



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

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AUDITOR

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December 12, 2006

The Honorable Richard T. Moore
Massachusetts Senate
State House – Room 111
Boston, Massachusetts 02133-1053

RE: House No. 5018, An Act to Reduce Asthma by Requiring Use of Safer Alternatives to Cleaning Products

Dear Senator Moore:

This letter is in response to your request relative to the Local Mandate Law, G. L. c. 29, s. 27C, and the above-captioned legislation. In summary, this bill would require the Commissioner of the Department of Public Health to establish a “Safer Cleaning Products List,” and prohibit the use of excluded products in day care centers, schools, and public buildings. The proposal also calls for state guidelines for safe use and disposal of such products, and requires that either the product manufacturers or employers of cleaning personnel at regulated sites deliver the training. Specifically, you ask whether these requirements would constitute unfunded local mandates within the meaning of G. L. c. 29, s. 27C. As explained below, since so much of the compliance details of this proposal would depend on the nature of DPH guidelines, at this time it is not possible to determine whether the Local Mandate Law would apply in this case. This is because it is presently unclear whether the proposal would have a significant financial impact at the local level. Nonetheless, it does appear that there may be means to mitigate any potential costs, conform to the standards of the Local Mandate Law, and still achieve the overall objectives.

In relevant part, the Local Mandate Law provides that any state law or regulation adopted after 1980 that imposes additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. Potentially relevant here, one exception to this general rule is that the Commonwealth need not assume the cost of mandates that impose only “incidental local administration expenses.” If this bill were

enacted, it would clearly be a law adopted after 1980. What is not so clear is whether the law would impose significant new costs at the local level. The two predominant potential areas of cost impact would be in purchasing the listed cleaning products, and in providing staff training.

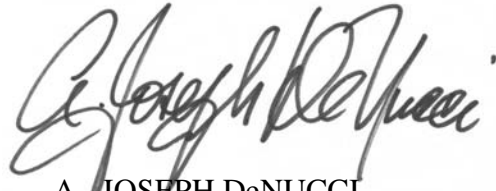
As for the first, sources at the University of Massachusetts Toxics Use Reduction Institute suggest that it would not necessarily be more expensive to purchase “safer products” than the standard varieties that may be presently in use. Reportedly, safer products tend to be water-based, thereby less costly to manufacture, handle, and dispose than the traditional petroleum-based options. Additionally, it is expected that items on the Safer Products Cleaning List would be added to the state Operational Services Division’s existing list of Environmentally Preferable Products. Though not required, cities, towns and school districts are eligible to use statewide contracts for these products, thereby avoiding the bidding process and benefiting from the bulk purchasing discounts often available to the Commonwealth. While these factors might tend to mitigate any adverse cost impact, an actual comparison of the cost of using safer v. standard products could not be made until the list of approved safer products were developed. You may wish to consider adding language to the bill requiring that the Department of Public Health conduct such a comparative analysis, and that the more cost effective safer products be identified as such on the list.

As for the second area of potential cost impact, concerns arise not only with the initial staff training upon introducing a new product, but also with the need that this training be conducted on an ongoing basis to address the frequent turn-over in custodial staff. The bill would allow that training be provided by either the manufacturers of the products or the employers. It would also provide for training by the Department of Public Health for a fee in the event that training requirements were violated. Again, until the precise training guidelines called for in the legislation are developed, the cost of conducting such programs cannot be determined. Nonetheless, potential costs to cities and towns could be mitigated by placing the responsibility more directly on the manufacturers and the Department of Public Health. Perhaps these parties could collaborate in the development of computer-assisted training modules that could be distributed to the regulated employers, and updated as products evolve.

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Assuming that the Department of Public Health would take a strong leadership role in administration of this program and develop guidelines with the intent to minimize local compliance costs, it would appear that House No. 5018 could be implemented so as not to impose more than incidental administration expenses on cities, towns, and districts. As you know, the Local Mandate Law does not apply to such incidental state mandated costs. I thank you for bringing this matter to our attention, and hope this reply is useful in your deliberations.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Joseph DeNucci". The signature is fluid and cursive, with a prominent initial "A" and a long, sweeping underline.

A. JOSEPH DeNUCCI
Auditor of the Commonwealth