Supplemental Report and Testimony of the Massachusetts Municipal Management Association (MMMA)

Hon. Stanley Rosenberg, Senate Chair
Hon. Paul Donato, House Chair
Special Municipal Relief Commission

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Recommendation One: Improve municipalities' ability to effectively and efficiently manage our human resources.

The MMMA focused on issues that cost cities and towns monetarily in terms of direct financial costs and administratively in terms of staff time dealing with overly restrictive and out-dated regulations and laws. In many instances, the State has exempted itself from these requirements, and as a result it has the ability to act more efficiently. In others, arcane and outdated laws and requirements have remained in effect for many decades, severely hamstringing the effective delivery of municipal human resource services and operations. Our specific legislative initiatives in this area are the following.

A. Ability to modernize municipal health plans. Through the Group Insurance Commission (GIC), the State has the ability to alter group health insurance plan design and change the terms of the plans being offered in order to help control costs without requiring the need to impact or collectively bargain with unionized employee groups. Municipalities, on the other hand, must impact and collectively bargain all plan design changes and offerings, regardless of the effect these plans may be having on a community's budget. In many cities and towns, annual increases in health insurance costs have reached and exceeded the 2.5% tax levy increase allowed by Proposition 2 ½ .
    1. Cities and towns could better manage these costs if they could make the same type of plan design changes the State is able to implement, such as adjustment to co-pays for visits to doctor's offices.
    2. Cities and towns should be allowed to join the GIC without having to negotiate with collective bargaining units. The decision for a community to join the GIC should be made by vote of the chief executive body.
    3. A state panel should be created that would certify those preferred provider organization plans (PPOs) that qualify as indemnity plans, thereby allowing towns to remove indemnity plan offerings without having to bargain with employees. For those communities that still offer indemnity plans, this would likely lead to immediate savings in health insurance costs. If health insurance costs continue to rise as substantially as they have in the past, the State should carry this idea further and simply require that cities and towns only offer certain health maintenance organization plans (HMOs/EPOs) off a list previously approved by the State. Finally, consideration should be given to exempting health insurance increases from the limits of Proposition 2 ½.
    4. The State should require all eligible municipal employees to sign up for Medicare B benefits without the additional hurdle of Town Meeting approval and without a requirement to impact bargain over the change in future benefits.
    5. Chapter 32B currently mandates that any employee who regularly works 20 hours per week is eligible for health insurance. This law should be changed to allow the municipality's contribution for new hires to be pro-rated. A community pays the same amount for health insurance for a 20-hour per week employee as it does a 40-hour per week employee. This benefit can be as high as $15,000 for a family in some communities. In most non municipal businesses, health insurance is prorated based on the amount of hours that an employee works.
    6. Finally, the State should conduct a complete study of c.32B, most of which was enacted more than 50 years ago. During this period, no other municipal cost center has increased as much or caused as many budget difficulties statewide as health insurance. Since FY00, a majority of communities report increases in their health insurance budgets of over 180%, as compared to total operating budgets which grew in the range of 50%-60% over the same period.

B. Ability to hire and manage personnel efficiently by reforming or eliminating Civil Service No other laws and regulations in Massachusetts are as antiquated and cumbersome as those found in Civil Service. Many of these procedures were implemented decades ago in order to prevent nepotism, require public procedures in filling vacancies, and reduce political influence on employee hires and personnel actions, including discipline and discharge. Proper personnel practices, especially concerning the filling of vacancies, are now commonplace in municipalities, and virtually all employees currently in Civil Service are also covered and protected by local collective bargaining agreements. Furthermore, legally enforceable personnel practices grounded in court and administrative rulings have been established that provide additional protection for employees, regardless of Civil Service status. The State would save millions of dollars by eliminating Civil Service, and communities would save hundreds of thousands of dollars in avoiding frivolous appeals of personnel decisions and actions, including bypass hearings, promotional appointments, and disciplinary actions. In addition, it should be pointed out that virtually every city and town in the Commonwealth has numerous, non-Civil Service positions they fill through standard, public procedures in a much shorter, more effective timeframe than through Civil Service. In our experience, these search efforts are eminently fair, comprehensive, and lead to more qualified and better hires than Civil Service procedures. If outright elimination of Civil Service is not possible, major reforms are needed. Recommended reforms include:
    1. Eliminate Civil Service coverage for all non-public safety departments and positions.
    2. Exempt Department head positions within Police and Fire Departments from being part of Civil Service.
    3. The only role for a reformed Civil Service should be the testing of entry level applicants for police officer and firefighter positions, and the use of Civil Service for this should be local option.

C. Ability to effectively manage injured public safety personnel by transitioning police and fire personnel into the workers' compensation system and eliminating the requirements of M.G.L.111F. The laws that govern 111F coverage for police and fire personnel require municipalities to provide 100% of the employee's regular pay, tax free, while a public safety employee is absent after being injured on the job. This makes it difficult to motivate injured public safety employees to return to work compared to non-public safety employees covered by workers' compensation. The rules that apply to all other employees through workers' compensation laws are fair and sufficient. In addition, the process for appealing an insurance company's decision or determining if an employee is actually injured is more straightforward and takes less time. If outright elimination of 111F is not possible, major reforms are needed. These reforms would include:
    1. Light duty provisions should be added to provide municipalities more options in dealing with these absences.
    2. If an employee is clearly not able to fully return to work, a more expedited process should be established to at least allow cities and towns to proceed with hiring a replacement, thereby reducing the overtime expenses needed to cover the injured employee's shift.
    3. Employees out on extended 111F absences should also be monitored to make sure they are not performing activities that clearly indicate they could be working.

D. Ability to impose reasonable drug and alcohol testing for all public safety employees. Whether a part of c.150E or separate legislation, all public safety personnel should be subject to random drug & alcohol testing as a condition of employment. The testing requirements should generally be in line with those mandated for other municipal employees required to possess a CDL license (i.e., public works, senior center, and school bus drivers). Recent events in Massachusetts highlight how important this testing has become.

E. Alternative to towns and cities paying for pre-employment training of public safety staff. Public safety applicants and potential employees should possess all State-required training

prior to applying for openings, and this training should be paid for by the applicant/employee. No other category of municipal employees receives this type of benefit or requires such a large municipal expense when initially hired. In addition to the cost to attend the academy, municipalities must often use overtime funds to cover the shift the employee would be working if they were previously trained and certified. Non-public safety employees are expected to possess the proper qualifications in terms of education, training, and work experience prior to applying for vacancies. In all cases except public safety, these efforts are completed at the employee's own expense. This requested revision applies to required State academies and training only, not the local training that municipal departments provide once the State requirements are completed, or the efforts needed to maintain and improve existing certifications once an employee is hired. These efforts would still be the responsibility and expense of the municipality. Note: In many states, the training for entry level Police and Firefighters is done through the state's community college program whereby the candidates may get not only their professional education required for entry level Police Officers or Firefighters, but they may earn college credits at the same time.

F. Modernization of Chapter 150E Collective Bargaining. The MMMA fully recognizes the right of employees to organize as collective bargaining units. However, the methodology and rationale used in 2008 to establish and certify as well as retain existing labor groups is due for an in-depth review and adjustment(s) where appropriate. The following are suggested topics for consideration:
    1. Bargaining unit makeup: The practice of allowing all levels of line-supervision and management to be included in the same bargaining unit is inefficient at best, and perhaps dangerous at worst. Supervisors who are expected to manage and, when necessary, discipline subordinates will often avoid that responsibility when it means taking action against fellow bargaining unit members. In such cases, corrective action that is essential for the efficient and effective operations of agencies does not occur. In the case of the Fire Service, all members, from line firefighter to, in some cases, Deputy Chiefs are often in the same unit. While it is not the intention to prevent most positions of rank from being part of a bargaining unit, it is suggested that a legislated separation occur between line-privates and officers whereby separate bargaining units are employed.
    2. Command level staff: The rank of Deputy Chief, Assistant Chief, and Battalion Chief in any fire or police department should be held as non-union, non-civil service management positions.
    3. The establishment of policies and procedures should remain the right of management. The requirement that city and town leaders negotiate policy and procedure changes with labor is antiquated and inefficient. Management is charged with the provision of safe, efficient, and effective services. Labor represents the needs and wants of employees, a function that is often inconsistent with operational demands. This concept also applies to the establishment of class sizes in municipal school systems. Given the constraints of Proposition 2 ½ , the determining factor for class size is often available funding, with priorities established by the local School Committee. In this regard, Chapter 150E Section 6 is in need of revision to reflect the obligation to bargain in good faith with respect to wages and working conditions related to employee safety.

G. Revisit Automatic Public Safety Health Condition Presumptions. Another area where State laws have been enacted to specifically benefit public safety personnel at the expense of municipal budgets is the so-called Heart / Lung Bill, which automatically presumes certain heart and lung conditions are work-related for public safety personnel. These regulations put the burden on municipalities to prove certain ailments were not contracted through work-related activities, rather than requiring employees to prove they contracted the illness through work. Certification from a physician should be required stating that an illness or injury directly occurred as a result of work activities for heart and lung coverages to apply. These

presumptions should be eliminated, and the employee should have to undergo the normal process to have a job-related injury approved, either through the existing 111F process or, preferably, through workers' compensation.

Recommendation Two: Modernize purchasing and procurement laws.

In developing the items listed below, the MMMA focused on issues that cost cities and towns monetarily in terms of direct financial costs and administratively in terms of staff time dealing with overly restrictive and out-dated regulations and laws. Our specific legislative initiatives in this area are the following.

A. Standardize all purchasing laws to the thresholds included in Chapter 30B. Raise the threshold in Chapter 149 requiring 3 written quotes for procuring goods and services from $1 to $5,000, with sound business practices for procurements under $5,000.
B. Raise the threshold in Chapter 149 and 30 requiring payment bonds for repair and construction projects from $2,000 to $50,000.
C. As recommended by the Inspector General several years ago, raise all of the bid thresholds, and then index these thresholds so that the legislature does not need to revisit the issue every 20 years when the old thresholds become outdated.
D. Allow long-term leases to extend more than 10 years upon vote of the local legislative body. The MMMA suggests the limit be changed to 99 years.
E. Create a prevailing wage exemption by implementing a lower limit of $1,000,000 before the prevailing wage rates apply.
F. Amend Chapter 149 to eliminate the requirement for filed sub-bids.

Recommendation Three: Increase options for municipal decision making, financing and organization

In developing the items listed below, the MMMA focused on issues that would provide the potential for greater efficiencies for communities as well as areas of current law and regulations with consequences that need to be addressed. Our specific legislative initiatives in this area are the following.

A. Authorize Joint Powers Authorities. The Commonwealth must encourage collaboration among communities in order to attain efficiencies in operations. The form that this encouragement will take is likely to be different for each community and region in the State. One size does not fit all. We propose that this issue be studied further with the intent to implement techniques that would make it financially feasible for communities to seek these efficiencies. In order to allow this to happen, changes are needed in the law as well as operating regulations issued by various State agencies. As a first needed change, the MMMA proposes that the State look to implement a process that is effectively used in other states allowing for a Joint Powers Authority or similar procedure. Massachusetts law allowing for Districts does not meet the needs of communities seeking to collaborate on providing joint services. Developing a more encompassing legislation that encourages this process will be more effective than the continued reliance on home-rule petitions. In addition, other areas that need to be addressed in such an all-encompassing review include the ability to impact-bargain workforce changes rather than requiring decision bargaining; providing incentives for regionalizing and/or collaborating such as grants or bonus provisions in formula aid; and creating opportunities for creative financing options.

   We see an extraordinary opportunity for creating efficiencies through collaboration with a different mix of neighboring towns for different services. Communities seek the right of self-determination on the appropriate governance structure needed to implement service consolidation and the ability to choose which of these services would meet community goals and expectations. This is a large issue with enormous potential requiring broad flexibility.

B. Provide state leadership for community collaboration. Communities are often faced with dealing with different State agencies for municipal affairs. At times, we are faced with conflicting priorities from agencies. The State once had a cabinet level position for communities (Executive Office of Communities and Development). We propose that some consideration be given to development of a central coordinating official that has the capability of providing overall direction for state and community relations.

C. Allow Impact Fees to be Assessed. The state needs to develop a fair system of assessing the cost of new developments on municipalities and allowing them to recoup some of these costs from developers.

D. Fix the Charter Schools financing inequity issue. Charter school financing is increasingly becoming a burden on communities. The issue of equity as to the difference between school choice financing and charter school financing needs to be addressed. The MMMA supports the Massachusetts Association of School Superintendents' (MASS) plan to cap the local contribution at $5,000 (the school choice cap) with any additional payments to charter schools made from other sources. Communities are charging extraordinary fees to school children to maintain transportation, athletics and other programs. This inequity needs to be addressed.

E. Eliminate or modify the library aid penalty. Municipalities receive aid from the Massachusetts Board of Library Commissioners. This aid is reflected in a community's cherry sheet. The Board of Library Commissioners has implemented rules that a community can only make cuts to local libraries comparable to cuts made to other departments. If their guidelines are violated, communities may lose a portion or all of the local aid assigned to their local library. In addition, communities may be penalized with forfeiting rights of their citizens to access regional library lending groups. This penalty is draconian. If a community determines to reduce fire services, it is not penalized with forfeiting rights to mutual aid. In no other service area is a community penalized in this nature for prioritizing its services.

F. Study Payment in Lieu of Taxes. Payment in Lieu of Taxes (PILOT) programs should be reviewed and addressed. The MMMA appreciates the efforts the State has made in recent years to fund many aspects of this program with regard to state owned properties. There are still areas that need to be addressed including the fact that certain former county agencies (prisons) do not qualify for payments at this time. Further, there are agencies (MBTA, etc.) that could participate in PILOT payments to communities, as well as for profit entities on state owned land.

G. Tax Increment Financing. Revise TIF legislation to allow municipalities to negotiate the personal property tax percentage relieved instead of being required to relieve 100% of that tax, as is currently required by law. The tools offered by Tax Increment Financing have been invaluable to communities; however these could be further enhanced by allowing municipalities to negotiate the amount of personal property tax relief instead of requiring municipalities to relieve 100% of that tax, as is currently mandated by statute. This additional flexibility, as provided by the proposed legislation, would benefit both municipalities and businesses and would enable communities to more easily tailor economic incentives that are more equitable in sharing the burden of lost revenue. In many cases, especially with high technology firms, the value of the personal property tax revenues is more significant than that of the local property taxes. See S1788 filed in 2007 and S1701 filed in 2006 by Senator Pam Resor for sample statutory language.

H. Develop new Business Improvement District regulations. The current BID regulations have only been used in 1 or 2 communities in the state. Specifically, the regulations should be modified to amend Chapter 40O, Sec. 3 & 4 to eliminate the opt-out and non-participation language. These sections allow a situation where some landlords opt-out and undermine a BID by taking a sizable percentage of the revenue away yet remain able to benefit from some aspects of the BID such as sidewalk cleaning, beautification efforts, and collective advertising. This circumstance creates a scenario where other owners perceive they are paying for those who have opted-out and leading to additional landlords to follow the lead and opt-out. These sections are the primary reason there have been so few BID's adopted in Massachusetts. Most states do not have opt-out or non-participation provisions in their BID enabling laws.

I. Allow for the creation of stormwater enterprise funds under M.G.L. Ch. 44, section 53F ½ and allow municipalities to establish appropriate stormwater management fees to finance the cost of stormwater improvements newly required by State and Federal law. At the current time, the Attorney General and the Department of Revenue have taken the position that the statutory references to G.L. c. 40, section 1A and c. 83, section 16 are obscure and inappropriate and, therefore, stormwater management fees and enterprise funds are not permissible.