

HOUSE No. 5658

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 14, 1995.

The committee on Ways and Means, to whom was referred the Bill authorizing certain payments to the city of Newton to defray certain extraordinary costs and to enhance retirement benefits to certain members of the city of Newton Fire Department (House, No. 1753), reports that the same ought to pass, with an amendment substituting therefor the accompanying bill (House, No. 5658).

[Cost: \$2,600,000.00]

For the committee,

THOMAS M. FINNERAN.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT AUTHORIZING CERTAIN PAYMENTS TO THE CITY OF NEWTON TO DEFRAID CERTAIN EXTRAORDINARY COSTS AND TO ENHANCE RETIREMENT BENEFITS TO CERTAIN MEMBERS OF THE CITY OF NEWTON FIRE DEPARTMENT.

1 *Whereas*, On October 25, 1993, an explosion of molten
2 sodium at the H. C. Starck, Inc., plant located at 152 Charlmont
3 Street, Newton, MA, resulted in serious injuries to eleven
4 Newton firefighters; and

5 *Whereas*, As a result of said explosion, Newton has been
6 forced to incur extraordinary expenses beyond its capacity to
7 absorb; and

8 *Whereas*, The effects of the explosion on Newton are similar
9 to those which result from natural disasters;

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION I. As used in this Act, the following words shall have
2 the following meanings:

3 a. "Firefighter" shall mean Assistant Fire Chief Thomas A.
4 Sweeney, Fire Lieutenant Edward M. Bagley, Fire Lieutenant
5 Raymond McNamara, Fire Lieutenant Edward J. Daley,
6 Firefighter James Dangelo, Jr., Firefighter Kevin M. Hough,
7 Firefighter Robert O. Moyer, Firefighter Richard J. O'Neill,
8 Firefighter Kenneth Nielson, Firefighter Joseph P. Olivo and
9 Firefighter Samuel D. Rizza, Jr., of the City of Newton Fire
10 Department.

11 b. "Surviving spouse" shall mean the legal spouse who is sur-
12 viving at the time of death of a Firefighter, and with whom the
13 Firefighter was living at the time of death, or who had been living
14 apart from the Firefighter for justifiable cause other than desertion
15 or moral turpitude on the part of the spouse. Former spouses shall
16 not be included in the definition of "surviving spouse" and shall
17 have no claim on any benefits provided under this Act.

18 c. "Unmarried children" shall mean the natural or adopted chil-
19 dren of a Firefighter who are not married, and are under age eigh-
20 teen, or who are over age eighteen and physically or mentally
21 incapacitated from earning on the date of death of the Firefighter,
22 or who are over age eighteen and under age twenty-one and full-
23 time students at an accredited educational institution.

1 SECTION 2. The commonwealth shall forthwith appropriate
2 and disburse the sum of two million six hundred thousand dollars
3 (\$2,600,000.00) to the City of Newton to be used to defray a por-
4 tion of the costs of said explosion. These costs include, but are not
5 limited to, payment of medical expenses pursuant to section one
6 hundred of chapter forty-one of the General Laws; payment of
7 medical expenses that may be incurred after the effective date of
8 this act as a result of said explosion; payment of wages pursuant
9 to section one hundred eleven F of chapter forty-one of the
10 General Laws; payment of overtime and replacement costs for the
11 Firefighters; and increases in unfunded pension liabilities due to
12 unanticipated accidental disability retirement as provided in
13 chapter thirty-two of the General Laws. The City of Newton shall
14 be free to allocate the funds disbursed pursuant to this section in
15 its discretion to defray whichever costs it deems appropriate.

1 SECTION 3. Effective upon receipt by the City of Newton of
2 the sum referred to in section two of this act, and contingent
3 thereupon, and notwithstanding the provisions of any general or
4 special law to the contrary:

5 a. The Firefighters, who as a result of said explosion are totally
6 and permanently disabled for further service as firefighters, are
7 hereby retired.

8 b. The annual amount of retirement allowance payable to Fire
9 Lieutenants Edward M. Bagley and Raymond McNamara under
10 this act shall be fixed in an amount equal to the regular compensa-
11 tion which would have been paid to them respectively had they
12 continued in service as a fire lieutenant in said City of Newton at
13 the grade held by them at the time of their retirement; provided,
14 however, that no salary increases for the grade held by them at the
15 time of their retirement which accrue after they have attained the
16 maximum age for their group shall be added to their retirement

17 allowance; and further provided that the retirement allowances
18 payable to them after they have attained the maximum age for
19 their group shall be increased in the manner provided to all City of
20 Newton retirees pursuant to any provision of chapter thirty-two of
21 the General Laws.

22 c. The annual amount of retirement allowance payable to the
23 remainder of the firefighters as named in section 1(a) of this Act,
24 other than Lieutenants Bagley and McNamara, shall be fixed in an
25 amount equal to seventy-two percent of the regular compensation
26 which the Firefighters would have received had they continued in
27 service as firefighters in the Newton Fire Department at the grade
28 held by them at the time of their retirement; provided, however,
29 that no salary increases for the grade held by them at the time of
30 their retirement which accrue after they have attained the max-
31 imum age for their group shall be added to their retirement
32 allowance; and further provided that the retirement allowances
33 payable to them after they have attained the maximum age for
34 their group shall be increased in the manner provided to all City of
35 Newton retirees pursuant to any provision of chapter thirty-two of
36 the General Laws.

37 d. Upon such retirement, the Retirement Board of the City of
38 Newton shall pay to each of the Firefighters a yearly amount of
39 annuity as calculated pursuant to Option B as defined in clause (1)
40 of subdivision (2) of section twelve of chapter thirty-two of the
41 General Laws.

42 e. Upon the death of a Firefighter, the surviving spouse shall be
43 entitled to a return of accumulated total deductions credited to the
44 Firefighter's account according to the provisions of Option B as
45 defined in clause (1) of subdivision (2) of section twelve of
46 chapter thirty-two of the General Laws, or to his surviving benefi-
47 ciary or beneficiaries entitled thereto.

48 f. Upon the death of a Firefighter, the Retirement Board of the
49 City of Newton shall pay to the surviving spouse, if any, an
50 allowance equal to that being paid to her husband, at the time of
51 his death. The allowance paid to the surviving spouse shall not be
52 eligible for any increases to which the Firefighter would have
53 been eligible pursuant to subsections (b) or (c) of this section, but
54 shall be eligible for all other increases provided to all City of
55 Newton retirees pursuant to any provision of chapter thirty-two of

56 the General Laws. Payment of said allowance shall be terminated
57 upon the death, but not the remarriage, of the surviving spouse.
58 The benefits, if any, available to a person who does not qualify as
59 a "surviving spouse" as defined in section l(b) of this Act, shall be
60 determined according to the provisions of chapter thirty-two of
61 the General Laws.

62 g. If at any time there is no surviving spouse eligible to receive
63 the retirement allowance provided in subsection (d) of this sec-
64 tion, then it shall be paid to the legal guardian for the benefit of
65 any surviving unmarried children as defined in this Act. Such
66 allowance shall be divided for the benefit of such children in such
67 manner as the Retirement Board of the City of Newton shall from
68 time to time determine, and shall be paid so long as any such child
69 survives, remains unmarried and is under age eighteen or if over
70 said age remains physically or mentally incapacitated from
71 earning.

72 h. Upon the death of a Firefighter, if there are any surviving
73 unmarried children of such Firefighter, the Retirement Board of
74 the City of Newton shall pay an additional pension at the rate of
75 four hundred and fifty dollars (\$450.00) annually for each such
76 child to the child's natural or legal guardian so long as each child
77 survives and remains an "unmarried child" as defined in section l
78 of this Act.

79 i. Following the retirement of the Firefighters, the City of
80 Newton shall pay for necessary and reasonable medical expenses
81 for the Firefighters due to injuries sustained as a result of said
82 explosion in the following manner:

83 (i.) medical care shall first be provided through the health
84 insurance provided to retired City of Newton employees pursuant
85 to chapter thirty-two B and chapter one hundred fifty E of the
86 General Laws;

87 (ii.) the City of Newton shall pay to the health care providers
88 all co-payments required by the health insurance policy under
89 which the Firefighter is insured;

90 (iii.) the City of Newton shall pay to the health care providers
91 all deductibles required by the health insurance policy under
92 which the Firefighter is insured;

93 (iv.) the City of Newton shall pay to the health care providers
94 the fees and other expenses for authorized services whose costs

95 exceed applicable benefits limits but whose payment is denied
96 solely because of said applicable benefits limit. Any such pay-
97 ments pursuant to this subparagraph must meet all other eligibility
98 requirements of said health insurance; provided, however, that no
99 Firefighter shall be required to change health care providers as a
100 result of this subparagraph (i); and provided further that any
101 changes made by a Firefighter in health care providers and any
102 referrals from current health care providers to health care
103 providers who have not rendered care to the Firefighter for
104 injuries or illnesses caused by said explosion shall comply with
105 the provisions of this subparagraph (i).

1 SECTION 4. Notwithstanding the provisions of any general or
2 special law to the contrary, including but not limited to section
3 eight of chapter thirty-two of the General Laws, no Firefighter
4 retired pursuant to this act shall be subject to examination or re-
5 examination by a medical panel or other physician to determine
6 his eligibility or continued eligibility for accidental disability
7 retirement benefits as provided in this act or in chapter thirty-two
8 of the General Laws.

1 SECTION 5. Effective upon receipt by the City of Newton of
2 the sum referred to in section two of this Act, and notwithstanding
3 the provisions of any general or special law to the contrary,
4 including but not limited to section eight, paragraph three of
5 chapter thirty-two of the General Laws:

6 a. No Firefighter shall have his retirement allowance subject to
7 modification as a result of earnings from alternative employment;
8 provided, however, that he shall be required to submit earnings
9 reports to the Retirement Board of the City of Newton pursuant to
10 section ninety-one A of chapter thirty-two of the General Laws.

11 b. The Firefighters shall be subject to the limitation of earnings
12 formula as set forth in said section ninety-one A, as it may be
13 amended from time to time, with the ability to earn the amount
14 described in said section plus an additional two thousand five hun-
15 dred dollars (\$2,500.00). Should a Firefighter earn in excess of
16 these allowable amounts, the Retirement Board of the City of
17 Newton shall inform him of the excess amount earned and the
18 amount owed by him, to the Retirement Board of the City of

19 Newton. The Retirement Board shall, at its discretion, require
20 repayment of that amount to the Retirement Board, or may with-
21 hold amounts as it deems appropriate from future retirement
22 allowance payments until the amounts owed to The Retirement
23 Board have been paid in full.

1 SECTION 6. The retirement allowances payable pursuant to
2 this act shall remain subject to all other provisions of chapter
3 thirty-two of the General Laws as if they had been granted as
4 accidental disability retirements in the normal course of events
5 pursuant to said chapter, except to the extent that the provisions of
6 chapter thirty-two of the General Laws conflict with the provi-
7 sions of this act.

1 SECTION 7. Notwithstanding the provisions of any general or
2 special law to the contrary, the commonwealth shall receive from
3 the City of Newton one-half (1/2) of any recovery for damages
4 caused by said explosion which the City of Newton actually
5 receives, exclusive of any amounts required to be paid by the City
6 of Newton as contributions to attorney's fees or any other deduc-
7 tion from such recovery required by any law or statute, from any
8 third party as a result of the civil action captioned *City of Newton*
9 *v H. C. Starck, Inc. and Bayer Corporation*, Middlesex Superior
10 Court, C.A. No. 94-2947-D. Said reimbursement shall be limited
11 to the amounts disbursed to the City of Newton pursuant to sec-
12 tion one of this act.

1 SECTION 8. This act shall take effect upon its passage.

