provides that tenured sworn state police officers who remain aggrieved after having been charged with misconduct and tried by a State Police Trial Board may appeal a final disciplinary disposition to the Civil Service Commission pursuant to G.L. c. 31, sections 41 to 45.

¹⁴ Regina Caggiano, Director of the Unit, gave a presentation on HRD’s role during the Commission’s 3rd meeting on July 12, 2021, <https://www.youtube.com/watch?v=hOF-MNaVuBY>, (18:20).

correctional officer who was injured or killed in the line of duty. When so ordered by the CSC, successful appellants whose civil service rights were abridged will also be placed atop “certifications” derived from eligible lists. In addition to the preferences affecting veterans and family members of injured or deceased firefighters and police officers, municipalities may request a list that places its own residents ahead of other applicants.

The powers and duties of the CSC include, but are not limited to, conducting investigations of alleged systemic violations of Chapter 31 and hearing and deciding appeals from those aggrieved by a decision, action, or failure to act by the CHRO or an appointing authority.¹⁵ The CSC hears and decides appeals¹⁶ relative to state and municipal employees and candidates for positions covered by the civil service law, including discipline, layoff, bypass, examination appeals, and reclassification appeals for all state employees.¹⁷ In so doing, the CSC is responsible for ensuring that personnel and employment decisions are compliant with the law, fair and impartial, and reflect basic merit principles established in G.L. c. 31 § 1.¹⁸ Final CSC decisions may be appealed to the Superior Court.

Municipalities Begin to Leave Civil Service

Over the course of decades, many cities and towns entered the civil service system in Massachusetts by accepting the provisions of Chapter 31. The optional nature of the law gives municipalities an opportunity to conditionally exit the civil service system through G.L. c. 4, § 4B. However, municipalities that joined civil service through a special act of the Legislature cannot be removed from the provisions of Chapter 31 without a corresponding act of the Legislature authorizing them to do so.¹⁹ Among the 351 municipalities in the Commonwealth, 142 public safety departments are subject to the provisions of Chapter 31, in whole or in part. In recent years, municipalities have sought to exempt public safety departments from the civil service law. According to HRD, 36 police departments²⁰ and eight fire departments²¹ that were once governed by Massachusetts’ civil service law have left. This trend continues today. Another eight municipalities have approved petitions to exempt certain departments and positions from Chapter 31 and those petitions are making their way through the legislative process.

¹⁵ See G.L. c.31, § 2.

¹⁶ An average of 250 appeals are filed with the CSC annually.

¹⁷ The official website of the Commonwealth of Massachusetts features a collection of two sets of web pages regarding the Civil Service Commission at, <https://www.mass.gov/orgs/civil-service-commission>.

¹⁸ The Commission heard that, similar to the rest of the civil service system, the CSC’s ability to fulfill its mission has been hampered by consistent underfunding.

¹⁹ See M.G. c.4 § 4B.

²⁰ See the official website of the Commonwealth of Massachusetts, webpage on Civil Service Police Departments, <https://www.mass.gov/service-details/civil-service-police-departments>.

²¹ See the official website of the Commonwealth of Massachusetts, webpage on Civil Service Fire Departments, <https://www.mass.gov/service-details/civil-service-fire-departments>.

Municipalities cite various reasons for separating from the civil service system. Among the most common are delays in the hiring process, challenges with recruitment, and unsuitable examinations. Municipalities also reported frustration with delays in exam results and release of eligible lists, sequencing of examinations and academy schedules, and a lack of funding. Municipalities seeking to separate from civil service report that the civil service hiring procedure can be burdensome and costly. Grafton Chief of Police, Normand Crepeau Jr., spoke of the civil service hiring timeline:

“Delays in hiring are potentially costly to the Town because we must backfill many vacant shifts on overtime. The police department could schedule an exam and have the results within two or three days instead of waiting six months or more under civil service.”²²

Throughout the course of its work, the Commission found that municipalities seeking to exit the civil service system claimed a desire to access a larger and more diverse candidate pool. Norwood Police Chief William Brooks III describes a system in which a limited number of candidates for existing job vacancies are provided to the municipality, requiring the municipality to choose the candidates included on that list or “bypass” them, essentially for cause:

“Civil Service uses the 2N+1 formula meaning that if there are two vacancies, the police department only receives a list of five candidates. (Now that we are out of civil service, we typically begin with a batch of at least 15 to 20 candidates).”²³

In addition, limited access to the police training academy, both because of location and the timing of sessions, serves as an impediment to municipal employers. Chief Edward Dunne of the Falmouth Police Department, which is within civil service, spoke about his experience getting officers into police academies. Chief Dunne suggested that by the time a municipality receives an eligible list from the Unit, many of the police academies no longer have availability, forcing the municipality to send his candidates to academies that are hours away. Otherwise, officers miss the academy cycle altogether and must wait a year for the next cycle.²⁴ Both scenarios are challenging for applicants and pose a potential threat to diversity within departments because attending an academy far from one's home is time consuming and costly, and those who wait until the next academy cycle commences must delay the start of their career.

²²See Appendix A pg. 007 for Report of Subcommittee on Municipalities not Subject to the Civil Service Law

²³ See Appendix A, pg. 014 for Report of Subcommittee on Municipalities not Subject to the Civil Service Law. The $2n + 1$ rule is spelled out in PAR.09 (1). When names have been certified to an appointing authority under PAR.08 and the number of appointments or promotional appointments actually to be made is n , the appointing authority may appoint only from among the first $2n + 1$ persons named in the certification willing to accept appointment. See Recommendation C. in section III., *infra*, for a more detailed explanation of how this formula plays out in practice.

²⁴ Chief Edward Dunne of the Falmouth Police Department testified in the Commission’s 6th meeting on August 20th, 2021, <https://www.youtube.com/watch?v=rzx4pCrmJ0I>, (32:13).

Municipalities highlighted several other challenges to improving diversity, transparency, and representation of all segments of the community within the existing civil service framework. Additional challenges include: limits on hiring preferences for candidates proficient in a second language; hiring candidates with higher education, or other certifications; and restrictions on hiring transfer candidates from non-civil service departments.²⁵

Labor representatives similarly expressed frustration with the system's lack of funding, leading to challenges in recruitment and lengthy hiring timelines. Labor representatives do not attribute these challenges to the civil service system itself, but to a lack of sustainable funding. Legislative Agents from the Professional Fire Fighters of Massachusetts ("PFFM"), Paul Jacques and Craig Hardy, spoke of the issue,

*"These problems [hiring timelines] are not a result of civil service itself but from a continued lack of funding year after year. Some may even say an intentional underfunding, 'death by a thousand cuts.' This lack of funding ... has created a backlog of cases and long delays in the hiring process that frustrate communities who rely on such process"*²⁶

The PFFM points out that almost all of the activities of the Unit are funded using a retained revenue model. Under such a model, the Unit receives appropriations based on the revenue from testing fees it anticipates during the current fiscal year. In this way, the Unit's operations are essentially funded through revenues derived from fees collected from candidates sitting for examinations. Rich MacKinnon, of the PFFM, testified about the civil service examination and funding of the system,

*"Due to its [the Unit] lack of funding, both entry-level testing as well as promotional testing prices have gone through the roof making it difficult for our men and women to take the entry-level and promotional exams. I think this stems from civil service being a revenue-neutral body in the Commonwealth and to keep themselves going they are going to need to keep raising the revenues to actually have these tests funded."*²⁷

²⁵ The Commission received testimony from municipalities that the absolute preferences set out within Section 26 create an impediment to greater access to diverse applicants. The Commission received testimony from veterans groups seeking to protect the preference as it exists. The Commission also received testimony from the designee of the National Association for the Advancement of Colored People New England Area Conference that preferences should be extended to African-American candidates. The Commission believes that much more comprehensive study, involving stakeholders and others not present within the Commission must be undertaken before any recommendation may be offered and therefore this issue is left for further discussion.

²⁶ See Appendix A, pg. 008 for Report of Subcommittee on Municipalities not Subject to the Civil Service Law. Other speakers mentioned the need to fully fund the CSC to enable it to render appellate decisions or complete investigations in a timely manner.

²⁷ Rich MacKinnon from the PFFM testified at the Commission's 10th meeting on January 28, 2022, <https://www.youtube.com/watch?v=tN0SP15Z9dg>, (18:23). HRD asserts that it is expensive to develop and then

Labor representatives expressed concerns about municipalities leaving civil service and no longer operating under the civil service disciplinary process. Mark Sanders, of PFFM, offers,

“One of the biggest problems [once municipalities leave civil service] is going to be disciplinary hearings, we believe that it will now open up [departing municipalities] to a lot more lawsuits; [the appeal process] will not be objective, you will not be appealing grievances or any labor disputes to civil service, you would now be answering to the municipality that you're being disciplined by.”²⁸

As well, labor representatives from non-civil service communities cited similar challenges in recruiting diverse applicants. President of the Lexington Fire Fighters IAFF Local 1491, Rob Green, whose department is not in the current civil service system, explained why recruiting for a diverse candidate pool outside of the state civil service infrastructure is difficult:

“I think a key component of that [diversity challenge] is to increase the hiring pool – the applicants that apply for these jobs. I can tell you from a Lexington perspective, we currently have four job openings, and we have six job applicants. That is not a very big pool and does not help us increase diversity.”²⁹

President Green suggested that those towns within the civil service system have an advantage, because applicants taking the state-wide examination are more plentiful than those who may choose to sit for an exam administered by a single municipality. In response to a question about how Lexington attracts veterans, President Green responded,

“If I am a veteran in the state, I’m going to apply to almost 100 municipalities through the civil service exam that gives me a veteran’s preference...”³⁰

Massachusetts law also includes an option for municipalities that do not want to join civil service under Chapter 31, but still seek the protection of a uniform system of managing public safety employment. G.L. c. 31A, titled “Municipal Personnel Systems” (“Chapter 31A”), allows a municipality to establish a decentralized personnel system outside of the provisions of Chapter 31, but also requires those municipalities to adopt certain standards for hiring, promotion and

validate the civil service examinations as being predictive of success in a particular public safety position, for HRD to administer them statewide (and offer makeup examinations for those serving in the military), and also take various measures necessary to protect the integrity of examinations and guard against potential cheating by candidates.

²⁸ Mark Sanders from the PFFM testified at the Commission’s 10th meeting on January 28, 2022, <https://www.youtube.com/watch?v=tN0SP15Z9dg>, (49:25).

²⁹ President of Lexington Fire Fighters IAFF Local 1491, Rob Green, testified before the Commission during the 10th meeting, <https://www.youtube.com/watch?v=tN0SP15Z9dg>, (1:07:00).

³⁰ President of Lexington Fire Fighters IAFF Local 1491, Rob Green, testified before the Commission during the 10th meeting, <https://www.youtube.com/watch?v=tN0SP15Z9dg>, (1:08:53).

discipline. However, Chapter 31A has not been adopted by any municipality and is essentially dormant, likely due to restrictive conditions necessary for its adoption.³¹

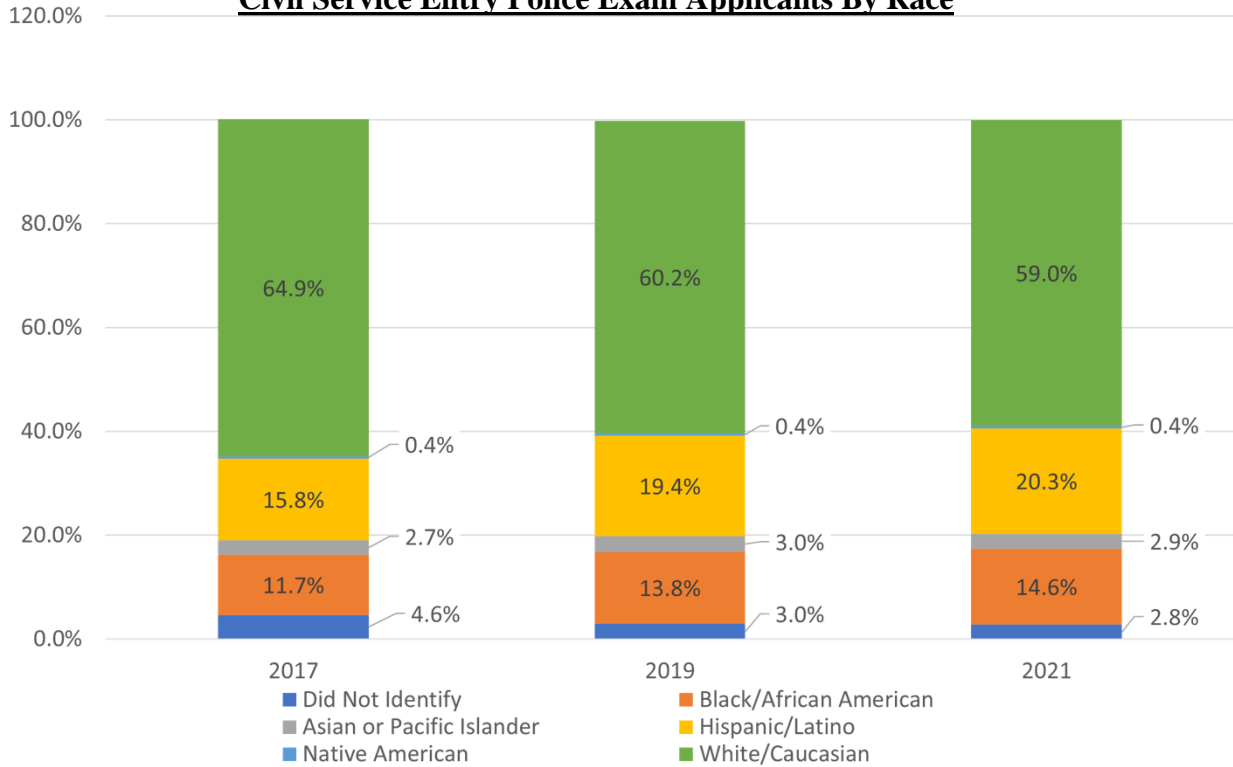
In considering its role in making recommendations to the Legislature concerning the diversity, transparency and representation of communities in civil service agencies, non-civil service agencies, and the MSP, the Commission sought information and relevant data to assess the demographic make-up of the workforce in civil service agencies and in departments that have left civil service. The Commission received testimony from several witnesses, including those currently employed in municipal public safety departments, who report from first-hand experience that municipal police and fire department personnel do not adequately represent the diverse make-up of their communities. Upon review of workforce demographics filed in U.S. District Court, among other public data, the Commission has concluded that in fact the workforces of numerous civil service departments do not proportionally represent the diversity of the communities they serve.³²

The Commission was presented with some evidence relative to the demographic makeup of candidates seeking civil service positions in the Commonwealth. According to an analysis of the civil service entry-level exam candidates compiled by the Unit associated with three police entry exams spanning from 2017 to 2021, the percentage of applicants identifying as Black/African American or Hispanic/Latino increased during that time. The percentage of applicants identifying as Asian or Pacific Islander or Native American was consistent throughout this period.

³¹ For example, G.L. c.31A, § 9 requires the municipality to submit to a semi-annual audit of its merit system the first year the municipality accepts Chapter 31A, with annual audits thereafter.

³² See *Appendix B pg. 132-133, Boston Chapter, NAACP, Inc. et al v. Nancy B. Beecher, et al.*, no.73-cv-269 (U.S.D.C. Mass)(March 23, 2021 filing) (2020 data re: Police and Fire Departments under consent decree, attached as Appendix B hereto). Moreover, communities subject to Chapter 31 are required to provide demographic data to HRD pursuant to Section 67 of Chapter 31. Such data concerning all municipalities that responded with information pursuant to Chapter 31, Section 67 was requested, but not received, by this Commission.

Civil Service Entry Police Exam Applicants By Race

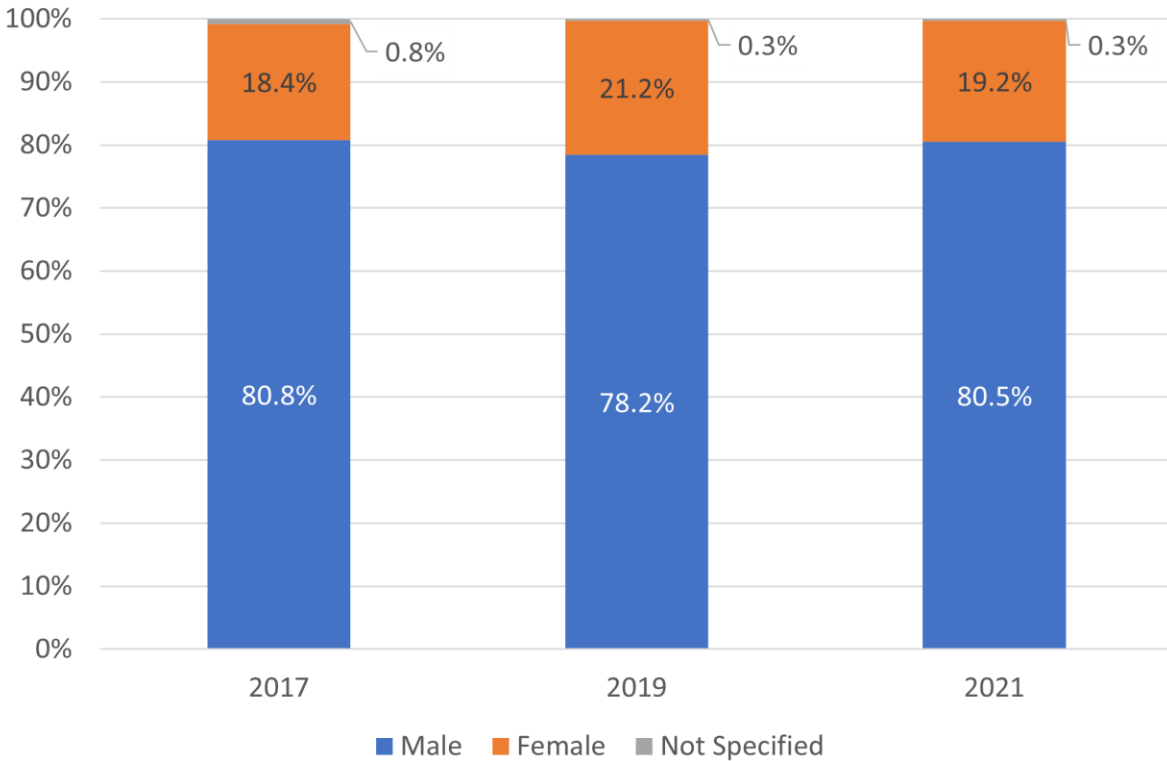


*Note Data include municipal, transit and state police in 2017 and 2021; municipal and transit only in 2015 and 2019 (state police did not elect to participate in exam in 2019).³³

HRD also presented the Commission with data regarding the gender makeup of police entry exam applicants. According to figures furnished by the Unit, the percentage of applicants identifying as female did not change significantly over these three exam periods.

³³ Data sourced from a presentation to the Commission by the Human Resources Division at the Commission’s 3rd meeting on Monday, July 12, 2021, <https://www.youtube.com/watch?v=hOF-MNaVuBY>, (38:19).

Civil Service Entry Police Exam Applicants - Gender



*Note Data includes municipal, transit and state police candidates in 2017 and 2021; but municipal and transit only in 2015 and 2019 (the MSP police did not elect to participate in the 2019 exam).³⁴

According to the most recent demographic data available on the Executive Branch Employee Diversity Dashboard, 13.7% of full-time sworn Protective Service Officers (i.e., troopers and superior officers) employed by MSP self-identified as people of color. Only 5.8% of the approximately 2,000 sworn Protective Service Officers are women.³⁵ Data presented to the Commission by the Department of Correction (“DOC”) showed that 16.7% of all Full-time employees (“FTEs”) in the DOC are self-identified people of color. The DOC has positions within civil service as well as non-civil service employees. Of DOC civil service employees, 18.1% are people of color, and 13.4% of the non-civil service FTEs are people of color.³⁶

The Commission further sought information from the municipalities that have left civil service as to the diversity make-up of their workforce at the time they left civil service and at the

³⁴ Data sourced from a presentation to the Commission by the Human Resources Division at the Commission’s 3rd meeting on Monday, July 12, 2021, <https://www.youtube.com/watch?v=hOF-MNnAVuBY>, (38:25).

³⁵ Data sourced from the official website of the Commonwealth of Massachusetts on the State Employee Diversity Dashboard page, <https://www.mass.gov/info-details/state-employee-diversity-dashboard>.

³⁶ Data presented during the Commission’s ninth meeting by The Department of Corrections, <https://www.youtube.com/watch?v=x9PvAIdZ4LU>, (17:57).

present time, but none have responded. As was announced by the Chair during the Commission’s meeting of March 4, 2022, the Commission may draw a negative inference given this lack of response to requested information concerning workforce diversity, including ethnic and gender diversity and veterans' status, in determining whether a municipality succeeded – or even attempted – in meeting the stated goals of increasing the diversity of its workforce and maintaining a preference for veteran hires.

CONCLUSIONS AND RECOMMENDATIONS

The recommendations outlined below recognize the value of merit-based personnel systems that are designed to ensure that the public sector workforce is qualified and also ensures fair and equal treatment of all public sector employees. Underpinning the Commission’s charge is the need to improve diversity, transparency, and representation of the community in recruitment, hiring, and training of public employees. After considering the data collected above, recent samplings of the municipal public safety workforce, other publicly available data, and testimony provided to the Commission, the Commission finds that people of color and women are largely underrepresented in public safety departments as compared to the communities they serve.³⁷ The Commission’s recommendations seek to strengthen public trust in Massachusetts public safety departments through amendments to the civil service law and personnel systems and in other ways.

I. TIME FRAME FOR COMMISSION WORK

The Commission has found that its work cannot effectively be addressed in one session of the Legislature, especially where its work has been limited to one calendar year. The challenges related to the administration of the civil service law are longstanding and complex. Many of the recommendations included in this report are derived from personal experience, expert opinion and hard data. But as will be detailed below, the Commission’s request for data have often been ignored or untimely provided.

Many of the recommendations propose revisions to the civil service system that have not previously been attempted and may require adjustment. Some of the recommendations require the establishment of new programs, funding and ongoing oversight. The Commission has recommended a reporting requirement for certain municipalities but systems are not yet in place to analyze and take action upon requested data. For these reasons alone, the Commission recommends that it remain active not only through the conclusion of the current legislative session but be re-formed beginning the first day of the 193rd session of the General Court. We anticipate the Commission, as it is reformed, may include different individuals because most of

³⁷ See e.g. Research: The Diversity Deficit: Municipal Employees in Metro Boston“, *MetroCommon*, 2020, <https://metrocommon.mapc.org/reports/14>.

the Commissioners have been designated in a representative capacity by the Act, but whoever is named to a newly constituted Commission should assemble and its work continue.

The Commission recommends that in the next legislative session it continue to hear from witnesses and determine whether further adjustments to the current system are necessary. Some opinions shared with the Commission have not advanced to the point of a recommendation herein, but may be worthy of further consideration in the next session. A continuation of the work of this Commission is, therefore, the first recommendation set forth.

II. INVESTING IN THE SYSTEM AND DIVERSITY ENHANCING INITIATIVES WITH NEW REVENUE

A. Correcting Underfunding of the Unit and Weaning Its Reliance on Exam Fees

Throughout the course of its work, the Commission heard that funding for the Unit is insufficient. As previously discussed in this report, projected fees serve as the basis for the Unit's appropriation at the beginning of each fiscal year. HRD receives an appropriation as a line item in the state budget consistent with its anticipated expenses in administering testing and other responsibilities. Concurrently, HRD receives fees from applicants registering for civil service examinations. The fees are accumulated by HRD and reverted to the General Fund, or deposited into the General Fund directly. The fees collected by HRD offset the appropriation, at least in major part, every year. This essential self-funding mechanism has been cited as limiting the Unit's effectiveness. Improvements to the civil service system in the Commonwealth depend on adequate and steady funding for the Unit.

To accomplish the improvements addressed in this Report, the Commission recommends an increase to the HRD budget for the work of the Unit in the amount of \$2 million. In FY22, the Unit was appropriated \$2,511,299.³⁸ Governor Baker's FY23 budget proposal considers a significant increase to the Unit's appropriation, funding the line item at \$4,611,299.³⁹ However, this increase is targeted at addressing the cost of converting HRD's civil service testing administration to a digital examination platform rather than for the expansion of programs and services. This Report recognizes that implementing many of the Commission's recommendations will require additional funding for the Unit.

The proposed budgetary increase may be ameliorated through a policy that allows HRD to retain a portion of its testing revenue, rather than serving as a mere pass-through for these fees

³⁸ This figure was sourced from the MA Legislature website on the FY22 budget page, <https://malegislature.gov/Budget/FY2022/FinalBudget>.

³⁹ This figure was also sourced from the MA Legislature website on the FY23 budget page, <https://malegislature.gov/Budget/FY2023/GovernorsBudget>.

as they are returned to the General Fund. While the effect on the state budget would be the same as an increase to the line item -- because any shortfall between the appropriation and testing revenue must be addressed within the budget -- this ready source of revenue may create an efficiency and predictability to encourage expansion of Unit's activities. Moreover, the Commission learned that the Massachusetts civil service system is unique in its funding approach. Other civil service systems in the United States typically do not rely on retained revenue from exam fees to fund their operations, as is the case, effectively, with the Unit at HRD.⁴⁰ While the Commissioners possessed insufficient information to consider the potential to decouple exam fees from the state appropriation in a way that would allow the Unit to retain a portion of generated fees for operational expenses, the Commission recommends that if the Legislature allows it to continue into the next legislative session that this topic be explored.

B. Expand Eligibility for Examination Fee Waivers and Implement a Cap on Examination Fees

The Commission has found that the high cost of examination fees is a prohibitive factor for many potential candidates and serves as an impediment to recruitment of a diverse workforce. Fees for entry police and fire exams range from \$100 to \$200.

The examination fee for those interested in policing cost \$100. As part of the process of becoming employed by a municipality, the applicant must also pass a Physical Abilities Test ("PAT"). The fee for the PAT is \$150. The Commission has learned that many municipalities cover the cost of the PAT for the conditional offeree.

The fire fighter entry exam includes both the written exam and the physical abilities exam. The cost for this test is \$200. The Commission knows of no source of financial assistance to applicants for the fire fighter exam other than a complicated and restrictive waiver process administered by HRD.⁴¹

The Secretary/Treasurer of the PFFM Billy Cabral testified:

*"Due to [the Unit's] lack of funding, both entry level testing as well as promotional testing prices have gone through the roof, making it difficult for men and women to take the entry level and promotional exams."*⁴²

⁴⁰ Regina Caggiano, Director of the Unit, gave a presentation on HRD's role during the Commission's 3rd meeting on July 12, 2021, <https://www.youtube.com/watch?v=hOF-MNaVuBY>, (17:54).

⁴¹ The Commission is advised that a large majority of exam takers do not find their name on a hiring certification and thus will not be made a conditional offer of employment.

⁴² Bill Cabral, PFFM Secretary/Treasurer, testified at the Commission's 10th meeting held on January 28th, 2022, (33:55).

While existing exam fee waivers are available to subsidize expenses for applicants on some form of public assistance, the Commission consistently heard that current exam fee waivers are ineffective, because the standard to qualify for them is too restrictive. The most common forms of public assistance accepted by the Unit include SNAP and WIC programs as well as unemployment benefits.⁴³ Many potential applicants choose not to disclose their reliance on these programs and therefore do not apply.

HRD explained that a significant reason that many applications are denied is the difficulty faced by applicants in providing supporting documentation. According to the Unit, of the 470 requested hardship fee waivers in FY19 for the entry police exam, only 160 of those requests were granted.⁴⁴ Throughout FY19, HRD administered 15 exams to 13,174 test takers. When the Commission inquired about the discrepancy in the number of requests for waivers and the number of waivers granted, HRD pointed to the lack of access to supporting documents necessary for approval.⁴⁵

The exam fee alone does not reflect the true cost of applying for a civil service position or promotion. Applicants often take multiple exams, incurring the exam fee each time. In addition, applicants may also feel the need to acquire test preparation materials, which can often cost hundreds of dollars.

The Commission recommends that HRD develop a strategy to expand access to waivers and test preparation materials, and streamline the waiver process. The Commission recommends HRD consider:

- (1) That waivers be offered in whole or in part;
- (2) Decoupling eligibility for a waiver from eligibility for public assistance; instead, eligibility could be tied, at least in the alternative, to a percentage of income above minimum wage. Any such calculation, however, should take into account the income of anyone who claims the applicant as a dependent on a tax return;
- (3) A waiver of the PAT examination fees, so that all applicants be treated equally, whether they have applied for an employment to a municipality that covers the cost of this examination or not;
- (4) A reduced fee for applicants who take an examination more than once;
- (5) A cap on total exam fees at \$100 per applicant; and
- (6) Making available test preparation materials without cost to the applicant.

⁴³ Regina Caggiano, Director of the Unit, gave a presentation on HRD's role during the Commission's 3rd meeting on July 12, 2021, <https://www.youtube.com/watch?v=hOF-MNaVuBY>, (20:01).

⁴⁴ Regina Caggiano, Director of the Unit, spoke to this issue during the Commission's 3rd meeting on July 12, 2021, <https://www.youtube.com/watch?v=hOF-MNaVuBY>, (18:29).

⁴⁵ During the Commission's 3rd meeting, Commissioner Higgins asked Regina Caggiano about the fee waivers for the civil service exams, <https://www.youtube.com/watch?v=hOF-MNaVuBY>, (45:20).

The Commission is aware that, under the Unit’s current fiscal model, any expansion of fee waivers or reductions in fees will create a shortfall between the appropriation from the General Fund and revenue generated from testing fees. However, because Unit budget shortfalls have been cited as a primary reason for delays and inefficiencies that frustrate municipalities’ abilities to efficiently fill vacancies, the Commission recommends that the Legislature consider a new strategy of fully funding civil service administration while retaining some cash flow opportunities for the Unit.

C. Extend publicly-funded Diversity Scholarship Offerings to Fire Science Programs and Create a Diversity Pipeline Initiative Linking Community Colleges to Municipal Fire Departments

As is true in most other states, the Massachusetts municipal fire service is heavily dominated by Caucasian males—in part due to complex social factors, and in part because the process for selecting firefighters has historically featured built-in elements that may tend to create greater barriers to entry for candidates from historically disadvantaged backgrounds. Due to changing expectations for the fire service, such as an expansion of the type of calls that involve fire service personnel, a lack of diversity in the fire force has become ever more problematic. Upwards of 85% of all fire department calls in recent years have sought paramedic, EMT, or other emergency assistance that does not entail deployment of fire suppression skills. Fire departments, now more than ever before, need to be as adept in communication skills as they are with fire prevention and safety measures because most of the job now centers around interaction with the public.

Women constitute only about 4.1% of all active firefighters nationwide. A detailed report on the status of female firefighters in the Boston Fire Department issued in 2018 revealed that barely 1% of the roughly 1,500 firefighters employed by the BFD are women. According to the Boston Globe, only one woman is a member of the Boston Fire Department’s current 90-member recruiting class.⁴⁶ Minorities are also vastly under-represented in most fire departments statewide. Among the 10 most racially-diverse cities in Massachusetts (most being majority-minority communities), only Springfield comes even close to rough parity between the non-Caucasian complement of firefighters and the diversity of the citizenry it serves.⁴⁷

⁴⁶ Boston Globe, March 10, 2022, “Boston Fire’s Newest Recruits Include Just One Woman in a Class of 90 ”. However, we point out that the BFD cooperated intensively with the independent investigators who authored the December 2018 report, and engaged substantively with this Commission on diversity issues over the course of multiple meetings, having planned for implementation of a fire cadet program and, among other things, employed a dedicated Diversity, Equity, and Inclusion officer.

⁴⁷ One Commissioner with first-hand information report that as examples of some cases of under-representation points to Everett Fire Department (fewer than 5% minority fire employees in a city that is more than 50% Black, Latinx, or Asian-American); Randolph (fewer than 9% minority firefighters in a city that is two-thirds minority);

In 2021, the General Court provided \$500,000 for the creation of a need-based scholarship pilot program for student officers to enroll in a full-time police academy. The purpose of these scholarships is to: “(i) promote diversity, equity and inclusion in the hiring of student officers; (ii) defray the upfront costs for qualified underrepresented and economically-disadvantaged individuals enrolled as student officers in a full-time police academy; and (iii) increase municipal police employment opportunities for underrepresented and economically-disadvantaged individuals.”⁴⁸

The Commission believes that many municipal fire departments in Massachusetts could increase the amount of diversity in their workforces as well, through the creation of diversity pipeline initiatives. Such initiatives could entail, among other things, diversity scholarships for minority youth interested in studying fire science; robust mentoring programs connecting youth from underprivileged backgrounds with incumbent firefighters; high school outreach efforts; and a program that could partner local fire municipalities with community colleges that educate thousands of diverse individuals. The outreach supported by such a program would help fire departments better reflect the communities they serve by greatly increasing the prospects of employing people who identify as minorities, as well as females—both constituting groups currently heavily underrepresented in fire departments across Massachusetts.

These efforts would not bypass the civil service infrastructure. Candidates who complete the programs or courses of study highlighted herein would be expected to sit for a civil service examination, and compete for employment with other applicants. The intent of these initiatives is to generate interest in public safety careers, focusing on members of historically underrepresented communities. In view of the investments of considerable time and effort in a proposed program elaborated below, that, for successful graduates, would entail earning a fire science degree, participating in a part-time fire cadet and mentoring program, and undertaking a rigorous physical fitness regiment, the Commission recommends establishing a defined education and training preference in civil service hiring for graduates, consistent with the recommendation in Section II D below.

1. Worcester as a Pilot Program Destination

Worcester would be an attractive choice for launching a pilot program to support such a diversity pipeline, given its size as the state’s second-largest municipality and its geographical location in central Massachusetts. The Worcester Fire Department has a demonstrated interest in advancing inclusionary hiring, including its appointment of Captain William Mosley, a superior officer of color, as its Chief Diversity Officer, some four years ago. Worcester’s municipal fire department, however, represents just one of many in Massachusetts that is still lagging in its

Lynn (13% minority firefighters in a city that is 61% minority); and Brockton (fewer than 12% minority firefighters in this majority-minority city).

⁴⁸ See St. 2021, c. 102, § 67.

diversity efforts and thus falls short of fairly reflecting the demographics of the population it serves. The 2020 census of Worcester residents counted 206,518 inhabitants, of which 51% are female and 35.2% identify as minorities.⁴⁹ However, the Worcester Fire Department, which consisted of 387 firefighters as of its last report to HRD, is only 10.8% minority and 2% female.

As part of the pilot initiative, the Worcester Fire Department would partner with Quinsigamond Community College (“QCC”). QCC is a community college in Worcester that offers both online and in-person classes for its more than 13,000 students, of whom 53% are women and 49.1% are members of diverse groups that have traditionally been disadvantaged in employment opportunities. QCC’s demographics and broad array of educational opportunities, including a fire science program, could permit it to serve as a key repository of information for a diverse population of college-bound Central Massachusetts students about the fire service as a potential career.

2. Diversity Pipeline Program

The QCC-Worcester Fire Department Diversity Pipeline program would attempt to replicate the bottom-line results of successful police mentoring programs established throughout Massachusetts. The Commission envisions a program wherein QCC would provide classes in fire science and related subjects and the Worcester Fire Department would provide hands-on experiences, mentoring, and perhaps some personnel to lead a new physical fitness regimen organized by community college personnel. The Commission also looks to programs such as the Black Fire Brigade in Chicago for inspiration. In a 12-week program, Chicago firefighters help train youth in first aid, cardio-pulmonary resuscitation (CPR), other EMT skills, and the basics of how ambulances operate, among other topics. Training program participants receive a \$24,000 stipend and the founder of the program reported in February of 2022 that he has a waiting list of 500 young people.⁵⁰

Members of this Commission hope to spark a deeper, broader, and more vigorous public conversation around the “diversity, equity, and inclusion” imperative (and other related ingrained issues) challenging many Massachusetts fire departments, especially those departments serving the largest urban centers and our state’s gateway cities. The outreach aspect of this program could eventually reach deeper into local high schools to help teenagers understand the steps that they should take so that they might one day end up on the top of the civil service entry-level firefighter hiring list.⁵¹

⁴⁹ “U.S. Census Bureau Quickfacts” for Worcester, MA., <https://www.census.gov/quickfacts/worcestercitymassachusetts>, last visited March 20, 2022.

⁵⁰ Michael Puente, “Program in Chicago attracts more minorities into the fire house,” NPR News, February 22, 2022.

⁵¹ To quote the founder of the Black Fire Brigade, Lt. Question Curtis: “I’m a Chicago firefighter today for one reason. At 12 years old, I’d seen my first Black fireman and, at that point, I decided that’s what I want[ed] to be. And, sadly, today I challenge the city to go into a Black neighborhood and find a Black fireman.” Program in Chicago attracts more minorities into the fire house, Michael Puente, NPR News, February 22, 2022.

D. To Establish a Diversity Scholarship Program For Other Civil Service Recruits

The Commission received testimony and evidence that revealed a lack of a diverse workforce among municipal police departments and correctional officers along with fire departments as previously described. While data to support this contention has not yet been provided by HRD to the Commission, the Commission expects the diversity challenges for municipal policing, the MSP, Massachusetts' correctional officers, parole, and environmental police officer to be roughly consistent with patterns found among municipal fire departments.

The Commission recommends that HRD establish and the Legislature fund a diversity scholarship program to assist students who pursue a degree or certificate in Criminal Justice or other public safety related programs at Massachusetts' community colleges or public institutions of higher education. While the appropriation for the scholarship would be up to the determination of future legislatures, the Commission recommends that it be sufficient to provide a meaningful incentive for a person seeking to enter the public safety fields. The Commission recommends that preference for this scholarship be given to women and members of traditionally disadvantaged communities. The Commission recommends that HRD establish criteria that would encourage, if not require, a student who successfully completes a degree program or certification to sit for an applicable civil service examination in pursuit of a civil service career.

The Commission heard testimony but offers no recommendation on the topic of whether a student who successfully obtains a degree or certificate in an applicable Criminal Justice or related field of study may be given a preference. Without the financial assistance to ensure such an education is within reach of all potential applicants, the Commission would not recommend such a preference. However, the Commission recommends that if it is authorized to continue its work into the next legislative session that the topic of an educational preference if coupled with scholarship availability would be appropriate to include in any future examination of the civil service system.

E. Establishment of Office of Diversity, Equity and Inclusion with Outreach Budget

1. An Office of Diversity, Equity and Inclusion Focused on Civil Service

The Commission received testimony from witnesses and has reviewed the Administration's current organizational composition to determine the feasibility of creating a statewide diversity office within the executive office of A&F. The Commission has learned that the duties and responsibilities concerning issues involving diversity, equity and inclusion currently fall within the job description of the Director of Diversity and Equal Opportunity ("Director") employed by HRD. While the Director has performed her responsibilities to the best

of her ability and with all good intent, the Commission recommends that, in order to fully and effectively satisfy the necessary duties of a diversity office focused on the civil service system, A&F create a new position at the Manager level,⁵² dedicated to expanding, maintaining, overseeing and addressing diversity in civil service employment throughout the Commonwealth.

This new Manager of Civil Service Diversity, Equity and Inclusion (“DEI Manager”) would be responsible for overseeing initiatives and addressing issues involving Diversity, Equity and Inclusion in public safety employment, with a particular focus on civil service municipalities and municipalities that have left the civil service system. The DEI Manager would also have jurisdiction over Chapter 31-related processes affecting civil service employees within the relevant state agencies. We recommend that the CHRO be charged with creating a job description for the DEI Manager that directs the DEI Manager, at a minimum, to establish affirmative action plans and guidelines for municipalities, oversee the implementation of these plans and guidelines, and monitor noncompliance.

The DEI Manager would report directly to the Director of Enterprise Staffing Support and would be compensated at approximately \$100,000 to \$110,000 per year, plus customary benefits. To assist the DEI Manager in these responsibilities the Commission recommends that A&F add a second new position to be created at the Coordinator level. This Coordinator would be expected to report to the DEI Manager, with particular focus on assisting municipalities to assure compliance with any standards A&F will establish. An employee at the Coordinator level is currently compensated at a salary of approximately \$70,000 to \$75,000, plus benefits. To the extent the CHRO or DEI Manager deems necessary, a second Coordinator position support staff level position should be created to assist in the assignments of the office. To account for these new salaries, and for office space and infrastructure, we recommend a line item in the Commonwealth’s budget in the amount of \$500,000 annually.

2. Enhance Recruitment Resources for Civil Service Communities

Many witnesses advised the Commission that one critical way the Unit can assist municipal departments that seek to attract a diverse and well qualified workforce is to help them in expanding the list of qualified candidates, including those from diverse backgrounds. The municipalities sought assistance both directly, with guidance and programs that could assist their marketing and recruiting efforts, and indirectly, by creating and maintaining a state-wide effort to introduce potential sources of recruits to employment opportunities.

The Commission recommends that the new DEI Manager be provided with a budget sufficient to engage in areas of community outreach, digital marketing, and other areas consistent

⁵² At a level established as M-VII or above.

with this report. With this additional funding, the DEI Manager may be charged with the creation and distribution of educational and promotional materials throughout the Commonwealth. Recruitment staff would oversee the expansion of recruitment locations to include schools, particularly community colleges, religious institutions, and community centers. The Commission recommends that recruitment initiatives take place year-round, and not just before exams, as is currently the case.

In addition, as part of enhanced local outreach, the Commission recommends the establishment of mentorship programs between seasoned public safety officers and potential candidates. Local radio, television, and internet ads to promote public safety service should also be sponsored from within this budget.

The Commission recommends the creation of shared tools and resources, including an interactive website, with access shared with municipalities. A shared services model would be particularly beneficial for smaller communities that do not have their own dedicated recruitment budget and/or staff. It would serve as an incentive for municipalities to remain within the civil service system, and perhaps a reason for municipalities whose departments have left civil service to return.

III. AMEND LEGISLATIVE COMMITTEE RULES

While the desire to increase workforce diversity is often cited as a prevailing factor by communities that wish to separate from the civil service system, the Commission has found that communities that have left the civil service system have oftentimes been unable to improve upon workforce diversity. While most if not all municipalities seeking to exit the civil service system express an intent to protect the preferences for veterans, disabled veterans, and other classes that receive preferences, the Commission has learned that the provisions that replace the so-called veteran's preference among the communities that have left civil service are usually inadequate.

The Commission heard, in live testimony, that “there are many glaring examples of municipalities that have gotten out of civil service, that their exit did nothing to address minority and veteran hiring, only to have patronage take over a fair and equitable system.”⁵³ When discussing one community that left civil service, the Commission learned that “during the fight to leave civil service, the main argument made by both the [Wellesley] fire chief and the police chief was their inability to diversify while under civil service, but it’s widely reported right now

⁵³ Billy Cabral, PFFM Secretary/ Treasurer, testified at the Commission’s 10th meeting held on January 28th, 2022, <https://www.youtube.com/watch?v=tN0SP15Z9dg>, (35:34).

that in 2012, there were three minority firefighters on the Wellesley fire department. Nine years after leaving civil service, that number still sits at three minority firefighters out of fifty-five.”⁵⁴

To help ensure that communities that intend to leave civil service make a good-faith effort to improve workforce diversity and participation, the Commission recommends that any petition to the Legislature be accompanied by a written Memorandum signed by the executive body of the municipality presenting the petition, and certified by the Clerk (“Municipal Report”), that includes certain minimum protections for applicants from diverse backgrounds. It should include preferences for veterans, disabled veterans, and families of fallen public service officers. It should explain a fair and impartial avenue for appeals.

The Commission recommends that the Committee incorporate within its Rules for the 193rd session and beyond the requirement that it cannot act upon a petition for any department seeking to leave public service without such a Municipal Report. This would not apply to petitions seeking to excuse particular management positions from civil service, but focus on departments, or a significant portion of departments, seeking to leave. Such a predicate for legislation to be acted upon by the Committee is not unique. The Committee currently includes a restriction on petitioners seeking group re-classification within its Section C.

The Municipal Report must include provisions establishing the structure and governing the operation of a personnel system that will replace the provisions of Chapter 31 that must address, at a minimum, basic local structural and/or operational provisions including:

- 1) The recruitment of candidates for positions that assures open competition with emphasis on attracting candidates from groups that are underrepresented in the work force;
- 2) The selection of candidates for appointment to positions in a manner that emphasizes, to the maximum extent feasible, job-related criteria;
- 3) Systematic approaches to promoting individuals to higher-level positions that embrace: (i) open competition among qualified applicants; and (ii) opportunities for upward mobility through training, education, and career-development assignments;
- 4) Training and development programs that increase proficiency for municipal employees in their present positions and prepare them for higher-level positions;
- 5) A transparent, accessible, neutral, and unit-independent disciplinary appeals process;
- 6) A centralized municipal personnel record-keeping system that is open to periodic inspection by a designee of the Commonwealth’s Chief Human Resources Officer;

⁵⁴ See statements of Commissioner Flynn during Commission’s 5th meeting held on August 6th, 2021, <https://www.youtube.com/watch?v=X2gw4Bxpndg> , (30:43).

- 7) A well-publicized, thoroughly-vetted, written standards of conduct for municipal employees, including prohibitions against unwarranted political interference in the personnel system;
- 8) The retention of a form of hiring preference for disabled veterans, veterans, widows or a single parent of veterans, a child of a public service officer killed or injured in the line of duty; and
- 9) Assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, sexual orientation, gender identity, marital status, veteran status, disability or religion.

Moreover, the Commission recommends that municipalities with petitions currently before the Legislature seeking to remove departments from the provisions of Chapter 31 be required to provide such a Municipal Report before the petition may be acted upon. The Commission points out that this requirement should not be considered burdensome or onerous, because it appears to be a reasonable and necessary step in considering a departure from the protections of Chapter 31. Finally, this Commission recommends that the new DEI Manager reach out to the municipalities whose departments have left the civil service due to an Act of the legislature in recent years and encourage them to publicly report on the demographics of their workforce consistent with the requirements of the Municipal Plan, every two years. This report would be provided to the Commission, if the Legislature extends the authority of the Commission beyond the current legislative session. Were this to occur, the Commission may delegate oversight of the review and potential remediation of the shortcomings that may be revealed by Municipal Report to a third-party entity, such as the Civil Service Commission, the Chief Human Resources Officer, the Attorney General, or any panel created thereby.

IV. RECOMMENDATIONS REQUIRING LEGISLATIVE OR ADMINISTRATIVE ACTION

A. Examine Amendments to Chapter 31A

As part of the last major overhaul of the Commonwealth's civil service laws some 40 years ago, the Legislature added Chapter 31A. Chapter 31A was designed to, “[p]rovide a local option for full decentralization of the existing civil service responsibilities.”⁵⁵ Rather than requiring municipalities to remain subject to the “extremely detailed and precise” requirements of Chapter 31, Chapter 31A was intended to offer “flexibility [to] appointing authorities” in the “exercise of reasonable management judgment” regarding personnel matters.⁵⁶ At the same

⁵⁵ Kevin F. Kiley, ed., *Civil Service Reform: A Guide to Chapter 767 of the Acts of 1981* at 7 (U.Mass. Institute for Governmental Services and the Special Commission on Civil Service, May 1982).

⁵⁶ Kevin F. Kiley, ed., *Civil Service Reform: A Guide to Chapter 767 of the Acts of 1981* at 7 (U.Mass. Institute for Governmental Services and the Special Commission on Civil Service, May 1982).

time, however, what is today the Commonwealth's HRD was required to develop a robust auditing capacity to monitor compliance with the civil service laws by local appointing authorities.⁵⁷

Any city or town that, prior to 1982, had been subject to Chapter 31 could become exempt from the state's civil service laws if it adopted a local personnel ordinance or by-law, had majority support of the municipality's executive officers, first conducted a public hearing, and then followed that up with a successful public referendum adopting Chapter 31A. Certain provisions of Chapter 31 would nonetheless remain in force under a local personnel system governed by Chapter 31A. For example, all testing for municipal public safety positions would continue to be administered by HRD in accordance with Chapter 31 provisions, tenured civil service employees "and their successors" could still appeal disciplinary actions, examination disputes, and the results of performance evaluations to the CSC if dissatisfied with the option of proceeding before a local arbiter and the veteran's preference provisions of G.L. c. 31, §§ 25, 26, and 28, would remain in effect.⁵⁸ Chapter 31A also introduced some new requirements:

- (1) Local adoption of a personnel ordinance or by-law transferring a municipality from Chapter 31 to Chapter 31A first required review of the local law by the state Personnel Administrator for conformance with basic merit principles and then final acceptance by the community via majority vote in a referendum.
- (2) Each municipality accepting Chapter 31A was required to create a local merit system (that featured a three-member Local Merit Appeals Board (LMAB) to act as an appellate board in municipal employee disciplinary matters) and also appoint a local personnel director experienced in personnel management.
- (3) As noted above, Chapter 31A also mandates HRD to conduct annual performance audits of the local merit system and empowers HRD to penalize any community that violates basic merit principles.

Whether it was because of the heavy-handed audit provision in § 9, the requirement of creating an LMAB when collective bargaining agreements uniformly provide for another disciplinary dispute resolution process (typically grievance hearings followed by binding arbitration), or another requirement perceived as costly or onerous, no municipality in Massachusetts has ever permanently adopted Chapter 31A. But some of Chapter 31A's basic protections and processes remain legitimate measures of a successful decentralized personnel system.

The Commission recommends that a more in-depth examination of these features be undertaken if this Commission is authorized to continue into the next legislative session. The Commission would be tasked to examine whether the provisions of Chapter 31A could be

⁵⁷ See St. 1981, c. 767, §§ 14 and 24.

⁵⁸ See G.L. c.31A, § 3.

amended to provide a reasonable, acceptable alternative to the provisions of Chapter 31 for municipalities that seek to operate independent of the Unit in overseeing their public safety departments. The Commission should examine, in particular, whether:

- The “Basic merit principles” defined in G.L. c. 31, § 1, should become binding on all municipal departments that henceforth become exempt from Chapter 31 requirements, including all municipal departments that became exempt from Chapter 31 since 1981, or all Massachusetts cities and towns; or some subset thereof.
- Chapter 31A, § 6, should be amended to require all Massachusetts cities and towns to designate in writing to HRD the name and contact information (updated as necessary) of a senior municipal official with responsibility for personnel matters.
- All Massachusetts cities and towns, or some subset thereof, should be required, via an amendment to G.L. c. 31A, § 4, to adopt basic local structural and/or operational provisions guaranteeing:
 1. The recruitment of candidates for positions in a way that assures open competition with emphasis on attracting candidates from groups that are underrepresented in the workforce;
 2. Establishing an acceptable form of preference for the hiring of military veterans;
 3. The selection of candidates for appointment to positions in a manner that emphasizes, to the maximum extent feasible, job-related criteria;
 4. Systematic approaches to promoting individuals to higher-level positions that embrace: (i) open competition among qualified applicants, and (ii) opportunities for upward mobility through training, education, and career-development assignments;
 5. Training and development programs that increase proficiency for municipal employees in their present positions and prepare them for higher-level positions;
 6. A transparent, accessible, neutral, and unit-independent disciplinary appeals process;
 7. A centralized municipal personnel record-keeping system that is open to periodic inspection by a designee of the CHRO; and
 8. Well-publicized, thoroughly-vetted, written standards of conduct for municipal employees, including prohibitions against unwarranted political interference in the personnel system and an assurance the employees enjoy the right to exercise constitutional freedoms, including participation in the political process.

In addition, in order to fulfill the Commission’s mandate, the Commission should consider whether all Massachusetts cities and towns, or some subset thereof, should be required, via amendment to Chapter 31A, to furnish to HRD on an annual basis basic demographic data regarding the composition of their workforce, with increased detail required of its public safety

departments.⁵⁹ Municipalities should be encouraged to file with HRD a document outlining their goals for increasing diversity within their municipal work forces. The Commission might consider recommending the establishment of a state board or panel consisting of one designee of the Attorney General, one designee of the Chief Human Resources Officer, and one designee of the Chair of the Civil Service Commission to review all such annual reports, issue recommendations for further progress toward diversity goals, and coordinate technical assistance to municipalities striving to meet diversity objectives.

If almost all non-probationary state employees who are not political appointees or tenured civil service employees [i.e., “provisional” civil service employees] are guaranteed the right to an informal “name-clearing” hearing in the event of contemplated disciplinary action,⁶⁰ the Commission should consider whether similar protections should be afforded municipal employees as a matter of right in any revised version of Chapter 31A. Without this protection (to give just one example), a Caucasian male who does not fall into any category protected by G.L. c. 151B, § 4, who interviews for an entry-level police officer position, and who comes to learn that his candidacy was rejected on account of a demonstrably false assumption by the hiring authority, or who has unfairly been deemed untruthful, may find himself “blackballed” from employment⁶¹ as a police officer in Massachusetts without any effective recourse.

⁵⁹ Section 67 of Chapter 31 requires all civil service communities to submit to HRD, on or before March first of each year, a list of all civil service employees in its employ as of January second of the same year. HRD’s “Form 67” captures additional data such as the gender and racial identification of all such employees and the statute mandates that this annual report shall be made under the penalties of perjury. Furthermore, a monetary fine may be assessed against any municipal appointing officer who fails to abide by certain portions of this statute. The Superior Court is empowered to enforce this annual reporting requirement “upon petition by one or more taxable inhabitants of a city or town or upon suit by the attorney general.” G.L. c. 31, § 67.

⁶⁰ The third paragraph of G.L. c. 31, § 41, provides: “If a person employed under a provisional appointment for not less than nine months is discharged as a result of allegations relative to his personal character or work performance and if the reason for such discharge is to become part of his employment record, he shall be entitled, upon his request in writing, to an informal hearing before his appointing authority or a designee thereof within ten days of such request. If the appointing authority, after hearing, finds that the discharge was justified, the discharge shall be affirmed, and the appointing authority may direct that the reasons for such discharge become part of such person’s employment record. Otherwise, the appointing authority shall reverse such discharge, and the allegations against such person shall be stricken from such record. The decision of the appointing authority shall be final, and notification thereof shall be made in writing to such person and other parties concerned within ten days following such hearing.”

⁶¹ It is commonplace for police department hiring officials to require all applicants to disclose any prior applications with other law enforcement agencies and to follow up by requesting access to the hiring records of agencies that chose to bypass an applicant. The new statewide Peace Officers Standards and Training (POST) Commission might also come to learn of a municipal police chief’s decision to forego hiring a candidate on grounds of untruthfulness, even if further investigation reveals that the police chief’s assessment of the candidate’s character was wholly erroneous.

B. Examine Adjustments to Residency Requirements for Prospective Candidates

G.L. c. 31, § 58 (“Section 58”) provides the framework for a municipality within the civil service system that seeks to hire a new public safety officer to request from HRD a current list of eligible candidates. Section 58 addresses the manner in which residents of the requesting municipality are included on the list. This section provides an opportunity for a municipality to essentially favor its own residents for employment opportunities by requesting HRD to move its residents above all other applicants on any eligible list. Section 58 sets forth, *inter alia*, that: “upon written request of the appointing authority to the administrator, the administrator shall ... place the names of all persons who have resided in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.” This clause from Section 58, therefore, effectively allows a municipality to request a list of candidates for new employment that places the names of its residents ahead of all other applicants. For municipalities whose population is largely Caucasian/white, this provision would hinder diversification of the municipalities’ workforce.

Section 58 defines “resident” for the purpose of this preference as, “any person who has resided in a city or town for one year immediately prior to the date of examination for original appointment to the police or fire force of said city or town”. This Commission recommends the Legislature consider amending the definition of “resident” as used therein. Under the current definition, an applicant who becomes aware of openings in a particular municipality but who has never resided in that municipality may move there one year prior to take the civil service exam, remain for one year, and then be considered a resident of that municipality with the same residency protection as a lifelong member of the community. It also means that a person with a significant stake in and identification with a community may be blocked by a residency requirement, where, for example, the person moves to another location for an education or to obtain employment or because of the high cost of housing. This Commission recommends that it be allowed to continue its work, to determine the frequency in which the scenario described in this paragraph actually occurs. If the practice is widespread, the Commission may consider amending Section 58 so that individuals may be given the option of naming any one community as their “residence”, as long as they can demonstrate a long-term commitment to or involvement with the community, such as whether it is the place where they grew up or went to school.

Therefore, the Commission recommends that this Commission retain jurisdiction over the issue to determine the number of municipalities that enforce a residency requirement, and whether the municipalities contiguous to the municipality enforcing a residency preference enforce one as well. If that is the case, it is likely that no single municipality in the region would consider amending its position, out of concern it would disadvantage its residents in employment opportunities. The Commission may also consider whether any municipality in which a majority of its residents are members of a class that has historically been disadvantaged and therefore where a diverse pool of available applicants is available, should be considered to be in

a different category as municipalities that are largely white/Caucasian. Therefore, the Commission should consider any “opt-out” to any revision to the residency standard under current law.

C. To Adjust the Formula for Creating Entry-Level Hiring Certifications

Currently, civil service communities must abide by the strictures of the so-called “ $2n+1$ ” certification formula when making original or promotional appointments. When an appointing authority seeks to begin a hiring process, the hiring official furnishes the Unit of HRD with the anticipated number of vacancies it intends to fill in any given hiring cycle for a particular position. In turn, HRD certifies a list of the highest-placed candidates (the “certification”) from the roster of all hiring-eligible individuals who both passed the entry-level civil service examination and expressed interest in working for that hiring department. The number of names on the certification is set through the use of a formula commonly referred to as “ $2n+1$,” with “ n ” representing the number of vacancies the hiring department seeks to fill.⁶² For example, when filling one ($n=1$) vacancy, a civil service community is limited to selecting from the three ($2 \times 1 + 1 = 3$) highest-ranked candidates willing to accept appointment. A hiring department that wishes to fill five vacancies would receive a certification containing a sufficient number of names to generate 11 candidates willing to accept appointment ($5 \text{ vacancies} \times 2, \text{ plus } 1$). If appointing authorities wish to bypass these candidates in favor of lower-ranked candidates for sound reasons, the community, under current law, may not consider additional candidates beyond the initial 11 highest-ranked candidates who signed as willing to accept appointment. Fire and Police Chiefs have regularly identified the relatively small size of the “finalist” hiring pool as a primary reason for leaving the civil service system, while labor unions and veterans’ groups argue that a controlled formula dissuades local appointing authorities from falling prey to nepotism and prevents appointments from being influenced by personal or political biases.

Section 27 of Chapter 31 contains language that, while somewhat opaque, appears to codify the $2n+1$ formula. Many years ago, HRD promulgated a regulation that more explicitly mandates use of the $2n+1$ formula and the process described above has been standard practice for decades now, even when HRD delegates to a local appointing authority responsibility for administering the hiring process.

The Commission recommends switching from the current $2n+1$ formula to a “ $3n+1$ Plus” formula. This proposal would apply only to entry level hiring and not promotions. This modified formulation would allow for the creation of larger certifications by multiplying the number of vacancies to be filled by 3 instead of 2. In addition, under the Commission’s proposal, should an

⁶² The same formula is used for promotions but the Commission is only proposing a modification of the formula for entry-level hiring given that several commission members and various citizens offered testimony attesting to the efficacy of the current formula in the distinct process of considering internal candidates for promotion.

appointing authority bypass a candidate, for each such valid bypass the appointing authority may “pull up” onto the certification an additional candidate who signed the certification as willing to accept appointment and who currently ranks highest on the larger hiring-eligible list—so long as every bypassed candidate gets the reasons in writing for their non-selection and is advised of a right of appeal to the CSC. A second subsidiary proposal to afford communities with greater hiring flexibility that is being endorsed by the Commission would stipulate that whenever a candidate whose name appears on the original certification has been bypassed, the hiring authority would not be required to reconsider that individual’s candidacy if his or her name appears on a subsequent certification *generated from the same eligible list*. This proposal accounts for the reality that most hiring eligible lists last for two years before being replaced by a new master list following administration of a new examination and many communities end up calling for multiple certifications as part of separate hiring cycles undertaken within that two-year period. Presently, an appointing authority must file a request with HRD to remove from subsequent certifications a bypassed candidate and receive HRD’s approval. This can be a cumbersome process; one which, in the Commission’s view, could safely be eliminated because the bypassed candidate would still be afforded the same due process appeal rights as guaranteed under current law. If the bypass were to prove illegitimate, the CSC could always exercise its remedial authority to order placement of the improperly bypassed individual’s name at the top of the next certification; however, in the absence of such an order, the hiring authority would not have to reconsider the application of an individual they had so recently rejected.

Appendix C illustrates the practical impact of modification of the certification process through use of the proposed 3n+1 Plus formula, as compared to application of the existing 2n+1 formula⁶³. In short, if a civil service community undertakes two separate hiring cycles within the life of one eligible list, in which five vacancies are to be filled at the end of each cycle, and yet is compelled to bypass two candidates (for legitimate reasons) in each cycle, the new proposed formula would allow that appointing authority to consider 16 viable candidates in *both* hiring cycles. Under the current 2n+1 formula, however, the same hiring authority would only have **nine** viable candidates to consider in the first cycle and only **seven** viable candidates to pick from in order to fill five vacancies in the second hiring cycle.

By enlarging the pool of viable finalist candidates, this proposal should enhance the ability of appointing authorities to afford concerted consideration to the candidacies of individuals from groups that are underrepresented in the work force. Current law permits selection of a slightly lower ranked minority candidate in the finalist pool if the selection process employed historically has had an adverse impact on minority groups, substantial underrepresentation persists, and the minority candidate possesses unique attributes that will enhance the department’s ability to serve the local citizenry. The PAR, which have the force of law as regulations, provide in relevant part as follows: “Upon determining that any candidate on a

⁶³ See Appendix C pg. 134-136

certification is to be bypassed . . . an appointing authority shall, immediately upon making such determination, send to [HRD] in writing, a full and complete statement of the reasons or reasons for bypassing a person or persons more highly ranked, *or of the reason or reasons for selecting another person or persons, lower in score or preference category*. Such statement shall include *all positive reasons for selection* and/or negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates.” PAR .08(4) (emphasis added).

D. To Allow Flexibility in Civil Service Exam Frequency

The Commission learned of a recent decision by HRD to change the civil service exam frequency to an annual exam instead of the traditional two-year exam schedule. The Commission identified varying viewpoints pertaining to the implementation of an annual exam schedule. This new annual exam schedule appears to benefit most municipalities and applicants. However, larger urban municipalities such as Boston cited various objections to an annual examination schedule on the basis that an annual exam will be disruptive to the hiring process and negatively impact city residents of diverse backgrounds. After consultation with HRD, the Commission discerned no material objection to implementing a flexible exam option.

HRD cites statutory constraints that prevent the CSC from allowing municipalities to opt-out of annual examinations.⁶⁴ Therefore, the Commission recommends providing authority to municipalities to opt-out of the annual exam schedule, in deference to the traditional two-year schedule in order select the exam frequency best suited for their individual needs. While the Commission supports an opt-out provision, the Commission recommends that the law require municipalities to participate in the relevant examination at least once every two years. HRD also cites programmatic and technology changes associated with a flexible examination option. Therefore, the Commission recommends that statutory changes afford HRD adequate time with which to implement this option.

E. To Allow Appointing Authorities to Consider Highest Exam Score

Currently, an applicant’s examination score remains active for two years, and an applicant who re-takes an examination and does not perform as well as on a previous examination must accept the lower exam score in applications for employment. This practice is inconsistent with the way in which scores on other common standardized tests are handled, such as the SAT, and puts candidates in the position of having to decide whether they wish to “gamble” on achieving a higher score after already taking the examination. The Commission

⁶⁴ HRD informed the Commission that in order to provide the option for municipalities to “opt-out” of the annual civil service exam, for a more flexible exam cycle, there must be amendments made to Chapter 31.

recommends that applicants who take an exam more than once be allowed to carry forward their examination scores for up to three years, and that the highest score of an applicant who re-takes any civil service examination will be considered for the purpose of their position on eligible lists. This change would particularly benefit individuals who have in the past not been successful standardized test takers, or who have not been frequently exposed to standardized testing or test preparation services in the past.

F. To Amend Chapter 31 to Allow an Applicant to Take an Entrance Exam Prior to Turning the Minimum Age Necessary to Hold the Particular Civil Service Position

The Commission proposes a leading window of exam eligibility of 6 to 12 months before an applicant turns the minimum age necessary to hold the particular civil service position. This proposal would afford applicants greater certainty in their civil service job prospects by allowing them to begin the application process earlier, rather than requiring that prospective applicants wait to begin the process. Therefore, this proposal would allow hiring entities under the civil service system to better compete with non-civil service employers for qualified applicants.

G. Enhance Flexibility in Use of Selective Certifications

The Commission recommends simplifying and increasing the flexibility for selective certification lists. Under the PAR, a municipality may request a selective certification list for persons having specialized and job-related qualifications.⁶⁵ These qualifications are in addition to general qualifications covered by exams. In order to receive a selective certification list, the appointing authority must complete a questionnaire and provide HRD with certain statistical information related to its request.

For example, a selective certification for specific language skills would require that an appointing authority provide HRD with the nature and frequency of the contacts between public safety employees in the position title and non-English speaking members of the local population. This includes the number of calls that need an interpreter for the language fluency being requested and the number of incidents in the community where an interpreter is needed.

Generally, to obtain a selective certification for a foreign language skill, the appointing authority must be able to clearly document that those who hold a particular title must have the additional qualification of fluency in a language other than English in order to adequately serve the public. It is the Commission's understanding that some public safety departments have not collected the data necessary to obtain a selective hiring certification, or that they have

⁶⁵ PAR.10 dictates the criteria for a municipality to receive a special certification from civil service.

insufficient data. On that subject, the Commission considered a recent language skill request submitted by the town of Norwood, which has a large Brazilian community, to HRD.

“Norwood has a heavy Brazilian community,” said Norwood Police Chief William Brooks III to the Commission. “When I first became chief and we were still in civil service I wanted to hire bilingual officers. I wrote to civil service asking for a selective certification list of Portuguese speaking officers. As part of my justification, I cited that Norwood Hospital uses translators and tracks the number of translations they need. In the year prior to my request, Norwood Hospital had needed Portuguese translators 1,100 times. That was all in a single year. Civil service denied my request.”⁶⁶

Therefore, the Commission recommends advancing legislation aimed at simplifying the process for obtaining a selective certification list so that HRD should be authorized to accept statistics concerning demographic data with respect to language used within the particular municipality when considering approval of access to a selective certification list. The Commission will continue its discussion of simplifying the process for obtaining selective certification lists should it continue into the next legislative session. Moreover, the Commission also recommends that if it continues its work into the next legislative session, further study should focus on the potential to simplify the process for obtaining certification lists, such as lists pertaining to gender.

H. Clarify and Enhance the Authority of the Civil Service Commission

The Commission recommends a number of amendments to Chapter 31 to update and clarify the statutory authority of the CSC and facilitate successful discharge of its statutory mandate of ensuring compliance with the Commonwealth’s civil service laws. The proposed amendments include:

- Clarifying bypass appeal procedures;
- Updating CSC’s authority to award attorneys’ fees;
- Enhancing the CSC’s remedial toolbox;
- Aligning Chapter 31’s “basic merit principles” with chapter 151B’s anti-discrimination provisions;
- Affording commissioners discretion to preserve the confidentiality of acutely sensitive personal information; and

⁶⁶ See Appendix A pg. 025 for Report of Subcommittee on Municipalities not Subject to the Civil Service Law. The Unit responded in a subcommittee meeting that it never outright denies a community the benefit of a special language certification but it has on occasion required more information from a community before approving issuance of such a list. Norwood is no longer a civil service community, and the Commission learned that Norwood Police has yet to hire a Portuguese speaking officer.

- Extending the CSC Chair’s authority to appoint outside hearing officers to handle not just disciplinary appeals but all matters, including bypass cases, adjudicated by the CSC.

1. Clarifying bypass appeal procedures

The Commission recommends recognizing a right of a candidate included on a certification to initiate a direct appeal from a municipality’s bypass decision with the CSC. Bypass appeals arise when a local hiring authority does not select the higher-ranked individual when filling a particular opening. Existing law details a process where hiring authorities must first seek approval from HRD prior to bypassing a candidate for appointment. But with the routine delegation by HRD to local appointing authorities of the power to make most hiring and promotional decisions without HRD review, the Commission recommends clarifying in statute that most bypass cases are now, in fact, direct appeals from a delegated appointing authority’s action. Relatedly, the Commission recommends: (1) eliminating the outdated technical requirement that a copy of the appeal must be filed with HRD before the CSC can process any bypass appeal; and (2) removing the automatic statutory availability of a bypass letter for public inspection because many such bypass letters (no longer reviewed by HRD personnel) contain disputed and highly sensitive personal information. Instead, a Public Records Law exemptions analysis should govern access, which could lead to redactions that blunt unwarranted invasions of personal privacy.

2. Updating CSC authority to award attorneys’ fees

Because union attorneys generally are not available to assist entry-level candidates who are bypassed for illegitimate reasons, the Commission recommends amending the existing statutory provision that allows for a modest award of attorneys’ fees solely in disciplinary appeal cases to cover bypass cases as well. The Commission has learned that the CSC has adjudicated many cases over the years in which minority candidates, among others, have been bypassed for unsound reasons and often, unless they secure *pro bono* legal representation, these individuals are left to navigate unfamiliar appellate legal proceedings on their own.

The Commission learned that the statute that allows the Commission to award legal fees to a successful appellant in a disciplinary case was written many decades ago and its provisions are greatly outdated. A maximum of \$200 can be awarded to cover attorneys’ fees for work performed before the CSC. A like sum can be awarded to a tenured civil service employee facing discipline and for attorneys’ fees at a municipal-level hearing. A similar formula is used if the case goes to Superior Court. Up to \$100 can be allotted for transcripts, the subpoenaing of witnesses, and other litigation expenses. This adds up to a maximum of \$700. Successful appellants usually incur far in more costs and fees during a civil service appeal. The Commission proposes a modest revision to existing statutory text as a baseline. If an individual is successful in a CSC case, or upon appeal to court (and/or had previously retained the

assistance of counsel at a local disciplinary hearing), she should be guaranteed reimbursement of up to \$1,500 for attorneys' fees in each forum – and up to \$500 in litigation expenses. That would mean that the employer that made an unlawful or unjustified personnel decision could be responsible for no more than \$5,000—in all but extraordinary cases. If cases where a wholly egregious, *willful* violation of Chapter 31 is found, such as those that involve discrimination on the basis of race, religion, national origin, gender, sexual orientation or the like, or cases involving nepotism, the Commission proposes that there be *no* statutory cap on reasonable attorneys' fees and costs—unless special circumstances would render such an award in full unjust. The Commission's proposal is in line with the authority of the MCAD to award attorneys' fees and costs upon a finding of unlawful discrimination—and, likewise, tenured civil service employees in the federal system who prevail in a civil service appeal also can obtain an award of attorneys' fees and costs under federal law. *See, e.g., James v. Santella*, 328 F.3d 1374 (Fed. Cir. 2003) (affirming decision of the Merit Systems Protection Board awarding attorney fees to prevailing employees who were “substantially innocent” of disciplinary charges); 5 U.S.C. § 1204(m)(1) and 5 U.S.C. § 7701(g)(1).

3. Align Chapter 31's “basic merit principles” with chapter 151B's anti-discrimination provisions

The Commission further recommends several technical amendments to Chapter 31 to clarify and align the powers and duties of the CSC with judicial interpretation since the last legislative overhaul of Chapter 31. For example, the CSC serves in practice as the primary engine to investigate all systemic violations of civil service law and yet its statutory authority to take appropriate remedial action appears limited and murky. Technical amendments are called for to clarify this oversight responsibility, accounting for the concurrent role of HRD in sections 72, 73, and 77 of Chapter 31. Likewise, in response to any determination that an appointing authority lacked just cause to take adverse disciplinary or personnel action against a tenured civil servant, the principal relief the Commission can order is reinstatement, *with* back pay. Chapter 31 should afford the Commission discretion to tailor remedial orders in both investigations and appeals, with an opportunity for input from stakeholders. The Commission should have the same remedial flexibility afforded the Commonwealth Employment Relations Board, the MCAD, the Board of Registration in Medicine, the Department of Labor, and the Commission's federal civil service counterpart (the Merit Systems Protection Board).

The Commission proposes an alignment of the anti-discrimination elements of the basic merit principles that undergird all of Chapter 31 with the cognate provisions of Chapter 151B. For example, the definition of protected characteristics under Section 1 of Chapter 31 should be updated to include sexual orientation and gender identity. And, as with our state's principal anti-discrimination law (Chapter 151B), status as a military veteran should be an explicitly protected characteristic in the application of civil service merit principles. Although this also falls under the heading of “removing outdated language from the civil service law,” the Commission

recommends updating the General Laws so that the head of the Civil Service Commission is not repeatedly referred to in Chapter 31 as the Chairman. The CSC has already taken similar action on its own, dropping the term “Chairman” from its letterhead and published decisions.

4. Affording the CSC discretion to preserve the confidentiality of acutely sensitive personal information

Chapter 31, § 43 makes certain CSC disciplinary hearings public hearings and another state law [G.L. c. 66, § 19(b)] mandates the publication of CSC decisions on a searchable website. Commissioners should have the statutory authority to take actions deemed necessary to protect the privacy of a person’s health or other acutely sensitive information. The Commission will recommend statutory language to supply this discretionary authority.

5. Extending the CSC Chair’s authority to appoint outside hearing officers to handle not just disciplinary appeals but all matters, including bypass cases, adjudicated by CSC

Section 2(b) of Chapter 31 should be amended to confer express authority on the Chair of the CSC to appoint “a disinterested person who is experienced in adjudication or well-versed in civil service law” to hear not just disciplinary appeals (as currently authorized by Section 43) but also bypass appeals and other matters adjudicated by the CSC. This would enable the CSC’s Chair to appoint retired judges or hearing officers, or other equivalently-credentialed individuals, to serve as hearing officers on occasions when current commissioners trained in adjudication are unavailable. Consistent with regulatory provisions governing tentative decisions set forth in the Commonwealth’s Standard Adjudicatory Rules of Practice and Procedure (801 Code Mass. Regs. 1.01, et seq.), any deputized hearing officer who is not an appointed commissioner would report his or her findings of fact and recommendations first to the litigants in the assigned case, consider any objections thereto, and then report a recommended final decision to the full Civil Service Commission for its action and disposition.

I. Remove and update outdated language from the civil service law

The Commission recommends that the civil service statutes be reviewed to remove outdated language. For example, Chapter 31 still uses the term “mentally retarded person” and the term “handicapped” appears in G.L. c. 31, § 47. Gendered language should also be removed from the civil service statutes. For example, the Chair of the Civil Service Commission is referred to as “Chairman” multiple times throughout Chapter 31. Additionally, Chapter 31 makes numerous references to the Personnel Administrator, a now-outdated title for the head of the state’s Human Resources Division, one that has since been superseded by the title of Chief Human Resources Officer.

Filed with the Legislature this 30th day of March, 2022,

A handwritten signature in blue ink that reads "Kenneth I. Gordon". The signature is fluid and cursive, with a long horizontal line extending to the right.

Rep. Kenneth I. Gordon
Co-Chair

A handwritten signature in black ink that reads "Michael D. Brady". The signature is cursive and compact.

Senator Michael D. Brady
Co-Chair

Appendices

Appendix A: Report of Subcommittee Not Subject to the Civil Service Law

Appendix B: Demographic Presentation in Consent Decree Communities

Appendix C: 3N+ 1 Illustration

Appendix D: Presentations before Commission

Appendix E: Public Testimony

Appendix F: Meeting Minutes

Appendix G: Votes of Commission