The Commonwealth of Massachusetts
AUDITOR OF THE COMMONWEALTH
STATE HOUSE, BOSTON 02133

SUZANNE M. BUMP, ESQ.
AUDITOR

TEL: 617-727-2075

February 6, 2019

Charles Seelig
Town Administrator
Town of Halifax
499 Plymouth Street
Halifax, MA 02238

RE: <u>The Financial Impacts of Work-Related Injury Presumptions for Firefighters under Chapter 148 of the Acts of 2018 on Halifax</u>

Dear Town Administrator Seelig:

On August 17, 2018, you petitioned the State Auditor's Division of Local Mandates (DLM) regarding the impact of recent amendments to work-related injury benefits for firefighters on the Town of Halifax. Specifically, you indicated in your petition that Chapter 148 of the Acts of 2018 ("Chapter 148") amended Massachusetts General Laws Chapter 32, Section 94B and Chapter 41, Section 111F, which made changes to the types of cancers presumed to be sustained in the line-of-duty and paid leave determinations. You indicated that these changes will increase municipal expenses, including medical costs, wages, and pension costs. You believe that these requirements impose direct service and cost obligations on Halifax in contravention of the Local Mandate Law, G.L. c. 29, § 27C.

In preparation for this determination, DLM staff met with Jeannie Horne, the Director of Human Resources in the Town of Duxbury[1] and yourself. During that meeting we asked for an extension to further investigate the matter, which you granted by email on October 9, 2018.

After a review of Chapter 148, G.L. c. 32, § 94B and G.L. c. 41, § 111F, DLM concludes that work-related injury benefits for firefighters are not an unfunded state mandate within the meaning of the Local Mandate Law. The Local Mandate Law does not apply to laws governing the benefits or conditions of municipal employment, this is governed by Article 115 of the Amendments to the Massachusetts Constitution (Article 115). Article 115 grants the Legislature the authority to amend the terms and conditions of municipal benefits as long as the Legislature complies with the provisions of Article 115.

[1] Duxbury is currently administering the benefits for a fire fighter under the provisions of Chapter 148 of the Acts of 2018.

Application of the Local Mandate Law to Chapter 148 of the Acts of 2018

In general terms, the Local Mandate Law, G.L. c. 29, § 27C, provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or be made conditional to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, a determination of the cost for complying with the unfunded mandate. DLM's deficiency determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate.[2] Alternatively, a community may seek legislative relief. However, the Local Mandate Law does not apply to all laws governing local activity. Laws that notably fall outside the scope of the Local Mandate Law are federal laws and regulations and laws regulating the benefits and conditions of municipal employment.[3]

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor,* 416 Mass. 751 (1994). Of particular relevance to this petition, the challenged law must take effect on or after January 1, 1981, it must either be a new law or a change in a law that rises to the level of a new law, and it must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense.[4] Moreover, the Legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law.[5]

Applying this analysis to the issue raised in your petition, DLM has determined that the work-related injury benefits outlined in G.L. c. 32, § 94B, and G.L. c. 41, § 111F are not a mandate within the meaning of the Local Mandate Law. Laws that increase the cost of the benefits or conditions of municipal employment are governed by Article 115 of the Amendments to the Massachusetts Constitution, not the Local Mandate Law.

Chapter 148 of the Acts of 2018 modifies G.L. c. 32, § 94B and G.L. c. 41, § 111F. The amendments to Chapter 32, Section 94B added breast and reproductive cancer to the types of cancers presumed to be sustained in the line-of-duty for firefighters and certain other public safety officials. Chapter 41, Section 111F extends the presumption of injury sustained in the line-of-duty under Chapter 32, Section 94B to paid leave determinations. Injuries in the line-of-duty and paid leave determinations are inherently related to compensation and the benefits and conditions of municipal employment. The treatment of injuries in the line-of-duty and paid leave

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[2] *See* M.G.L. c. 29, § 27C (e).

[3] *Town of Lexington v. Commissioner of Education,* 393 Mass. 693, 697 (1985); *City of Cambridge v. Attorney General*, 410 Mass. 165, 170 (1991).

[4] *Worcester,* 416 Mass. at 754-755.

[5] *Lexington,* 393 Mass. at 698; *Sch. Comm. of Lexington v. Commissioner of Education,* 397 Mass. 593, 595 (1986).

determinations are routinely bargained for between municipalities and the unions representing firefighter.[6] Additionally, the Massachusetts courts have held that collective bargaining agreements may override or differ from the benefits laid out in G.L. c. 41, § 111F, as long as the agreement does so through express terms.[7] Collective bargaining agreements are intended to allow organized employees to bargain with employers regarding wages, hours, and other terms and conditions of employment.[8] Given the fact that municipalities and firefighters already bargain for the benefits received due to work-related injuries, and the courts held that collective bargaining agreements may alter the benefits received under Section 111F, we find that the benefits provided for under Section 111F should be considered a condition or benefit of municipal employment. Consequently, DLM finds that these provisions are the type that Article 115 was intended to regulate and fall outside the scope of the Local Mandate Law.

Article 115 of the Amendments to the Massachusetts Constitution

Similar to the Local Mandate Law, Article 115 restricts the Legislature's authority to regulate the benefits and conditions of municipal employment when those changes would impose an additional cost upon two or more municipalities that is not locally adopted or funded by the Commonwealth, unless the law has been enacted by two-thirds of each brand of the legislature. Article 115 states that, in relevant part, that

No law imposing additional costs upon two or more cities or towns by the regulation of the compensation, hours, status, conditions or benefits of municipal employment shall be effective in any city or town until such law is accepted by vote or by the appropriation of money for such purposes [. . .], unless such law has been enacted by a two-thirds vote of each house of the general court present and voting thereon, or unless the general court, at the same session in which such law is enacted, has provided for the assumption by the commonwealth of such additional cost.[9]

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[6] City of Boston, *Boston Firefighters Local 718 Contract 2017*, *available at* https://www.boston.gov/sites/default/files/iaff_cba_2014_-_2017.pdf; Town of Canton, *Canton Firefighters Local 1580 Contract 2015*, *available at* https://town.canton.ma.us/DocumentCenter/View/350/Fire-Fighters-IAFF-1580-Union-PDF; Town of Concord, *Agreement Between the Town of Concord and the Concord Firefighters Association Effective July 1, 2016 through June 30, 2019*, *available at* https://concordma.gov/DocumentCenter/View/8250/Fire-Collective-Bargaining-Agreement--; City of Fitchburg, *Collective Bargaining Agreement Between the City of Fitchburg and the Fitchburg Fire Fighters Association*, *available at* http://www.ci.fitchburg.ma.us/DocumentCenter/View/2639/IAFF-Local-3128-Fire-2015-2018; City of Gloucester, *Collective Bargaining Agreement Between the City of Gloucester and Gloucester Firefighters Local 762, I.A.F.F.*, *available at* https://gloucester-ma.gov/DocumentCenter/View/2752; City of Northampton, *Agreement between the City of Northampton and Northampton Firefighters Effective July 1, 2016*, *available at* https://www.northamptonma.gov/DocumentCenter/View/10041/Fire--IAFF-Local-108-Agreement-16-to-19?bidId; and City of Worcester, *Agreement Between the City of Worcester and Local 1009 International Association of Firefighters Effective July 1, 2000 to June 30, 2003*, *available at* http://www.worcesterma.gov/uploads/ed/65/ed656b42966556ee87ed9c7db752a3b5/local-1009-moa-2000-2003.pdf.

[7] *Willis v. Bd. of Selectmen of Easton*, 405 Mass. 159, 164–65 (1989); *Rein v. Marshfield*, 16 Mass. App. Ct. 519, 523-24 (1983);

[8] G.L. c. 150E, § 2.

[9] art. 115 of the Amendments to the Massachusetts Constitution.

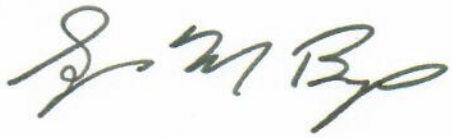
The Division of Local Mandates has no statutory authority to determine whether the standards of Article 115 apply to a given law. However, as part of our mandate determination, we researched the legislative history of Chapter 148 of the Acts of 2018. Both the House of Representatives and Senate passed Chapter 148 of the Acts of 2018 unanimously.

Conclusion

We understand that the changes to Massachusetts General Law Chapter 32, Section 94B and Chapter 41, Section 111F may increase insurance and benefits costs for municipalities. The change in status from non-work related to work-related injuries has an impact on the type of insurance that will cover the injury. There is a possibility that health insurance companies will deny coverage for the medical costs associated with these cancers because they are considered work-related. Additionally, the premiums for injured on duty insurance may increase due to the addition of injuries that are now expected to be covered by injured on duty insurance. We heard from the Group Insurance Commission (GIC) that one municipal insurer that covers on-duty injuries has informed a member municipality that it will not cover treatments for cancers. The GIC indicated that this could potentially expose that municipality to significant liabilities for covering cancer determined to be in the line-of-duty. We received a letter from the Massachusetts Municipal Association supporting your petition which raised similar cost issues and concerns. While Chapter 148 of the Acts of 2018 may not be an unfunded mandate within the meaning of the Local Mandate Law, because it falls under the scope of Article 115, the changes adopted by Chapter 148 have the potential to significantly increase municipal costs for the treatment of cancer in firefighters.

This opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with Section 27C(e) of Chapter 29. Although we are sympathetic to the fiscal constraints facing all cities and towns, DLM must apply the Local Mandate Law consistently to each issue and as interpreted by the courts. Thank you for bringing this matter to our attention, please do not hesitate to contact DLM with further concerns on this or other matters impacting your community.

Sincerely,



Suzanne M. Bump
Auditor of the Commonwealth

cc: Governor Charlie D. Baker
Karen E. Spilka, President of the Senate
Robert A. DeLeo, Speaker of the House