



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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AUDITOR

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May 18, 2005

Mr. Daniel Sullivan, Esq.
General Counsel
Senate Committee on Ways and Means
State House/Room 212
Boston, Massachusetts 02133

Dear Attorney Sullivan:

This letter is in reply to your inquiry regarding G. L. c. 29, s. 27C, the Local Mandate Law, and 2005, Senate No. 2037, AN ACT RELATIVE TO THE INSTALLATION OF CARBON MONOXIDE DETECTORS IN RESIDENTIAL BUILDINGS ("NICOLE'S LAW"). Specifically, you ask whether provisions of the bill that would require local fire departments to conduct inspections of these devices would constitute an unfunded local mandate. The bill would also set a schedule of fees payable by the owners of the premises being inspected. As it appears that the specified fee schedule is intended to defray the cost of conducting the inspections, it is our preliminary opinion that the Local Mandate Law would not apply. The following further explains this conclusion.

In relevant part, the Local Mandate Law provides that any post-1980 law or regulation imposing additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. Any community aggrieved by a law or regulation enacted contrary to this standard may petition superior court for an exemption from compliance. In such a proceeding, the determination of the Division of Local Mandates shall be prima facie evidence of the amount of state funding necessary to sustain the mandate.

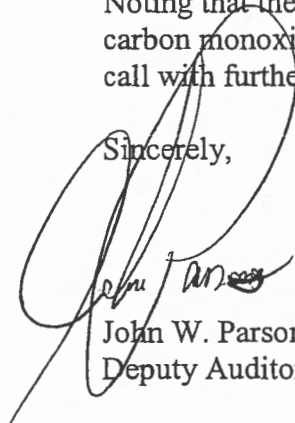
Senate No. 2037 would clearly impose additional duties upon local fire departments, but allows for a schedule of fees contemplated to offset the cost. The bill would allow fire departments to charge fees ranging from up to \$50 for inspections of carbon monoxide detectors at single-family dwellings to \$500 at residential buildings with more than six units. Additionally, the bill would provide the same schedule of fees for inspections of smoke detectors, but allow that only one fee be charged if smoke and carbon monoxide detector inspections are conducted simultaneously. Current law is silent regarding carbon

monoxide detector inspection fees, and provides for a single fee for smoke detector inspections up to \$50, without regard to the number of units in the building. G. L. c. 148, s. 10A.

Should these fees, in fact, offset the cost of conducting required inspections, it is our opinion that the Local Mandate Law would not apply in this case. Granted, there is no court precedent directly addressing the notion that fees charged to private parties to cover the local cost of administering a state mandated program would satisfy the standards of the Local Mandate Law. Nonetheless, it follows that there would be no cost to be assumed by the Commonwealth, if cities and towns fully recovered any expenses from the regulated private parties.

I thank you, on behalf of this office, for the opportunity to comment on this legislation. Noting that the bill calls for regulations to further define the inspection requirements for carbon monoxide detectors, we reserve the right to revisit this matter if necessary. Please call with further questions or comments you may have.

Sincerely,



John W. Parsons, Esq.
Deputy Auditor