Massachusetts Municipal Lawyers Association

July 12, 2022

To: Conference Committee Members:
Senator Michael J. Rodrigues, Senate Chair
Representative Daniel M. Donahue, House Chair
Senator Joanne M. Comerford
Senator Ryan C. Fattman
Representative Joseph F. Wagner
Representative Mathew J. Muratore

Re: Conference Committee on H.4800 & S.2823 – Acts relative to equity in the cannabis industry

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Dear Conference Committee Members:

I am writing to you in my capacity as the Executive Director of the Massachusetts Municipal Lawyers Association (MMLA), the state's municipal bar association, to express some concerns associated with H.4800 and S.2823.

We have closely monitored the General Court's discussions and debate on the issues, especially those sections of the bills that pertain to host community agreements and community impact fees.

We ask that you consider the points made in the attached memo. We welcome the opportunity to discuss these concerns in person or remotely. Please feel free to contact me.

Sincerely,

JBL

James Lampke, Esq.
Executive Director, MMLA

/Attachment

CC: Senate President Karen Spilka
House Speaker Ronald Mariano
Senator Sonia Chang-Diaz, Senate Chair, Joint Committee on Cannabis Policy

115 North Street, Hingham, MA 02043
Office-781-749-9922 Cell-617-285-4561 FAX-781-749-9923
Executive Director email: jlampke@massmunilaw.org
website: www.massmunilaw.org

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COMMENTS on H.4800 and S.2823

The MMLA recommends that the General Court should not include the following Sections from H.4800 and S.2823 in the final compromise bill, for the reasons stated below.

Bill Section	Comment	Suggestion
H.4800 Section 7, inserting ch. 94G Sec. (3)(d)(2)(i) and (3)(d)(2)(i)(C)	Community impact fees should not be limited to five years. Communities with true impacts should be permitted to impose an impact fee for as long as those impacts are incurred. Also, in this new industry, it is too soon to know if any existing impacts will continue and for how long, or whether there may be newly discovered impacts after five years. The fees must be documented and shared, and can be waived by communities with no impacts.	Instead, adopt S.2823, Section 6, inserting ch. 94G Sec.(3)(d)(2)(i)(C), which permits HCAs to be subject to renewal after a single 5-year term.
H.4800 Section 7, inserting ch. 94G Sec. (3)(d)(2)(iv)	The Cannabis Control Commission's ("CCC") authority to consider the reasonableness of past community impact fees to determine if the community's calculation of costs conforms to the requirements of this new section, impairs existing contracts that were freely negotiated by the parties based on the information known and applicable laws at the time. This section was not in place at the time those HCAs were entered into or the costs were calculated. Without grandfathering existing agreements, this provision violates the home rule amendment.	
H.4800 Section 7, inserting ch. 94G Sec. (3)(d)(3) (Also, should not adopt Section 6 of S2823 inserting ch. 94G Sec. (3)(d)(3))	Annual CCC review and approval of HCAs is not necessary, particularly if the CCC develops a model HCA, and in light of the MA Office of the Inspector General having jurisdiction to advise municipalities on whether the terms and conditions of an HCA are compliant with state law. Communities are capable of entering into HCAs that comply with the regulations without requiring another level of review and approval, that adds significant time to the process. Both parties to the HCA should determine that the HCA is reasonable and in compliance with the law. Licensees can negotiate and are not forced to sign HCAs.	Instead, adopt Section 8 of S.2823, inserting ch. 94G Sec. 4(a)(xxxiii), requiring the CCC to develop a model HCA.

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Bill Section	Comment	Suggestion
H.4800 Section 8, inserting ch. 94G Sec. 4(a)(xxviii) (Also, should not adopt Section 8 of S.2823 inserting ch. 94G Sec. 4(a)(xxviii))	CCC should not determine the lawfulness of or approve HCAs. As noted above, communities and licensees have qualified legal counsel capable of drafting HCAs in compliance with the law.	
H.4800 Section 7, inserting ch. 94G Sec. (3)(d)(5)	The CCC should be required to establish model procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities, rather than requiring the communities to establish those procedures and policies, without guidance, and with additional legal costs for communities.	Instead, adopt Section 6 of S.2823 inserting ch. 94G Sec. (3)(d)(5), Section 7 of S.2823 adding ch. 94G Sec. (3)(f), and Section 8 of S.2823 adding ch. 94G Sec. (4)(a)(xxxi), which require the CCC to adopt policies and procedures and for communities to adhere to them.
H.4800 Section 16	As noted above, communities should not be required to draft the procedures and policies to promote and encourage full participation, and they should also not be fined for a failure to do so. The proposed fine is draconian and unrelated to a failure to comply because the penalty includes a forfeiture of all impact fees, but the conduct is related to social equity.	
S.2823 Section 6, inserting ch. 94G Sec. (3)(d)(2)(iii)	There is no reason to expressly include a legal remedy in the statute, a breach of contract claim is possible for any party to a contract.	

Finally, additional concerns with the bills include the fact that the bills do not allow for municipalities to take a deposit from the marijuana establishment or medical marijuana treatment center for the costs incurred by communities of negotiating a Host Community Agreement, and to reduce the Community Impact Fee by those costs. Also, the calculation of the Community Impact Fee does not account for indirect or unanticipated costs or costs that are difficult to calculate for communities, such as, the portion of salaries of certain employees who are spending time in night meetings, phone calls and other correspondence relating to the HCAs.

As noted in the cover letter, MMLA asks that you consider the points made in this memo, and we welcome the opportunity to discuss these concerns in person or remotely.