



July 16, 2020

The Honorable Aaron Michlewitz
Chair, House Committee on Ways & Means
The Honorable Claire Cronin
House Chair, Joint Committee on the Judiciary
State House
Boston, MA 02133

Dear Chair Michlewitz, Chair Cronin and Members of the House Ways & Means and Judiciary Committees,

The Massachusetts Municipal Association wishes to express its support for S. 2820, important legislation to create a system for the training and certification of police officers, and make other needed changes to law and policy to improve and enhance the accountability of policing in the Commonwealth. This is landmark legislation that would help transform how law enforcement is practiced in Massachusetts, with a long overdue focus on racial equity in our justice system.

The provisions in the bill are important first steps, but much more is needed to ensure that cities and towns have the management authority to ensure that the spirit and the expectations raised in the bill can actually be achieved. Beyond S. 2820, state law must be changed so that local governments can effectively implement modern policing methods, and cases of misconduct can be swiftly and properly addressed at the local level, and not be undermined by the obsolete Civil Service system and the state's regressive collective bargaining rules. In addition to reforming state laws to empower cities and towns to hold public safety officers accountable, communities need flexibility in hiring and promotions so they can diversify local police, fire and other municipal departments. These are necessary steps to advance racial equity in our public safety system. There is an incredible amount of work that needs to be done, and we look forward to collaborating closely with you and your colleagues to advance these priorities.

The additional long-term priorities include the following:

Civil Service Reform

In a manner similar to the provisions in S. 2820 related to the State Police, municipal decisions to discipline police officers for excessive use of force or other acts of misconduct, such as racial discrimination and profiling or refusal to implement departmental policies, should NOT be appealable to the Civil Service Commission and subject to being overturned administratively. This important reform would provide a timely and effective way for cities and towns to act on misconduct and would complement the responsibilities of the proposed Police Officer Standards and Accreditation Committee (POSAC). This reform should apply to police, fire and all municipal departments.

In addition, cities and towns should have the authority to remove police and fire departments

from Civil Service without special legislation or through protracted negotiations. In addition to improving accountability, departing the Civil Service system would allow communities to make progress in adopting modern hiring and advancement systems to diversify their public safety personnel. We urge you to take into consideration legislation included in the Ten Point Plan released last month by the Massachusetts Black and Latino Legislative Caucus (H. 2292) filed by Rep. Russell Holmes and legislation filed by Rep. Stephen Kulik in the last session (H. 1410).

Collective Bargaining Reform

It is indisputable that Chapter 150E, the state's collective bargaining law for municipal employees, has created a system of unresponsive contract rules that make accountability of public employees for misconduct, particularly police and fire, almost impossible to implement. For a comprehensive analysis, [please see this 2017 study of police contracts](#), which details the many ways that collective bargaining statutes have led to arbitration requirements and other provisions that undermine the ability of municipalities to hold officers accountable for misconduct.

We ask the Legislature to review Chapter 150E and modernize the law to clarify that discipline and termination policies, procedures and actions related to excessive use of force, racial discrimination and profiling, or refusal to implement departmental policies are fundamental management rights and are NOT permissible subjects of collective bargaining.

Chapter 150E should also be updated to ensure that use of force policies, use of body cameras, reporting requirements related to collecting and providing information regarding race, ethnicity and gender, decisions regarding whether or not to leave the Civil Service system and the replacement of that system, the creation of civilian review boards or other disciplinary review processes, and training on racial equity, implicit bias, de-escalation, use of force, are basic management rights and NOT permissible subjects of collective bargaining.

Almost all of the contract rules that undermine accountability have been in place for a very long time, added during a different time and without a full understanding of how the system would evolve. For example, having disciplinary decisions subject to arbitration may sound reasonable, except that the arbitration system has evolved such that it is quite common for an arbitrator to overturn or weaken a disciplinary action – arbitrators have a natural incentive to “find middle ground” so they are rehired in the future – but this is not in the public interest when it comes to use of force or racial bias.

Once in place, it is exceedingly difficult to remove these contract provisions, because new language needs to be agreed to by both parties, and management has been unable to win reform at the bargaining table. The situation is further complicated by the state-imposed “[evergreen law](#)” enacted in 2011, which continues all contract provisions (when an evergreen clause exists) until a successor contract is approved. This makes police and fire contract provisions related to accountability almost impossible to reform. The solution is to clarify in state law that the policies, procedures and actions listed above are inherent management rights, and are not subject to collective bargaining under Chapter 150E.

The Joint Labor Management Committee

Cities and towns have long been frustrated by the overreaching conditions and infringements on

management decision-making that have been imposed by the Joint Labor Management Committee over the years. After binding arbitration was repealed by the voters in 1980, the JLMC process was established in state law to provide a closure process for collective bargaining on police and fire contracts. The process has led to significant encroachment on municipal operations, far beyond salary and benefit decisions. In order for the reforms in S. 2820 and the Chapter 150E and Civil Service reforms listed above to be effective, the JLMC statute must be clarified to limit the agency's mediation and arbitration process to salary and benefit decisions only. Arbitrators should not have authority to recommend or impose any provisions that conflict with basic management authority, including discipline and termination policies, procedures and actions related to excessive use of force, racial discrimination and profiling, implementation of departmental policies, use of civilian review boards, use of body cameras, decisions about exiting the Civil Service system, hiring and promotional practices, racial equity training or training in general, and similar management prerogatives.

Qualified Immunity

The issue of civil actions against public employees is highly complex and multi-layered. The goal of providing individual accountability in our civil justice system is an important one to advance, yet there are many issues to address to avoid unforeseen impacts or consequences, such as exposing taxpayers to financial liability. Further, while the intent of the change is to address public safety, the language in S. 2820 is very broad and would impact the entire state and local governmental system. The qualified immunity changes as passed by the Senate would impact all municipal employees, far beyond law enforcement, and would also include public entities. Since a public entity is really the taxpayer, it will be essential to reach consensus on the actual impact of the proposed changes before enacting them. We strongly recommend a detailed and comprehensive study to understand and address all aspects of the qualified immunity issue.

Summary

We applaud the Legislature and Governor for prioritizing racial equity, and police standards, training and accountability legislation in the closing weeks of the legislative session. While we strongly support S. 2820 and similar legislation, it is important to recognize that these are first steps in a longer reform process. We raise the Civil Service, collective bargaining and JLMC issues, knowing that these will be challenging reforms to advance, yet certain that these are necessary to move the Commonwealth forward to ensure that we have modern and accountable policing and a diverse public safety workforce.

We look forward to working with you on these important issues. Please contact me or MMA Legislative Director John Robertson at jrobertson@mma.org if you have any questions.

Thank you very much.

Sincerely,



Geoffrey C. Beckwith
Executive Director & CEO