Appendix B:
Legislation and Other Government Documents

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OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 506

Establishing the Governor's Task Force on Public Integrity

WHEREAS, the people of the Commonwealth of Massachusetts have entrusted public officials and employees with operating our government in an open and honest manner, free of any improper influence;

WHEREAS, it is imperative that public officials and employees at all levels of government earn and maintain the confidence of the people they represent;

WHEREAS, to earn and maintain that confidence, all public officials and employees must adhere to the highest standards of honesty and integrity;

WHEREAS, strong and effective laws governing ethics and lobbying activities are essential components to defining and enforcing such standards; and

WHEREAS, the Commonwealth's existing laws pertaining to ethics and lobbying were enacted separately, at different times, and would benefit from a comprehensive reexamination that assesses the adequacy of the existing regulatory frameworks, the sufficiency of the current enforcement mechanisms and penalties, and whether gaps

exist between the separate systems that could be closed through greater coordination.

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § I, Art. I, hereby order as follows:

Section 1. There is hereby established the Governor's Task Force on Public Integrity (the "Task Force").

Section 2. The Task Force shall consist of the Chief Legal Counsel, who shall serve as Chairperson, and up to 12 additional members to be appointed by the Governor, including two members of the Senate Committee on Ethics and Rules, two members of the House Committee on Ethics, and up to eight additional individuals with expertise on issues relating to ethics and public integrity. All members of the Task Force shall serve in an advisory capacity. The Task Force will meet at such times and places as determined by the Chairperson.

Section 3. The Task Force shall examine the existing legal and regulatory frameworks governing ethics and lobbying and make recommendations concerning any need for amendments to the current laws, regulations, investigative and enforcement mechanisms, and penalties. The Task Force's assessment shall include the sufficiency of the current legal and regulatory schemes, and the potential for strengthening the system through greater coordination among the offices responsible for ensuring the integrity of the Commonwealth's governmental processes. In formulating its recommendations, the Task Force shall confer with representatives of the various state offices responsible for overseeing state ethics and lobbying as well as with academics, practitioners and others with expertise in these areas.

Section 4. The Task Force may report to the Governor from time to time and shall issue a final report to the Governor presenting its assessment and recommendations no later than 60 days from the date of this order.

Section 5. Nothing in this Executive Order shall be construed to require or permit action inconsistent with any applicable state or federal law.

Section 6. This Executive Order shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 7th day of November in the year of our Lord two thousand and eight and of the Independence of the United States, two hundred and thirty-two.

DEVAL L. PATRICK
GOVERNOR
Commonwealth of Massachusetts

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

FY 2011 Budget Outside Sections 21-34

No Lobbyists for State Entities

SECTION 21. Said chapter 29 is hereby further amended by inserting after section 29I the following section:- Section 29J. Notwithstanding section 50 of chapter 3, or any other general or special law to the contrary, a state agency or state authority shall not use state funds to pay for an executive or legislative agent, as defined in section 39 of said chapter 3, unless the executive or legislative agent is a full-time employee of the state agency or state authority.

Open Meeting Notices

SECTION 22. The third paragraph of subsection (c) of section 20 of chapter 30A of the General Laws, as appearing in section 18 of chapter 28 of the acts of 2009, is hereby amended by inserting after the words "attorney general" the following words:- and a duplicate copy of said notice shall be filed with the regulations division of the state secretary's office.

Cap Pension Earnings

SECTION 23. The definition of "Regular compensation" in section 1 of chapter 32 of the General Laws, as most recently amended by section 2 of chapter 21 of the acts of 2009, is hereby further amended by inserting after the second paragraph the following paragraph:- Notwithstanding any provision of this chapter to the contrary, regular compensation for any person who becomes a member after January 1, 2011, shall not include salary, wages or other compensation in whatever form in any calendar year in excess of 64 per cent of the annual limitation that may be imposed under federal law on the amount of compensation that may be taken into account when calculating benefits under plans described in 26 U.S.C. 401(a) including, but not limited to, the applicable limits for any calendar year under 26 U.S.C. 401(a)(17). Faculty, librarians and administrators in public higher education, as well as any physicians employed by the commonwealth who are eligible for the state retirement system, shall not be prohibited from participating in the college retirement equities fund or the optional retirement program by the Teachers Insurance and Annuity Association.

Pension Funding Schedules

SECTION 24. Said section 1 of said chapter 32 is hereby further amended by striking out, in line 488, as appearing in the 2008 Official Edition, the word "may" and inserting in place thereof the following word:- shall.

Interest Rate on Returned Retirement Deductions

SECTION 25. Subdivision (1) of section 11 of said chapter 32 is hereby amended by striking out paragraph (a), as so appearing, and inserting in place thereof the following paragraph:-

A member entitled to a return of the member's accumulated total deductions as provided for in paragraph (c) or (d) of subdivision (1) of section 4, in subdivision (4) of section 10, in paragraph (b) of subdivision (2) of section 13 or in subdivision (3) of section 25 shall, subject to subdivision (8) of section 3, this section and section 15, be paid in 1 sum the amount of his accumulated total deductions within 60 days after the member's filing with the board on a prescribed form his written request therefor. For any such member who becomes a member subsequent to January 1, 1984, who voluntarily withdraws from service with creditable service of less than 120 months, the rate of regular interest for purposes of calculating accumulated total deductions shall be 3 per cent. Any other member entitled to return of his accumulated total deduction shall receive 100 per cent of the rate of regular interest payable.

No summary disposition in DALA retirement cases

SECTION 26. **Section was returned for amendment (Attachment D)

The second paragraph of subdivision (4) of section 16 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after the third sentence the following 2 sentences:- A hearing assigned under this section shall, at the election of a party involving a claim hereunder, be subject to a full evidentiary hearing; provided, however, that such claims may be subject to summary procedure only at the request of any such party; and provided further, that the summary procedure shall be governed by the standard rules promulgated under section 9 of chapter 30A without addition or substitution thereto. The division of administrative law appeals may impose a reasonable administrative fee for the initiation of a claim under this section for the purpose of employing magistrates.

Supplemental Pension Allowance to Widows of Disabled Employees

SECTION 27. Section 101 of said chapter 32, as so appearing, is hereby amended by striking out, in line 8, the words "six thousand dollars" and inserting in place thereof the following words:- either $6,000 or, in a retirement system accepting the supplemental annual allowance as provided in this section, $9,000.

Supplemental Pension Allowance to Widows of Disabled Employees

SECTION 28. Said section 101 of said chapter 32, as so appearing, is hereby further amended by adding the following paragraph:-

Notwithstanding the previous paragraph, a retirement system may accept a supplemental annual allowance fixed at the rate of $9,000, by a majority vote of the board of each such system, subject to the approval of the legislative body thereof. For the purposes of this section, "legislative body" shall mean, in the case of a city, the city council in accordance with its charter, in the case of a town, the town meeting, in the case of a county, the county retirement board advisory council, in the case of a region, the regional retirement board advisory council, in the case of a district, the district members and, in the case of an authority, the governing body of such authority. Acceptance shall be deemed to have occurred upon the filing of a certification of such votes with the commission. For purposes of this section, the state teachers' and state

employees' retirement systems shall be deemed to have accepted the supplemental annual allowance provided for by this section.

Municipal Retiree Health Insurance Costs Allocated Between Employers

SECTION 29. Said chapter 32B is hereby further amended by inserting after section 9A the following section:-

Section 9A1/2. Whenever a retired employee or beneficiary receives a healthcare premium contribution from a governmental unit in a case where a portion of the retiree's creditable service is attributable to service in 1 or more other governmental units, the first governmental unit shall be reimbursed in full, in accordance with this paragraph, by the other governmental units for the portion of the premium contributions that corresponds to the percentage of the retiree's creditable service that is attributable to each governmental unit. The other governmental units shall be charged based on their own contribution rate or the contribution rate of the first employer, whichever is lower.

The treasurer of the first governmental unit shall annually, on or before January 15, upon the certification of the board of the system from which the disbursements have been made, notify the treasurer of the other governmental unit of the amount of reimbursement due for the previous fiscal year and the treasurer of the other governmental unit shall immediately take all necessary steps to insure prompt payment of this amount. In default of any such payment, the first governmental unit may maintain an action of contract to recover the same, but there shall be no such reimbursement if the 2 systems involved are the state employees' retirement system and the teachers' retirement system.

Pension Reform Effective Dates

SECTION 30. Section 65D of said chapter 32, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "office,", in line 5, the following words:- and a chief justice or an associate justice of the supreme judicial court.

Essex Pension - Retirement Board Governance Reform 1

SECTION 31. Section 19 of chapter 34B of the General Laws, as so appearing, is hereby amended by inserting after the word "date" in line 6, the following words:- ; provided, however, that this section shall not apply to Essex county or an entity managing the contributory retirement system formerly administered by Essex county unless explicitly noted otherwise.

Essex Pension - Retirement Board Governance Reform 1

SECTION 32. Paragraph (b) of said section 19 of said chapter 34B, as so appearing, is hereby further amended by striking out clause (6).

Essex Pension - Retirement Board Governance Reform 1

SECTION 33. Said chapter 34B is hereby further amended by inserting after section 19 the following section:-

Section 19A. (a) The contributory retirement system for Essex county, operating under the terms of sections 1 to 28, inclusive, of chapter 32, shall be known as the Essex regional retirement system and all business shall be transacted under the name of the Essex regional retirement system.

(b) The Essex regional retirement system shall be managed by the Essex regional a retirement board which shall have the general powers and duties set forth in subdivision (5) of section 20 of chapter 32. The board shall consist of 5 members as provided herein:

(1) The first member shall be a chief executive or chief administrative officer of a member town, unit or district belonging to the Essex regional retirement system for a term of 3 years. This member shall be chosen by weighted vote of the chief executive or chief administrative officers of member towns, units or districts belonging to the Essex regional retirement system. The member town, unit or district weighted vote shall be computed based on the percentage of members of the retirement system who were employed by the member town, unit or district. For the purposes of this section, "chief executive or chief administrative officer" shall mean, in the case of a town, the town manager or town administrator, except for a town which has neither a town manager nor a town administrator, in which case it shall mean the chairman of the board of selectmen; in the case of a school district, the superintendent; in the case of a water district, the superintendent; in the case of a veterans' services entity, the director; in the case of a housing authority, the executive director; in the case of a regional vocational institute, the superintendent; in the case of a mosquito control district, the superintendent; and in the case of a regional retirement board, the chief executive officer; provided, however, that in the case of the Essex regional retirement board, the chief executive officer shall not be eligible to be elected as the first member of the regional retirement board. If the first member is not elected within 30 days of the expiration of the previous term, or in the event of any earlier vacancy in this office, the public employee retirement administration commission shall appoint the first member.

(2) The second member shall be a member of the regional retirement board advisory council, and shall be elected by a majority of those present and voting at a public meeting of the council, properly posted and specifically calling for such election under subsection (i) and shall serve for a term of 3 years.

(3) The third and fourth members, hereinafter referred to as the elected members, shall be elected by the members in or retired from service of the Essex county retirement system from among persons retired under the system in accordance with subsection (i) and shall serve for a term of 3 years.

(4) The fifth member, who shall not be an employee, retiree or official of the retirement system, or of any of its constituent governmental units, shall be chosen by the other 4

members and shall serve for a term of 5 years. If the fifth member is not chosen within 30 days of the expiration of the member's term, or if a vacancy in the office occurs before the end of the term, the public employee retirement administration commission shall appoint the fifth member.

(5) Upon the expiration of the term of office of a member, or in the event of a vacancy, the member's successor shall be elected for a term of 3 years or for the unexpired portion thereof, as the case may be. (

6) The members of the retirement board shall elect a chairman from among the members.

(c) The members of the Essex regional retirement board shall be compensated in an amount to be determined by the board but not to exceed the amounts set forth in subdivision (6) of section 20 of chapter 32.

(d) No person shall be both a member of the Essex regional retirement board, or an employee thereof, and registered as a legislative or executive agent, as defined in section 39 of chapter 3. Should a sitting member of the board register as a legislative or executive agent, as so defined, the member's seat shall be considered vacant.

(e) The retirement board may employ clerical and other assistants as may be required to transact the business of the retirement system; provided, however, that all employment contracts shall be subject to review and approval by the public employee retirement administration commission. All permanent employees of the retirement system shall be members of the retirement system.

(f) The retirement board may purchase or lease property, facilities and equipment and employ personnel necessary for the proper administration and transaction of business of the retirement system.

(g) The retirement board and the chairman thereof shall respectively be and act as the board and treasurer-custodian of the system with respect to the employees of any town or district who become members of the system as provided for in paragraphs (b) or (c) of subdivision (3) or paragraph (b) of subdivision (4) of section 28 of chapter 32, or who have become members under corresponding provisions of law. The treasurer or other disbursing officer of any such town or district shall act as a liaison officer between the employees thereof and the board of the system.

(h) There shall be an Essex regional retirement board advisory council which shall consist of all the full-time treasurers, elected or appointed, of each city, town, unit or district in the Essex regional retirement system. If a city, town, unit or district does not employ a full-time treasurer, the highest ranking, full-time executive employee shall be a member of the Essex regional retirement board advisory council. The members of the advisory council shall elect a chair from among the members. The council shall meet twice annually and at the call of the chair. The council shall supervise and certify the

procedures involved in the election of members to the retirement board, as provided in subsections (b) and (i). Upon approval by votes of the retirement board and the council, the actuary shall be furnished with an estimate of the expenses and costs of administration of the system for the ensuing year. The actuary shall annually, not later than December 15, specify by written notice to the council and the board the amounts required to be paid from the Pension Fund, the Annuity Reserve Fund, the Special Fund for Military Service Credit and the Expense Fund, as provided in subdivision (7) of section 22 of chapter 32. The regional retirement board advisory council, at a meeting specifically called for the purpose, shall elect 1 of its members, who shall be a member in service in the retirement system, as a member of the regional retirement board at the expiration of the current member's term, as provided in paragraph (2) of subsection (b). (i) The Essex regional retirement board advisory council, which shall serve as the election board, shall supervise the election of the elected members of the retirement board. The council shall make available nomination papers to a member in or retired from service so requesting and shall require that the nomination papers be signed by the candidate and be returned to the office of the retirement board for safekeeping until the election board shall meet. The chairman of the council shall give a duplicate receipt for the nomination papers to each candidate. Completed nomination papers shall contain the signatures and addresses of at least 5 active or retired members of the retirement system. The election board shall determine whether each candidate has filed nomination papers containing the requisite signatures and addresses. If, after an investigation, the election board determines that a candidate has filed nomination papers containing less than 5 signatures, the election board shall declare the nomination papers invalid and shall notify the candidate of the determination. If, after an investigation, the election board determines that only 1 candidate has filed the requisite number of signatures, the election board shall declare the candidate to be the elected member of the county retirement board. If, after an investigation, the election board determines that more than 1 candidate has obtained the requisite number of valid signatures, the election board shall notify the candidates of the determination and shall immediately prepare election ballots and set the date for an election to be held within 40 days.

The election board shall mail ballots to all members of the retirement system whether active or retired. The election board shall instruct each member to place an appropriate marking on the face of the printed ballot envelope next to the name of 1 candidate, insert the ballot into a ballot envelope and the ballot envelope into the pre-stamped envelope, seal the pre-stamped envelope and mail the envelope to the election board in care of the Essex regional retirement board, within 20 days after they were mailed. An envelope postmarked later than 20 days after the mailing shall not be used to determine the elected member. The election board shall notify each candidate of the time and location of the tabulation of the ballots and shall permit all candidates to be present at the tabulation. At the specified time for tabulation, the election board shall assemble all envelopes and inspect the envelopes. Any envelope which has been opened prior to that date or which has not been signed on the rear by the appropriate addressee shall be invalidated and shall not be used to determine the elected member. The election board shall assemble all properly signed, unopened envelopes and shall open each

envelope and separate the enclosed ballot from the envelope. The election board shall assemble all ballots and shall tabulate the vote for each candidate. Any ballot which contains a marking for more than the number of vacancies shall be declared invalid.

The election board shall notify each candidate in writing of the results of the election. All envelopes and ballots received by the election board, including those determined to be invalid, shall be preserved by the election board for 2 years. The costs incurred by the election board in administering the election shall be paid from the Essex regional retirement system administration fund.

(j) The group insurance commission shall make available to board members and employees of the Essex regional retirement board health, life and disability benefits and board members and employees shall be eligible to participate in all benefits administered by the group insurance commission. The costs thereof, including any administrative costs incurred by the group insurance commission, shall be borne by the employees and board members and the regional retirement system.

Any benefits provided, prior to the abolition of county government, to employees and retirees of a regional retirement system that are not available through the group insurance commission may be provided to employees and retirees through the Essex regional retirement system; provided, however, that the system is fully reimbursed, in the case of retirees, for the cost of the benefits, and, in the case of employees, is reimbursed in a percentage equal to that of the percentage paid by state employees for similar benefits.

(k) If the public employment retirement administration commission makes a written finding that the retirement board has violated or neglected to comply with chapter 32 or the rules and regulations promulgated by the public employee retirement administration commission, in a manner that substantially impacts the duties or obligations of the board, the commission may appoint a receiver to oversee the retirement board. The receiver shall be authorized to take or refrain from taking any action in order to ensure that the system is managed with reasonable care, skill, prudence and diligence. The action may include, but shall not be limited to, the following: (i) transfer of assets to the PRIT Fund; (ii) removal of a board member; (iii) appointment of a board member; (iv) termination of a contract; (v) approval or denial of retirement benefits; (vi) employment or termination of employees; and, (vii) conduct a fiduciary audit.

Corporate Election Advertising

SECTION 34. Chapter 55 of the General Laws is hereby amended by inserting after section 18F, inserted by section 43 of chapter 28 of the acts of 2009, the following section:-

Section 18G. An independent expenditure or electioneering communication which is transmitted through paid radio, television or internet advertising shall include a statement disclosing the identity of the individual, corporation, group or association paying for the advertisement. If the independent expenditure or electioneering

communication is a radio or television advertisement, the advertisement shall include a statement by the individual paying for the advertisement in which the person acknowledges that he paid for the message and his city or town of residence. If the radio or television advertisement is paid for by a corporation, group, association or a labor union, the following statement shall be made by the chief executive officer of the corporation, the chairman or principal officer of the group or association or the chief executive or business manager of a labor union: "I am _____ (name) the _____ (office held) of _____ (name of corporation, group, association or labor union) and _____ (name of corporation, group, association or labor union) approves and paid for this message." Such statements in television advertisements shall be conveyed by an unobscured, full-screen view of the person making the statement. If an independent expenditure or electioneering communication is transmitted through internet advertising, the statement shall appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement.

Whoever violates this section shall be punished by imprisonment in the house of correction for not more than 1 year or by a fine of not more than $10,000, or both.

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HOUSE . . . . . No. 3327

Message from His Excellency the Governor recommending legislation relative to financing improvements to the Commonwealth's transportation system. March 13, 2013.

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

March 13, 2013.

To the Honorable Senate and House of Representatives:

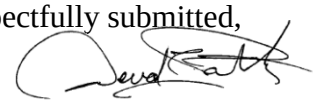
Lieutenant Governor Murray and I are pleased to file this capital authorization bill to implement The Way Forward: A 21st Century Transportation Plan.

In addition to responsibly paying for our daily operations, the 21st century plan calls for a significant infusion of capital investment funds. The bill I am filing today invests $13.7 billion over ten years to address a backlog of deferred maintenance and strategically improve our transportation system to reduce congestion on our roads, curb delays and minimize crowding on our trains and buses, and improve customer service. In addition, this bill continues funding our current investments identified in the statewide road and bridge program identified in the Fiscal Year 2013-2017 Capital Investment Plan. In total, the bill authorizes $19 billion of capital investment in our transportation system. Taken together, this legislation represents our commitment to a 21st century transportation system for the Commonwealth.

These investments will create jobs and economic development in every region of the Commonwealth. Over the next ten years, these funds will give our residents the transportation system they want, have asked for and deserve. The transportation investment bill, to be funded by both existing revenues and additional revenues through passage of tax reform, is a reflection of a choice. To support the transportation system our residents and economy need and deserve, we must finance it honestly and sustainably. This requires raising additional revenues to support additional, high-yield public investments in transportation as well as in education and innovation.

In the long run, these investments funded by the choices we make allow us to be responsible today and for the next generation.

Respectfully submitted,



DEVAL L. PATRICK,
Governor.

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The Commonwealth of Massachusetts

In the Year Two Thousand Thriteen.

AN ACT FINANCING IMPROVEMENTS TO THE COMMONWEALTH'S TRANSPORTATION SYSTEM.

Whereas, the deferred operation of this act would tend to defeat its purposes, which is to forthwith finance improvements to the commonwealth's transportation system, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. To provide for a program of transportation development and improvements, the sums set forth in sections 2 to 2G, inclusive, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds; provided, that the amounts specified in an item or for a particular project may be adjusted in order to facilitate projects authorized in this act. The sums appropriated in this act shall be in addition to any amounts previously appropriated and made available for these purposes.

SECTION 2.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Highway Division

6121-1314 For projects on the interstate and non-interstate federal highway system; provided, that funds may be expended for the costs of these projects including, but not limited to, the nonparticipating portions of these projects and the costs of engineering and other services essential to these projects; provided further, that notwithstanding this act or any other general or special law to the contrary, the department shall not enter into any obligations for projects which are eligible to receive federal funds under this act unless state matching funds exist which have been specifically authorized and are sufficient to fully fund the corresponding state portion of the

federal commitment to fund these obligations; and provided further, that the department shall only enter into obligations for projects under this act based upon a prior or anticipated future commitment of federal funds and the availability of corresponding state funding authorized and appropriated for this use by the general court for the class and category of project for which this obligation applies $2,400,000,000

SECTION 2A.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Highway Division

6121-1317 For the design, construction and repair of, or improvements to, non-federally-aided roadway and bridge projects and for the nonparticipating portion of federally-aided projects; provided, that the department may use these funds for the purchase and rehabilitation of facilities, heavy equipment and other maintenance equipment; provided further, that not less than $429,755,000 shall be expended for the design, construction and repair of, or improvements to pedestrian, bicycle and multi use pathways; and provided further, that the amounts specified in this item or for a particular project may be adjusted in order to facilitate projects relating to the design, construction, repair or improvement to non-federally-aided roadway projects.....$4,366,755,000

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENT

Department of Conservation and Recreation

2890-7020 For the design, construction, reconstruction, repair, improvement, or rehabilitation of department of conservation and recreation parkways, boulevards, and related appurtenances and equipment including, but not limited to, the costs of engineering and other services for those projects rendered by department of conservation and recreation consultants; provided, that all work funded by this item shall be carried out according to standards developed by the department of conservation and recreation pursuant to historic parkways preservation treatment guidelines to protect the scenic and historic integrity of the bridges and parkways under its control……..$250,000,000

SECTION 2B

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Local Aid

6122-1323 For the construction and reconstruction of town and county ways as described in clause (b) of the second paragraph of section 4 of chapter 6C of the General Laws; provided, that a city or town shall comply with the procedures established by the Massachusetts Department of Transportation; provided further, that a city or town may appropriate for these projects amounts not in excess of the amount provided to the city or town under this item, preliminary notice of which shall be provided by the department to the city or town not later than April 1 of each year; provided further, that the appropriation shall be considered as an available fund upon approval of the commissioner of revenue under section 23 of chapter 59 of the General Laws; and provided further, that the commonwealth shall reimburse a city or town under this item subject to the availability of funds as provided in section 9B of chapter 29 of the General Laws, after receipt by the department of a request for reimbursement from the city or town, which request shall include certification by the city or town that actual expenses have been incurred on projects eligible for reimbursement under this item, and that the work has been completed to the satisfaction of the city or town according to the specifications of the project and in compliance with applicable laws and procedures established by the department; and provided further, that an amount not to exceed $50,000,000 may be used for the design and acquisition of a town and county ways pavement management system.....$3,411,014,530

SECTION 2C.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Rail and Transit Division

6622-1305 For the purposes of chapter 161B of the General Laws, including the purchase and rehabilitation of rolling stock, related assets and support equipment necessary to safely serve transit passengers, construction and rehabilitation of regional transit authority operations and passenger facilities, and purchase of related appurtenances and tools.....$500,000,000

6622-1382 For the purposes of implementing the mobility assistance program under section 13 of chapter 637 of the acts of 1983 and regional intercity bus and intermodal service; provided, that funds may also be used for transportation planning, design, permitting, acquisition of interests in land and engineering for bus and other transit projects ……..$24,000,000

6622-1380 For the purpose of implementing rail improvements under chapter 161C of the General Laws; provided, that funds may also be used for transportation planning, design, permitting, acquisition of interests in land and engineering for rail projects, including the industrial rail access program.....$80,000,000

SECTION 2D.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Massachusetts Bay Transportation Authority

6621-1308 For the purpose of implementing rail improvements under chapter 161C of the General Laws; provided, that funds may be used for transportation planning, design, permitting and engineering, right-of-way acquisition, acquisition of interests in land, vehicle procurement, construction, construction of stations, signals and electrical systems, and for heavy rail, light rail and bus projects which projects shall include the Red Line, Orange Line, Green Line, and system-wide bus service; and provided further, that the department may use these funds for the purchase and rehabilitation of heavy equipment and other maintenance equipment …….....$3,382,000,000

SECTION 2E.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Aeronautics Division

6820-1301 For the implementation of the airport improvement program under chapter 6C of the General Laws……$178,000,000

SECTION 2F.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Registry of Motor Vehicles Division

6420-1317 For the implementation of the registry of motor vehicles modernization and improvement program under chapter 6C of the General Laws……..……$150,000,000

SECTION 2G.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Rail and Transit Division

6622-1381 For the purpose of implementing South Coast Rail improvements; provided, that funds may be used for transportation planning, design, permitting and engineering, acquisition of interests in land, vehicle procurement, construction, construction of stations, and right-of-way acquisition.....$1,791,483,000

6622-1382 For the purpose of implementing the Green Line Extension improvements; provided, that funds may be used for transportation planning, design, permitting and engineering, acquisition of interests in land, vehicle procurement, construction, construction of stations, and right-of-way acquisition.....$1,327,517,000

6622-1383 For the purpose of implementing South Station improvements; provided, that funds may be used for transportation planning, design, permitting and engineering, acquisition of interests in land, vehicle procurement, construction, construction of stations, and right-of-way acquisition.....$850,000,000

6622-1384 For the purpose of implementing rail improvements under chapter 161C of the General Laws; provided, that funds may be used for transportation planning, design, permitting and engineering, acquisition of interests in land, vehicle procurement, construction, construction of stations and right-of-way acquisition for rail projects, including Springfield to Worcester service, Boston to Cape Cod service and Pittsfield to New York City service ……..…$497,000,000

SECTION 2H.

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MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

Office of the Secretary

6720-1307 For the acquisition of information technology and related expenses including, but not limited to, renovation of the operations center and intelligent transportation systems and the development of an asset management system required under section 6 of chapter 6C of the General Laws ……..…….$146,500,000

SECTION 3. To meet the expenditures necessary in carrying out section 2, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $432,000,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 4. To meet the expenditures necessary in carrying out section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $4,616,755,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor

makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 5. To meet the expenditures necessary in carrying out section 2B, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $3,411,014,530. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 6. To meet the expenditures necessary in carrying out section 2C, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $604,000,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 7. To meet the expenditures necessary in carrying out section 2D, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an

amount to be specified by the governor from time to time but not exceeding, in the aggregate, $3,382,000,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 8. To meet the expenditures necessary in carrying out section 2E, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $178,000,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 9. To meet the expenditures necessary in carrying out section 2F, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $150,000,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general

court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 10. To meet the expenditures necessary in carrying out section 2G, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $3,802,241,500. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2053. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 11. To meet the expenditures necessary in carrying out section 2H, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $146,500,000. All bonds issued by the commonwealth under this section shall be designated on their face, The Way Forward Transportation Improvement Act of 2013, and shall be issued for a maximum term of years, not exceeding 20 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2043. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Unless the

governor makes a request under section 20 of chapter 29 of the General Laws, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 12. Notwithstanding any general or special law to the contrary, in carrying out sections 2 to 2H, inclusive, and all other provisions of this act, the Massachusetts Department of Transportation may enter into contracts, agreements, or transactions that may be appropriate with other federal, state, local or regional public agencies or authorities. The contracts, agreements, or transactions may relate to such matters as the department shall determine including, without limitation, the research, design, layout, construction, reconstruction or management of construction of all or a portion of these projects. In relation to any such contracts, agreements, or transactions the department may advance monies to these agencies or authorities, without prior expenditure by the agencies or authorities, and the agencies and authorities may accept monies necessary to carry out these agreements, but the department shall certify to the comptroller the amounts so advanced, and these agreements shall contain provisions satisfactory to the department for the accounting of monies expended by any other agency or authority. All monies not expended under these agreements shall be credited to the account of the department from which they were advanced.

SECTION 13. (a) Notwithstanding any other general or special law to the contrary, the Massachusetts Department of Transportation shall expend the sums authorized in sections 2, 2A, and 2B for the following purposes: projects for the laying out, construction, reconstruction, resurfacing, relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or facilities, on- and off-street bicycle projects, sidewalks, telecommunications, parking facilities, auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other crossings, traffic safety devices on state highways and on roads constructed under clause (b) of the second paragraph of section 4 of chapter 6C of the General Laws, highway or mass transportation studies, including, but not limited to, traffic, environmental or parking studies, the establishment of school zones under section 2 of chapter 85 of the General Laws, improvements

on routes not designated as state highways without assumption of maintenance responsibilities and projects to alleviate contamination of public and private water supplies caused by the department's storage and use of snow removal chemicals which are necessary for the purposes of highway safety and for the relocation of persons or businesses or for the replacement of dwellings or structures including, but not limited to, providing last resort housing under federal law and any functional replacement of structures in public ownership that may be necessary for the foregoing purposes and for relocation benefits to the extent necessary to satisfy the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., Pub. L. 97-646, 84 Stat. 1864 (1971), and to sell any structure the title to which has been acquired for highway purposes. Environmental studies conducted under this subsection may include an assessment of both existing and proposed highway rest stop facilities to determine the cost-effectiveness of sanitary facilities that use zero pollution discharge technologies, including recycling greywater systems. When dwellings or other structures are removed in furtherance of any of these f projects, the excavations or cellar holes remaining shall be filled in and brought to grade within 1 month after the removal. In planning projects funded by said section 2A, consideration shall be made, to the extent feasible, to accommodate and incorporate provisions to facilitate the use of bicycles and walking as a means of transportation. Nothing in this section shall be construed to give rise to enforceable legal rights in any party or a cause of action or an enforceable entitlement as to the projects described in this section.

(b) Funds authorized in section 2A shall, except as otherwise specifically provided in this act, be subject to the first paragraph of section 6 and sections 7 and 9 of chapter 718 of the acts of 1956, if applicable, and, notwithstanding any general or special law to the contrary, may be used for the purposes stated in this act in conjunction with funds of cities, towns and political subdivisions.

(c) The Massachusetts Department of Transportation may expend funds made available by this act to acquire from a person by lease, purchase, eminent domain under chapter 79 of the

General Laws or otherwise, land or rights in land for parking facilities adjacent to a public way to be operated by the department or under contract with an individual; expend funds made available by this act for the acquisition of van-type vehicles used for multi-passenger, commuter-driven carpools and high-occupancy vehicles including, but not limited to, water shuttles and water taxis; and, under all applicable state and federal laws and regulations, exercise all powers and do all things necessary and convenient to carry out the purposes of this act.

(d) In carrying out this section, the Massachusetts Department of Transportation may enter into contracts or agreements with cities to mitigate the effects of projects undertaken under this act and to undertake additional transportation measures within the city and may enter into contracts, agreements or transactions with other federal, state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions that may be necessary to implement these contracts or agreements with cities. Cities and other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions may enter into these contracts, agreements or transactions with the department. In relation to these agreements, the department may advance to these agencies, organizations or authorities, without prior expenditure by the agencies, organizations or authorities, monies necessary to carry out these agreements, but the department shall certify to the comptroller the amount so advanced, and all monies not expended under these agreements shall be credited to the account of the department from which they were advanced. The department shall report to the house and senate committees on ways and means on any transfers completed under this subsection.

SECTION 14. Notwithstanding any other general or special law to the contrary, the Massachusetts Department of Transportation shall take all necessary actions to secure federal highway or transportation assistance which is or may become available to the department including, but not limited to, actions authorized under or in compliance with Title 23 of the United States Code, the Surface Transportation Act of 1987, Pub. L. 100-17, the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, the Transportation Equity Act

for the 21st Century, Pub. L. 105-178, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law 110-53 and any successor acts or reauthorizations of those acts, and actions such as filing applications for federal assistance, supervising the expenditure of funds under federal grants or other assistance agreements and making any determinations and certifications necessary or appropriate to the foregoing. If a federal law, administrative regulation or practice requires an action relating to federal assistance to be taken by a department, agency or other instrumentality of the commonwealth other than the Massachusetts Department of Transportation, the other department, agency or instrumentality shall take such action.

SECTION 15. Notwithstanding any other general or special law to the contrary, all construction contracts funded in whole or in part by the funds authorized by this act shall include a price adjustment clause for each of the following: fuel, both diesel and gasoline, asphalt, concrete and steel. A base price for each material shall be set by the awarding authority or agency and included in the bid documents at the time a project is advertised. The awarding authority or agency shall also identify in the bid documents the price index to be used for each material or supply. The adjustment clause shall provide for a contract adjustment to be made on a monthly basis when the monthly cost change exceeds plus or minus 5 per cent.

SECTION 16. Notwithstanding any other general or special law to the contrary, section 61 and sections 62A to 62I, inclusive, of chapter 30, chapter 91 and section 40 of chapter 131 of the General Laws shall not apply to bridge projects of the Massachusetts Department of Transportation and the Massachusetts Bay Transportation Authority for the repair, reconstruction, replacement or demolition of existing state highway, authority and municipally-owned bridges, including the immediate approaches necessary to connect the bridges to the existing adjacent highway and rail system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced, but said section 61 and said sections 62A to 62I, inclusive, of said chapter 30 shall apply to the repair, reconstruction,

replacement or demolition project where the project requires a mandatory environmental impact report under 301 CMR 11.00, and all work shall be subject to the requirements of the then current edition of the Massachusetts Department of Transportation's Stormwater Handbook as approved by the department of environmental protection under applicable law. Notice shall be published in the Environmental Monitor of any application to the department of environmental protection for a water quality certification, and the work shall be subject to performance standards prescribed by the department of environmental protection under section 401 of the Federal Clean Water Act if applicable to the project. Notwithstanding any other provision of this section, said section 61 and said sections 62A to 62I, inclusive, of said chapter 30, said chapter 91 and said section 40 of said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing of the Charles river for the Central Artery/Tunnel Project. If any state highway, authority or municipal bridge crosses over a railroad right-of-way or railroad tracks, the department or authority, as applicable, shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the bridge, but the department and the authority and their agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for purposes that the department or authority may consider necessary or convenient to carry out this section. If a flagman is needed to carry out the section, the railroad company, railway company or its assigns shall provide the flagman, the cost which shall be borne by the bridge project except in the case of a bridge transferred under chapter 634 of the acts of 1971. For the purposes of this section, "bridge" shall include any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility or other area. Any project exempted from any law under this section shall be subject to the public consultation process required by the then current version of the Massachusetts Department of Transportation's project development and design guidebook.

SECTION 17. Chapter 6C of the General Laws, as appearing in the 2010 Official Edition is hereby amended by striking out section 44 and inserting in place thereof the following section:-

Section 44. (a) The division of highways may provide functional replacement of real property in public ownership whenever the division has acquired such property, in whole or in part, under this chapter or when such property is significantly and adversely affected as a result of the acquisition of property for a highway or highway-related project and whenever the division determines that functional replacement is necessary and in the public interest. For the purposes of this section, "functional replacement" shall mean the replacement, pursuant to chapter 7, requiring authorization of the general court prior to disposition of real property, including either land or facilities thereon, or both, which shall provide equivalent utility. For the purposes of this section "real property in public ownership" shall mean any present or future interest in land, including rights of use, now existing or hereafter arising, held by an agency, authority, board, bureau, commission, department, division or other unit, body, instrumentality or political subdivision of the commonwealth. This section shall not constitute authorization by the general court as required by said chapter 7.

(b) Whenever the division determines it is necessary that a utility or utility facility, as defined under federal law, be relocated because of construction of a project which is to be reimbursed federally, in whole or in part, or which is to be paid by the commonwealth, in whole or in part, such facility shall be relocated by the division or by the owner thereof in accordance with an order from the division. Failure to comply with an order from the division shall be subject to enforcement under chapter 81. The division shall reimburse the owner of such utility or utility facility for the cost of relocation subject to the limitations in subsection (e) and in accordance with the following formula: for any utility facility that is to be reimbursed federally, in whole or in part, and for any utility facility that does not qualify for federal reimbursement, the division shall reimburse the owner at least 50 per cent of the costs of relocating the utility facility.

(c) Any relocation of facilities carried out under this section which is not performed by employees of the owner shall be subject to sections 26 to 27F inclusive of chapter 149.

(d) Notwithstanding any general or special law to the contrary, any utility facility that is required to be relocated because of the construction of a project federally funded under the Federal-Aid Highway Act of 1982 and the Federal-Aid Highway Act of 1987 may be relocated temporarily above ground during the construction of the project.

(e) A utility relocation shall be eligible for reimbursement under this section only if it is completed to the satisfaction of the division within target dates established by the division and in accordance with design criteria set forth by the division for the relocation in a manner that facilitates the timely completion of the affected project.

SECTION 18. Section 5 of chapter 161A of the General Laws, as so appearing, is hereby amended by striking out subsection (l) and inserting in place thereof the following subsection:-

(l) Whenever the authority determines it is necessary that a utility or utility facility, as defined under federal law, be relocated because of construction of a project which is to be reimbursed federally, in whole or in part, or which is to be paid by the commonwealth, in whole or in part, such facility shall be relocated by the authority or by the owner thereof in accordance with an order from the authority. The authority shall reimburse the owner of such utility facility for the cost of relocation subject to the limitations in paragraph (e) and in accordance with the following formula: for any utility facility that is to be reimbursed federally, in whole or in part, and for any utility facility that does not qualify for federal reimbursement, the authority shall reimburse the owner at least 50 per cent of the costs of relocating the utility or utility facility.

(i) Any relocation of facilities carried out under this section which is not performed by employees of the owner shall be subject to sections 26 to 27F, inclusive, of chapter 149.

(ii) Notwithstanding any general or special law to the contrary, any utility facility that is required to be relocated because of the construction of a project federally funded under the

Federal-Aid Highway Act of 1982 and the Federal-Aid Highway Act of 1987 may be relocated temporarily above ground during the construction of the project.

SECTION 19. Appropriations made in this act shall be available for expenditure in the 10 fiscal years following June 30 of the calendar year in which the appropriation is made and any portion of such appropriation representing encumbrances outstanding on the records of the comptroller's bureau at the close of such tenth fiscal year may be applied to the payment thereof any time thereafter. The unencumbered balance shall revert to the commonwealth at the close of such tenth fiscal year.

SECTION 20. The secretary of administration and finance and secretary of transportation shall submit a report on the progress of any projects funded under this act and included in the department's five-year capital investment plan to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means, and the senate and house chairs of the joint committee on bonding, capital expenditures and state assets. The report shall include, but not be limited to: the previous year planned spending, previous year spending, current year planned spending, current year spending to date, original estimated total project cost, project description and location of the project. The report shall be submitted on June 30 and December 31 of each year for a period of 8 years after the effective date of this act.

SECTION 21. Notwithstanding any general or special law to the contrary, the unexpended balances of all capital accounts authorized in chapter 86 of the acts of 2008, chapter 233 of the acts of 2008, chapter 303 of the acts of 2008, chapter 10 of the acts of 2011, chapter 133 of the acts of 2012 and chapter 242 of the acts of 2012 which otherwise would revert on June 30, 2013, but which are necessary to fund obligations during fiscal year 2014, are hereby re-authorized through June 30, 2014.

SECTION 22. The secretary of transportation may authorize the transfer of funds from items of appropriation within individual sections of this bill to another item of appropriation within the

same section of this bill. The aggregate amount of all such transfers shall not exceed $200,000,000 in a single fiscal year.

HOUSE . . . . . No. 40

Message from His Excellency the Governor recommending legislation relative to modernizing licensing operations at the Division of Professional Licensure. January 7, 2013.

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

DEVAL L. PATRICK

GOVERNOR

TIMOTHY P. MURRAY

LIEUTENANT GOVERNOR

January 7, 2013.

To the Honorable Senate and House of Representatives:

I am filing today for your consideration the attached legislative proposal, "An Act Modernizing Licensing Operations at the Division of Professional Licensure."

Under various statutes enacted over many years, the Division of Professional Licensure (DPL) currently oversees 31 boards of registration for licensees in a wide range of trades and professions. Accountants, architects, barbers, electricians, engineers, funeral directors, massage therapists, plumbers, psychologists, social workers and veterinarians are just some of the professionals licensed by DPL boards. The primary purpose of a professional licensing board is to protect the public by licensing qualified individuals and businesses, and by fair and consistent enforcement of the licensing laws and regulations.

Through our statewide regulatory reform initiative we have identified a number of opportunities to update or, in some cases, eliminate licensing provisions without compromising public safety. To this end, the legislation I am filing today will modernize DPL's operations by ensuring our licensing requirements more properly reflect the circumstances and needs of today's consumers and businesses.

In sum, the legislation combines the licensing of barbers and electrologists under a single Cosmetology and Barbering Board; puts a cap on the amount of the fee a board can charge a former licensee for re-entry into the profession; eliminates the Board of Registration of Radio and Television Technicians; eliminates obsolete language pertaining to appointment and quorum

requirements, board staffing and compensation; adds certain clarifying language; and replaces mandates for costly mailing with requirements for posting of information on a publicly available website.

DPL has also taken steps to modernize its regulations over the past year, and later this year DPL will be rolling out an e-Licensing initiative. This legislation will enable DPL to further improve its work in fairly and responsibly overseeing licensure for professionals in Massachusetts. Accordingly, I urge your prompt and favorable consideration of this bill.

Respectfully submitted,

DEVAL L. PATRICK,

HOUSE . . . . . No.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

AN ACT MODERNIZING LICENSING OPERATIONS AT THE DIVISION OF PROFESSIONAL LICENSURE.

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

SECTION 1. Section 12C of chapter 13, as appearing in the 2010 Official Edition, is hereby amended by striking out the words "There shall be paid by the commonwealth to the secretary of the board a salary of five hundred dollars, and his necessary expenses incurred in the discharge of his official duties, and to each of the other members thereof a salary of two hundred and fifty dollars, and his necessary expenses so incurred; provided, that the salaries and expenses of the members of the board shall not be in excess of the receipts for registration." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 2. Section 18 of said chapter 13, as so appearing, is hereby amended by striking out the words "There shall be paid by the commonwealth to the secretary of the board a salary of seven hundred and fifty dollars, and to each other member thereof a salary of five hundred and seventy-five dollars, and to each member thereof his necessary traveling expenses actually

incurred in attending the meetings of the board and such other expenses of the board as are incurred under section sixteen or seventeen or under sections sixty-six to seventy-three, inclusive, of chapter one hundred and twelve." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 3. Section 28 of said chapter 13, as so appearing, is hereby amended by striking out the words "There shall be paid by the commonwealth to the secretary a salary of fifteen hundred dollars and his necessary traveling and contingent expenses, not exceeding three hundred dollars, actually incurred in attending to the necessary work of the board, and to each of the other members of the board a salary of two hundred and fifty dollars and his necessary traveling and contingent expenses actually incurred in attending the meetings thereof." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 4. Section 31 of said chapter 13, as so appearing, is hereby amended by striking out the words "There shall be paid by the commonwealth to the chairman of said board the sum of twenty-five hundred dollars annually, to the secretary of said board the sum of eighteen hundred and seventy-five dollars, and to each of the other members of said board the sum of twelve hundred and fifty dollars, and to all members of the board their necessary traveling and other expenses actually expended in attending meetings thereof. Said board may expend any sum not exceeding five hundred dollars annually for purposes of instruction and dissemination of new and useful knowledge among and for the benefit of registered embalmers and funeral directors;

provided, that such salaries and expenses shall not be in excess of the receipts for registration and renewals thereof received by the state treasurer from the board." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 5. Section 32 of said chapter 13, as so appearing, is hereby amended by striking out the words "The board shall appoint an executive secretary who shall be a wage earner, a citizen of the commonwealth, and a practical electrician of at least ten years' experience in such installation. The board may also appoint, subject to chapter thirty-one, such other clerical and technical assistants as may be necessary to discharge its duties under chapter one hundred and forty-one and shall establish their duties. The members, ex officiis, shall receive no compensation for their services under chapter one hundred and forty-one, but the appointive members shall each receive for their services thereunder a salary of seven hundred and fifty dollars. The board may expend for the salaries of the appointive members and of the secretary and other employees and for necessary traveling and other expenses for themselves and their employees such sums as are annually appropriated therefor." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 6. Section 35 of said chapter 13, as so appearing, is hereby amended by striking out the words "Each member of the board shall receive fifty dollars for each day or part of a day actually spent in the performance of his duties, but in any one year not more than three thousand dollars shall be paid to any member. Each member shall be reimbursed for his actual and

necessary expenses incurred in the discharge of his official duties. The board shall employ an executive secretary, who shall be a certified public accountant, and shall determine his salary. The executive secretary shall not be subject to the provisions of sections forty-five to fifty, inclusive, of chapter thirty, or to the provisions of chapter thirty-one. The board may appoint such committees or persons to advise it or assist it in such administration as it may see fit. It may seek counsel to advise and assist it as may be provided by the attorney general." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 7. Section 36 of said chapter 13, as so appearing, is hereby amended by striking out the words "Said board shall appoint an executive secretary who is a citizen of the commonwealth and has had at least ten years' continuous practical experience as a plumber. He shall receive his necessary traveling expenses incurred in the performance of his duties. No member of said board shall be eligible for appointment as secretary."

SECTION 8. Section 38 of said chapter 13, as so appearing, is hereby amended by striking out the words "There shall be paid by the commonwealth to the chairman of the examiners a salary of seven hundred and fifty dollars and to each other member thereof a salary of five hundred dollars, and to each member thereof his necessary traveling expenses actually incurred in attending meetings of the examiners. The division of professional licensure shall furnish the examiners with such clerical assistance as may be necessary." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 9. Sections 39 to 41, inclusive, of said chapter 13 are hereby repealed.

SECTION 10. Said chapter 13 is hereby amended by striking out section 42 and inserting in place thereof the following:-

Section 42. There shall be a board of registration of cosmetology and barbering to consist of 9 members to be appointed by the governor, 1 of whom shall be designated as chairperson by a majority vote of the board. Upon initial appointment to said board, 3 members shall continue in office for 1 year, 3 members shall continue in office for 2 years and 3 members shall continue in office for 3 years. Successors shall be appointed for terms of 3 years; provided, however, that any person designated to fill a vacancy shall be appointed only for the unexpired term of the board member so replaced. Upon the expiration of a term of office, a board member may continue to serve until a successor has been appointed and qualified.

The governor may remove the chairperson or other member of said board for neglect of duty or malfeasance or upon a conviction of a felony or crime of moral turpitude. No board member shall participate in any matter before said board in which said member has a pecuniary interest, personal bias, or other conflict. No 2 members of said board, while in office, shall be interested in a cosmetology establishment in the same town. A board member in office on the effective date of this section shall continue to serve as a voting, full time member of said board until such time as his term of office expires.

The governor shall appoint members to the board from among candidates who meet the following qualifications:- (a) 8 members who shall be licensees of the board, in compliance with sections 87T to 87JJ, inclusive, of chapter 112, 1 of whom shall own a licensed cosmetology school for at least 5 years, 1 of whom shall be a cosmetologist for at least 5 years, 1 of whom

shall be a licensed cosmetologist and shop owner for at least 5 years, 1 of whom shall be a licensed vocational educator from the public sector who has taught cosmetology or barbering for at least 5 years, 2 of whom shall be licensed master barbers for at least 5 years, 1 of whom shall be a licensed electrologist for at least 5 years, and 1 of whom shall be a licensed aesthetician for at least 5 years; and (b) 1 member shall be a representative of the general public and shall have no direct affiliation with the practice of cosmetology, barbering or electrology.

SECTION 11. Section 43 of said chapter 13 is hereby repealed.

SECTION 12. Section 44 of said chapter 13 is hereby repealed.

SECTION 13. Section 44D of said chapter 13, as so appearing, is hereby amended by striking out the words “Each member of the board shall receive eighteen dollars and seventy-five cents for each day or portion thereof spent in the performance of his official duties; provided, that the total sum paid to any member thereof shall not exceed seven hundred and fifty dollars in any one year; and, in addition, all proper traveling and incidental expenses actually incurred by him in connection with said duties. The board may appoint such clerks as may be necessary; provided, that the salaries and expenses of the members of the board and its employees, and the expenses of the board, shall not be in excess of the receipts for registration and from other sources that have been received by the state treasurer from the board.” and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 14. Section 46 of said chapter 13, as so appearing, is hereby amended by striking out the words “At all meetings of the board, a quorum shall consist of three members.”

SECTION 15. Section 50 of said chapter 13, as so appearing, is hereby amended by striking out the words “There shall be paid annually by the commonwealth to the secretary of the board a salary of three hundred and seventy-five dollars and to each other member thereof an annual salary of one hundred and twenty-five dollars and to each member the necessary traveling expenses actually incurred in attending the meetings of the board and such other expenses as shall be incurred in the discharge of his duties.” and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 16. Section 53 of said chapter 13, as so appearing, is hereby amended by striking out the words “Each member of the board, other than the employee of the department of public health, shall receive from the commonwealth twelve dollars and fifty cents for each day or portion thereof spent in attending board meetings; and each member shall be paid the necessary traveling expenses actually incurred by him in attending said meetings; provided, that such compensation and expenses shall not in any one year exceed the receipts from registrations and licenses paid to the commonwealth by the board. The board may appoint such employees as may be necessary to carry out its duties and may expend therefor such sums as may be appropriated.” and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 17. Section 57 of said chapter 13, as so appearing, is hereby amended by striking out the words “The board may, subject to chapter thirty-one, employ a secretary and such other clerical and technical assistants as may be necessary to discharge its official duties, shall

establish their duties, and, subject to the provisions of sections forty-five to fifty, inclusive, of chapter thirty, shall fix their compensation which shall be paid by the commonwealth. The commonwealth shall provide the board with adequate office space and shall pay the expenses of the board incurred in the performance of its duties."

SECTION 18. Sections 58 to 60, inclusive, of said chapter 13 are hereby repealed.

SECTION 19. Sections 61 to 63, inclusive, of said chapter 13 are hereby repealed.

SECTION 20. Section 66 of said chapter 13 is hereby amended by striking out the words "All fees received by the secretary of the board and not returned to the applicant shall be paid monthly to the state treasurer. Each member of the board shall receive from the commonwealth fifteen dollars for each day or portion thereof spent in the performance of his official duties. Each member shall be paid the necessary traveling and other expenses actually incurred by him in the performance of said duties." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 21. Section 68 of said chapter 13, as so appearing, is hereby amended by striking out the words "and a secretary who may, but need not, be a member of the board. At all meetings of the board a quorum shall consist of three members."

SECTION 22. Section 72 of said chapter 13, as so appearing, is hereby amended by striking out the words "Each member of the board other than the employee of the department of public health shall receive from the commonwealth ten dollars for each day or portion thereof spent in attending board meetings and each member shall be paid the necessary travelling expenses

actually incurred by him in attending said meetings, provided that such compensation and expenses shall not in one year exceed the receipts from the registrations and licenses. The board may appoint such employees as may be necessary to carry out its duties and may expend therefor such sums as may be appropriated." and inserting in place thereof the following:- The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

SECTION 23. Section 85 of said chapter 13, as so appearing, is hereby amended by striking out the words "Three members of the board shall constitute a quorum to do business, provided at least one speech-language pathologist and one audiologist are present."

SECTION 24. Section 92 of said chapter 13, as so appearing, is hereby amended by striking out the words "One of the appraiser members shall be a state-certified general real estate appraiser, one shall be a state-certified residential real estate appraiser, and one shall be a state-licensed real estate appraiser. One of the real estate appraiser members of the board shall be an assessor in a city or town in the commonwealth." and inserting in place thereof the following:- At least 1 of the appraiser members shall be a state-certified general real estate appraiser, and 1 shall be a state-certified residential real estate appraiser.

SECTION 25. Said section 92 of said chapter 13, as so appearing, is hereby further amended by striking out the words "A quorum of the board shall be five members."

SECTION 26. Said section 92 of said chapter 13, as so appearing, is hereby further amended by striking out the words "The director of the division of registration, with approval of the board, shall appoint an executive secretary to serve the board. The division of professional licensure

shall employ such other clerical and technical assistants as may be necessary to discharge the official duties of the board."

SECTION 27. Section 93 of said chapter 13, as so appearing, is hereby amended by striking out the words "A quorum of the board shall be three members."

SECTION 28. Section 95 of said chapter 13 is hereby repealed.

SECTION 29. Section 60J of chapter 112, as appearing in the 2010 Official Edition, is hereby amended by striking out the words "Copies of such roster shall be mailed to each person so registered, placed on file with the state secretary, and furnished to the public on request." And inserting in place thereof the following:- Such roster shall be posted on a publicly available website.

SECTION 30. Said chapter 112 of the General Laws is hereby amended by inserting after section 65E the following section:-

Section 65F. Notwithstanding any general law or special law to the contrary, the fee for reinstating a lapsed or expired license issued by a board of registration under the supervision of the division of professional licensure shall be no more than the cost of the current renewal fee for 2 missed renewal cycles. This fee for reinstatement is in addition to any applicable late fee.

SECTION 31. Section 81I of said chapter 112, as so appearing, is hereby amended by striking out the words "Copies of such roster shall be mailed to each person so registered, placed on file with the state secretary and furnished to the public upon request." and inserting in place thereof the following:- Such roster shall be posted on a publicly available website.

SECTION 32. Section 81Q of said chapter 112, as so appearing, is hereby amended by striking out the words “if three or more members of the board vote in favor of such reissuance.”

SECTION 33. Sections 87F to 87S, inclusive, of said chapter 112 are hereby repealed.

SECTION 34. Said chapter 112 is hereby amended by striking out sections 87T to 87JJ, inclusive, and inserting in place thereof the following:-

Section 87T. The following words, as used in sections 87T to 87JJ, inclusive, shall have the following meanings:

“Aesthetician”, any person who is licensed by the board to perform aesthetics.

“Aesthetics”, cleansing, stimulating, manipulating, and beautifying of the skin using hands, mechanical, or electrical apparatus or appliances, cosmetic preparations, tonics, lotions, or creams; or performing or offering to perform, with or without compensation, any of the above-mentioned services for the public generally. Aesthetics only includes methods that are minimally invasive and pose a minimal risk to the public’s health as defined by the board. The practice of aesthetics includes holding oneself out as an aesthetician or as someone engaged in the practice of aesthetics or in any manner offering to practice as an aesthetician.

“Barber”, any person who is licensed by the board to perform barbering.

“Barbering”, shaving or trimming the beard, cutting the hair, giving facial and scalp massaging, giving facial and scalp treatments with oils and creams and other preparations made for that purpose, either by hand or mechanical appliances, singing and shampooing the hair or applying any make of hair tonics, or dying the hair, of any person; or performing or offering to perform, with or without compensation, any of the above-mentioned services for the public generally.

The practice of barbering includes holding oneself out as a barber or as someone engaged in the practice of barbering or in any manner offering to practice as a barber.

"Board", the board of registration of cosmetology and barbering established by section 42 of chapter 13.

"Cosmetologist", any person who is licensed by the board to perform cosmetology.

"Cosmetology" the practice of aesthetics, manicuring, and hairdressing for compensation, or performing or offering to perform, with or without compensation, any of the above mentioned services for the public generally. The practice of cosmetology includes holding oneself out as a cosmetologist or as someone engaged in the practice of cosmetology or in any manner offering to practice as a cosmetologist. However, the definition of cosmetology shall not include barbering, make-up artistry, or acts performed as a demonstrator.

"Demonstrator", any person who engages on behalf of a manufacturer, wholesaler, retailer or distributor in demonstrating the use of any technique, machine or other article pertaining to cosmetology or barbering without charge to the person who is subject to such demonstration.

"Electrologist", any person who is licensed by the board to perform electrolysis.

"Electrolysis", the method of removing hair from the human body by the application of an electrical current to the hair-papilla by means of a needle or any other instrument or device to cause decomposition, coagulation or dehydration of the hair-papilla and thus permanently remove the hair or performing or offering to perform, with or without compensation, any of the above-mentioned services for the public generally. The practice of electrolysis includes holding

oneself out as an electrologist or as someone engaged in the practice of electrology or in any manner offering to practice as an electrologist.

"Hairdressing", arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similarly treating the hair of any person, or any combination of any of the foregoing, or performing or offering to perform, with or without compensation, any of the above-mentioned services for the public generally. The practice of hairdressing includes someone engaged in the practice of hairdressing or in any manner offering to practice hairdressing.

"Instructor", any person who is licensed by the board to teach a branch of electrology, barbering, hairdressing, manicuring, or aesthetics in a licensed school.

"Licensee", an individual licensed by the board.

"Manicurist", any person who is licensed by the board to perform manicuring.

"Manicuring", the cutting, trimming, polishing, tinting, coloring or cleansing the nails of any person; or performing or offering to perform, with or without compensation, any of the above-mentioned services for the public generally. The practice of manicuring includes holding oneself our as a manicurist or as someone engaged in the practice of manicuring or in any manner offering to practice as a manicurist.

"School", a school or other institution conducted for the purpose of teaching electrolysis, barbering, manicuring, aesthetics, or hairdressing and/or such of its branches as the board may require.

"Shop", a physical location to which customers come for aesthetics, barbering, cosmetology, electrolysis, hairdressing, and/or manicuring.

Section 87U. The board may require schools to register or report the progress of enrolled students. No fee shall be required for such registration. No student shall practice hairdressing, barbering, electrolysis, manicuring or aesthetics upon any paying customer, and no school shall directly or indirectly make any charge for services in connection with such practice of aesthetics, barbering, cosmetology, electrolysis, hairdressing, or manicuring. A school shall not pay a student for any services rendered by him or her.

Section 87V. The board shall make such uniform rules and regulations as they deem proper for the performance of their duties, the practice of aesthetics, barbering, cosmetology, electrolysis, hairdressing, or manicuring, the operation of shops, and rules governing the education, experience, and or examination requirements for applicants for aesthetician, cosmetologist, electrologist, barbering, or manicurist licenses. The board shall hold frequent examinations in the greater Boston area, and at such other convenient locations as it deems necessary. The board may issue specialty limited licenses within the practice of aesthetics, barbering, cosmetology, electrolysis, hairdressing, and manicuring to the extent necessary for the protection of the public's health, safety, and welfare.

Except as may be necessary for the protection of the public health, safety or morals, the board shall not make any rule or regulation restraining the normal and incidental business of a shop by restricting the retail sale therein of so-called beauty preparations, lotions, salves, toilet articles, jewelry, gift novelties, personal attire and accessories or other articles.

The practice of aesthetics, barbering, electrolysis, hairdressing, and manicuring shall be engaged only in a fixed place or establishment, which place or establishment shall be provided with such

instruments, implements and equipment, and subject to such sanitary regulations and inspection, as said board may prescribe.

Section 87W. Any demonstrator who has had at least 3 months' practical experience as such, and who after application, accompanied by a notarized affidavit from each manufacturer or distributor for whom he is or was employed during such period and the fee as provided in said section 87CC, together with 2 pictures of the applicant, may be licensed by the board as a demonstrator, and thereafter may practice as a demonstrator. Any person who is licensed as a hairdresser, barber, aesthetician, operator or instructor may, upon payment of said fee, be licensed also as a demonstrator, and may thereafter practice as such. Such demonstrations shall be given by a demonstrator only in a licensed shop, in the business quarters of distributors or supply houses in the commonwealth, at professional trade shows or meetings in the presence of licensed shop owners and their employees, or in schools with a licensed instructor in attendance.

Section 87X. No licensee shall include in any advertising, or publish, issue or make, any misrepresentation or false, fraudulent or misleading statements through the press, circulation of advertising matter, radio, television, display signs or otherwise. Section 87Z. The board may license, with or without examination, any individual who has been licensed as an aesthetician, cosmetologist, barber, electrologist, or manicurist under the laws of another state, which, in the opinion of the board, maintains a standard substantially equivalent to that of the commonwealth. The board may require additional education if it determines that the standards required for the licensing in another state are inconsistent with the standards in effect in the commonwealth.

The word "state" as used in this section shall include the District of Columbia, any territory of the United States or foreign country, state or province.

Section 87AA. The board may authorize 1 or more licensees or any person employing 1 or more licensees, upon payment to the board of a fee as provided in section 87CC, to operate a licensed shop. The owner of such shop shall not employ for hire or allow any individual to provide aesthetics, barbering, cosmetology, electrolysis, or manicuring in such shop unless licensed in accordance with sections 87T to 87JJ, inclusive.

Licenses issued hereunder shall be valid only for the location named therein, and shall not be transferable. Upon change of location of a licensed shop, a new license shall be issued to such shop upon payment of the fee provided in section 87CC.

Section 87BB. The board may license any school which it approves, upon payment of a school license fee as provided in section 87CC, and such school license may be renewed upon payment of a renewal fee as provided in said section 87CC; provided, that standards of professional training satisfactory to the board are there maintained and sufficient course is there given. The board shall also issue licenses to all instructors to teach aesthetics, barbering, electrolysis, hairdressing, or manicuring who have adequate experience, education, and meet any examination determined by the board.

No person not licensed as an instructor may instruct in aesthetics, barbering, cosmetology, electrolysis, hairdressing, or manicuring in any licensed school except as authorized by the board.

No person shall be examined as an instructor or licensed as such nor granted a temporary license unless at the time of filing his application for examination he or she has successfully completed a 4-year high school course or possesses the educational equivalent thereof.

The board may make such reasonable rules and regulations as are necessary for the proper conduct of schools, qualifications of instructors, courses of study, and hours of study, and as to standards of professional training.

Section 87CC. The fees for a license issued by the board, or for any renewal thereof, shall be determined by the secretary of administration under section 3B of chapter 7. The director of professional licensure shall determine the renewal cycle and renewal period for all licenses issued by the board. Persons licensed in accordance with these sections shall apply to the board for renewal of their licenses on or before the expiration date, as determined by the director, unless such license was earlier revoked, suspended or canceled as a result of a disciplinary proceeding instituted under this chapter. Applications for renewal shall be made on forms approved by the board and accompanied by payment of a renewal fee, as determined by the secretary of administration under section 3B of chapter 7. All licensing and application fees and civil administrative penalties collected under sections 87T to 87JJ, inclusive, of chapter 112, shall be deposited into the trust fund established in section 35V of chapter 10

Section 87DD. The board may enter and inspect any shop or school in a proper manner at any time during business hours thereof. Whenever a complaint is made to the board that any person has suffered personal injury as a result of the practice of the occupation of aesthetics, barbering, cosmetology, electrology, hairdressing, or manicuring, or that any person has been exposed to a hazard to the public's health, safety, or welfare, or that any contagious or infectious disease has been imparted, at any shop, or that any shop or school is kept in an unsanitary condition, or that any person has been engaged in aesthetics, barbering, cosmetology, electrolysis, hairdressing, or manicuring is in violation of any provision of sections 87T to 87JJ, inclusive, the board shall visit and inspect such, school or place where at such violation is alleged to have occurred, and

enforce the provisions of said sections 87T to 87JJ, inclusive. The board may investigate the standard of professional training at any school, and the sufficiency of the course or courses there given.

Section 87EE. The board shall be under the supervision of the division of professional licensure and shall have all the authority conferred under sections 61 to 65E, inclusive. The board, under such reasonable rules and regulations as it may make, may for cause, including unprofessional conduct, fraud, deceit or misrepresentation in practice or in advertising, habitual drunkenness, gross incompetence, or for violation of any of the provisions of sections 87T to 87JJ, inclusive, or any rule or regulation made thereunder, revoke, suspend, or otherwise discipline any license granted under said sections 87T to 87JJ, inclusive.

Section 87FF. The board may, by a majority vote, again license a person or school whose license has been cancelled, or revoke the suspension of a license under section 87EE, if satisfied that this can be done consistently with the public interest. However, notwithstanding the provisions of this section, failure to pay or appeal an assessed fine shall be considered grounds for the refusal to renew a license under section 13 of chapter 30A.

Section 87GG. Each license granted under sections 87T to 87JJ, inclusive, shall expire upon the date prescribed by or pursuant to section 87CC, and shall be renewed upon the filing of an application therefore, and the payment of the prescribed renewal fee, on or before its expiration. No person licensed under said sections shall engage in the occupation covered by such license until the prescribed renewal fee shall have been paid and renewed license issued. Any licensee whose license has not been renewed within 3 years following the date of expiration thereof shall be entitled to renewal of such license upon filing an application, accompanied by the proper fee

therefore and by passing a practical examination satisfactory to the board. Notwithstanding the foregoing provisions, a person who has at any time been licensed both as an aesthetician, barber, electrologist, or cosmetologist, and as an instructor, if he or she has every 2 years renewed either such license, may reinstate the other without examination even if such other has been lapsed beyond 3 years.

Section 87HH. Any person aggrieved by the refusal of the board to grant, or by its suspension or cancellation of, a license, or by its refusal to again license him or her, may, seek judicial review under section 14 of chapter 30A.

Section 87II. Whoever engages in or follows, or attempts to engage in or follow, the occupation of an instructor or of aesthetics, demonstrating, cosmetology, electrology, hairdressing, barbering or manicuring, unless duly licensed by the board, and whoever conducts, or attempts to conduct, a shop or school not so licensed, and whoever violates any provision of sections 87T to 87HH, inclusive, or any rule or regulation made under authority thereof, shall, in addition to any other penalty prescribed or authorized by said sections, be subject to penalties as proscribed in sections 61 through 65E, inclusive. Upon notice from the board, the board of health or equivalent authority of the several cities and towns of the commonwealth shall terminate any general authorization to conduct business given to a shop or school not so licensed by the Board.

No person shall engage in the practice of electrolysis or hold himself out as a practitioner of, or being able to practice, electrolysis unless he or she is duly licensed by the board or is a qualified physician licensed under the laws of the commonwealth.

Section 87JJ. Sections 87T to 87II, inclusive, shall apply to licensees who are employed by the commonwealth. Nothing in sections 87T to 87II, inclusive, shall be deemed to authorize a

licensee to engage in massage or other occupation requiring a license to the extent such services fall outside the scope of the license issued by the board.

SECTION 35. Section 87KK of said chapter 112 is hereby repealed.

SECTION 36. Sections 87EEE to 87OOO, inclusive of said chapter 112 are hereby repealed.

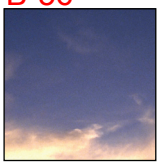
SECTION 37. Sections 87PPP to 87VVV, inclusive, of said chapter 112 are hereby repealed.

SECTION 38. Section 1 of chapter 142 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the definition of "gas fitting" and inserting in place thereof the following:- any work which includes the assembly, design, installation, alteration, and replacement of equipment, appliances, and related accessories which utilize gas as a fuel or raw material to produce light, heat, power, refrigeration, or air conditioning, as well as any piping systems conveying said gas beyond the point of delivery of the gas supplier, gas meter outlet, or regulator. Said work shall also include equipment, appliances, and related accessories utilized for the intake and ventilation of air or other byproducts necessary for the functioning and safe condition of any equipment or appliances utilizing gas as a fuel or raw material.

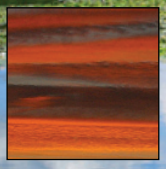
SECTION 39. Section 21 of said chapter 142, as so appearing, is hereby amended by striking out the words "subject to the approval of the department of public health, and".

SECTION 40. Notwithstanding the provisions of sections 9 to 12, inclusive, 18, and 33 to 36, inclusive, all orders, rules and regulations duly made and all licenses and approvals duly granted which are in force immediately before the effective date of this act shall continue in force and shall thereafter be enforced until superseded, revised, rescinded or canceled, in accordance with law, by the board.

SECTION 41. Sections 9 to 12, inclusive, 18, and 33 to 36, inclusive, shall take effect 180 days after the effective date of this act.



MassDEP Streamlining and Regulatory Reform



Governor Deval Patrick has challenged MassDEP to improve its performance and lighten the burden on our businesses and municipalities, while maintaining the strict environmental protection standards that help make Massachusetts a desirable place to live. MassDEP has met this challenge. We have streamlined permitting to meet the Governor's goal of "permitting at the speed of business." We have completed a top-to-bottom review and reform of our regulations, weeding out those that are obsolete or unnecessary, and focusing on the ones that matter the most.

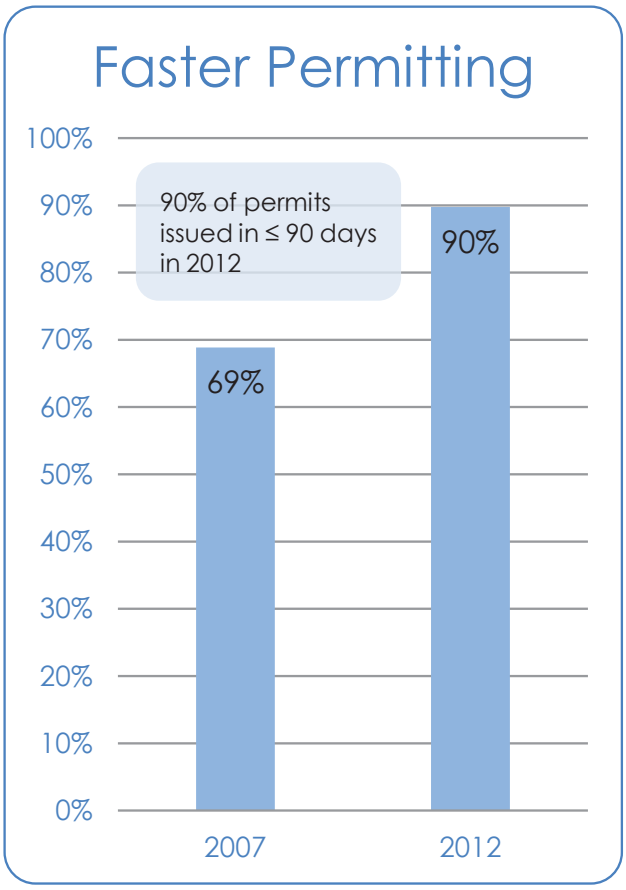
These initiatives have dramatically shortened the time to permit, removed unnecessary barriers to jobs and economic growth, and made MassDEP a national leader in protecting the environment through smarter and better methods.

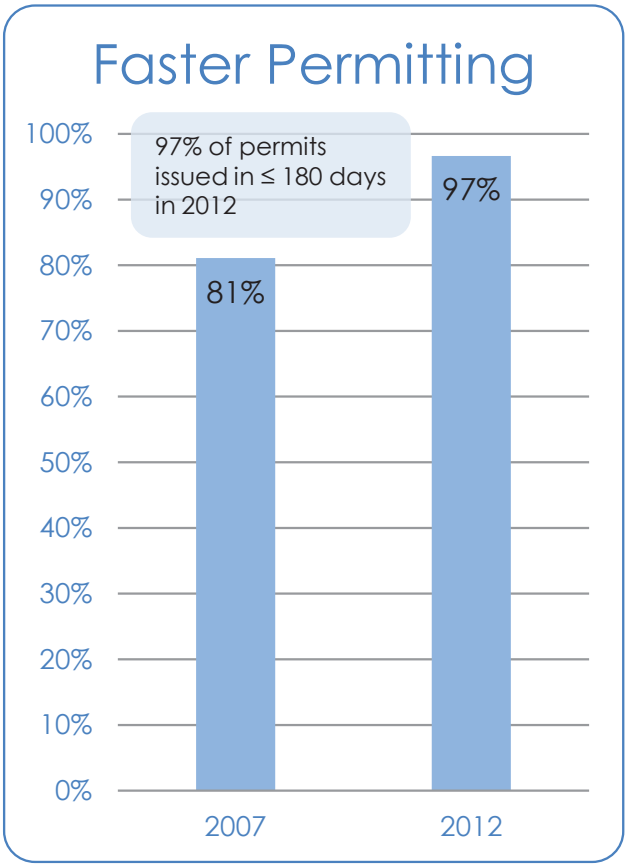
Permit and Appeal Streamlining

Permit Streamlining: In March 2007, Governor Patrick announced his "Regulation at the Speed of Business" Initiative to speed the regulatory decisions that are critical for development projects. Governor Patrick charged MassDEP to:

- Issue 90 percent of permit applications within 180 days or less.
- Reduce MassDEP permitting timelines for most of MassDEP's permits by 20 percent.
- Reform key permit categories, selected because of their significance to economic development opportunities and history of customer concerns about decision process or delays. The targeted categories included: wetlands appeals, air quality permits, Chapter 91 licenses, and groundwater discharge permits.

Streamlining Success: MassDEP delivered on Governor Patrick's Regulation at the Speed of Business Initiative completing all three steps outlined above.





Key Permit Categories

Wetland Appeals: Before 2007, homeowners or businesses conducting work in or near wetlands could expect years of delay waiting for appeals of wetland permits to be resolved. MassDEP streamlined the wetlands appeal process in October 2007 to establish clear deadlines and require appealing parties to present their case early in the process.

These reforms significantly reduced the time to resolve wetlands appeals. Since the reforms went into effect in 2007:

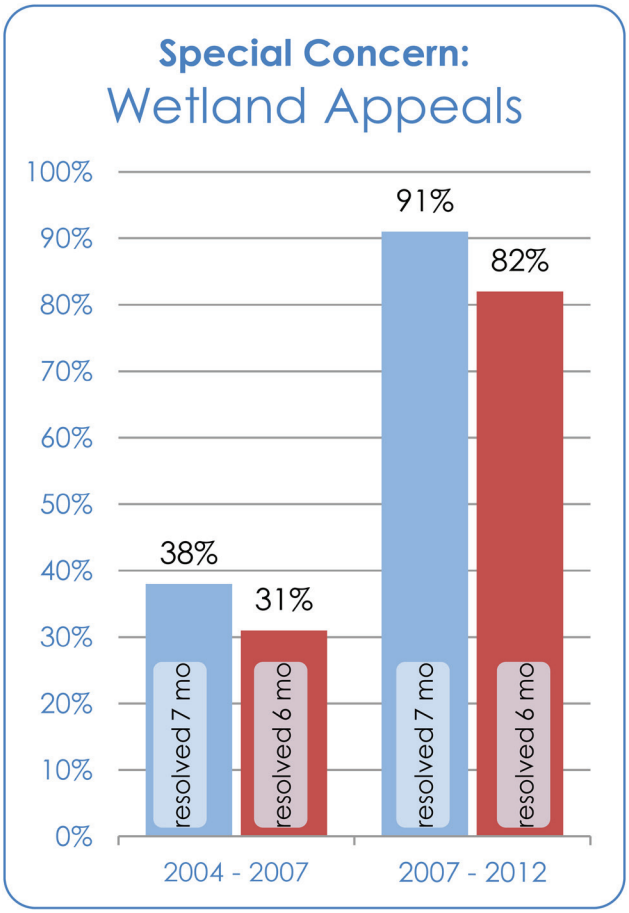
- **91 percent** of wetland appeals since October 2007 were resolved within seven months – in contrast, during the previous three years, only **38 percent** were resolved within this timeframe.
- **82 percent** of cases since October 2007 were resolved within six months – during the previous three years, only **31 percent** were resolved in that timeframe.

Air Permits: These permits are for power plants, manufacturing plants, and others, which emit large quantities of air pollutants. Since FY07, **99 percent** of air permits were issued within the

permit timelines, and 91 percent were issued within 180 days – **82 percent** were issued within 180 days from 2002 through 2007.

Groundwater Discharge Permits: These permits are needed by new businesses that are not connected to a sewer system. Since FY07, 97 percent of Groundwater (GW) permits were issued within the permit timelines and **83 percent** of groundwater discharge permits were issued within 180 days (an improvement from **68 percent** within 180 days during the previous five years). In FY2012 alone, 93 percent of GW permits were issued within 180 days and 76 percent within 90 days, significantly better than FY07, when 71 percent were within 180 days and 32 percent were issued within 90 days.

Chapter 91 Licenses: Chapter 91 licenses govern new projects along the waterfront. Over the past five years, **63 percent** of license decisions were issued within 180 days – only **20 percent** were issued within 180 days during the prior five years.



In FY12, 90 percent of license decisions were issued within 180 days and 80 percent were issued within 90 days – significantly better than the year before the initiative, when 22 percent were issued within 180 days and only 16 percent within 90 days.

These reforms mean that projects that meet our strict environmental standards can go forward on a timely basis. And for those projects that do not meet these standards, the applicant will receive a faster determination so that time and expense is not spent fruitlessly.

MassDEP's Regulatory Reform Initiative

Building on the permit streamlining success, in April 2011, at the Governor's direction, MassDEP launched a broad Regulatory Reform Initiative. The main goal of this far-reaching effort was to boost efficiency so that MassDEP could maintain high standards of environmental protection despite resource constraints, and readying the agency for an increase in permitting activity as we rebound from the recession.

Another important goal was to lighten the regulatory burden on business without lowering environmental protection standards. MassDEP's Regulatory Reform Initiative also fulfills the requirement in the 2010 Act Relative to Economic Development Reorganization for all Massachusetts state agencies to review existing regulations for efficiency improvements.

With help from both business and environmental stakeholders, MassDEP identified more than **20 changes** to its regulations and policies that cut across the agency.

MassDEP then worked closely with external stakeholders to flesh out the regulatory and policy details and develop regulatory proposals necessary to implement these reforms – a total of

16 regulation packages. Those regulations have been published for public comment.

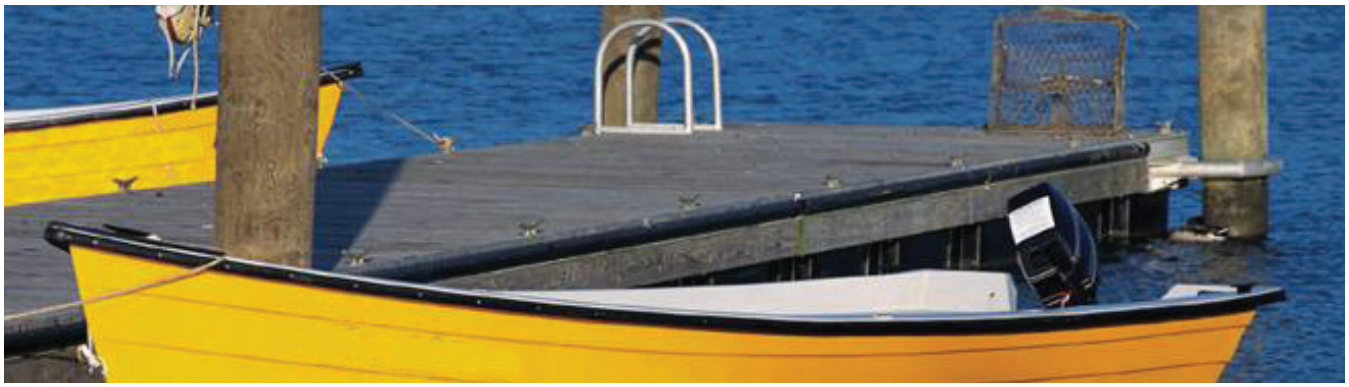
The regulation changes cover a wide array of programs, and generally fall into one or more of the following categories:

- Reducing MassDEP staff time for relatively low-value tasks;
- Avoiding redundant permitting of matters handled well at the local level;
- Using tried-and-true performance standards in lieu of individual permits;
- Promoting environmentally beneficial projects and innovative technology; and
- Lightening regulation by consolidating permit applications, harmonizing notice requirements, and other common sense approaches.

Some examples of the major changes include the following:

- Allowing landowners to "close out" hazardous waste sites by using effective ventilation systems and remote sensing devices to prevent indoor air pollution, thereby encouraging Brownfields redevelopment;
- Combining three different permits for coastal dredging projects into one permit process;
- Allowing businesses that want to pilot new technologies to receive temporary permits that allow them to gather necessary data;
- Eliminating the requirement that businesses obtain a sewer connection permit for discharges into the sewer system, because this permit is already issued at the local level, and MassDEP regulates the discharges out from the sewer system; and
- Allowing homeowners to build small docks and piers without an individual MassDEP permit, as long as the homeowner obtains local approvals and does not interfere with others' use of the waterfront.

Once implemented, these reforms will save hundreds of hours of administrative time per year for MassDEP and allow the agency to focus on the most pressing environmental challenges, such as identifying and remedying the sources of pollution of urban waterways, tapping into the hidden energy value of food waste through the process of anaerobic digestion, and implementing the Governor's goal of reducing greenhouse gas emissions by 25 percent by 2020. These reforms will also promote jobs and economic growth, lighten the regulatory burden, and save significant time and expense for the private sector without, in any way, compromising the Commonwealth's strict environmental protection standards.



MassDEP
Kenneth Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street, Boston, MA 02108

PENSION REFORM

Since taking office in 2007, Governor Patrick has proposed and signed into law three separate pension reform bills to help curb abuses, change the system to make it more fair and equitable for taxpayers and all state workers, make the pension system more sustainable and creditable over time and restore the public's trust in state and municipal retirement systems.

Pension Reform I – Signed June 2009

- Closes the One Day/One Year provision.
- Eliminates "King for a Day provision.
- Eliminates pension credit for unpaid positions.
- Limits regular compensation to exclude benefits like housing, lodging, and travel.
- Reforms dual service pensions to prevent the combination of two positions.
- Prohibits consultants from collecting pensions and receiving full-time salaries.
- Stops elected officials from claiming "termination allowances".
- Changes vesting requirements for elected officials from 6 to 10 years.

Pension Reform II – Signed June 2010

- Imposes a cap on earnings for the purpose of calculating pension benefits.
- Requires that if a retiree worked for two different employers, both employers would share the costs for the retiree's health insurance.
- Requires Supreme Court Justices to pay into the pension system.

Pension Reform III – Signed November 2011

- Increases the retirement age for virtually all state workers and eliminates early retirement subsidies.
- Introduces anti-spiking rule to limit annual increases in pensionable earnings.
- Eliminates the ability to receive a pension and compensations for the same elected position unless the individual does not hold the elected off for at least on year after retiring.
- Pro-rates pension benefits for new employees based on employment history
- Increases the period for averaging earnings for purposes of calculating a member's retirement allowance from three to five years.

SAVINGS

- These reform measures will generate over $5 billion in pension funding savings over 30 years, including an estimated $2 billion for cities and towns.

B-61

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January 6, 2009

Governor Deval L. Patrick
State House, Room 360
Boston, MA 02133

Dear Governor Patrick:

Pursuant to Executive Order No. 506, Establishing the Governor's Task Force on Public Integrity, the Task Force respectfully submits the enclosed Report and Recommendations.

Sincerely,

Ben T. Clements
Chair, Public Integrity Task Force

MEMBERS OF THE GOVERNOR'S TASK FORCE ON PUBLIC INTEGRITY

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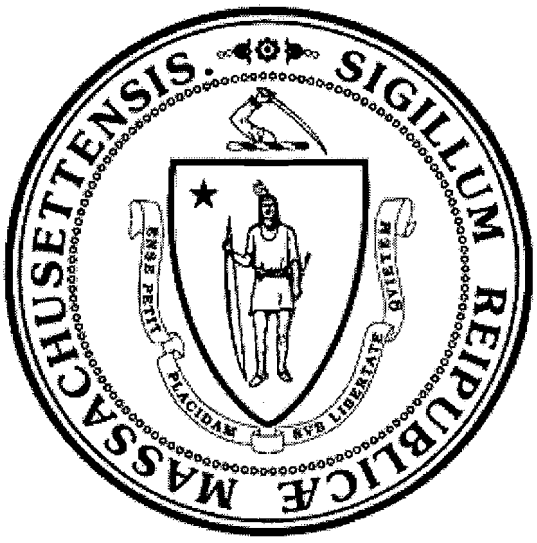

GOVERNOR'S TASK FORCE ON PUBLIC INTEGRITY

REPORT AND RECOMMENDATIONS

JANUARY 6, 2009

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APPENDICES

I. INTRODUCTION

On October 31, 2008, Governor Deval Patrick announced plans to form a bi-partisan Task Force on Public Integrity (the "Task Force"), charged with proposing specific recommendations to improve the Commonwealth's ethics and lobbying laws. The Task Force was convened and chaired by the Governor's Chief Legal Counsel and included four legislators and eight members of the public.

The Task Force recognizes that most of the Commonwealth's approximately 375,000 government employees[1] are honest, upstanding, dedicated public servants who do their best to properly perform their responsibilities and comply with the ethics rules. As has been widely recognized, however, recent highly publicized reports of transgressions in different branches and at different levels of government – both here and around the country – have shaken the public's trust in public employees and government as a whole. As Governor Patrick has stated, "when a small few act out, it affects government's ability to function as well as it should."

While particular events may have prompted the creation of the Task Force, the goal was not to address any particular case. Nor should it be assumed that the Task Force's recommendations would necessarily have prevented any specific transgression, as no system of ethics rules and enforcement will prevent all violations. However, a system that has clearer, better understood rules, more effective investigatory and enforcement mechanisms, and, where appropriate, more severe penalties, will help ensure that violations are less frequent, detected sooner and with more certainty, and punished in

[1] *See Compendium of Public Employment: 2002*, U.S. Census Bureau (issued Sept. 2004), p.56 (According to the most recent U.S. Census Bureau data available, Massachusetts has 376,793 state and local government employees).

a manner that reflects the seriousness of the infraction and provides a meaningful measure of deterrence.

The Task Force also recognizes that ethics violations may not always be a failing of the law but, rather, a failing of the individual. At least as important as having clear and well functioning rules and enforcement mechanisms is cultivating a culture of public trust, in which government employees aspire to comply with their ethical obligations, not because of fear of sanction, but because of their commitment to fulfilling their trust to the citizens.

The Task Force concluded that the existing substantive ethics rules governing the conduct of government employees are generally strong and broad, but substantial improvements are needed in the areas of enforcement, penalties, and education. With respect to the state lobbying laws, the Task Force identified significant gaps in all of these areas, as well as in the laws defining the obligations of lobbyists. To address these deficiencies, the Task Force recommends that the Governor file, and the Legislature enact, *An Act to Improve the Laws Relating to Ethics and Lobbying*.[2] The Task Force also recommends ongoing review of the ethics and lobbying laws and further review and consideration of additional proposals relating to campaign finance, government transparency, and legislative process – subjects that are beyond the scope of the Task Force's mandate but are important to enhancing public integrity.

[2] *See* Appendix C.

II. THE TASK FORCE

On November 7, 2008, the Governor issued Executive Order No. 506 creating the Task Force.[3] The Task Force is comprised of the Chair, the Governor's Chief Legal Counsel Ben T. Clements; two members of the Senate Committee on Ethics and Rules; two members of the House Committee on Ethics; and eight private citizens with backgrounds and expertise relating to ethics and public integrity.[4] The Task Force's mandate was to recommend improvements to the ethics and lobbying laws and to submit draft legislation necessary to carry out those recommendations.

Beginning on November 19, 2008, the Task Force held several meetings and heard presentations from various offices affected by the reform the Task Force planned to undertake. The Task Force met with the Executive Director of the State Ethics Commission, the Secretary of State, and the Inspector General. The Chair of the Task Force also met with the Attorney General. The Task Force held a public hearing to receive ideas and perspectives from the public. Throughout the process, the Task Force solicited and received input online through the Task Force's website and through calls and emails to the Governor's Office and to members of the Task Force.

The Task Force gathered ideas from its members and the public on needed improvements to the ethics and lobbying laws. The Task Force synthesized those ideas and developed recommendations and amendments to the current laws. The Task Force believes these recommendations will promote the integrity of government employees and the public's confidence in government and governmental decision-making.

[3] *See* Appendix D.
[4] *See* Appendix E for a list of all Task Force members.

III. RECOMMENDATIONS REGARDING ETHICS AND LOBBYING LAWS

In assessing the efficacy of our current ethics and lobbying laws, the Task Force reviewed all aspects of these laws, including: the applicable regulatory structures and authority; the investigative and enforcement structures and authority; the applicable penalties for violations of these laws; and the substantive rules that govern government employees and those that govern lobbyists. The Task Force identified significant deficiencies in the existing mechanisms for implementing and enforcing the ethics and lobbying laws. The State Ethics Commission has insufficient regulatory and investigatory authority to effectively implement and enforce the ethics laws, while the Secretary of State has even less authority to implement and enforce the lobbying laws. The Attorney General has authority to enforce criminal violations of the ethics and lobbying laws, but is hampered by the lack of several enforcement tools available in other states and in the federal system. The Task Force has therefore proposed a series of enhancements to the rulemaking, investigative, and enforcement authority of the Commission, the Secretary of State, and the Attorney General.

The Task Force concluded that the existing ethics rules that govern the conduct of government employees are, for the most part, comprehensive, appropriately strong, and relatively clear. However, the rules governing lobbyists are few and, many believe, lacking in clarity. Accordingly, the Task Force's recommendations include a small number of proposals to clarify and strengthen the existing ethics laws and several broader proposals to expand and clarify the lobbying laws.

The Task Force also found the existing civil and criminal penalties for violations of the ethics and lobbying laws to be inadequate for effective enforcement and

deterrence. In both areas, the penal structure has not been updated in decades and includes maximum civil and criminal sanctions that are far below those that apply in the federal system and in many other states and are inadequate to reflect the Commonwealth's necessary commitment to integrity in our public officials and our government.

The Task Force has recommended increases in the maximum applicable fines and other civil sanctions and in the maximum applicable criminal fines and prison terms for bribery and the full range of other ethics and lobbying related offenses. To allow for greater flexibility in effectively and efficiently achieving the appropriate disposition in light of the nature of the specific violation, the Task Force also recommends legislation explicitly providing the Attorney General with concurrent jurisdiction to seek civil sanctions.

In both the areas of ethics and lobbying, the Task Force concluded that there are insufficient mechanisms in place to ensure that those who must comply with rules have a necessary understanding of what those rules require and what steps they can take to ensure their own compliance. The Task Force has made several recommendations to address this deficiency through mandatory education. The Commission will be required to provide all government employees with information concerning the ethics laws and the Secretary of State will be required to provide all lobbyists with information concerning the lobbying laws.

A. ENHANCEMENT OF ETHICS LAWS AND STATE ETHICS COMMISSION'S AUTHORITY

1. Rulemaking Authority of the State Ethics Commission

The State Ethics Commission enforces the Commonwealth's conflict of interest and financial disclosure laws.[5] Unlike many state agencies, however, it has no general authority to issue regulations implementing the laws it is charged with enforcing. In 2004, the Commission was given limited authority to issue regulations to create exemptions to certain sections of Chapter 268A.[6] In the absence of general rulemaking authority, the Commission has implemented the ethics laws through a series of individual rulings – which are often confidential – and advisories, resulting in a patchwork of interpretations rather than a clear set of interpretive guidelines. Full rulemaking authority, with the opportunity for a hearing and public comment, would allow for more clarity and a more open process for interpreting the conflict of interest and financial disclosure laws.

Most other states that have a similar ethics commission structure to ours already empower their ethics commissions to adopt regulations or rules to implement the provisions of the law relevant to the commission's authority.[7] The Task Force recommends legislation to give the Commission broader rulemaking authority to implement Chapters 268A and 268B.[8] This would bring Massachusetts in line with many other states. This would also provide the Commission with the necessary tools to interpret the conflict of interest laws, through regulatory clarifications, so as to remove

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[5] *See* Mass. Gen. Laws ch. 268A, 268B.
[6] Mass. Gen. Laws ch. 268B, § 3(a) (allowing the Ethics Commission to create exemptions from the provisions of sections 3-7, 11-14, 17-20, and 23 of chapter 268A).
[7] *See, e.g.*, Neb. Rev. Stat. § 49-14,123; Conn. Gen. Stat. Ann. § 1-81(g); Or. Rev. Stat. Ann. § 244.290(2); Haw. Rev. Stat. § 84-31(a)(5); Ark. Code Ann. § 7-6-217(g)(1).
[8] *See* SECTION 51 of An Act to Improve the Laws Relating to Ethics and Lobbying.

uncertainties and provide clearer guidance to those who are subject to the law and to the public.

2. Summons Authority

The Ethics Commission has the authority to issue a summons to obtain testimony and documents.[9] However, under current law, persons receiving a summons are free to disregard it, forcing the Commission to file a lawsuit in Superior Court if it wishes to pursue the testimony or documents.[10] The Superior Court then has the discretion to decide whether to enforce the Commission's summons.[11] This burdensome process both delays and deters the Commission from gathering the evidence it needs to conduct effective investigations and strains the Commission's limited resources. Indeed, when coupled with the relatively short statute of limitations currently applicable to ethics violations,[12] it creates an incentive for those who are subjects of an investigation to delay by resisting demands for evidence.

To enable the Commission to obtain relevant information more efficiently and expeditiously, the Task Force recommends legislation providing the Commission with the authority to issue a mandatory summons. Subjects and witnesses would still be entitled to object to the summons on the basis of privilege or other legal grounds and would be protected against any overreaching by the Commission through the right to seek a court order quashing or limiting the summons.[13]

[9] Mass. Gen. Laws ch. 268B, § 4(d).
[10] *Id.*
[11] *Id.*
[12] *See Statute of Limitations for Ethics Violations* Section III.A.3. below.
[13] *See* SECTION 54 of An Act to Improve the Laws Relating to Ethics and Lobbying.

3. Statute of Limitations for Ethics Violations

In many cases, the Commission has been unable to enforce alleged ethics violations due to the expiration of the limitations period, now set by regulation at three years from the date a disinterested person learns of the alleged violation.[14] The current three-year statute of limitations allows the subject of an investigation to use delay as a strategy to run out the clock. The Task Force recommends legislation to allow the Commission to bring an action up to five years from the date it learns of the alleged violation, but not more than six years from the date of the last conduct relating to the alleged offense.[15]

4. Gratuities Statute

The Massachusetts gratuities statute prohibits gifts given "for or because of any official act performed or to be performed."[16] For many years, the Massachusetts gratuities statute and its federal counterpart were interpreted to prohibit payments made for unspecified future consideration. Under this approach, the gratuities statute would bar payments made because of a government employee's "official position—perhaps, for example, to build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now and in the future."[17]

In *United States v. Sun-Diamond Growers of California,* however, the Supreme Court rejected this interpretation of the gratuities statute.[18] Instead, the Court interpreted the gratuities statute in a manner akin to a bribery statute, requiring that the payment be

[14] 930 Mass. Code Regs, § 1.02(10).
[15] *See* SECTION 53 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[16] Mass. Gen. Laws ch. 268A, § 3.
[17] *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 405 (1999).
[18] *Id.* at 406.

tied to a specific identified act. The Supreme Judicial Court soon followed with an identical reading of the Massachusetts law in *Scaccia v. State Ethics Commission.*[19]

The effect of this constricted interpretation is that the gratuities law no longer prohibits a regulated person or entity from making gifts – of even *unlimited value* – to the public official responsible for regulating the person or entity, unless it can be shown that the purpose of the gift was to reward a *specific* action already taken by the official or to influence a *specific* action in the future. This is so even if the motivation of the giver of the gift is to induce favorable treatment from the official with regard to not yet identified action in the future.

While such gifts are no longer prohibited under the gift statute, their receipt may in some circumstances be a violation of Section 23 of the conflict of interest law. The conflict of interest law prohibits government employees from using their position to obtain unwarranted privileges, and from failing to disclose circumstances which could lead to the appearance of a conflict of interest.[20] Indeed, in part as a result of the *Scaccia* decision, the Ethics Commission relies on Section 23 as an enforcement tool far more often than it relies on the gratuities statute. However, Section 23 is a broad standard of conduct provision, not directed specifically at gifts and gratuities. It therefore does not provide the same level of clarity or guidance to government employees or to regulated persons or entities that a clearly defined gratuities law can provide. Moreover, Section 23 applies only to the public employee receiving the benefit and not the person or entity providing it.

[19] 431 Mass. 351 (2000).
[20] Mass. Gen. Laws ch. 268A, § 23(b).

The most straightforward manner to address this problem is to simply prohibit gifts given to government employees because of the employee's official position. Some commentators, including the United States Supreme Court in *Sun-Diamond*, have suggested that such a prohibition is not workable because, for example, it would ban the Red Sox from giving the President a World Champions jersey when visiting the White House.[21] Concerns have also been raised about whether such a prohibition would bar some gifts that are motivated by family or other personal relations, rather than by any intent to influence. These concerns can be addressed by requiring that the gift be of "substantial value," by excluding gifts motivated by family or other personal relation, and by directing the Commission to issue regulations implementing these limitations and excluding other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

The Massachusetts Supreme Judicial Court's interpretation of the Commonwealth's gratuities statute to require a "link" between the gift and a specific official act appears to be the narrowest construction of a state gratuities statute in the country.[22] No other state court has cited either *Sun-Diamond* or *Scaccia* in a reported decision nor do there appear to be any other state cases interpreting a state gratuities statute to require such a direct "link."

The most common approach is to prohibit gifts that either influence or appear to influence an official's performance of duties generally, as opposed to a specific official

[21] 526 U.S. at 406-07.
[22] *Scaccia*, 431 Mass. at 352.

act.[23] Other states have outright bans on gifts based on the recipient's position as a public employee or official.[24]

The Task Force recommends legislation that would eliminate the specific act requirement, bring Massachusetts law in line with what appears to be the most common approach taken in other states, and more clearly prohibit the provision or receipt of gifts for the purpose of influencing public officials. Specifically, the Task Force proposes legislation prohibiting gifts of substantial value given "for or because of an employee's

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[23] *See, e.g.*, Ariz. Admin. Code § R2-5-501(C)(4) ("A state service employee shall not accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's *official conduct*.") (emphasis added); Mich. Comp. Laws Ann. § 15.342(2)(4) ("A public officer or employee shall not solicit or accept a gift or loan of money, goods, services or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs *official duties*.") (emphasis added); Mont. Code Ann. § 2-2-104 ("A public officer, legislator, or public employee may not . . . (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift: (i) that would tend to improperly influence a reasonable person in the person's position to *depart from the faithful and impartial discharge of the person's duties*. . .") (emphasis added); N.J. Stat. Ann. § 52:13D-14 ("No State officer or employee . . . shall accept from any person, whether directly or indirectly, . . . any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with the intent to influence him in the *performance of his public duties and responsibilities*.") (emphasis added); Ohio Rev. Code Ann. § 102.03(F) ("No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a *substantial and improper influence* upon the public official or employee with respect to that person's duties.") (emphasis added); N.Y. Pub. Off. Law § 73(5) ("No statewide elected official, state officer or employee . . . shall, directly or indirectly: (a) solicit, accept or receive any gift . . . *under circumstances in which it could reasonably be inferred that the gift was intended to influence him* ....") (emphasis added).

[24] *See, e.g.*, Ark. Code Ann. § 21-8-801 ("No public servant shall (1) [r]eceive a gift or compensation . . ., other than income and benefits . . . for the performance of the duties and responsibilities of his or her office or position"); Cal. Gov't Code § 89503(a) ("No elected state officer, elected officer of a local government . . . shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250)."); 5 Ill. Comp. Stat. § 430/10-10 (". . . no officer, member or State employee shall intentionally solicit or accept any gift from any prohibited source. . . . No prohibited source shall intentionally offer or make a gift that violates this Section."); Iowa Code Ann. § 68B.22 ("Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor."); N.H. Rev. Stat. Ann. § 15-B:3 ("It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any elected official, public official, public employee, constitutional official or legislative employee."); Tex. Penal Code Ann. § 36.08(f) ("A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, agrees to accept any benefit from any person."); Wyo. Stat. Ann. § 9-13-103 ("(a) No public official, public member or public employee shall use his office or position for his private benefit. (b) As used in this section, "private benefit" means the receipt by the public official, public member or public employee of a gift which resulted from his holding that office.").

official position" and directing the Commission to establish exceptions by regulation and specific advisories where the circumstances do not present a genuine risk of a conflict or appearance of a conflict.[25] The Task Force also proposes legislation directing the Commission to adopt regulations defining "substantial value," which shall in no case be less than $50.[26]

5. Authority of State Ethics Commission to Recover Economic Advantage

In addition to imposing a civil penalty of up to $2,000, the Commission may also recover on behalf of the Commonwealth the amount of the economic advantage obtained by a violator of Sections 2 through 8 of Chapter 268A.[27] However, it may not invoke this remedy as part of its regular administrative procedures but must instead bring a separate civil action against the violator. As a practical matter, given the current funding and staffing levels of the Commission, the Commission is unlikely to expend its scarce resources on the pursuit of such remedies in all but the largest cases.

To address this issue, the Task Force recommends legislation authorizing the Commission to recover up to $25,000 of economic advantage resulting from the violation, on top of its existing power to impose penalties, without having to initiate an action in court.[28] The Task Force also recommends that the Commission's authorization to recover these monies be expanded to include violations of Section 23 of Chapter 268A. The Task Force further recommends that the Commission be authorized to order restitution to an injured party (subject to the same $25,000 cap) in addition to any civil

[25] *See* SECTIONS 22 & 24 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[26] *Id.; see also* 930 Mass. Code Regs. 5.04(1)(a) (stating that it shall not be a violation of Chapter 268A for an individual to give or offer to give or for a public employee to receive a gift or benefit of anything with a value of less than $50).
[27] Mass. Gen. Laws ch. 268A, §§ 9, 15, 21.
[28] *See* SECTIONS 32, 37 & 42 of An Act to Improve the Laws Relating to Ethics and Lobbying.

penalty the Commission may impose. Administrative orders by the Commission to pay the economic advantage or restitution would still be subject to challenge in the Superior Court in accordance with Section 4(k) of Chapter 268B or Chapter 30A. To recover damages for economic advantage and/or restitution from a violator in excess of $25,000, the Commission will still need to file a civil action.

6. Enforcement of False Claims by Government Employees

The Commission does not currently exercise jurisdiction over false claims by government employees, such as cases in which employees submit false time sheets or false expenses for reimbursement, or charge personal expenses to the Commonwealth. There does not appear to be any enforcement agency assuming primary responsibility for addressing such conduct, particularly where there is not a substantial amount of money involved. This conduct is typically more criminal in nature than a conflict of interest, yet may not be viewed as significant enough to be pursued by criminal law enforcement agencies.

The Commission's current position is that, absent some use of the employee's "official position" to commit the wrongdoing, such behavior is beyond the scope of the language of the conflict of interest laws.[29] The Task Force recognizes that in these cases, the appropriate remedy would be for the employer to investigate its employees, and, where warranted, take appropriate disciplinary action, up to and including termination, and referral for prosecution. The Task Force also believes, however, that it is important in many of these cases to have an outside entity (such as the Commission) act as investigator and enforcer. Co-workers or others who have business dealings with the dishonest employee should have some means available to them by which they can

[29] *See* Mass. Gen. Laws ch. 268A, § 23(b)(2).

anonymously submit their complaints. Accordingly, the Task Force recommends legislation to amend Section 23(b)(2) of Chapter 268A to clearly place within the Commission's jurisdiction the ability to investigate and penalize government employees who attempt to defraud their employers.[30]

7. Information and Resource Sharing

The Commission is currently limited in its ability to share information with and to obtain resources from other agencies. This limitation often serves as a barrier to effective and efficient cooperation and coordination among the various agencies having enforcement responsibilities concerning ethics, lobbying, and related areas. The Commission is currently authorized to share information with the Attorney General's Office, the United States Attorney's Office, and district attorney's offices when the information may be used in a criminal proceeding.[31] However, the Commission may not share information with the Secretary of State's Office, the Office of Campaign and Political Finance (OCPF), or the Inspector General's Office.[32] Similarly, the Commission may receive personnel and other assistance from the State Police, the State Auditor, the Comptroller, the Attorney General, and the Director of OCPF, but not from the Secretary of State or the Inspector General.[33]

The Task Force recommends legislation to authorize the Commission to provide information to the Secretary of State's Office, OCPF, and the Inspector General's Office.[34] Any agency receiving information from the Commission would be subject to the same confidentiality restrictions that govern the Commission's handling of

[30] *See* SECTION 43 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[31] Mass. Gen. Laws ch. 268B, § 4(a).
[32] *See id.*
[33] *Id.* § 2(m).
[34] *See* SECTION 52 of An Act to Improve the Laws Relating to Ethics and Lobbying.

investigative information.[35] The Task Force recommends that agencies that are sharing information and/or investigating similar allegations enter into memoranda of understanding to ensure the coordination of their efforts and to minimize duplication and cross-agency interference. The Task Force also recommends legislation to allow the Secretary of State and the Inspector General to provide personnel and other assistance to the Commission.[36]

8. Budget of State Ethics Commission

The Commission's budget is subject to legislative approval. Many believe that the Commission has been inadequately funded throughout its history. An exception to this historical pattern was the Commission's FY09 budget, which included an additional $103,000 for one-time expenditures to upgrade the Commission's website and financial disclosure electronic filing application. The Commission's budget increases over the years have not kept pace with inflation, nor has the Commission's budget increased at a rate comparable to that of other watchdog agencies.

It is critically important to ensure that the Commission is provided with the necessary resources to fulfill its legislatively mandated responsibilities, as well as to preserve its independence. Adequate funding is necessary to ensure that the Commission staff is able to provide timely legal advice and to efficiently complete investigations. The Task Force recommends that the Commission be provided with a legislatively guaranteed annual base budget that would be no lower than the amount appropriated to the Commission in the preceding year.[37] In order to leave the Legislature the needed

[35] *See* Mass. Gen. Laws ch. 268B, § 4(a) ("All commission proceedings and records relating to a preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be confidential").
[36] *See* SECTION 50 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[37] *See* SECTION 49 of An Act to Improve the Laws Relating to Ethics and Lobbying.

flexibility to deal with budget crises, the proposed legislation would not mandate increases in the Commission's budget. Nonetheless, the Task Force recommends that every effort be made, consistent with budgetary realities, to provide adequate funding to ensure the Commission will continue to be a robust and independent enforcement body.

B. ENHANCEMENT OF LOBBYING LAWS AND SECRETARY OF STATE'S AUTHORITY

1. Definition of Lobbying

The term "lobbying" is undefined by current Massachusetts law.[38] Instead of defining the term "lobbying," Massachusetts defines the terms "executive agent" and "legislative agent."[39] This has resulted in significant uncertainty as to what conduct of lobbyists must be reported. Lobbyists often report only money paid for time spent in direct contact with public officials, omitting the significant time spent on strategizing and other related activity.

Many other states include within their lobbying laws a specific definition of "lobbying."[40] Some states also specifically include lobbyists' preparation time in their definition of "lobbying."[41]

The Task Force recommends removing the current uncertainty in our laws and closing what many believe is a significant loophole in our reporting requirements. Specifically, the Task Force recommends legislation to update the definitions of executive and legislative agent and define executive and legislative lobbying to include

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[38] *See* Mass. Gen. Laws ch. 3, § 39.
[39] *Id.*
[40] *See, e.g.*, Miss. Code Ann. § 5-8-3(k)(i); Kan. Stat. Ann. § 46-225(a); Ark. Code Ann. § 21-8-402(10).
[41] *See, e.g.*, Me. Rev. Stat. Ann. tit. 3, § 312-A(9) ("includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action."); Wis. Stat. Ann. § 13.62(10) ("includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.").

"strategizing, planning, researching and other background work only if performed in connection with or for use in communicating with a government employee."[42] This definition adds an express requirement of contact with a government employee, while also clarifying that lobbying includes the time preparing and strategizing.[43]

Under current law, persons who lobby state officials are required to register with and submit reports to the Secretary of State's Office.[44] However, there are no such requirements with respect to the lobbying of municipal officials.[45] Municipal lobbying raises the same issues of public accountability as does state lobbying. Moreover, there is often a connection between state and municipal activity. Recognizing the importance of the interconnection between state and municipal lobbying activity, a growing body of states enforce laws regulating lobbying on the municipal or local level as well.[46]

The Task Force recommends legislation to extend registration and reporting requirements to municipal lobbying when the municipal lobbying is connected to the state lobbying.[47] Requiring the same registration and reporting with the Secretary of State's Office for municipal lobbying activities will ensure that there is one location where all lobbying information may be found.

2. *Revolving Door Provision*

The "revolving door" of public officials leaving office creates the possibility that former colleagues or employees may be unduly influenced or at least the appearance that they may be unduly influenced. In what many claim was an inadvertent error of the

[42] *See* SECTIONS 1-4 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[43] *Id.*
[44] Mass. Gen. Laws ch. 3, §§ 39, 41.
[45] *See id.*
[46] *See, e.g.*, Ark. Code Ann. § 21-8-402(6), (11)(a); Ala. Code § 36-25-1(17), (25); Ga. Code Ann. § 21-5-70(5)(E); Md. Code Ann., State Gov't §§ 15-803, -806; Minn. Stat. Ann. § 10A.01(21), (24); Miss. Code Ann. § 5-8-3(d); Mo. Rev. Stat. Ann. § 105.470(1); N.Y. Leg. Law § 1-c(c)(vii).
[47] *See* SECTIONS 3 & 4 of An Act to Improve the Laws Relating to Ethics and Lobbying.

lobbying reform legislation of 1994, executive branch lobbying has been omitted from the "cooling off" period which bars former public officials from lobbying their former agencies.[48] The current law prohibits a former state employee or elected official, including members of the Legislature, from acting as a *legislative agent* before the governmental body with which that employee was associated, for one year after he leaves that body.[49]

The Task Force supports expanding this provision to apply to former executive branch officials, whether elected or appointed. The Task Force proposes legislation that would apply the same limitations to "executive agents," and allow the Commission to define the meaning of "governmental body" to ensure that former colleagues or employees are not or do not appear to be unduly influenced. [50]

The limitation of the Massachusetts revolving door provision to legislative agents is unusual. Of the states with a revolving door restriction, almost all of them prohibit former legislators and former members of the executive branch from lobbying the agency in which they served for a specified period of time.[51] Massachusetts' revolving door statute differs from the majority of states only in the sense that it does not include a restriction on executive agents equal to its restriction on legislative agents. This simple addition of the term "executive agent" would allow Massachusetts' statute to mirror that of other states and would address this gap.

[48] Chapter 43 of the Acts of 1994.
[49] Mass. Gen. Laws ch. 268A, § 5.
[50] *See* SECTIONS 26, 27, 47, 48 & 59 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[51] *See, e.g.*, Ala. Code § 36-25-13; Alaska Stat. § 24-45-121(c); Ariz. Rev. Stat. Ann. § 38-504(A); Fla. Stat. Ann. § 112.313; N.J. Stat. Ann. § 52:13C-21.4; Or. Rev. Stat. Ann. § 244.045.

3. "Incidental" Lobbying

Massachusetts law exempts those engaged in only incidental lobbying activities from registering as an executive or legislative agent. A person's lobbying activities are presumed to be incidental if the person engages in such activity for not more than 50 hours, or receives less than $5,000, for engaging in such activity during any six-month reporting period.[52] Other states provide for similar exemptions for those who engage in a minimal amount of lobbying during a reporting period.[53] However, Massachusetts is unusually permissive compared to other states. New Jersey, for example, presumes lobbying activities to be incidental if they constitute less than 20 hours in a one-year reporting period.[54] In Pennsylvania, a person need not register if he has lobbied less than 20 hours during a two-year reporting period.[55]

The Task Force recognizes that there should be a category of "incidental" lobbying that does not trigger registration, but the Task Force believes that 50 hours in a six-month period is a significant amount of time and that that degree of lobbying should require registration. The Task Force recommends legislation to reduce the amount of allowable incidental lobbying to not more than 10 hours or receipt of not more than $2,500 in any reporting period (which will be three months under the proposed legislation).[56]

[52] Mass. Gen. Laws ch. 3, § 39.
[53] *See, e.g.*, N.J. Admin. Code § 19:25-20.2; 65 Pa. Cons. Stat. § 13A06(5).
[54] N.J. Admin. Code § 19:25-20.2.
[55] 65 Pa. Cons. Stat. § 13A06(5).
[56] *See* SECTION 1 & 2 of An Act to Improve the Laws Relating to Ethics and Lobbying.

4. Clarification of Registration and Reporting Requirements

Persons and lobbyist entities required to register as lobbyists under Section 41 are required to file semi-annual reports under Sections 43 and 47 of Chapter 3.[57] The Secretary of State is, in turn, required to keep a docket of all of the information required to be filed under Section 41.[58] The current language creates a loophole that does not require lobbyists or lobbyist entities whose names do not "appear on the docket" to file reports, even if the lobbyist or lobbyist entity should have lawfully registered. The Task Force proposes legislation to close this loophole to ensure that those who evade the filing requirements are not also lawfully permitted to evade the periodic reporting requirements.[59]

5. Periodic Disclosure Requirements

Currently, reports of lobbying activities are required to be updated semi-annually.[60] According to the Secretary of State, semi-annual reporting is insufficient because lobbyists wait until the very end of a reporting period or even into subsequent reporting periods, to file the required information. This prevents the Secretary of State's Office from receiving timely and accurate information and prevents private citizens from reviewing activities of lobbyists until long after they have occurred. Ideally, the ordinary citizen should be able to go on the internet, to the library or legislative docket, and easily determine, in real time, who is lobbying for or against a bill and other relevant

[57] Mass. Gen. Laws ch. 3, §§ 43 (persons), 47 (lobbyist entities).
[58] *Id.* § 41.
[59] *See* SECTIONS 10 & 16 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[60] Mass. Gen. Laws ch. 3, § 47.

information. The Task Force recommends legislation to require reports of lobbying activities to be updated quarterly.[61]

States utilizing quarterly and monthly reporting are becoming more common.[62] Quarterly reporting would bring Massachusetts in line with the reporting requirements of many other states and would allow the Secretary of State and members of the public to better monitor lobbying activity.

6. *Disclosure of Lobbyist Activities*

Massachusetts currently has confusing statutory requirements regarding the scope of information that must be reported by executive and legislative agents.[63] Pursuant to Section 43 of Chapter 3, executive and legislative agents are required to report campaign contribution expenditures and a list of bill numbers of legislation that they acted to promote, oppose, or influence.[64] According to the Secretary of State's Office, legislative and executive agents often provide inadequate information in their disclosure reports.

Other states provide clear and detailed disclosure requirements and also require the disclosure of information beyond that which Massachusetts currently requires. Many states require disclosure of the name of the client on whose behalf an expenditure has been made.[65] Other states also require registrants to provide a description of the subject matter of their lobbying efforts.[66] Some states require that lobbyists disclose their direct business relationships with public officials.[67]

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[61] *See* SECTIONS 9, 13 & 15 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[62] *See, e.g.*, Ariz. Rev. Stat. Ann. § 41-1232.02; Del. Code Ann. tit. 29, § 5835(a); N.J. Stat. Ann. § 52:13C-22(a).
[63] Mass. Gen. Laws ch. 3, § 43.
[64] *Id.*
[65] *See, e.g.*, Ohio Rev. Code Ann. § 101.73; R.I. Gen. Laws § 22-10-09(a)(1).
[66] *See, e.g.*, Wis. Stat. Ann. § 13.67(1) (requiring a description of "any topic of a lobbying communication with reasonable specificity, sufficient to identify the subject matter of the lobbying communication and whether the communication is an attempt to influence legislative or administrative action, or both"); S.C.

To provide greater transparency and accountability, the Task Force recommends legislation to more clearly specify information that must be reported by executive and legislative agents, including the identity of the client on whose behalf they acted, the identity and description of the legislative bills or other governmental action they sought to influence for each client, the amount of compensation they receive for lobbying, and any business associations they have with public officials.[68]

7. Availability of Lobbying Information Online

Online disclosure is an area that is ripe for development. Currently, the docket of lobbyists and their employers and other filings related to lobbying are required to be available for public inspection at the Public Records Division.[69] The Secretary of State maintains an electronic database with legislative and executive agents and now requires all lobbyists to register and report online. Those who do not have access to a computer to complete online registration may visit the Secretary of State's Office to have that office enter the data electronically on their behalf.

The Secretary of State's website devoted to lobbying allows the public to search for lobbying information by "type," "category," "contribution," and "activity." Three of the searches are essentially searches by lobbyist's name.[70] The search by contribution allows searching by the name or position of political candidates. The only search option

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Code Ann. §§ 2-17-30, -35; R.I. Gen. Laws § 22-10-9; Utah Code Ann. § 36-11-201; Tenn. Code Ann. § 3-6-302; Tex. Gov't Code Ann. §§ 305.005, .006; Ala. Code § 36-25-18; N.Y. Legis Law § 1-e(c)(5) (requiring disclosure of the general subject of legislative lobbying efforts and bill numbers, as well as disclosure of information relating to executive orders, state-tribal agreements, rules, regulations, rates, and the titles of any procurement contracts and related documents).

[67] *See, e.g.*, Md. State Gov't Code Ann. § 15-706(c); Mo. Rev. Stat. Ann. § 105.4733(2)(f); S.C. Code §§ 2-17-30(A)(7), -35(A)(7); Tenn. Code Ann. § 3-6-302(b)(2)(E).

[68] *See* SECTION 11 of An Act to Improve the Laws Relating to Ethics and Lobbying.

[69] Mass. Gen. Laws ch. 3, § 47.

[70] Searching by type allows one to search for either clients or lobbyists by name. Searching by category also allows one to search for lobbyists by name, but allows one to restrict the results to those involved in a certain industry. Searching by contribution is also a search by name, but it displays results indicating the amount a lobbyist has contributed to various political candidates.

that does not require a search by name is "activity," which allows one to search for lobbyists by the descriptions the lobbyists have provided regarding their lobbying activity.

Many have expressed frustration over the website's current searching capability, finding that it contains limited information and is difficult to use. According to the Secretary of State' Office, the database is limited because it can only generate the information that is provided online by lobbyists. Moreover, the information supplied is often incomplete. Some contend that that the Secretary of State receives limited data from lobbyists because the disclosure statute is confusing and vague with respect to the scope of information that must be disclosed.[71]

The majority of states provide the public with online searchable databases containing information on lobbyists and their activities.[72] Some of those states provide a greater number of searching categories and a greater combination of search terms than Massachusetts. States, such as Wisconsin, also link various databases.[73] Wisconsin's posted lobbying information integrates seamlessly with their legislative database, providing not only lobbyists' salaries and expenditures but also the text of bills, legislative history, testimony filed, recent commentary, and links to other groups lobbying on that legislation. Both Wisconsin lawmakers and the public use the site to

[71] *See* Mass. Gen. Laws ch. 3, § 47; *see also Disclosure of Lobbyists Activities* Section III.B.6. above.
[72] *See, e.g.*, Louisiana at http://domino.ethics.state.la.us/LobbyistDb.nsf; North Carolina at http://www.secretary.state.nc.us/lobbyists/lsearch.aspx; Pennsylvania at http://www.palobbyingservices.state.pa.us/Act134/Public/RegistrationSearch.aspx; New York at http://www.nyintegrity.org/public/lobby_data.html; California at http://cal-access.ss.ca.gov/Lobbying/; Texas at http://www.ethics.state.tx.us/main/search.htm; Illinois at http://www.cyberdriveillinois.com/departments/index/lobbyist_search.html; Rhode Island at http://www2.sec.state.ri.us/lt_filing/public/; Colorado at http://www.sos.state.co.us/lobby/inquiryHome.do;jsessionid=0000_6GeFUVDm4LgwOwV64vCfoQ:11mkepqht; Wisconsin at http://ethics.state.wi.us/lobbyingregistrationreports/LobbyingOverview.htm.
[73] *See* http://ethics.state.wi.us/lobbyingregistrationreports/LobbyingOverview.htm.

learn more about the issues and who is promoting them. Such a well-trafficked site also helps encourage lobbyist registration by giving lawmakers and the public the tools to encourage unregistered entities to do so.

The Secretary of State's Office has been working for the last year and a half on a new searchable database that it will launch in March 2009. The site will include a new online registration and disclosure system that will require lobbyists to disclose all of the information required and will not allow lobbyists to complete their registration without supplying all of the information required. The Task Force recommends that, as part of its ongoing efforts, the Secretary of State's Office explore ways of expanding and improving its searchable database. Massachusetts should consider additional and more functional search categories as well as enhancements to its results display.

8. Rulemaking Authority of Secretary of State

The Secretary of State's Public Records Division is currently responsible for overseeing the registration and disclosure requirements for lobbyists. The Task Force is recommending various changes to clarify and further strengthen the lobbying laws.[74] To implement those changes, the Secretary of State will require rulemaking authority. The Task Force believes that the Secretary of State's Office, like the Ethics Commission, should be empowered to issue regulations to implement its laws. Rulemaking authority would allow more clarity and a more open process for interpreting the lobbying laws. Therefore, the Task Force recommends legislation to give the Secretary of State rulemaking authority to implement the lobbying laws under Sections 39 through 50 of

[74] *See Enhancement of Lobbying Laws and Secretary of State's Authority* Section III.B.1-6. above.

Chapter 3 of the General Laws.[75] The Task Force also recommends giving the Secretary of State the authority to provide confidential, binding advisory opinions.[76]

9. Enforcement Authority of Lobbying Laws

While the Secretary of State's Public Records Division is responsible for the registration and disclosure requirements for lobbyists, the Secretary of State lacks any civil enforcement authority over the lobbying laws, other than a loosely defined disqualification authority.[77] The Secretary may direct complaints to the Attorney General's Office, but other than the small number of serious cases that the Attorney General is able to pursue, there is no meaningful enforcement of the lobbying laws.

The Secretary of State has civil enforcement authority with respect to enforcing the securities laws.[78] The securities laws allow the Secretary of State to subpoena witnesses and documents, issue an order requiring compliance, and file an action in Superior Court to enforce the order in a securities investigation.[79] The Task Force believes that the Secretary of State should be granted parallel authority with respect to violations of the lobbying laws. The Task Force recommends legislation to authorize the Secretary to impose fines; initiate a preliminary inquiry and an adjudicatory proceeding, if necessary; issue summonses for records and testimony; issue an order requiring compliance; and file an action in Superior Court to enforce an order.[80]

A number of states vest the Secretary of State with oversight powers, including the power to assess penalties for late filings. Michigan and Rhode Island give the

[75] *See* SECTION 8 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[76] *Id.*
[77] Mass. Gen. Laws ch. 3, § 45.
[78] Mass. Gen. Laws ch. 110A.
[79] *Id.* § 407.
[80] *See* SECTION 14 of An Act to Improve the Laws Relating to Ethics and Lobbying.

Secretary of State more investigative power before referring a matter to the Attorney General's office, including the power to hold hearings and gather evidence and testimony.[81] California and Wisconsin are states which have comprehensive independent offices with broad authority and substantial power to enforce the lobbying laws.[82] The Task Force's proposal would bring Massachusetts in line with other states leading the efforts in empowering their agencies to enforce their lobbying laws.

C. Enhanced Authority of Attorney General

1. Civil Enforcement Authority over Ethics Violations

While the Ethics Commission is responsible for civil enforcement of the ethics and financial disclosure laws, the Attorney General has the exclusive authority to seek criminal penalties for ethics and financial disclosure violations. To facilitate this authority, the Ethics Commission is required to provide the Attorney General with notice of all preliminary inquiries.[83] Based on this division of responsibility, the Attorney General typically will not be actively involved in an ethics investigation unless there is reason to believe that a criminal sanction may be appropriate.

In cases in which the Attorney General does become involved and determines that there has been a violation of the ethics laws, but not one sufficiently serious to warrant criminal prosecution, the Attorney General may seek to negotiate a non-criminal resolution. However, the Attorney General has no clear statutory authority to pursue a civil enforcement action. While the Ethics Commission is and should be the primary agency responsible for civil enforcement of ethics violations, in those cases in which the Attorney General has conducted an investigation but determined that a civil sanction is

[81] Mich. Comp. Laws Ann. § 4.423; R.I. Gen. Laws § 22-10-10.
[82] Cal. Gov't Code §§ 83115, 83118; Wis. Stat. Ann. § 5.05.
[83] Mass. Gen. Laws ch. 268B, § 4.

the most appropriate disposition, the Attorney General should have the authority to bring a civil enforcement action. The Task Force therefore proposes legislation to provide the Attorney General with concurrent jurisdiction to enforce the conflict of interest and financial disclosure laws.[84]

2. Civil Enforcement Authority over Lobbying Violations

The Attorney General may institute civil proceedings or refer the case to the proper district attorney for violations of Section 43, 44 or 47 of Chapter 3 of the General Laws – the laws which require legislative and executive agents, their employers, groups, and organizations to file a statement of expenditures and contributions.[85] That civil enforcement authority, however, does not extend to violations of Sections 41 and 42– the laws requiring annual registration and payment of filing fees and prohibiting agreements to influence legislation for compensation, respectively. While the Task Force is recommending that expanded civil authority over lobbying violations be granted to the Secretary of State,[86] for the same reason discussed above with respect to ethics enforcement, the Attorney General should have concurrent jurisdiction to enforce the lobbying laws with civil sanctions. The Task Force therefore proposes legislation to provide the Attorney General with civil enforcement authority for violations of Sections 41 and 42.[87]

3. Recording of Conversations in Corruption Investigations

Some of the most important public corruption cases brought in federal court and in other states have relied on audio recordings of conversations between undercover law

[84] *See* SECTION 58 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[85] Mass. Gen. Laws ch. 3, § 48.
[86] *See Enforcement Authority of Lobbying Laws* Section III.B.9. above.
[87] *See* SECTION 19 of An Act to Improve the Laws Relating to Ethics and Lobbying.

enforcement officers or cooperating witnesses, who have agreed to be recorded, on the one hand and corrupt public employees on the other. These recordings are often critical to the success of such cases. The Massachusetts statute regarding the interception of communications, however, prohibits such recordings except in "organized crime" investigations.[88]

The effect of this prohibition is profound. It means that unless a public corruption case involves "organized crime," state law enforcement cannot make a consensual recording of a conversation conducted by an undercover law enforcement agent or a cooperating witness. When a single public official requests and accepts a bribe from an undercover law enforcement agent, no recording can be made. This can lead to state authorities declining to pursue an investigation for fear that even a successful investigation will not produce sufficient evidence to persuade a jury to convict.

Massachusetts is one of only a few states that require two-party consent when recording a conversation. The federal statute allows for one-party consent in recording or intercepting communications, unless such communication is intercepted for the purpose of committing a criminal act.[89] The majority of states allow some form of one-party consent for recording a conversation.[90] Some states without a consent statute have adopted the federal statute in their common law.[91]

Several current and former law enforcement officials have recommended amending Massachusetts law to make this critical tool available in public corruption

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[88] Mass. Gen. Laws ch. 272, § 99.
[89] 18 U.S.C. § 2511(2)(d).
[90] *See, e.g.*, Ind. Code Ann. § 35-33.5-1-5(2); Iowa Code Ann. §§ 727.8, 808B.2(2)(c); Ohio Rev. Code Ann. § 2933.52(B)(4).
[91] *See State v. Fuller*, 146 Vt. 364, 366, 503 A.2d 550, 551 (1985) (adopting 18 U.S.C. § 2511); *Mays v. Mays*, 267 S.C. 490, 494, 229 S.E.2d 725, 726 (1976) (adopting 18 U.S.C. § 2511(d)(2)).

investigations. Consistent with these recommendations and the prevailing practice in other jurisdictions, the Task Force recommends legislation to amend the interception of communications statute to allow one-party consent monitoring and recording of conversations with judicial approval in state corruption investigations.[92] While Massachusetts law does not require judicial approval to record conversations in all cases involving organized crime, the Task Force believes that this is an essential protection that should be required before law enforcement may record a conversation in a public corruption case.

4. Criminal Penalties for Fraudulent Violations of Standards of Conduct

The Task Force heard recommendations to create an honest services fraud statute – modeled on the existing federal statute – that would provide criminal sanctions for engaging in a fraudulent scheme to deprive citizens of their right to honest services of a public official. Others recommended the adoption of criminal sanctions for violations of the existing standards of conduct statute, Section 23 of Chapter 268A, which prohibits, among other things, a government employee using his office to secure privileges or exemptions not properly available to others and the failure to disclose facts that might present the appearance of a conflict of interest.

Because Section 23 already provides a broad framework applicable to misuse of office and other conduct generally thought to be contrary to the duty of honesty owed by government employees, the Task Force believes it is preferable to adapt any new criminal sanctions to these existing standards, rather than adopting under state law yet another broad statutory standard – especially one carrying criminal penalties.

[92] *See* SECTION 63 of An Act to Improve the Laws Relating to Ethics and Lobbying.

At the same time, however, there are two shortcomings with simply imposing criminal sanctions for Section 23 violations. First, because Section 23 does not require fraudulent intent and is broad enough to reach minor and even unintentional violations, the Task Force does not believe criminal sanctions are appropriate for all Section 23 violations. Second, Section 23 only applies to government employees and would not reach the conduct of a private citizen who seeks to corrupt the services of a government employee or otherwise participates in an employee's violation of Section 23.

Accordingly, to enable prosecutors to reach both the public and the private participants of serious violations of Section 23, without criminalizing minor or inadvertent violations, the Task Force recommends legislation subjecting persons who, with fraudulent intent, violate or cause another to violate Sections 23(b)(1), (2) or 23(c). The proposed legislation imposes a penalty of up to $10,000, up to 5 years imprisonment, or both for a violation of this section.[93]

5. Obstruction of Justice Statute

For many years in the Commonwealth, there was no statute addressing efforts by targets of criminal and other official investigations to impede those investigations, whether by intimidating witnesses or destroying evidence. While the federal government and nearly every other state made it clear that such actions are illegal and subject to severe punishment, in the Commonwealth, authorities were forced to rely on a common law misdemeanor that was fraught with exceptions and ambiguities.[94] As a result, there was little deterrence of such conduct, and there were very few prosecutions. In 2006, the

[93] *See* SECTION 45 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[94] *See, e.g., Commonwealth v. Triplett*, 426 Mass. 26, 686 N.E.2d 195 (1997) (recognizing the common law crime but also restricting its use to those instances in which a grand jury had been convened and the defendant was aware of the grand jury's work).

witness intimidation statute was strengthened to include conduct involving threats and violence to witnesses that previously would go unpunished.[95] Destruction of evidence, however, was still not specifically prohibited by the General Laws. This is an omission that has profound consequences. Indeed, in the absence of such a statute, there is little reason why the target of an investigation who suspects that a subpoena or search warrant for inculpatory evidence is forthcoming would not destroy the evidence in the hope of avoiding responsibility altogether. The Task Force recommends legislation that imposes penalties for obstruction of justice, including acts like destruction of evidence.[96]

6. Statewide Grand Jury

Public corruption cases involving state, county, and municipal officials from around the Commonwealth are more often investigated and prosecuted by the Attorney General's Office than by district attorneys' offices. The Attorney General is better situated to handle such cases because it has a statewide constituency and has a team of specially trained investigators and prosecutors who are experts in complex, long-term investigations of white collar crime.

The Attorney General is put at a disadvantage, however, when these investigations occur outside of Suffolk County, as it is only in Suffolk County that the Attorney General has the authority to convene its own special grand jury that it does not share with the district attorney's office. In every other part of the Commonwealth, the Attorney General typically has to borrow a Grand Jury convened by the local district attorney to conduct an investigation. This presents a number of potential complications. Among them are: the Attorney General's case must compete for time – often

[95] *See* Mass. Gen. Laws ch. 268, § 13B, amended by St. 2006, ch. 48, § 3.
[96] *See* SECTION 20 of An Act to Improve the Laws Relating to Ethics and Lobbying.

unsuccessfully – with pressing local investigations involving violent crime such as homicide, rape and robbery; confidentiality may be compromised because of the need for witnesses to come to a location where they are likely to be known by fellow witnesses, media or others in the courthouse; reliance on local courthouse officials for support can be uncomfortable or present an outright conflict; and county grand juries sit for only three months and are difficult to extend, while complex corruption investigations often go on for more than a year. Establishment of a statewide grand jury will also avoid the inefficiencies often associated with the current system. The Task Force therefore proposes legislation to allow the Attorney General's office to investigate crimes that cross county lines and to convene inquiries into local corruption matters without relying exclusively on local grand jurors.[97]

D. Enhanced Penalties for Conflict of Interest Violations

When the conflict of interest law was codified as a criminal statute in 1962 as Chapter 268 of the General Laws, the maximum penalty for bribery was set at three years imprisonment and a $5,000 fine. The maximum penalty for other criminal violations of the conflict of interest laws was set at two years imprisonment and a $3,000 fine. The criminal penalties have remained unchanged since 1962. The maximum civil penalties also remain historically out of date at no more than $2,000 per violation. When the Commonwealth's conflict of interest law was enacted, it was one of the stronger such laws in the country, and the Commonwealth has often been a leader in this area. Our laws governing the applicable penalties, however, have fallen behind and no longer serve as an adequate deterrent. Indeed, the potential financial penalties are so low that, in some cases, they may be viewed as no more than the (relatively inexpensive) cost of doing

[97] *See* SECTION 64 of An Act to Improve the Laws Relating to Ethics and Lobbying.

business, where maximum exposure amounts to a tiny fraction of the financial interest of the employee that is implicated by the transgression. Below are the Task Force's specific recommendations for increasing criminal and civil penalties for ethics violations.

1. Bribery

The current penalty for giving or receiving a bribe to influence an official act is up to $5,000, or up to three years imprisonment, or both.[98] This is lower than the maximum penalty for larceny ($25,000 or five years imprisonment),[99] the maximum penalty for false entries in corporate books (10 years imprisonment),[100] and the maximum penalty for embezzlement ($2,000 and up to 10 years imprisonment).[101] There is no justification for treating crimes against the integrity of our government so much less seriously than we treat other financial crimes. To the contrary, while both are typically financially motivated, and have harmful financial consequences, public integrity crimes also damage the fabric of our democracy.

In addition to being unreasonably lenient when compared with other Massachusetts crimes, our bribery penalties pale by comparison to other states. At least six states currently have a maximum penalty of $100,000 or more for bribery,[102] and 23 states have a maximum sentence of at least ten years for

[98] Mass. Gen. Laws ch. 268A, § 2.
[99] Mass. Gen. Laws ch. 266, § 30 (larceny over $250; larceny over $250 of the property of a person 60 years or older or a person with a disability is punishable by $50,000, up to 10 ten years, or both).
[100] *Id.* § 67.
[101] *Id.* § 57.
[102] Alaska Stat. §§ 11.56.100, .110, 12.55.035(b)(3) ($100,000 maximum fine), Ariz. Rev. Stat. Ann. §§ 13-2602, -801 ($150,000 maximum fine); Colo. Rev. Stat. Ann. §§ 18-8-302, 18-1.3-401(1)(a)(III) ($750,000 maximum fine); Kan. Stat. Ann. §§ 21-3901, -4503a(a)(3) ($100,000 maximum fine); N.J. Stat. Ann. §§ 2C:27-2, :43-3a.(2) ($150,000 maximum fine if bribe amount was $200 or more); Va. Code Ann. §§ 18.2-438, -439, 18.2-10(d) ($100,000 maximum fine).

bribery.[103] Colorado has the highest monetary penalty at $750,000.[104] Georgia, Rhode Island, and Texas have the highest maximum prison sentence for first offenses at 20 years.[105] New York imposes up to 25 years for second offenses in which the bribe affects an investigation, arrest, or prosecution.[106] The Commonwealth's current three-year maximum penalty is the lowest in the nation and is only shared with two other states – Arizona and New Mexico.[107] The Task Force recommends legislation to increase the criminal penalty for bribery to up to $100,000, or up to 10 years imprisonment, or both.[108]

2. *Other Criminal Violations- Gifts and Gratuities / Receiving Compensation for State Action / Revolving Door Provision / Participation in a Matter in Which Employee Has a Financial Interest / Financial Interest in Contract of State Agency / Directing Bidder to Particular Insurer on Public Building or Construction Contract*

In addition to bribery, Massachusetts criminalizes other violations of the conflict of interest laws. Those violations include: (a) giving or receiving anything of substantial

[103] Ala. Code §§ 13A-10-61, -5-6(a)(3) (10 year maximum sentence); Alaska Stat. §§ 11.56.100, .110, 12.55.125(d) (10 year maximum sentence); Conn. Gen. Stat. Ann. §§ 53a-147, -148, -35a (10 year maximum sentence); Fla. Stat. Ann. §§ 838.315, 775.082 (15 year maximum sentence); Ga. Code Ann. § 16-10-2 (20 year maximum sentence); Haw. Rev. Stat. §§ 710-1040, 706-660 (10 year maximum sentence); Md. Code Ann., Crim. Law § 9-201 (12 year maximum sentence); Mich. Comp. Laws Ann. § 750.118 (10 year maximum sentence); Minn. Stat. Ann § 609.42 (10 year maximum sentence); Miss. Code Ann. § 97-11-13 (10 year maximum sentence); Mont. Code Ann. § 45-7-101 (10 year maximum sentence); N.J. Stat. Ann. §§ 2C:27-2, :43-6(2) (10 year maximum sentence if bribe was $200 or more); N.Y. Penal Law §§ 200.12, 70.00 (25 year maximum sentence for specific form of bribery); Or. Rev. Stat. Ann. §§ 162.15, .25, 161.605(2) (10 year maximum sentence); R.I. Gen. Laws §§ 11-7-3, 7-5 (20 year maximum sentence); S.C. Code Ann. §§ 16-9-210, -220 (10 year maximum sentence); S.D. Codified Laws §§ 22-12A-6, -7, -6-1 (10 year maximum sentence); Tex. Penal Code Ann. §§ 36.02, 12.33 (20 year maximum sentence); Utah Code Ann. §§ 76-8-103, -105, 76-3-203 (15 year maximum sentence); Va. Code Ann. §§ 18.2-439, -10 (10 year maximum sentence); Wash. Rev. Code Ann. §§ 9A.68.010, .20.02(1)(b) (10 year maximum sentence); W. Va. Code Ann. §§ 61-5A-3, -9(a) (10 year maximum sentence); Wyo. Stat. Ann. § 6-5-102 (10 year maximum sentence).

[104] Colo. Rev. Stat. Ann. §§ 18-8-302, 18-1.3-401(1)(a)(III).

[105] Ga. Code Ann. § 16-10-2; R.I. Gen. Laws § 11-7-5; Tex. Penal Code Ann. §§ 12.33, 26.02.

[106] N.Y. Penal Law §§ 200.12, 70.00.

[107] Ariz. Rev. Stat. Ann. §§ 13-2602, 13-702; N.M. Stat. Ann. §§ 30-24-1, -2, 31-18-15.

[108] *See* SECTION 21 of An Act to Improve the Laws Relating to Ethics and Lobbying.

value in exchange for an official act;[109] (b) receiving or requesting compensation in relation to any matter in which the state has a direct or substantial interest;[110] (c) acting as a legislative agent before the governmental body with which that employee was associated for one year after he leaves that body;[111] (d) participating, without permission, in a matter in which a state employee has a financial interest;[112] (e) having a financial interest in the contract of a state agency; [113] and (f) directing a bidder on a public building or construction contract to any particular surety or insurance company.[114] The maximum penalties for violations of (a) through (e) are up to $3,000 and up to two years imprisonment, or both.[115] The penalty for directing a bidder on a public building or construction contract to any particular surety or insurance company is up to $5,000, or up to two years imprisonment, or both.[116]

Most states criminalize similar violations of their respective conflict of interest laws. However, other states' penalties are far more severe than Massachusetts' for similar violations. Alaska, for example, imposes a criminal penalty of up to $10,000 for receiving a gift in exchange for an official act.[117] Other states impose penalties of $10,000 (to up to $150,000) and up to 15 years imprisonment for receiving compensation for state action.[118] At least five states have criminal penalties of $10,000 or more for

[109] Mass. Gen. Laws ch. 268A, § 3. Substantial value has been interpreted to mean $50 or more. *See Commonwealth v. Famigletti*, 4 Mass. App. 584, 587, 354 N.E.2d 890, 893 (1976); *see also* 930 Mass. Code Regs. 5.04(1)(a).
[110] Mass. Gen. Laws ch. 268A, §§ 4, 11, 17.
[111] *Id.* §§ 5, 12, 18.
[112] *Id.* §§ 6, 13, 19.
[113] *Id.* §§ 7, 14, 20.
[114] *Id.* § 8.
[115] *Id.* §§ 4-7, 11-14, 17-20.
[116] *Id.* § 8.
[117] Alaska Stat. §§ 11.56.120, 12.55.035(b)(5).
[118] *See, e.g.*, Fla. Stat. Ann. §§ 838.016, 775.083(b) (up to $10,000) ; N.J. Stat. Ann. §§ 2C:27-10, :43-3 ($15,000 or up to $150,000 depending on the amount received), :43-6(a)(2) (between 5 and 10 years imprisonment); Tenn. Code Ann. §§ 39-16-104, 40-35-111(5) (up to 6 years imprisonment); Wyo. Stat.

violations of those states' revolving door provisions.[119] Wisconsin and Indiana, for example, impose penalties of $10,000 for participating in a matter in which the employee has a financial interest.[120] Delaware provides for penalties of up to $10,000 for each violation of the Delaware law prohibiting public employees from directing bidders to a particular company on a state contract.[121]

The Task Force proposes legislation to increase the penalties for the above listed criminal violations of the conflict of interest laws to up to $10,000, or up to five years imprisonment, or both.[122] These increased penalties would place Massachusetts alongside the majority of other states that impose high penalties and imprisonment terms for criminal violations of conflict of interest laws.

3. Civil Violations of Conflict of Interest Laws

Civil enforcement is an important alternative to the criminal process in the complex field of conflict of interest. The Ethics Commission is currently authorized to impose a maximum civil penalty of $2,000 per violation for a civil violation of any conflict of interest law under G.L. c. 268A.[123] This maximum penalty has been unchanged since 1982, when it was increased from $1,000 to $2,000. The Task Force believes that an increase in civil penalties in addition to the increases in criminal penalties discussed above is also long overdue. In most cases, $2,000 is simply not a meaningful deterrent or penalty. This becomes particularly apparent in those situations where there

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Ann. § 6-5-104 (up to 10 years imprisonment); Fla. Stat. Ann. § 775.082(3)(c) (up to 15 years imprisonment).

[119] *See* Ala. Code §§ 36-25-13, -25-27, 13A-5-11 ($30,000); Ariz. Rev. Stat. Ann. §§ 38-504, -510, 13-801 (up to $150,000); Miss. Code Ann. §§ 25-4-105, -109 ($10,000); N.J. Stat. Ann. § 52:13C-21.4 ($10,000); Or. Rev. Stat. Ann. §§ 244.045, .350 ($25,000).

[120] Wis. Stat. Ann. §§ 946.13, 939.50(3)(i); Ind. Code Ann. §§ 35-44-1-3, -50-2-7.

[121] Del. Code Ann. tit. 18, §§ 2304(21)(e), 2308 (up to an aggregate of $150,000).

[122] *See* SECTIONS 23, 25, 28-31, 33-36, 38-41of An Act to Improve the Laws Relating to Ethics and Lobbying.

[123] Mass. Gen. Laws ch. 268B, § 4(j)(3).

has been a single, but serious, violation of the conflict of interest laws. In those cases, the current maximum penalty of $2,000 is clearly insufficient. The Task Force recommends legislation to increase the civil penalty to up to $10,000 for any civil violation of the conflict of interest laws other than bribery and to increase the civil penalty for bribery to $25,000.[124] This proposal would bring Massachusetts in line with other states' penalties for civil violations of the conflict of interest laws.[125]

E. Enhanced Penalties for Financial Disclosure Violations

1. False Statements in Ethics Proceeding and Filing False Disclosures

A Statement of Financial Interest (SFI) must be filed by certain employees holding major policymaking positions to disclose information about potential conflicts of interest.[126] The current penalty for filing a false SFI is up to $1,000, or up to three years imprisonment, or both.[127] However, the statute that imposes the penalty for filing a false SFI does not expressly require the false filing to be willful, nor does it require that the false statement be material. The same statutory provision imposes the same penalty for willfully making a materially false statement in a proceeding before the Commission.

Other states impose penalties of up to $10,000 or up to five years imprisonment for filing a false disclosure, with many of those states including a knowing and willful requirement.[128] The Task Force recommends amending the law to clarify that the willful and material requirement also applies to filing false disclosures. The Task Force also

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[124] *See* SECTION 55 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[125] *See, e.g.*, Conn. Gen. Stat. Ann. §§ 1-85, -88 ($10,000); Fla. Stat. Ann. §§ 112.3143, 112.317(1)(a)(6) ($10,000); Miss. Code Ann. § 25-4-105, -109 ($10,000).
[126] Mass. Gen. Laws ch. 268B, § 5.
[127] *Id.* § 7.
[128] *See* Colo. Rev. Stat. Ann. § 24-6-202(7) (up to $5,000); 5 Ill. Comp. Stat. § 420/4A107 (up to $5,000); La. Rev. Stat. Ann. § 42:1124.1(B) (up to $10,000); Neb. Rev. Stat. §§ 28-105; 49-14,134 (the penalty for knowingly filing a false disclosure statement is a class IV Felony punishable by up to five years imprisonment and/or a fine not to exceed $10,000).

recommends legislation to increase the penalty to up to $10,000, or up to five years imprisonment, or both for willfully making materially false statements in a proceeding before the Commission or willfully filing a materially false SFI.[129] Submitting false statements in ethics proceedings and filing false disclosures seriously impedes the ability of the Commission to enforce the ethics laws and should be punished with the same force and in the same manner as other similar violations of the ethics laws.

2. Civil Violations of Financial Disclosure Laws

The current penalty for a civil violation of any financial disclosure law under Chapter 268B of the General Laws is up to $2,000 per violation.[130] The Task Force recommends legislation to increase the civil penalty to up to $10,000 for any civil violation of the financial disclosure laws.[131]

Civil penalties for disclosure laws vary widely from state to state. Many states impose stiff civil penalties for violations of the financial disclosure laws. For example, in Tennessee, failing to file 35 days after a notice of failure to file is punishable by a fine of up to $10,000.[132] Texas also imposes a fine of up to $10,000.[133] Florida provides a civil penalty of up to $10,000 in addition to a host of penalties for violation of its disclosure laws.[134] An increase in the civil penalty to $10,000 would place Massachusetts among the states with the highest penalties and would maintain the parity between the penalty

[129] *See* SECTIONS 61 & 62 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[130] Mass. Gen. Laws ch. 268B, § 4(j)(3).
[131] *See* SECTION 55 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[132] Tenn. Code Ann. § 3-6-205(a)(2).
[133] Tex. Gov't Code Ann. § 572.033(b) (penalty of up to $10,000 if initial $500 civil penalty is not paid within 10 days of receiving 30-day late notice).
[134] Fla. Stat. Ann. § 112.317(1)(a)-(c) (In addition to the civil fine, (i) if the violator is a public officer, he may be impeached, removed from office, suspended from office, be subject to public censure or reprimand, and forfeiture of no more than one third salary per month for no more than 12 months; (ii) if the violator is an employee, he may be subject to dismissal, suspension for not more than 90 days without pay, demotion, forfeiture of no more than one-third salary per month for no more than 12 months; (iii) in the case of a candidate, the penalties include disqualification, public censure, and reprimand).

applicable to a financial disclosure violation with that applicable to a conflict of interest violation.

F. Enhanced Penalties for Lobbying Violations

1. Late Filings

Late filings prevent the Secretary of State's Office from properly assessing violations of the lobbying laws and undermine public transparency and accountability. While the act itself may seem minor, the result can have a significant impact on the Secretary of State's ability to monitor and detect violations of the lobbying laws. The current penalty for lobbyists who file a late statement is $250 (if less than 10 days late) or $500 (if more than 10 days late).[135] The Task Force recommends legislation to increase the penalty to $50 per day for the first 20 days and $100 per day thereafter.[136]

The proposed fines are within the same range as many other states. Many states provide a per day late filing penalty.[137] Other states set a threshold and then provide for a per day penalty beyond that threshold. Virginia, for example, sets a $50 late fee for the first 10 days late and $50 per day for every day thereafter.[138] Other states also set a per-day penalty, but cap the maximum fine.[139] Oregon, for example, provides a $10 per day penalty for the first 14 days late and $50 for each day thereafter, up to $5,000.[140]

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[135] Mass. Gen. Laws ch. 3, § 43 (for legislative and executive agents), § 47 (for employers of legislative and executive agents). The Secretary may waive fees for good cause.
[136] *See* SECTION 12 & 17 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[137] *See, e.g.*, Colo. Rev. Stat. Ann. § 24-6-302(7); Alaska Stat. § 24.45.141; Mich. Comp. Laws Ann. § 4.418(3).
[138] Va. Code Ann. § 2.2-431(A).
[139] *See, e.g.*, Ky. Rev. Stat. Ann. § 6.797(2)(a) (providing for a discretionary fine, determined by the commission, up to $100 per day up to a maximum total of $1,000); Tenn. Code Ann. § 3-6-306(a)(1)(A), (a)(2)(A)(providing that the ethics commission may assess a late fee not to exceed $25 per day up to a maximum of $750).
[140] Or. Rev. Stat. Ann. § 171.992(2)(c).

Louisiana provides for a mandatory penalty of $50 per day for late filings and after 11 days (and a hearing), an additional fine of up to $10,000.[141]

The Task Force's recommendation would place Massachusetts among those states recognizing the importance of enforcing timely compliance with lobbyist disclosure requirements.

2. Registration Violations

Under current Massachusetts law, violation of lobbying laws, including annual registration, filing of expenditure statements, prohibitions on agreements to influence legislation for compensation for lobbyists, lobby entities, and employers of lobbyists are misdemeanors, which result in a fine of $100 to $5,000, and no possibility of jail time.[142] The Task Force recommends legislation to increase the criminal penalty to up to $10,000, up to five years imprisonment, or both.[143]

Several states make a violation of individual and entity lobbyist registration rules a criminal offense. Several states impose penalties of up to a $10,000 fine and 10 years imprisonment.[144] Indiana provides for imprisonment of up to six years.[145] Texas also allows for a penalty of up to $10,000 and up to 10 years imprisonment for violations of prohibitions on agreements to influence legislation for compensation.[146] The Task Force's proposal to increase penalties for violations of lobbyist registration related rules to up to a $10,000 fine and five years imprisonment would similarly recognize the

[141] La. Rev. Stat. Ann. § 24:58(D)(1)-(2).
[142] Mass. Gen. Laws ch. 3, §§ 41, 42, 43, 44, 47, 48.
[143] *See* SECTION 18 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[144] *See, e.g.*, Tenn. Code Ann. §§ 3-6-302, -303, -304, -306(1)(B) (up to $10,000); R.I. Gen. Laws §§ 22-10-5, -9, -11, -12 (up to $10,000); Tex. Gov't Code Ann. §§ 305.005, .006, .022, .031, 12.21, .34.
[145] Ind. Code §§ 2-7-2, -3, -4, 35-50-2-7.
[146] Tex. Gov't Code Ann. §§ 305.005, .006, .022, .031, 12.21, .34.

importance of these laws to ensuring public accountability and integrity in the process of government.

3. Disqualification for Lobbying Violations

Currently, the Secretary of State may disqualify a person from acting as a lobbyist for three regular sessions following the disqualification, which equates to six years.[147] The applicable statute provides little guidance on what procedures the Secretary is to follow in invoking this remedy and it appears that the remedy has not been invoked in recent times. According to a public statement of the Secretary of State on December 5, 2008, he had never before moved to suspend a lobbyist.[148] The Task Force believes that this remedy needs to be better defined to serve as an effective enforcement and deterrent mechanism. Specifically, the Task Force recommends legislation to require legislative and executive agents to obtain a license from the Secretary of State upon registration and to allow the Secretary of State, upon cause shown, to suspend or permanently revoke a legislative or executive agent's license.[149]

4. Gift Restriction

Rules regarding gifts to public officials from legislative agents are inconsistent and confusing. The penalty for a legislative agent providing *anything* of value to a public official (or a member of his family) is not less than $100 and not more than $5,000.[150] However, a separate provision of the ethics laws prohibit gifts from lobbyists to a public

[147] Mass. Gen. Laws ch. 3, § 45.
[148] *Mass. Sec. of State moves to suspend lobbyist*, The Boston Globe, Dec. 5, 2008.
[149] *See* SECTION 14 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[150] Mass. Gen. Laws ch. 3, §§ 43, 48.

official of more than $100 in value in a calendar year and impose a penalty of up to $2,000 for violating that restriction.[151]

The Task Force recommends removing the inconsistency from the ethics law and conforming it to the existing prohibition contained in the lobbying laws.[152] The Task Force also recommends legislation to increase the criminal penalty to up to $10,000, or up to 5 years imprisonment, or both for a lobbyist providing a gift to a public official (or a member of his family) in violation of these provisions.[153]

Several states fall into the category of "zero tolerance" lobbyist gift giving states.[154] Some states impose high penalties for violating the lobbyist gift restriction. South Carolina, for example, makes violation of its gift law a felony punishable by a fine of not more than $10,000 and imprisonment for not more than 10 years.[155] Violation of the Tennessee gift law can result in a civil penalty of $25 or 200 percent the value of the gift for a first offense; subsequent offenses carry a fine up to $10,000.[156]

G. MANDATORY TRAINING AND EDUCATION

The Commission conducts seminars for state, county, and municipal employees. The Commission also publishes a bulletin with updates on the ethics laws. The Task Force understands the critical role that the Commission plays in educating government employees and believes that even greater and more uniform public education is

[151] Mass. Gen. Laws ch. 268B, §§ 4(j)(3), 6.
[152] *See* SECTION 60 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[153] *See* SECTION 18 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[154] *See, e.g.*, Alaska Stat. § 24.60.080, .990 (exception for immediate consumption of food or beverage); Colo. Constitution Art. XXIX (exception for consumption of food or beverage at which recipient appears to speak or answer questions as part of a scheduled program, among others); Minn. Stat. Ann. § 10A.071(2) (exception for consumption of food or beverage at speech or panel, among others); N.J. Rev. Stat. Ann. § 52:13D-14; Tenn. Code Ann. § 3-6-305(b)(1); Wis. Stat. Ann. §§ 19.42(1), .45, 13.625; *see also* http://www.ncsl.org/programs/ethics/e_Coffee.htm for a listing of all state lobbyist gift restrictions.
[155] S.C. Code Ann. § 8-13-705(F).
[156] Tenn. Code Ann. §§ 3-6-305, -306.

necessary. Many professions require continuing education and achievement of performance standards to remain current and to assure accountability. Government employees should also receive periodic ethics training. The Task Force believes that required training will help government employees identify and avoid conflicts and encourage government employees to seek further advice when a potential problem arises.

1. Summary of Conflict of Interest Laws

Many violations of the ethics and lobbying laws are caused by lack of knowledge rather than intentional misconduct. The majority of government employees, like most people, want to do the right thing. This is easier to accomplish when people have relevant information to guide their actions. Yet, there is no statutory requirement that government employees receive information on the ethics and lobbying laws.

The conflict of interest law currently provides that municipal officials be provided with a copy of the "standards of conduct" section of the conflict of interest law.[157] It also requires that municipal officials sign an acknowledgment that they received this section.[158] It requires only that the language of one section of the statute be provided and it has no provision to provide any material or notice about the conflict of interest law to state and county officials.

The conflict of interest law has 25 sections. Some of the language has been interpreted in ways that are not always intuitive. It restricts what public officials and employees at the state, county, and municipal levels, whether elected or appointed, paid or unpaid, full-time or part-time, can do on the job, after hours, and when they leave public service. Public officials and employees who violate the law may face civil or

[157] Mass. Gen. Laws ch. 268A, §23(f).
[158] *Id.*

criminal penalties. Given the importance of these laws to government employees and to the citizenry, it is essential that our government employees have a reasonable understanding of what they require.

Several other states already mandate various degrees of ethics training.[159] Massachusetts, long a leader in government ethics, should not be left behind. To address this need, the Task Force recommends legislation to require that all state, county, and municipal employees receive a summary of the conflict of interest laws within 30 days of becoming an employee and every year thereafter.[160] The Task Force's proposal provides for a 90-day transition period for current state, county, and municipal employees.[161] The summary would be a short, plain-language synopsis of all of the sections of the conflict of interest laws, including the section on former employees, and would be prepared by the Commission. The Commission would make the summary available on its website for access and distribution by the city and town clerk for municipal employees, appointing authorities for appointed state and county employees, and by the Commission for elected state and county employees. All employees would be required to sign and file a written acknowledgment that they received a summary with the entity that provided them with the summary.

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[159] *See, e.g.*, Alaska Stat. § 24.60.155 (requires ethics training within 30 days of employment and within 10 days of the beginning of each regular legislative session); 5 Ill. Comp. Stat. 430/5-10 (requires training within six months of employment and annually thereafter); N.J. Stat. Ann. §§ 52:13D-21(o), -21.1, -28 (requires employees in the executive branch to certify that they have received, read, and understood a plain language ethics guide prepared by the ethics commission; also requires annual ethics training as well as a biannual ethics online ethics tutorial course for all legislative employees and officers); Nev. Rev. Stat. § 281A.500 (Nevada requires every public officer to acknowledge receipt and understanding the ethical standards); Ohio Rev. Code Ann. § 102.09(D) (requires that each employee of a public agency acknowledge receipt of Ohio's conflict of interest laws within 15 days of beginning employment); Tex. Gov't Code Ann. § 2113.014(b) (requires each state agency to provide its employees with a copy of the Texas conflict of interest laws and that each employee acknowledge receipt by signature).

[160] *See* SECTIONS 44 & 46 of An Act to Improve the Laws Relating to Ethics and Lobbying.

[161] *See* SECTION 66 of An Act to Improve the Laws Relating to Ethics and Lobbying.

Providing government employees with a brief summary of the law, rather than the actual text of a single section of the law as the current law requires, will provide guidance in general, promote awareness of the specific restrictions of the conflict of interest laws, and will provide government employees with information about how to obtain additional information and advice from the Commission.

The Task Force has also considered whether government employees should be required to receive a summary when they leave public employment. The Task Force agrees with the Commission that if employees receive the summaries every year and those summaries include a discussion of the rules applicable to former employees, it is not necessary to also include a requirement that departing employees be given another summary.

2. Periodic Online Training

The Commission promotes education and advice as part of its mission to enforce the conflict of interest laws. The Commission's website includes an online training program for state employees, which the Commonwealth's Human Resources Division has identified as an essential course for all state employees. However, there is currently no statutory requirement that government employees take this training. In recent years, states have shown an increased attention to ensuring that government employees and officials understand conflict of interest laws. Many states now statutorily require certain categories of government employees to complete ethics training programs that address

conflict of interest laws.[162] Most states with mandatory training programs make periodic training a central component of their programs.[163]

The Task Force recommends legislation requiring all state, county, and municipal employees to take the Commission's online training program within 30 days of becoming an employee and every two years thereafter.[164] The Task Force's proposal provides for a 90-day transition period for current state, county, and municipal employees.[165] The Commission would be required to log and maintain a record of completion for each employee who completed the online training program. The Task Force's proposal would bring Massachusetts in line with many states mandating online training for their employees.

Similar to the distribution of the summary of the conflict of interest laws, based on input from the Commission, the Task Force does not believe that it would be feasible to legislatively require online training for outgoing employees. The Commission's online training program will include a component on rules applicable to former employees. Continual review of those rules every year through review of the summary, and every two years through the online training program, should be sufficient to remind employees of the restriction on former employees.

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[162] *See, e.g.*, La. Rev. Stat. Ann. § 42:1170; Cal. Gov't. Code § 53235; N.J. Stat. Ann. § 52:13D-28.
[163] *See, e.g.*, Alaska Stat. § 24.60.155 (requires training within 30 days of employment and within 10 days of the beginning of each regular legislative session).5 Ill. Comp. Stat. 430/5-10 (requires annual training); N.J. Stat. Ann. §§ 52:13D-21.1, -28; (requires ethics training annually; legislative employees and officers must, in addition to annual training, complete an online tutorial course biannually).
[164] *See* SECTION 46 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[165] *See* SECTION 67 of An Act to Improve the Laws Relating to Ethics and Lobbying.

3. Training Program for Municipalities

Individuals appointed or elected to a municipal agency receive a copy of Section 23 of Chapter 268A of the General Laws.[166] The Task Force recommends developing a certification program for municipalities so that each municipality has at least one person knowledgeable about the ethics laws who can educate municipal employees.[167]

The Task Force considered the fiscal and administrative feasibility of administering in-person ethics training to municipal employees and concluded that it would be best to train and establish an ethics liaison in each of the Commonwealth's municipalities. The designated liaison will be available to advise and train municipal employees with respect to ethics laws, as opposed to having the Commission develop training sessions for those employees on a statewide basis. Specifically, the Task Force proposes legislation to create a role for a "designated liaison" who would act as an information disseminator or facilitator in encouraging and assisting employees with requesting opinions from town counsel.[168] The online training, mentioned above, will also prove to be a cost-effective way of ensuring that municipal employees are educated and trained with regard to ethics laws as well.

4. Training for Lobbyists

There is currently no statutory requirement that lobbyists receive training on lobbying laws. The Secretary of State's Public Records Division conducts one-on-one training for any lobbyist who requests it, limited to instructing the lobbyist on the type of information that is required to be disclosed and training on how to use the new online

[166] Mass. Gen. Laws ch. 268A, § 23(f).
[167] *See* SECTION 46 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[168] *Id.*

reporting module. (The Secretary of State's Office currently requires electronic registration and disclosure for all lobbyists.)

Several states already require lobbyists to take an ethics training course. For example, California requires lobbyists to attend an orientation regarding lobbying laws and ethics within 12 months of registering as a lobbyist for the first time and every two years thereafter.[169] Similarly, Maryland requires lobbyists to attend training at least once every two years and currently offers both basic and advanced in-person classes.[170] Alaska requires that lobbyists complete either an in-person or online ethics course within the 12 months preceding their initial registration as a lobbyist and every year thereafter.[171]

The Task Force recommends legislation requiring all legislative and executive agents to take an in-person or online training course offered by the Secretary of State within 90 days of the effective date of the legislation and every year thereafter.[172] All legislative and executive agents must receive a certificate of completion to be filed with the Secretary of State, prior to being able to register.[173] The Task Force's proposal would join Massachusetts with the number of other states that require ethics training for lobbyists.

IV. RELATED ISSUES FOR FURTHER CONSIDERATION

In addition to the areas discussed above concerning ethics, lobbying, and related enforcement, the Task Force heard proposals extending beyond the scope of the Task

[169] Cal. Gov't Code §§ 8956(b), 86103(d)(1)-(2) (effectively requires refresher training every two years. For a brief summary, *see* Fair Political Practices Commission, http://www.fppc.ca.gov/index.html?id=28).
[170] Md. Code Ann., State Gov't § 15-205(e)(1); Maryland State Ethics Commission, http://ethics.gov.state.md.us/lobytrain.htm.
[171] Alaska Stat. §§ 24.45.031(a)(6), .041(b).
[172] *See* SECTIONS 6 & 65 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[173] *Id.*

Force's mandate, including recommendations for consolidating the various agencies charged with enforcing ethics, lobbying, and campaign finance laws; strengthening campaign finance laws; improving home rule and special legislation; and increasing transparency in government. An overview of these proposals follows. While the Task Force is not making any specific recommendations in these areas, it believes that many of the proposals merit further review and consideration.

A. Consolidation of Public Integrity Functions

The Task Force discussed proposals that would allow for greater coordination by combining the various regulatory and enforcement functions relating to public integrity. The Task Force believes that there is merit to bringing public integrity functions including, but not limited to, ethics, lobbying, and campaign finance within a single independent agency with sufficient staff and resources to handle all of those areas, but given the urgent need to promptly address ethics and lobbying concerns, the Task Force determined that it would be more productive to focus its recommendations on improvements that can be made within the existing regulatory structure. The Task Force recommends that the efficacy of the Commonwealth's ethics, lobbying, and campaign finance enforcement efforts be reevaluated and reassessed under the proposed information sharing regime,[174] and further review given to whether consolidation of functions would be beneficial.

A combined public integrity office could benefit the Commonwealth in several important respects. First, a single agency would foster consistency in the interpretation and enforcement of public integrity laws. Second, it would eliminate the need for citizens and government employees to approach multiple offices in order to obtain advice

[174] *See Information and Resource Sharing* Section III.A.7. above.

or information, file complaints, or submit reports. Third, combining the investigative and enforcement efforts into a single office would facilitate more effective and efficient investigations into matters that involve a combination of ethics, lobbying, and/or campaign finance issues, and would eliminate duplication of effort among agencies.

Several states have already created a single agency for ethics, campaign, and lobbying oversight. Wisconsin recently created the Government Accountability Board (GAB) to oversee elections, campaign finance, ethics, and lobbyists. In Texas and Arkansas, ethics commissions are responsible for all public integrity matters and candidate and political committee reporting, though their respective secretaries of state remain the chief election officer.

Wisconsin established the GAB in 2008 by legislation merging the State Elections Board and the State Ethics Board.[175] The GAB is divided into two divisions: the Elections Division and the Ethics & Accountability Division.[176] The Elections Division is responsible for registering candidates and political action committees, overseeing campaign finance rules, and overseeing orderly state elections. The Ethics and Accountability division oversees lobbyists, public employee financial disclosures, and standards of conduct for state and local officials. All members of the GAB are former state judges and serve staggered terms.[177] The Wisconsin approach was adopted in part to provide consistency and meet the public desire for a single trusted source for information relating to government accountability.[178]

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[175] *See* 2007 Wisconsin Act 1, *available at* http://www.legis.state.wi.us/2007/data/acts/07Act1.pdf; Wis. Stat. Ann. § 5.02.
[176] *See* Wisconsin Government Accountability Board website, *available at* http://gab.wi.gov/.
[177] Wis. Stat. Ann. § 5.60.
[178] Telephone Interview with Kevin Kennedy, Director and General Counsel, Wisconsin Government Accountability Board (Dec. 26, 2008). Mr. Kennedy explained that proposals to merge the offices began in the 1990s and arose out of a sense from constituents that the various oversight agencies had become

After the legislation's enactment in February 2007, it took approximately eleven months to establish the GAB.[179] The legislature enacted a number of ethics reforms before creating the GAB.[180] The state then faced logistical challenges in nominating and confirming the initial Board members and budgeting for the transition.[181] The process of physically combining the three pre-existing offices into one location is expected to occur January 26, 2009.[182]

The Wisconsin model is not the first of its kind. Both Arkansas and Texas established combined agencies nearly twenty years ago. Today, the Arkansas Ethics Commission is responsible for overseeing all public integrity matters, except elections which are the responsibility of the Secretary of State.[183] However, candidates for public office must establish committees and file reports with the Ethics Commission. The Texas Ethics Commission was created by a voter-approved amendment to the Texas Constitution on November 5, 1991.[184] Legislation following the amendment created additional duties for the Commission covering political contributions and expenditures, lobbyist registration and reporting activities, and public employee financial disclosures and conduct.[185]

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complacent to the point where constituents were frustrated with the lack of consistency and the need to approach different offices to answer a single question. Additionally, in 2006 the Elections Board was criticized by the minority party for making a number of partisan decisions.

[179] *See* 2007 Wisconsin Act 1, *available at* http://www.legis.state.wi.us/2007/data/acts/07Act1.pdf (date of enactment: Feb. 2, 2007); Government Accountability Board website, *available at* http://gab.wi.gov/ ("The GAB is a result of the merger of the staffs of the former State Elections Board and State Ethics Board into a single agency, as of January 10, 2008.").

[180] Telephone Interview with Kevin Kennedy, Director and General Counsel, Wisconsin Government Accountability Board (Dec. 26, 2008).

[181] *Id.*

[182] *Id.*

[183] Ark. Code Ann. §§ 7-6-102, -217.

[184] *See* Texas Ethics Commission website, *available at* http://www.ethics.state.tx.us/tec/duties.htm.

[185] *See id.*; Tex. Gov't Code Ann. § 571.001-.177.

The Task Force recommends that the Governor, Legislature, and relevant enforcement agencies study the benefits and feasibility of combining all state public integrity oversight into a single independent agency. The Task Force is not recommending immediate transition to a single agency. There are a number of logistical challenges in creating a new agency, and the transition could take up to a year. Because of the potential benefits of a single enforcement and oversight agency, however, creating this agency should be given careful study and consideration.

B. CAMPAIGN FINANCE

Massachusetts already has one of the more comprehensive regulatory schemes governing campaign contributions, but there is certainly room for improvement. The Director of the Massachusetts Office of Campaign and Political Finance testified before the Task Force and offered a number of sensible proposals to improve the campaign finance requirements, including: enhancing filing of disclosure reports; electronic filing by mayoral candidates; disclosure of late contributions; reporting of independent expenditures, disclosure of expenditures to sub-vendors; disclosure of ballot question expenditures; and enforcement of the campaign finance laws. Other suggestions in the campaign finance arena, discussed below, include campaign contributions from lobbyists and government contractors, and public financing of elections.

1. Filing of Disclosure Reports

Legislative candidates, political action committees (PACs), and people's committees are required to file reports three times in an election year and only once in an off election year. The Director of OCPF recommended a proposal to add an additional midyear report every year, ensuring timely and more accurate disclosure for the public.

In addition, it has been suggested that legislative committees use the "depository system" for reporting – the same system that is used by statewide candidates and mayoral candidates in the state's largest cities.[186]

2. Electronic Filing by Mayoral Candidates

Current law requires filing for mayoral candidates in cities with populations of 100,000 or more. The Director of OCPF recommended a proposal that would require mayoral candidates in cities with populations between 50,000 and 100,000 to file electronically with OCPF if they raise or spend $5,000 in an election cycle.

3. Disclosure of Late Contributions

Under current law, disclosure of legislative campaign finance activity ends 18 days before the election. For example, activity by legislative candidates and PACs that occurred after October 17, 2008 will not be disclosed until January 20, 2009. The Director of OCPF recommended a proposal to require electronic disclosure of large (*i.e.* $500) contributions within 24 hours of receipt of the contribution if it was received in the 18 day window before an election. Disclosure within 24 hours of receipt would also have been required for independent expenditures over $250 made less than 14 days before the election. Currently, independent expenditure reports must be filed within 7 business days of the date of the expenditure.

4. Reporting of Independent Expenditures

Currently, reports of independent expenditures of $100 or more must be filed in paper form within seven business days. The Director of OCPF recommended a proposal that would require electronic reporting of expenditures of $250 or more. If the

[186] The depository system for reporting to OCPF requires: the designation of a "depository" bank; the use of the bank for all campaign finance activity; and reporting by the bank to OCPF of campaign finance activity on a regular basis.

expenditure is made after the 14th day before an election, the report must be filed within 24 hours.

5. Disclosure of Expenditures to Sub-vendors

Sub-vendor reporting is another area of concern. For example, a candidate can hire a consultant for $40,000. The consultant then spends much of that money on advertisements, printing, and other consultants. Under current law, only the original expenditure to the consultant is disclosed; expenditures made by the consultant to other entities are not required to be disclosed. The Director of OCPF recommended a proposal to require additional disclosure of such expenditures.

6. Disclosure of Ballot Question Expenditures

There is no current requirement that individuals disclose expenditures for ballot questions. The Director of OCPF recommended a proposal to require individuals to file reports disclosing such expenditures.

7. Enforcement of Campaign Finance Laws

From an enforcement perspective, the Director of OCPF recommended a proposal to provide flexibility from the current statute that prevents OCPF from referring alleged violators to the Attorney General until after the relevant election. The current law also imposes a window allowing such referrals only during the 2 years after the relevant election. It is often difficult to meet this strict standard, especially when an investigation, complete with the use of subpoenas, is taking place.

8. Campaign Contributions from Lobbyists

The law currently allows for a $200 contribution from a legislative or executive agent.[187] Some suggested that lobbyists should be precluded from contributing to political campaigns to remove the perception that government decisions are based on the influence of lobbyists. Certain states have already enacted legislation banning campaign contributions from lobbyists.[188]

Massachusetts currently imposes no statutory restrictions on political fundraising by lobbyists. Some have recommended restrictions on political fundraising by lobbyists. Several states restrict lobbyists from soliciting campaign contributions or raising funds for candidates for public office.[189] Other states restrict lobbyists from soliciting campaign contributions, but only while the legislature is in session.[190]

9. Campaign Contributions from Government Contractors

Many states have enacted legislation prohibiting government contractors from making campaign contributions to those responsible for issuing the contract. Some suggested that Massachusetts join other states which ban this type of donation or more generally just prohibit state contractors (or their affiliates, including board members,

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[187] Mass. Gen. Laws ch. 55, § 7A(b).

[188] *See, e.g.*, Ky. Rev. Stat. Ann. § 6.811(6); N.C. Gen. Stat. Ann. § 163-278.13B(c); S.C. Code Ann. § 2-17-80.

[189] *See, e.g.*, Alaska Stat. § 24.45.121(a)(8) (stating that a lobbyist may not "host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate, or otherwise engage in the fund-raising activity of a legislative campaign or campaign for governor or lieutenant governor."); Md. Code Ann., State Gov't § 15-714(d) (stating that a lobbyist may not solicit or fundraise for a political campaign, but may give personal contributions); S.C. Code Ann. § 2-17-110(F) (stating that lobbyists, their employees, and their principals may not host an event to raise funds for a public official).

[190] *See, e.g.*, Ariz. Rev. Stat. § 41-1234.01 (prohibiting lobbyists from soliciting contributions for legislative candidates while the legislature is in session); Colo. Rev. Stat. Ann. § 1-45-105.5 (restricting lobbyists from soliciting campaign contributions while the legislature is in session, but permits lobbyists to engage in other fundraising activities for a party, but not a particular legislative candidate or current legislator); N.C. Gen. Stat. Ann. § 163-278.13B (prohibiting lobbyists from soliciting contributions for legislative candidates while the legislature is in session).

executives, shareholders, and their spouses) from making campaign contributions or raising money for elected officials.[191]

10. Public Financing of Elections

Some believe that Massachusetts has the least competitive legislative elections in the nation, and that lack of competitiveness and accountability is the root cause of ethics problems confronting state government. They contend that public financing of legislative races will ensure contested races as well as accountability.

Two years ago, Connecticut passed a full public financing law which was tested in this fall's election. Over 75 percent of the candidates participated, and incumbents and challengers alike reportedly gave the system good reviews. In Maine, a large majority of candidates, incumbents as well as challengers, are now publicly financed.

Many believe that Massachusetts' private financing system results in a high percentage of incumbents who run unopposed each year. A beneficial consequence of considerably more contested elections is that the challengers can be expected to scrutinize the incumbents' activities for corruption, among other weaknesses. The expectation that this will happen could be a further incentive to resist ethical lapses.

C. HOME RULE LEGISLATION

Although the Task Force has focused on ethics and lobbying reform, it has also discussed other potential improvements in the lawmaking process, including home rule legislation. By many accounts, home rule legislation – bills that authorize a single city or town in the state to take action it is not otherwise authorized to take without the legislature's permission and the Governor's approval – have become the currency for

[191] *See., e.g.*, Conn. Gen. Stat. Ann. § 9-610.

political trade-offs and deal-making on Beacon Hill. Concerns have been raised that the focus on such local legislation increases opportunity and incentive for corrupt behavior.

Our current home rule structure dates back to the 1960s and guarantees that the Legislature spends substantial amount of time deciding when and how localities can tax, borrow, regulate private and civil affairs, and make rules for municipal elections. Since the Governor took office on January 4, 2007, approximately 720 bills have been enacted. Out of those 720 bills, approximately 315 have been home rule bills; which means that over 40 percent of all legislation passed over the last two years are local laws that affect only one community. Accordingly, an inordinate amount of time and legislative resources are spent on matters that, for the most part, are not controversial and are fully supported by the elected officials of the affected municipality and its citizens. Sponsors of a home rule bill often expend a great deal of time and political capital to get the non-controversial, purely local matter moving and enacted, rather than working on matters of statewide concern. This arrangement makes it more difficult for legislators to focus on issues outside the four corners of their district and to focus on the merits of more significant legislative proposals.

The problem with these petitions is not that they are unworthy of attention, but rather that they become the currency of the legislative process and distract the Legislature from matters of statewide concern. Both to enable legislators to focus more of their time and energy on important matters of statewide concern and to reduce the potential for corruption that may arise from excessive entanglement by state officials in municipal matters, consideration should be given to legislation granting greater autonomy to municipalities.

D. TRANSPARENCY

Members of the Task Force and members of the public believe that government transparency helps foster public integrity by increasing civic engagement, helping citizens and enforcement agencies hold public employees accountable, and discouraging inappropriate behavior by making it more likely that such behavior will be detected. Some assert that Massachusetts lags behind other states in transparency laws and procedures. To address this, proponents of greater transparency in government have made various suggestions, including proposals to improve the availability and accessibility of budget information, strengthen the Open Meeting Law and the Public Records Law, and improve the identification of lobbyists.

1. Availability and Accessibility of Budget Information

Currently, the Commonwealth's House and Senate have budget websites, available at www.mass.gov/legis. Members of the public have proposed implementing a searchable online database of government expenditures. While Massachusetts has made significant strides in state budget disclosure, and the Legislature's budget websites have improved, many believe that state budget disclosure can be significantly improved. Many states mandate that citizens be able to access a searchable online database of government expenditures. These budget sites are sometimes referred to as "Transparency 2.0," which is the new standard for comprehensive, one-stop budget accountability and accessibility.[192] Some believe that such sites can save money by highlighting unnecessary spending and, in the context of state contracts, can serve to deter abuse.

[192] MassPIRG Report, *Transparency.gov 2.0- Using the Internet for Budget Transparency to Increase Accountability, Efficiency and Taxpayer Confidence* (Dec. 2008), *available at* http://www.masspirg.org/uploads/av/VF/avVFUhvhAeBN4_jyHK_FPw/MAPIRG-TransGov-final.pdf. MassPIRG is an advocacy organization for the public interest.

MassPIRG's Transparency 2.0 report highlights the national trend towards transparent budgets. It outlines the benefits in the form of money saved and more accountable contracting and expenditures with private entities.[193] The report compares best practices in the 18 states that have "upgraded" their budget transparency this way. Many believe that Massachusetts should enlist new information technology tools to enhance transparency for public money. Searchable web portals to track any government contract or subsidy are becoming standard practice in other states. In those states, public officials know that their spending and fiscal decisions are open to public scrutiny.

ONE Massachusetts offered the following proposals to significantly increase the public's confidence in state government: (1) yearly state budgets prominently displayed on the Commonwealth's website with easy to understand pie chart graphics as well as departmental budgets; (2) detailed and easily accessible information on the budget as it's being drafted, with clear information about how and when the public can give input; (3) detailed and easily accessible information on the tax expenditure budget, which shows the cost to the Commonwealth of the exemptions given to individuals and businesses; and (4) each agency and department should post their proposed budgets, current and past-year budgets for comparison purposes.[194] Agencies and departments should include program/service narratives that describe the program's intent, operational process and measurable outcomes, and social value of each program/service.[195]

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[193] *Id.*

[194] Testimony of Yawu Miller, ONE Massachusetts, at Governor's Task Force on Public Integrity Public Hearing (Dec. 3, 2008), *available at* http://www.mass.gov/Agov3/docs/Miller%20Testimony.doc. ONE Massachusetts is a network of people and organizations working to rebuild public confidence in people and government to expand economic opportunity and improve the quality of life in Massachusetts.

[195] *Id.*

There has also been significant criticism of the budgetary process, specifically with respect to earmarks and concerns that this part of budget process is closed to the public. The Task Force heard requests for ways to allow taxpayers to see how their money is spent. Some proposed reforms for revamping the current budgetary process by removing earmarks.

2. Open Meeting Law

The Legislature is exempt from the Open Meeting Law. While the majority of states subject their legislature to open meeting laws, Massachusetts is among the minority of states that do not. Some believe this exemption is warranted, to foster the type of candid discussion that can be chilled if all meetings must take place in public. Proponents of this view note that legislative committees hold numerous public hearings and that sessions of the full Legislature are open to the public. Others assert, however, that the exemption should be amended and that all legislative committees should be subject to the Open Meeting Law. They believe that there are already adequate provisions for Executive Sessions (which are closed to the public)[196] in the existing law and that such an open process would make the legislative committee structure a meaningful component of the legislative process.

Many of the latter advocates likewise urge that quasi-public entities, and public or private entities performing public work, whether or not they vote in quorum, also should be subject to the Open Meeting Law. They believe that every plenary, caucus, task force and committee meeting or hearing should be publicly noticed, including a complete agenda, at least 48 business-day hours in advance, with minutes and full written transcript of every meeting, hearing, and executive session publicly posted.

[196] *See* Mass. Gen. Laws ch. 39, § 23A.

These are difficult issues that implicate numerous competing considerations that the Task Force believes warrant further consideration.

3. Public Records Law

The Massachusetts Public Records Law is an essential tool for public information. It is intentionally broad in scope and, in several respects, extends materially further than its federal counterpart, the Freedom of Information Act. Some believe it works well in its current form. Others, however, assert that its overarching purpose can be too easily circumvented through inadequate searches, unwarranted claims of exemption, or the imposition of excessive retrieval and copying fees.

Still others urge that the Public Records Law be made applicable to additional components of state government that are currently exempt, such as the legislative and judicial branches, as well as to all appointed, hired or contracted entities, public or private, performing public tasks.

Although the foregoing issues fall outside the Task Force's principal area of focus, they are worthy of future discussion and consideration.

V. CONCLUSION

The Task Force recommends that the Governor file, and the Legislature enact, the attached *Act Improving the Laws Relating to Ethics and Lobbying* to strengthen the applicable rules, penalties, investigative and enforcement tools, and buttress public confidence in government.

SUMMARY OF PROPOSALS

A. ENHANCEMENT OF ETHICS LAWS AND STATE ETHICS COMMISSION'S AUTHORITY

1. Rulemaking Authority of State Ethics Commission

Currently: The Ethics Commission has rulemaking authority to create exemptions. G.L. c. 268B, § 3(a).

Proposal: Amend G.L. c. 268B, § 3(a) to expand the Commission's rulemaking authority to allow it to prescribe and publish rules and regulations to implement chapters 268A.

2. Summons Authority of State Ethics Commission

Currently: The Commission has summons authority, but must file suit to enforce; the Superior Court has the discretion to decide whether to enforce the Commission's summons. G.L. c. 268B, § 4(d).

Proposal: Amend G.L. c. 268B, § 4(d) to make compliance with the Commission's summons mandatory and leave it to the recipient to seek a court order quashing the summons.

3. Statute of Limitations for Ethics Violations

Currently: Pursuant to regulation, the Commission has 3 years from the date it learns of an alleged violation to issue an Order to Show Cause. 930 CMR § 1.02(10). Pursuant to the Commission's website, the Commission will not issue an Order to Show Cause more than 6 years after the alleged violation occurred. http://www.mass.gov/ethics/statute_limitations.html. There is no statutory limitations period for ethical violations.

Proposal: Amend G.L. c. 268B to include a section that allows the Commission to bring an action up to 5 years from the date the Commission learns of the alleged violation, but not more than 6 years from the date of the last conduct relating to the alleged violation.

4. Gratuities Statute

Currently: Gifts of substantial value given to public employees violate the gratuities statute only if given for or because of any specific official act performed or to be performed. G.L. c. 268A, § 3; *see Scaccia v. State Ethics Commission*, 431 Mass. 351 (2000).

Proposal: Amend G.L. c. 268A, § 3 to clarify that gifts of substantial value given "for or because of the employee's official position" violate the gratuities law, and provide the Commission with specific direction to adopt regulations to define "substantial value" (which shall not be less than $50) and establish exceptions where the circumstances do not present a genuine risk of a conflict or appearance of a conflict.

5. Authority of State Ethics Commission to Recover Economic Advantage

Currently: The Commission may bring a civil action against someone who acted to his economic advantage to recover damages in the amount of the

economic advantage. G.L. c. 268A, §§ 9 (state), 15 (county), 21 (municipality).

Proposal: Amend G.L. c. 268A, §§ 9, 15, and 21 to allow the Commission to recover the amount of the economic advantage up to $25,000 without filing a separate lawsuit, subject to review in Superior Court in accordance with G.L. c. 268B, § 4(k) or G.L. c. 30A, while requiring the Commission to file an action in Superior Court to seek to recover a greater amount of economic advantage.

6. Enforcement of False Claims by Public Employees

Currently: The Commission does not have jurisdiction over false claims by public employees (*e.g.*, lying on time sheets or submitting false reimbursement requests).

Proposal: Amend G.L. c. 268A § 23 to explicitly bring such violations within the authority of the Commission.

7. Information and Resource Sharing

Currently: The Commission may share information with the Attorney General, the United States Attorney, and the District Attorneys offices when the information may be used in a criminal proceeding. G.L. c. 268B, § 4(a). The Commission may also receive personnel and other assistance from the State Police, the State Auditor, the Comptroller, the Attorney General, and the Director of OCPF. G.L. c. 268B, § 2(m).

Proposal: Amend G.L. c. 268B, § 4 to expand the Commission's authority to share information to the Inspector General, the Secretary of State, the Office of Campaign and Political Finance, and the Attorney General, consistent with the confidentiality restrictions in G.L. c. 268B, § 4. Amend G.L. c. 268B, § 2(m) to allow the Secretary of State and the Inspector General to provide personnel and other assistance to the Commission.

8. Budget of State Ethics Commission

Currently: The Commission's budget must be approved annually.

Proposal: File legislation to provide the Commission with a guaranteed annual base budget which shall be no lower than the prior fiscal year.

B. ENHANCEMENT OF LOBBYING LAWS AND SECRETARY OF STATE'S AUTHORITY

1. Definition of Lobbying

Currently: The term "lobbying" is undefined. G.L. c. 3, § 39.

Proposal: Amend G.L. c. 3, § 39 to include a definition of legislative lobbying and executive lobbying based on clarified definitions of executive and legislative agents

2. Revolving Door Provision

Currently: Prohibits a former state employee or elected official, including members of the Legislature, from acting as a *legislative* agent before the

governmental body with which he was associated for one year after he leaves that body. G.L. c. 268A, § 5(e), c. 268B, §§ 1, 5, 6.

Proposal: Amend G.L. c. 268A, § 5(e) and c. 268B, §§ 1, 5 and 6 to expand the revolving door provision to include executive agents.
Allow the Ethics Commission to establish by regulation the meaning of "governmental body with which he has been associated."

3. "Incidental" Lobbying

Currently: Authorizes up to 50 hours of incidental lobbying in each 6-month reporting period without triggering filing requirements. G.L. c. 3, § 39.

Proposal: Amend G.L. c. 3, § 39 to reduce the amount of allowable incidental lobbying to not more than 10 hours or not more than $2,500 in any 3-month reporting period.

4. Clarification of Registration and Reporting Requirements

Currently: Persons required to register as a lobbyist under G.L. c. 3, § 41 are required to file semi-annual reports under § 43, and the lobbyist entity must do so under § 47. The current language creates a loophole that does not require lobbyists or lobbyist entities whose names do not "appear on the docket" to file reports, even if the lobbyist or lobbyist entity should have lawfully registered.

Proposal: File legislation to close this loophole.

5. Periodic Disclosure Requirements

Currently: Requires semiannual reporting of lobbying activities. G.L. c. 3, §§ 43, 44, 47.

Proposal: Amend G.L. c. 3, §§ 43, 44, and 47 to increase the reporting requirement to quarterly reporting (Apr. 15; July 15; Oct. 15; Jan. 15).

6. Disclosure of Lobbyist Activities

Currently: Confusing statutory requirements create uncertainty regarding the scope of information that must be reported by legislative and executive agents.

Proposal: Amend G.L. c. 3, § 43 to specify information that must be reported by legislative and executive agents, including the identity of the client on whose behalf they acted; the identity of the legislative bills or other governmental action that they sought to influence for each client; the positions that they took; the compensation they received; and any direct business relationships with public officials.

7. Availability of Lobbying Information Online

Currently: Docket of lobbyists and their employers and other filings related to lobbying are required to be available for public inspection at the Public Records Division. G.L. c. 3, § 47. The Secretary of State maintains an electronic database with legislative and executive agents and lobbyist entities' registration information.

Proposal: Recommend that the Secretary of State's Office explore ways to expand and improve its searchable database.

8. Rulemaking Authority of Secretary of State

Currently: The Secretary has no authority to issue regulations implementing the lobbying laws.

Proposal: File legislation to provide the Secretary of State rulemaking authority to implement the lobbying laws, and to provide confidential, binding advisory opinions.

9. Enforcement Authority of Lobbying Laws

Currently: The Secretary of State may disqualify a person from acting as a lobbyist, but has no other enforcement authority. G.L. c. 3, § 45.

Proposal: Amend G.L. c. 3, § 45 to allow the Secretary of State to impose fines and to have the same civil enforcement authority over violations of the lobbying laws as the Ethics Commission has over violations of the ethics laws.

C. ENHANCED AUTHORITY OF ATTORNEY GENERAL

1. Civil Enforcement Authority over Ethics Violations

Currently: A civil violation of any conflict of interest law is enforced by the Ethics Commission under G.L. c. 268B, § 4(j)(3).

Proposal: File legislation to provide the Attorney General with concurrent jurisdiction to enforce this section.

2. Civil Enforcement Authority over Lobbying Violations

Currently: The Attorney General may institute civil proceedings or refer the case to the proper district attorney for violations of § 43 (filing requirement of statement of expenditures and contributions for legislative and executive agents), § 44 (same for organizations or groups), or § 47 (same for employers of legislative and executive agents). G.L. c. 3, §§ 48, 49.

Proposal: Amend G.L. c. 3, § 49 to provide the Attorney General with civil enforcement authority for violations of §§ 41 and 42.

3. Recording of Conversations in Corruption Investigations

Currently: G.L. c. 272, § 99 requires that the case involve "organized crime" to record a conversation.

Proposal: Amend G.L. c. 272, § 99 to allow one-party consent monitoring and recording of conversations with judicial approval in state corruption investigations.

4. Criminal Penalties for Fraudulent Violations of Standards of Conduct

Currently: No criminal penalties for violations of section 23.

Proposal: File legislation imposing criminal penalties on persons who, with fraudulent intent, violate or cause another to violate section 23(b)(1), (2)

or 23(c) of up to $10,000, up to 5 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both.

5. Obstruction of Justice Statute

Currently: Obstruction of justice is a common law offense under *Commonwealth. v. Triplett*, 426 Mass. 26 (1997).

Proposal: File legislation that imposes penalties for obstruction of justice, including but not limited to the destruction of evidence.

6. Statewide Grand Jury

Currently: No statewide grand jury.

Proposal: File legislation authorizing the convening of a statewide grand jury with jurisdiction extending throughout the Commonwealth.

D. ENHANCED PENALTIES FOR CONFLICT OF INTEREST VIOLATIONS

1. Bribery

Currently: Penalty for giving or receiving a bribe to influence an official act is up to $5,000, or up to 3 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both. G.L. c. 268A, § 2.

Proposal: Amend G.L. c. 268A, § 2 to increase the penalty to up to $100,000, or up to 10 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

2. Other Criminal Violations

a. Gifts and Gratuities (G.L. c. 268A § 3)
b. Receiving Compensation for State Action (G.L. c. 268A §§ 4, 11, 17)
c. Revolving Door Violations (G.L. c. 268A §§ 5, 12, 18)
d. Participation in a Matter in Which Employee has a Financial Interest (G.L. c. 268A §§ 6, 13, 19)
e. Financial Interest in Contract of State Agency (G.L. c. 268A §§ 7, 14, 20)
f. Directing Bidder to particular Insurer on Public Building or Construction Contract (G.L. c. 268A § 8)

Currently: Penalty for violations of (a) through (e) is up to $3,000, and up to 2 years imprisonment, or both. The penalty for (f) is up to $5,000, and up to 2 years imprisonment, or both.

Proposal: Amend G.L. c. 268A to increase the maximum penalty for each violation to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

3. Civil Violations of Conflict of Interest Laws

Currently: Penalty for a civil violation of any conflict of interest law under G.L. c. 268A is up to $2,000 for each violation. G.L. c. 268B, § 4(j)(3).

Proposal: Amend G.L. c. 268B, § 4(j)(3) to increase the civil penalty to up to $10,000 for each civil violation of the conflict of interest laws other than bribery, and increase the civil penalty for bribery to $25,000.

E. ENHANCED PENALTIES FOR FINANCIAL DISCLOSURE VIOLATIONS

1. False Statements in Ethics Proceeding and Filing False Disclosures

Currently: Penalty for willfully making materially false statements in a proceeding before the Ethics Commission or filing a false Statement of Financial Interest (SFI) (no explicit willful or material requirement for the SFI) is up to $1,000, or up to 3 years imprisonment in state prison (or up to 2 ½ years in a house of correction), or both. G.L. c. 268B, § 7.

Proposal: Amend G.L. c. 268B, § 7 to increase the penalty to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both for willfully making materially false statements in a proceeding before the Commission or willfully filing a materially false SFI.

2. Civil Violations of Financial Disclosure Laws

Currently: Penalty for a violation of any financial disclosure law under G.L. c. 268B is up to $2,000 for each violation. G.L. c. 268B, § 4(j)(3).

Proposal: Amend G.L. c. 268B, § 4(j)(3) to increase the penalty to up to $10,000 for each violation.

F. ENHANCED PENALTIES FOR LOBBYING VIOLATIONS

1. Late Filings

Currently: Penalty for filing a late statement is $250 (if less than 10 days late) or $500 (if more than 10 days late). G.L. c. 3, § 43 (for legislative and executive agents) and § 47 (for employers of legislative and executive agents). Secretary may waive fees for good cause.

Proposal: Amend G.L. c. 3, §§ 43, 47 to increase the penalty to $50 per day for the first 20 days and $100 per day for every day after the twentieth day.

2. Registration Violations

Currently: Penalty for violating registration-related lobbying rules under G.L. c. 3, §§ 41, 42, 43, 44, and 47, is a misdemeanor punishable by not less than $100 and not more than $5,000, with no possibility of imprisonment. G.L. c. 3, § 48. The Attorney General may prosecute when appropriate for violations of § 41 (annual registration and payment of filing fee) and § 42 (prohibition on agreements to influence legislation for compensation). The Attorney General may institute civil proceedings or refer the case to the proper district attorney for violations of § 43 (filing requirement of statement of expenditures and contributions for legislative and executive agents), § 44 (same for organizations or groups), or § 47 (same for employers of legislative and executive agents).

Proposal: Amend G.L. c. 3, § 48 to increase the criminal penalty to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

3. Disqualification for Lobbying Violations

Currently: The Secretary of State may, upon cause shown, disqualify a person from acting as a lobbyist for 3 regular sessions following the disqualification. G.L. c. 3, § 45.

Proposal: Amend G.L. c. 3, § 45 to allow the Secretary of State, upon cause shown, to suspend or permanently revoke a legislative or executive agent's license.

4. Gift Restriction

Currently: Penalty for a lobbyist providing anything of value to a public official or employee (or a member of their family) is not less than $100 and not more than $5,000. G.L. c. 3, §§ 43, 48. The ethics laws prohibit gifts from a lobbyist to public officials of $100 or more in value in a calendar year and impose a penalty of up to $2,000 for violating that restriction. G.L. c. 268B, §§ 6 and 4(j)(3).

Proposal: Amend G.L. c. 3, § 48 to increase the penalty to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both for a lobbyist providing anything of value to a public official (or a member of their family). Update G.L. c. 268B, § 6 to remove the inconsistent $100 per year prohibition and bring the language in line with G.L. c. 3, § 43.

G. MANDATORY TRAINING AND EDUCATION

1. Summary of Conflict of Interest Laws

Currently: No statutory requirement that government employees receive a summary of the conflict of interest laws.

Proposal: File legislation to require the Ethics Commission to make a summary of the conflict of interest laws available on its website. Require that all state, county, and municipal employees, within 30 days of becoming an employee and every year thereafter, be furnished with the summary by and file an acknowledgement with: (i) the city or town clerk for municipal employees; (ii) the appointing authority or his designee for appointed state and county employees; or (iii) the Commission for elected state and county employees. Require the Commission to establish procedures for implementing this section and ensuring compliance.

2. Periodic Online Training

Currently: No statutory requirement that government employees take an online training course on the conflict of interest laws. (The Commission has an online training program for state employees).

Proposal: File legislation to require the Commission to make an online training program available on its website. Require that all state, county, and municipal employees, within 30 days of becoming an employee and every 2 years thereafter, take the online training program. Require the Commission to log and maintain a record of completion. Require the Commission to establish procedures for implementing this section and ensuring compliance.

3. Training Program for Municipalities

Currently: No statutory training requirement for municipal employees.

Proposal: File legislation to require the Commission to develop a certification program for municipalities (so that each municipality has at least one person knowledgeable about conflict of interest laws). Require that each municipality designate a senior level employee as its liaison to the Commission. Require the Commission to conduct seminars for designated liaisons.

4. Training for Lobbyists

Currently: No statutory requirement that lobbyists receive training on lobbying laws.

Proposal: Amend G.L. c. 3, § 41 to require all legislative and executive agents, within 90 days of the date of the effective date of the act and every year thereafter, to take either an in-person or online certification course from the Secretary of State's Office and receive a certificate of completion to be filed with the Secretary of State, prior to being able to register as a legislative or executive agent. Require the Secretary of State's Office to issue regulations to implement this section.

SECTION BY SECTION SUMMARY OF PROPOSED LEGISLATION

AN ACT IMPROVING THE LAWS RELATING TO ETHICS AND LOBBYING

SECTIONS 1 & 2. Amends section 39 of chapter 3 to update the definitions of "legislative agent" and "executive agent" to include the terms "legislative lobbying" and "executive lobbying" and to reduce the amount of permissible incidental lobbying from 50 hours or $5,000 in any 6-month reporting period to 10 hours or $2,500 in any 3-month reporting period.

SECTIONS 3 & 4. Amends section 39 of chapter 3 to add definitions of "legislative lobbying" and "executive lobbying" that include municipal lobbying connected to state lobbying and acts done in preparation for an actual communication with a government employee.

SECTION 5. Amends section 39 of chapter 3 to update the definition of "client" to include persons, corporations, partnerships, associations, and other entities.

SECTION 6 & 65. Amends section 41 of chapter 3 to require all legislative and executive agents to annually complete a certification course offered by the Secretary of State's Office prior to registering as a legislative or executive agent.

SECTION 7. Amends section 41 of chapter 3 to require the Secretary of State to issue each legislative and executive agent a license every year.

SECTION 8. Amends section 41 of chapter 3 to direct the Secretary of State to enact regulations to implement the lobbying laws, and to provide confidential, binding advisory opinions.

SECTION 9, 13 & 15. Amends sections 43, 44, and 37 of chapter 3 to require lobbying reports filed by legislative and executive agents, lobbyist organizations, and employers of legislative and executive agents to be filed quarterly.

SECTION 10 & 16. Amends sections 43 and 47of chapter 3 to require all executive and legislative agents to file reports, regardless of whether they are registered and their names appear on the docket.

SECTION 11. Amends section 43 of chapter 3 to update the information that must be reported by legislative and executive agents to include: the identification of the client for whom the agent provided lobbying services; the legislative bills or government action that the agent sought to influence; the position the agent took on each bill or government action; the amount of compensation the agent received; and business associations the agent has with public officials.

SECTION 12 & 17. Amends sections 43 and 47 of chapter 3 to increase the penalty applicable to legislative and executive agents and employers of legislative and executive agents who file late statements from $250 if the statement is less than 10 days late or $500 if the statement is more than 10 days late to $50 per day for the first 20 days late and $100 per day for every day after the twentieth day.

SECTION 14. Amends section 45 of chapter 3 to provide the Secretary of State with civil enforcement authority over the lobbying laws, including authority to subpoena documents and testimony; conduct adjudicatory proceedings; impose civil fines of up to $10,000 per violation; and suspend and revoke a violator's license.

SECTION 18. Amends section 48 of chapter 3 to increase the criminal penalty for violating the lobbying laws from a fine of not less than $100 and not more than $5,000, to a fine of up to $10,000, or up to 5 years imprisonment in a state prison, or up to 2 1/2 years in a house of correction, or both.

SECTION 19. Amends section 49 of chapter 3 to provide the Attorney General with civil enforcement authority over violations of registration, filing fee, identification card requirements, and violations concerning improper agreements to influence decisions of executive branch employees or legislation.

SECTION 20. Adds a new section 13E to chapter 268 providing penalties of up to $25,000, or up 10 years imprisonment in a state prison, or up to 2 1/2 years in a house of correction, or both for obstruction of justice.

SECTION 21. Amends section 2 of chapter 268A to increase the maximum criminal penalty for giving or receiving a bribe to influence an official act from a fine of $5,000, or 3 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both to a fine of up to $100,000, or up to 10 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

SECTIONS 22 & 24. Amends section 3 of chapter 268A to clearly prohibit gratuities of substantial value given to a state, county, or municipal employee for or because of the employee's official position. The Commission is required to adopt regulations to define substantial value (which shall not be less than $50) and establish exceptions where the circumstances do not present a genuine risk of a conflict or appearance of a conflict.

SECTIONS 23, 25, 28-31, 33-36, 38-41. Amends sections 3 to 8, 11 to 14, and 17 to 20 of chapter 268A to increase the penalties for gifts and gratuities, receiving compensation for state action, revolving door violations, participation in a matter in which employee has a financial interest, financial interest in the contract of a state agency, and directing a bidder to a particular insurer on pubic building or construction contract from a maximum of $3,000, or 2 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both (a maximum of $5,000, or 2 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both for directing a bidder to a particular insurer)

to a maximum of $10,000, 5 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both.

SECTIONS 26, 27, 47, 48 & 59. Amends section 5(e) of chapter 268A and section 1 of chapter 268B to include executive agents and executive lobbying to the revolving door provisions.

SECTIONS 32, 37 & 42. Amends sections 9, 15, and 21 of chapter 268A to allow the Commission to recover, after an adjudicatory proceeding, the amount of the economic advantage resulting from a violation or restitution up to $25,000 without filing a separate lawsuit. The violator may obtain review of the Commission's decision in Superior Court.

SECTION 43. Amends section 23 of chapter 268A to give the Commission jurisdiction over false claims by government employees.

SECTION 45. Amends chapter 268A to add section 26 to impose criminal penalties for fraudulently violating section 23(b)(1), (2) or 23(c) or, with fraudulent intent, causing another person to violate section 23(b)(1), (2) or 23(c), of a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTIONS 44, 46, 66 & 67. Amends chapter 268A to add sections 27 to 29 to provide that all government employees receive a summary of the conflict of interest laws from the Ethics Commission within 30 days of becoming a government employee and every year thereafter (with a 90-day transition period for current employees); to provide that the Ethics Commission establish an online training program on the conflict of interest laws and that all government employees must take the online training program within 30 days of becoming a government employee and every 2 years thereafter (with a 90-day transition period for current employees); and to provide that each municipality designate a senior level employee to serve as its liaison to the Ethics Commission and that the Ethics Commission develop a certification program for municipalities and provide training to the designated liaisons.

SECTION 49. Amends section 2 of chapter 268B to provide that the Commission will be guaranteed an annual base budget of no less than the preceding year.

SECTION 50. Amends section 2(m) of chapter 268B to authorize the Secretary of State and the Inspector General to provide personnel and other assistance to the Commission, just as the State Police, the State Auditor, the Comptroller, the Attorney General, and the Director of OCPF are currently authorized to do.

SECTION 51. Amends section 3(a) of chapter 268B to provide the Ethics Commission with rulemaking authority to implement the conflict of interest laws.

SECTION 52. Amends section 4 of chapter 268B to expand the Commission's authority to share information with the offices of: the Attorney General, the United States

Attorney, the District Attorney, the Inspector General, the Secretary of State, and the Office of Campaign and Political Finance.

SECTION 53. Amends section 4(c) of chapter 268B to include a 5 year statute of limitations for ethics violations, beginning from the date the Commission learns of the violation. Notwithstanding the 5 year statute of limitations, the Commission is prohibited from bringing any action for a violation that occurred more than 6 years from the date of the most recent alleged misconduct.

SECTION 54. Amends section 4(d) of chapter 268B to mandate compliance with summonses issued by the Ethics Commission and allow the recipient to seek a court order quashing the summons.

SECTION 55. Amends section 4(j)(3) of chapter 268B to increase the penalty for a civil violation of any conflict of interest law other than bribery or any financial disclosure law from a maximum of $2,000 per violation to a maximum of $10,000 per violation. The civil penalty for bribery is increased to $25,000.

SECTIONS 56 & 57. Amends sections 4(j) and 4(k) of chapter 268B to clarify that the Ethics Commission's authority to file an action in Superior Court to enforce an order and the Superior Court's ability to review the order applies to orders issued in accordance with chapter 268A in addition to chapter 268B.

SECTION 58. Amends section 4 of chapter 268 B to allow the Attorney General, along with the Ethics Commission, to civilly enforce the conflict of interest laws.

SECTION 60. Amends section 6 of chapter 268B to conform to the existing gift prohibition in the lobbying laws by prohibiting gifts from legislative or executive agents to government officials or employees.

SECTIONS 61 & 62. Amends section 7 of chapter 268B to increase the penalty for willfully making false statements in a proceeding before the Ethics Commission or for willfully filing a materially false SFI from a maximum of a $1,000 fine, or 3 years imprisonment in a state prison or 2 1/2 years in a house of correction, or both to a maximum of a $10,000 fine, 5 years imprisonment in a state prison or 2 1/2 years in a house of correction, or both.

SECTION 63. Amends section 99 of chapter 272 to allow one-party consent monitoring and recording of conversations with judicial approval in state corruption cases.

SECTION 64. Adds a new chapter 277A to provide for a statewide grand jury with jurisdiction throughout Massachusetts.

PROPOSED LEGISLATION

AN ACT IMPROVING THE LAWS RELATING TO ETHICS AND LOBBYING

SECTION 1. Section 39 of chapter 3 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the definition of "Executive agent" and inserting in place thereof the following definition:-

"Executive agent", a person who for compensation or reward engages in executive lobbying, which includes at least one communication with a government employee. The term "executive agent" shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to engage in activity covered by this definition in a manner that is simply incidental to his regular and usual business or professional activities if he: (i) engages in any activity or activities covered by this definition for not more than 10 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period, for any activity or activities covered by this definition.

SECTION 2. Section 39 of chapter 3, as so appearing, is hereby further amended by striking out the definition of "Legislative agent" and inserting in place thereof the following definition:-

"Legislative agent", a person who for compensation or reward engages in legislative lobbying, which includes at least one communication with a government employee. The term "legislative agent" shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to engage in activity covered by this definition in a manner that is simply incidental to his regular and usual business or professional activities if he: (i) engages in any activity or activities covered by this definition for not more than 10 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period, for any activity or activities covered by this definition.

SECTION 3. Section 39 of chapter 3, as so appearing, is hereby further amended by inserting after the definition of "Executive agent" the following definition:-

"Executive lobbying," any act to influence or to attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to statewide constitutional officers and employees thereof, where such decision concerns

legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement. The term includes acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and includes strategizing, planning, research, and other background work only if performed in connection with or for use in an actual communication with a government employee for purposes of the acts described in this definition.

SECTION 4. Section 39 of chapter 3, as so appearing, is hereby further amended by inserting after the definition of "Legislative agent" the following definition:-

"Legislative lobbying," any act to promote, oppose or influence legislation, or to promote, oppose or influence the governor's approval or veto thereof. Acts to influence legislation shall include, without limitation, any action to influence the introduction, sponsorship, consideration, action or nonaction with respect to any legislation. The term includes acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with legislative lobbying at the state level; and includes strategizing, planning, research, and other background work only if performed in connection with or for use in an actual communication with a government employee for purposes of the acts described in this definition.

SECTION 5. Section 39 of chapter 3, as so appearing, is hereby further amended by striking out the definition of "Client" and inserting in place thereof the following definition:-

"Client", any person, corporation, partnership, association, or other entity that contracts with another person, corporation, partnership, association, or other entity to receive lobbying services.

SECTION 6. Section 41 of chapter 3, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

The state secretary shall offer educational seminars on the requirements of sections 39 to 50, inclusive, for all legislative agents and executive agents. The seminars shall be conducted in-person or offered online through the state secretary's website. All new legislative and executive agents, as defined by section 39, shall, before registering with the state secretary, and every year thereafter, complete an in-person or online seminar offered by the state secretary. Completion of the in-person or online seminar shall be a requirement for annual registration with the state secretary. If requested by the state secretary, the commonwealth, acting through the superintendent of the state bureau of

office buildings, shall provide, at no cost to the state secretary, suitable facilities for such seminars. The state secretary shall adopt regulations for implementing this section.

SECTION 7. The last paragraph of section 41 of chapter 3, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:- Upon registration, the state secretary shall issue to each legislative agent and executive agent a license which shall entitle the holder to act as an executive or legislative agent for a client that has filed a registration statement under this section. A nontransferable identification card shall evidence this license and shall include the agent's name and photograph. Each license shall expire on December 31 of each year, unless sooner suspended or revoked under section 45.

SECTION 8. Section 41 of chapter 3, as so appearing, is hereby further amended by adding the following 2 paragraphs:-

The state secretary shall adopt regulations under chapter 30A to carry out sections 39 to 50, inclusive.

The state secretary shall, upon written request from a person who is or may be subject to sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion rendered by the state secretary, until and unless amended or revoked, shall be a defense in a criminal action brought under sections 39 to 50, inclusive, and shall be binding on the state secretary and the attorney general in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; but the state secretary may publish such opinions if the name of the requesting person and any other identifying information is not included in such publication unless the requesting person consents to such inclusion.

SECTION 9. Section 43 of chapter 3, as so appearing, is hereby further amended by striking out, in lines 1 to 3, the words "On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year" and inserting in place thereof the following words:- On or before April 15, complete from January 1 through March 31; on or before July 15, complete from April 1 through June 30; on or before October 15, complete from July 1 through September 30; and on or before January 15, complete from October 1 to December 31 of the preceding year.

SECTION 10. Section 43 of chapter 3, as so appearing, is hereby amended by striking out, in line 4, the words "appearing on the docket".

SECTION 11. Section 43 of chapter 3, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following 2 paragraphs:-

Every executive and legislative agent shall include in the statement required by this section for the relevant reporting period: (1) the identification of each client for whom the legislative or executive agent provided lobbying services; (2) a list of all bill numbers of legislation and other governmental action that the executive or legislative agent acted to promote, oppose or influence; (3) a statement of the executive or legislative agent's position on each such bill or other governmental action; (4) the identification of the client or clients on whose behalf the executive or legislative agent was acting with respect to each such bill or governmental action; and (5) the amount of compensation received for executive or legislative lobbying from each client with respect to each such bill or action. The disclosure shall be required regardless of whether the executive or legislative agent specifically referenced the bill number or other governmental action while acting to promote, oppose or influence legislation, and shall be as complete as practicable.

Every executive and legislative agent shall also include in the statement required by this section all direct business associations with public officials.

SECTION 12. The fourth paragraph of section 43 of chapter 3, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- This penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive the above penalties for good cause.

SECTION 13. Section 44 of chapter 3, as so appearing, is hereby amended by striking out, in lines 1 to 3, the words "On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year" and inserting in place thereof the following words:- On or before April 15, complete from January 1 through March 31; on or before July 15, complete from April 1 through June 30; on or before October 15, complete from July 1 through September 30; and on or before January 15, complete from October 1 to December 31 of the preceding year.

SECTION 14. Chapter 3 of the General Laws is hereby further amended by striking out section 45 and inserting in place thereof the following section:-

Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the state secretary, the state secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50, inclusive, of this chapter. At the beginning of a preliminary inquiry into any such alleged violation, the state secretary shall notify the attorney general of such action. All

proceedings and records relating to a preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be confidential, except that the state secretary may provide to: (1) the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in the expenditure of public funds; (3) the state ethics commission concerning violations of chapters 268A and 268B; and (4) the director of the office of campaign and political finance information concerning violations of chapter 55. Any information provided by the state secretary pursuant to this section shall be confidential in accordance with this section and section 4 of chapter 268B, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings. The state secretary shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

(b) If a preliminary inquiry fails to indicate reasonable cause for belief that any provision of sections 39 to 50, inclusive, of this chapter has been violated, the state secretary shall immediately terminate the inquiry and so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry.

(c) If a preliminary inquiry indicates reasonable cause for belief that any provision of sections 39 to 50, inclusive, of this chapter has been violated, the state secretary may initiate an adjudicatory proceeding to determine whether there has been such a violation.

(d) The state secretary may require by summons the attendance and testimony of witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this chapter. Such summons may be issued by the state secretary and shall be served in the same manner as summonses for witnesses in civil cases, and all provisions of law relative to summonses issued in such cases, including the compensation of witnesses, shall apply to summonses issued by the state secretary. Such summonses shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by order of a justice of the superior court and may be quashed only upon motion of the summonsed party and by order of a justice of the superior court .

(e) The state secretary or his designee may administer oaths and may hear testimony or receive other evidence in any proceeding.

(f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing adjudicatory proceedings. All witnesses shall be entitled to be represented by counsel.

(g) Any person whose name is mentioned during an adjudicatory proceeding of the state secretary and who may be adversely affected thereby may appear personally before the

state secretary on his own behalf, with or without an attorney, to give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding.

(h) All hearings in adjudicatory proceedings of the state secretary carried out pursuant to the provisions of this section shall be public.

(i) Within 30 days after completion of deliberations, the state secretary shall publish a written report of his findings and conclusions.

(j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation of this chapter, the state secretary may issue an order:

(1) requiring the violator to cease and desist such violation of sections 39 to 50, inclusive, of this chapter;
(2) requiring the violator to file any report, statement or other information as required by sections 39 to 50, inclusive, of this chapter;
(3) suspending for a specified period or revoking the license and registration of the violator; or
(4) requiring the violator to pay a civil penalty of not more than $10,000 for each violation of this chapter.

The state secretary may file a civil action in superior court to enforce this order.

(k) Final action by the state secretary under this section shall be subject to review in superior court upon petition of any party in interest filed within 30 days after the action for which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside the order of the state secretary, or it may remand the proceedings to the state secretary for such further action as the court may direct. If the court modifies or sets aside the state secretary's order or remands the proceedings to the state secretary, the court shall determine whether such modification, set aside, or remand is substantial. If the court does find such modification, set aside, or remand to be substantial, the petitioner shall be entitled to be reimbursed from the treasury of the commonwealth for reasonable attorneys' fees and all court costs incurred by him in the defense of the charges contained in the proceedings. The amount of such reimbursement shall be awarded by the court but shall not exceed $20,000 per person, per case.

SECTION 15. Section 47 of chapter 3, as so appearing, is hereby amended by striking out, in lines 1 to 3, the words "On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year" and inserting in place thereof the following words:- On or before April 15, complete from January 1 through March 31; on or before July 15, complete from April 1 through June 30; on or before October 15, complete from July 1 through September 30; and on or before January 15, complete from October 1 to December 31 of the preceding year.

SECTION 16. Section 47 of chapter 3, as so appearing, is hereby further amended by striking out, in lines 4 and 5, the words "whose name appears upon the docket".

SECTION 17. The second paragraph of section 47 of chapter 3, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- This penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause.

SECTION 18. Section 48 of chapter 3, as so appearing, is hereby amended by striking out, in line 3, the words "five thousand dollars" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 19. Section 49 of chapter 3, as so appearing, is hereby amended by inserting after the first sentence the following 2 sentences:- These courts may also, upon application of the attorney general, grant equitable or mandamus relief to enforce sections 41 and 42 and the provisions of section 43 prohibiting the offering or giving of or paying for gifts, meals, beverages, or other items. Relief under this section may include (a) an order to pay to the commonwealth an amount equal to the value of any compensation or thing paid or received in violation of section 42, or the value of any gift, meal, beverage, or other item given or received in violation of section 43; and (b) a civil penalty of up to $10,000 for each violation of sections 41 to 47, inclusive.

SECTION 20. Chapter 268 of the General Laws is hereby amended by inserting after section 13D the following section:-

Section 13E. (a) As used in this section, **"**official proceeding**"** means a proceeding before a court or grand jury of the commonwealth, or a proceeding before a state agency or commission, which proceeding is authorized by law and relates to an alleged violation of a criminal statute or the laws and regulations enforced by the state ethics commission, the state secretary, the office of the inspector general, or the office of campaign and political finance, or for which the attorney general may issue a civil investigative demand.

(b) Whoever alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding is pending at that time, shall be punished, by (i) a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more

than 2 1/2 years, or by both such fine and imprisonment, or (ii) if the official proceeding involves a violation of a criminal statute, by a fine of not more than $25,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

(c) The record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(d) A prosecution under this section may be brought in the county where the official proceeding was or would have been convened or where the alleged conduct constituting an offense occurred.

SECTION 21. Section 2 of chapter 268A of the General Laws, as so appearing, is hereby amended by striking out, in lines 46 to 49, the words "five thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one half years, or by both such fine and imprisonment in a jail or house of correction" and inserting in place thereof the following words:- $100,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 22 . Section 3 of chapter 268A, as so appearing, is hereby amended by striking out clauses (a) and (b) and inserting in place thereof the following 2 clauses:-

(a) Whoever, otherwise than as provided by law for the proper discharge of his official duties, directly or indirectly gives, offers, or promises anything of substantial value to any present or former state, county, or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary for or because of the employee's official position; or

(b) Whoever, being a present or former state, county, or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of his official duties, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of substantial value for himself for or because of the employee's official position; or.

SECTION 23. Section 3 of chapter 268A, as so appearing, is hereby further amended by striking out, in lines 30 and 31, the words "three thousand dollars or by imprisonment for not more than three years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 24. Section 3 of chapter 268A, as so appearing, is hereby further amended by adding the following paragraph:-

The commission shall adopt regulations: (i) defining "substantial value," provided however that "substantial value" shall not be less than $50; (ii) establishing exclusions for ceremonial gifts; (iii) establishing exclusions for gifts given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

SECTION 25. Section 4 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 17 and 18, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 26. Section 5 of chapter 268A, as so appearing, is hereby amended by inserting after the word "legislative", in line 26, the following words:- or executive.

SECTION 27. Section 5 of chapter 268A, as so appearing, is hereby further amended by inserting after the word "body", in line 28, the following words:- , as determined by the commission pursuant to regulation.

SECTION 28. Section 5 of chapter 268A, as so appearing, is hereby further amended by striking out, in lines 41 and 42, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 29. Section 6 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "three thousand dollar or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 30. Section 7 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three thousand dollar or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 31. Section 8 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 17 and 18, the words "five thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 32. Chapter 268A is hereby further amended by striking out section 9 and inserting in place thereof the following section:-

Section 9. (a) In addition to any other remedies provided by law, any violation of sections 2 to 8, inclusive, which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action on such terms as the interests of the commonwealth and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the state ethics commission upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2 to 8, inclusive, or section 23, may issue an order: (1) requiring the violator to pay the commission on behalf of the commonwealth damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the state ethics commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 33. Section 11 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 34. Section 12 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 24 and 25, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 35. Section 13 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 36. Section 14 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 37. Chapter 268A of the General Laws is hereby further amended by striking out section 15 and inserting in place thereof the following section:-

Section 15. (a) In addition to any other remedies provided by law, a violation of sections 2, 3, 8, or 11 to 14, inclusive, which has substantially influenced the action taken by any county agency in any particular matter, shall be grounds for avoiding, rescinding, or canceling the action on such terms as the interests of the county and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the state ethics commission, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 11 to 14, inclusive, or 23, may issue an order (1) requiring the violator to pay the commission on behalf of the county damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general and the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by

this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 38. Section 17 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 39. Section 18 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 22 and 23, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 40. Section 19 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 41. Section 20 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 42. Chapter 268A is hereby further amended by striking out section 21 and inserting in place thereof the following section:-

Section 21. (a) In addition to any other remedies provided by law, a finding by the commission pursuant to an adjudicatory proceeding that there has been any violation of sections 2, 3, 8, or 17 to 20, inclusive, which has substantially influenced the action taken by any municipal agency in any particular matter, shall be grounds for avoiding, rescinding, or canceling the action of said municipal agency upon request by said municipal agency on such terms as the interests of the municipality and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the commission, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 17 to 20, inclusive, or 23, may issue an order (1) requiring the violator to pay the commission on behalf of the municipality damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 43. Section 23 of chapter 268A, as so appearing, is hereby amended by inserting after clause (3) of subsection (b), the following clause:-

(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

SECTION 44. Section 23 of chapter 268A, as so appearing, is hereby further amended by striking out subsection (f).

SECTION 45. Chapter 268A is hereby further amended by adding the following section:-

Section 26. Any person who, with fraudulent intent, violates subsection (b)(1), (b)(2) or (c) of Section 23, and any person who, with fraudulent intent, causes any other person to violate subsection (b)(1), (2) or (c) of Section 23 shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 46. Chapter 268A is hereby further amended by adding the following 3 sections:-

Section 27. The state ethics commission shall prepare, and update as necessary, summaries of this chapter for state, county, and municipal employees, respectively, which the commission shall publish on its official website. Every state, county, and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgment that he has been provided with such a summary. Municipal employees shall be furnished with the summary by, and file an acknowledgment with, the city or town clerk. Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment with, the employee's appointing authority or his designee. Elected state and county employees shall be furnished with the summary by, and file an acknowledgment with, the commission. The commission shall establish procedures for implementing this section and ensuring compliance.

Section 28. The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website:

(1) a program which shall provide a general introduction to the requirements of this chapter. Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the Commission shall log and maintain an electronic record of completion for 6 years.

(2) a program which shall provide information on the requirements of this chapter applicable to former state, county, and municipal employees.

The state ethics commission shall establish procedures for implementing this section and ensuring compliance.

Section 29. Each municipality , acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities.

SECTION 47. Section 1 of chapter 268B, as so appearing, is hereby amended by inserting after clause (f) the following clause:-

(f 1/2) "executive agent" means any person who is an executive agent as defined in section 39 of chapter 3;.

SECTION 48. Section 1 of chapter 268B, as so appearing, is hereby further amended by striking out clause (k) and inserting in place thereof the following clause:-

(k) "legislative agent" means any person who is a legislative agent as defined in section 39 of chapter 3;.

SECTION 49. Section 2 of chapter 268B, as so appearing, is hereby amended by adding the following subsection:-
(n) Subject to appropriation, the commission shall receive an appropriation for the operations of the commission in an amount no less than the amount of the appropriation for the immediately preceding fiscal year. The general court shall appropriate additional amounts to the state ethics commission as may be necessary and appropriate.

SECTION 50. Section 2 of chapter 268B, as so appearing, is hereby further amended by inserting after the words "attorney general,", in line 61, the following words:- inspector general, state secretary,.

SECTION 51. Section 3 of chapter 268B, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words "; provided, however, that the rules and regulations shall be" and inserting in place thereof the following words:- , including but not.

SECTION 52. Subsection (a) of section 4 of chapter 268B of the General Laws, is hereby amended by striking out the third sentence and inserting in place thereof the following 2 sentences:- All commission proceedings and records relating to a preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be confidential, except that the commission may provide to: (1) the attorney general, the United States Attorney or a district attorney of competent jurisdiction information which may be used in a criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in the expenditure of public funds; (3) the state secretary information concerning violations of sections 39 to 50, inclusive, of chapter 3; and (4) the director of the office of campaign and political finance information concerning violations of chapter 55. Any information provided by the commission pursuant to this section shall be confidential in accordance with this section, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings.

SECTION 53. Subsection (c) of section 4 of chapter 268B, as so appearing, is hereby amended by adding the following sentence:- The commission shall initiate such an adjudicatory hearing within 5 years from the date the commission learns of the alleged

violation, but not more than 6 years from the date of the last conduct relating to the alleged violation.

SECTION 54. Subsection (d) of section 4 of chapter 268B, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Such summonses shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by order of a justice of the superior court and may be quashed only upon motion of the summonsed party and by order of a justice of the superior court.

SECTION 55. Subsection (j) of section 4 of chapter 268B, as so appearing, is hereby further amended by striking out, in lines 73 and 74, the words "two thousand dollars for each violation of this chapter or said chapter two hundred and sixty-eight A" and inserting in place thereof the following words:- $10,000 for each violation of this chapter or chapter 268A, with the exception of a violation of section 2 of chapter 268A, which shall be subject to a civil penalty of not more than $25,000.

SECTION 56. Subsection (j) of section 4 of chapter 268B, as so appearing, is hereby further amended by inserting after the word "order", in line 76, the following words:- and any order issued by the commission in accordance with chapter 268A.

SECTION 57. Subsection (k) of section 4 of chapter 268B, as so appearing, is hereby further amended by inserting after the words "pursuant to this chapter", in line 77, the following words:- or chapter 268A.

SECTION 58. Section 4 of chapter 268B, as so appearing, is hereby further amended by inserting after subsection (k) the following subsection:-

(l) The superior court shall have concurrent jurisdiction to issue orders under subsection (j) in a civil action brought by the attorney general. In any such action, an advisory opinion of the commission under clause (g) of section 3 shall be binding to the same extent as it is against the commission under that clause.

SECTION 59. Section 5 of chapter 268B, as so appearing, is hereby amended by inserting after the word "legislative", in line 68, the following words:- or executive

SECTION 60. Chapter 268B, is hereby further amended by striking out section 6 and inserting in place thereof the following section:-

Section 6. No executive or legislative agent shall knowingly and willfully offer or give to any public official or public employee or a member of such person's immediate family, and no public official or public employee or member of such person's immediate family shall knowingly and willfully solicit or accept from any executive or legislative agent, any gift of any kind or nature; provided, however, that these prohibitions shall not apply to gifts given by an executive or legislative agent to a public official or public employee who is a member of his immediate family or a relative within the third degree of consanguinity or of such agent's spouse or the spouse of any such relative.

SECTION 61. Section 7 of chapter 268B, as so appearing, is hereby amended by striking out, in line 7, the words "files a false" and inserting in place thereof the following words:- willfully files a materially false

SECTION 62. Section 7 of chapter 268B, as so appearing, is hereby further amended by striking out, in lines 9 and 10, the words "one thousand dollars or by imprisonment in the state prison for not more than three years" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 63. Paragraph 4 of subsection B of section 99 of chapter 272, as so appearing, is hereby amended by adding the following 2 sentences:- Furthermore, it shall not constitute an interception for an investigative or law enforcement officer, as defined in this section, to record or transmit a wire or oral communication if the officer is a party to such communication or has been given prior authorization to record or transmit the communication by such a party and (a) the recording or transmission is made in the course of an investigation of bribery or other crime involving the use or prospective use of an official position by a state, municipal, or county employee; and (b) a judge of competent jurisdiction determines pursuant to the procedures set out in chapter 276 that there is probable cause that evidence of such a crime will be recorded or transmitted. There shall not be a requirement that any investigation of bribery or other crime involving the use or prospective use of an official position by a state, municipal, or county employee involves organized crime in order to obtain such judicial approval.

SECTION 64. The General Laws are hereby further amended by inserting after chapter 277 the following chapter:-

CHAPTER 277A
Statewide Grand Jury

Section 1. Upon written application of the attorney general to the chief justice of the superior court department, with good cause stated therein, the chief justice may authorize

the convening of a statewide grand jury with jurisdiction extending throughout the commonwealth.

Section 2. The chief justice of the superior court department shall, upon granting an application, receive recommendations from the attorney general as to the county in which the statewide grand jury shall sit. Upon receiving the attorney general's recommendations, the chief justice shall choose 1 of those recommended locations as the site where the grand jury shall sit. Once a county has been selected, the chief justice shall direct the regional administrative judge from the county selected to appoint, and reappoint as necessary, a superior court judge to preside over the statewide grand jury.

Section 3. The presiding superior court judge shall consult with the attorney general and district attorney for the relevant district about the nature and scope of the investigation and shall thereafter designate and authorize an existing county grand jury to serve as a statewide grand jury for purposes of the investigation specified in the written application, or, alternatively, convene and preside over a specially empaneled statewide grand jury.

Section 4. A specially empaneled statewide grand jury shall be drawn and selected in the same manner as the county grand jury in the county in which the specially empaneled statewide grand jury sits. A specially empaneled statewide grand jury may, at the discretion of the presiding superior court judge, draw jurors from counties adjoining the one in which the statewide grand jury is to sit.

Section 5. A specially empaneled statewide grand jury convened pursuant to this chapter shall sit for a period not to exceed 18 months. The presiding superior court judge may extend this period if, in accordance with section 1A of chapter 277 and section 41 of chapter 234A, public necessity requires further time by the grand jury to complete an investigation then in progress.

Section 6. The attorney general or her assistant shall attend each session of a statewide grand jury and may prosecute any indictment returned by it. The attorney general or her assistant shall have the same powers and duties in relation to a statewide grand jury that she has in relation to a county grand jury, except as otherwise provided by law.

Section 7. Indictments shall be returned in the county where the statewide grand jury sits and shall thereafter be transferred to the county specified by the grand jury on the indictment. Venue for purposes of trial of offenses indicted by a statewide grand jury shall be in any county where venue would otherwise be proper.

Section 8. No provision of this chapter shall be construed as limiting the jurisdiction of county grand juries or district attorneys in the commonwealth. Except as otherwise provided by law, an investigation by a statewide grand jury shall not preempt an investigation by any other grand jury or agency having jurisdiction over the same subject matter.

SECTION 65. Every person who is a legislative agent or executive agent as defined by section 39 of chapter 3 of the General Laws on the effective date of this act, shall, within 90 days after the effective date of this act, and every year thereafter, complete an in-person or online seminar offered by the state secretary in accordance with section 41 of chapter 3.

SECTION 66. In accordance with section 26 of chapter 268A of the General Laws, inserted by this act, within 90 days after the effective date of this act every state, county, and municipal employee shall be provided a summary of chapter 268A prepared by the state ethics commission and shall file a written acknowledgment as required by that section.

SECTION 67 . Within 90 days after the effective date of this act, each municipality shall provide written notification to the state ethics commission of the liaison designated under section 28 of chapter 268A of the General Laws.

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 506

Establishing the Governor's Task Force on Public Integrity

WHEREAS, the people of the Commonwealth of Massachusetts have entrusted public officials and employees with operating our government in an open and honest manner, free of any improper influence;

WHEREAS, it is imperative that public officials and employees at all levels of government earn and maintain the confidence of the people they represent;

WHEREAS, to earn and maintain that confidence, all public officials and employees must adhere to the highest standards of honesty and integrity;

WHEREAS, strong and effective laws governing ethics and lobbying activities are essential components to defining and enforcing such standards; and

WHEREAS, the Commonwealth's existing laws pertaining to ethics and lobbying were enacted separately, at different times, and would benefit from a comprehensive reexamination that assesses the adequacy of the existing regulatory frameworks, the sufficiency of the current enforcement mechanisms and penalties, and whether gaps

exist between the separate systems that could be closed through greater coordination.

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § I, Art. I, hereby order as follows:

Section 1. There is hereby established the Governor's Task Force on Public Integrity (the "Task Force").

Section 2. The Task Force shall consist of the Chief Legal Counsel, who shall serve as Chairperson, and up to 12 additional members to be appointed by the Governor, including two members of the Senate Committee on Ethics and Rules, two members of the House Committee on Ethics, and up to eight additional individuals with expertise on issues relating to ethics and public integrity. All members of the Task Force shall serve in an advisory capacity. The Task Force will meet at such times and places as determined by the Chairperson.

Section 3. The Task Force shall examine the existing legal and regulatory frameworks governing ethics and lobbying and make recommendations concerning any need for amendments to the current laws, regulations, investigative and enforcement mechanisms, and penalties. The Task Force's assessment shall include the sufficiency of the current legal and regulatory schemes, and the potential for strengthening the system through greater coordination among the offices responsible for ensuring the integrity of the Commonwealth's governmental processes. In formulating its recommendations, the Task Force shall confer with representatives of the various state offices responsible for overseeing state ethics and lobbying as well as with academics, practitioners and others with expertise in these areas.

Section 4. The Task Force may report to the Governor from time to time and shall issue a final report to the Governor presenting its assessment and recommendations no later than 60 days from the date of this order.

Section 5. Nothing in this Executive Order shall be construed to require or permit action inconsistent with any applicable state or federal law.

Section 6. This Executive Order shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 7th day of November in the year of our Lord two thousand and eight and of the Independence of the United States, two hundred and thirty-two.

DEVAL L. PATRICK
GOVERNOR
Commonwealth of Massachusetts

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

TASK FORCE MEMBERS

Ben T. Clements, *Chair*
Chief Legal Counsel, Office of the Governor

Charlie Baker
CEO, Harvard Pilgrim Healthcare

George Brown
Professor, Boston College Law School

Kimberly Budd
Director, Community Values Program, Harvard Business School

Benjamin Downing
State Senator, Commonwealth of Massachusetts

James Fagan
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Scott Harshbarger
Senior Counsel, Proskauer Rose LLP

Michael Knapik
State Senator, Commonwealth of Massachusetts

Mary Rogeness
State Representative, Commonwealth of Massachusetts

Joseph Savage
Partner, Goodwin Procter LLP

Peter Sturges
General Counsel, Harvest Automation, Inc.

Andrew Tarsy
Senior Executive, Facing History & Ourselves

Pam Wilmot
Executive Director, Common Cause Massachusetts

MEETING SCHEDULE

Date	Location	Purpose
Nov. 19, 2008	Governor's Council Chamber State House, Room 360	Organizational Meeting State Ethics Commission Presentation
Nov. 25, 2008	Governor's Council Chamber State House, Room 360	Working Meeting Secretary of State Presentation Inspector General Presentation
Dec. 3, 2008	Hearing Room A-1 State House	Public Hearing
Dec. 10, 2008	Governor's Council Chamber State House, Room 360	Working Meeting
Dec. 17, 2008	Governor's Council Chamber State House, Room 360	Working Meeting
Jan. 5, 2009	Governor's Council Chamber State House, Room 360	Working Meeting

LIST OF PUBLIC HEARING PARTICIPANTS*

Representative Jennifer Callahan

Dan Iagatta

Michael Sullivan, Office of Campaign and Political Finance

Thomas Colo

Stephen Kaiser

Karen Nober, State Ethics Commission

John Grossman, Executive Office of Public Safety & Security

Chester Chalupowski

Yawu Miller, ONE Massachusetts

Shirley Kressel

Deirdre Cummings, MassPIRG

Kristi Devine

Cathy Su

Kathleen Devine

Frances Burke, Integrity International

Eli Beckman, Green-Rainbow Party

Janet Aldrich

Julius Levine+

Barbara Hildt+

* In order of testimony.
+ Written testimony provided, but unable to attend public hearing.

SUMMARY OF PUBLIC COMMENTS

Authority of State Ethics Commission

1. Increase the Ethics Commission's budget commensurate with any increase in responsibilities or expansion of jurisdiction.
2. Fold the Ethics Commission's budget into the Attorney General's budget. Allow the Attorney General to direct additional resources to the Ethics Commission and other oversight agencies.
3. Adopt a rule that any person who fails to keep confidential the fact of their complaint filed with the Ethics Commission shall be deemed to have waived that complaint.

Lobbying Requirements for Municipalities

Include municipality lobbyists in registration and reporting requirements.

Availability of Lobbyist Information

1. Require lobbyists to report the client on whose behalf they received payment.
2. Require lobbyists to report the amount of payment and the activities for which they received payment.
3. Require lobbyists to report every meeting and the subject of every meeting with decision makers.
4. Link the databases of lobbying expenditures, campaign contributions, and corporate officers with information about what bills are being advocated on behalf of which corporations.

Lobbyist Qualifications

1. No convicted felon should be eligible to register as a lobbyist or executive agent.
2. Other than attorneys, all lobbyists/executive agents should be required to take a 6-hour certification course, consisting of 2-hour segments by the Ethics Commission, OCPF, and the Secretary of State.
3. Require lobbyists "on duty" in public facilities to wear name tags identifying them as lobbyists to remind public officials that such conversations are in the course of lobbying.

Prosecution

Establish a specialized office of public corruption to prosecute state public corruption cases.

Training and Education

1. Teach ethics in school and make ethics a subject on standardized exams.
2. Require ethics training for all government employees.

Legislative Process

1. Increase transparency of the legislative process.

2. Home rule petitions should go through committee before a vote on the House and Senate floors.
3. Mandate ethics training for legislators each legislative cycle.
4. Strip legislators who have been fined or have received disciplinary action by the State Ethics Commission of their leadership titles.

Availability and Accessibility of Budget Information

1. Allow taxpayers to see how their money is spent.
2. Remove earmarks from state budgetary process.
3. Review process for outside sections to the budget.
4. Prohibit legislative appropriations directly to persons or corporations, except to satisfy a judicial judgment, unless the money has been subject to a public, competitive, and open procurement process.

Open Meeting Law

1. Subject the Legislature to the open meeting law.
2. Expand open meeting law to municipal meetings, quasi-state agencies and other entities who are discussing the use of public resources.
3. Strengthen open meeting law.

Public Records Law

1. Subject the Legislature to the public records law.
2. Limit exemptions from public records law.
3. Disclose public records on official websites, not just in the State Archives.
4. Provide public records without cost to requesters.
5. Subject any advance payments required for record searches to review by the Secretary of State's Office who would decide whether such costs need to be paid.

Campaign Finance

1. Greater disclosure of campaign contributions, including contributions made to ballot measures.
2. Re-enact and fund a comprehensive, voluntary, public campaign financing system.
3. Require candidates to turn over excess campaign funds after each election cycle, either to the state treasury, the state political party, a recognized charity, or pro rata to donors. Establish a minimum "allowance" to help offset the costs of incumbency.
4. Expand oversight of OCPF reports, including particular expense reports.
5. Publish candidate spending on the internet.
6. Require candidates to file weekly reports and daily reports during the last 7 days of the campaign, rather than periodic reports.
7. Increase the campaign contribution limit from $500 per year to $2,300 per year.
8. Ban lobbyists from making political contributions.

Miscellaneous

1. Greater disclosure of rates paid and the nature of services provided by "consultants" to elected officials.
2. Cap consulting fees/bidding rates of consultants and contractors.
3. Establish a citizens' review board of all public contracting and increase transparency and accountability over quasi-public agencies.
4. Make zoning documents immediately available online and in public libraries.
5. Broaden the definition of "state employee" to include municipal employees.
6. Tighten deadlines for the statement of financial interest and gift disclosures.
7. Fairness in liquor licensing procedures.
8. Implement a fraud statute.
9. Strengthen whistleblower provisions.
10. Institute an anti-nepotism law that immediate family members of a legislator, governor, or councilor are ineligible for state employment.
11. Establish term limits for members of the legislature and other elected officials.
12. Consider increasing elected official compensation.

ACKNOWLEDGEMENTS

Many thanks to E. Abim Thomas, Deputy Legal Counsel to the Governor and Executive Director of the Task Force.

Many thanks also to Ryan W. Copus, Ryan E. Ferch, John A. Grossman, Cathy Judd-Stein, Katherine G. McKenney, David C. Newton, Jonathan C. Sclarsic, David E. Sullivan, and Rebecca M. Webb.

REGULATORY REFORM

The Patrick Administration's on-going regulatory reform efforts have included 60 state agencies, 446 sets of reviewed regulations and 286 regulations that have been amended or eliminated. This is the impost significant and impactful regulatory reform initiative in Massachusetts, designed to cut unnecessary red tape and increase the ease of doing business in Massachusetts. The regulatory reform initiative has four parts:

- A comprehensive review of existing regulations
- A systematic and coordinated process for regulators to consider economic impacts for newly proposed regulations
- Public reporting of small business impacts impact for all regulatory changes to improve transparency during the public rule-making process
- Partnerships with the regulated community to share responsibility for creating a balanced regulatory environment

To date, the regulatory reform effort has made doing business in Massachusetts easier for thousands of businesses. Key successes include:

- Streamlining the tax return extension process for small business to make applications easier. This reform alone will help 71,388 businesses.
- Standardized permitting and police escort fees for oversized loads on the MassPike, a move that allows for freer transit of trucks while still maintaining public safety parameters.
- Making it easier to approve requests for access to MassDOT property, including curb cuts and other construction access permits, eliminating regulatory hurdles that were slowing down progress.
- Pending legislation that combines and removes some professional boards, along with other changes that will improve administrative efficiencies and lower fees for thousands of professionals who are licensed through the Division of Professional Licensure.

Talking Points

- The Patrick Administration is committed to creating an economic environment that works smoothly for businesses and reduces costs as much as possible.
- Our regulatory reform changes may seem small, but they are significant, positive steps forward for thousands of businesses.
- To stay competitive, both in business and in government, we need to continually reevaluate our processes and look for opportunities to improve efficiencies. That is exactly what we are doing here in Massachusetts. We are focusing our regulations on what's necessary, and eliminating what's not.
- Through our comprehensive review of regulations across state government, we are making Massachusetts an even better place to do business, and are showing other states how regulatory review can be effective.
- The proposed legislation reshaping the Division of Professional Licensure are indicative of the common-sense changes we are undertaking, which will provide an easier regulatory structure for small-business owners.
- By merging or eliminating some boards, reducing harsh re-entry fees and eliminating some requirements that are outmoded due to technology, the fresh

look we are bringing to licensing and regulations will help thousands of businesses and licensed professionals.

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CHAPTER 176 AN ACT PROVIDING FOR PENSION REFORM AND BENEFIT MODERNIZATION.

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

SECTION 1. Clause Twenty-sixth of section 7 of chapter 4 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following subclause:-
(t) statements filed under section 20C of chapter 32.

SECTION 2. The second paragraph of section 50 of chapter 7 of the General Laws, as so appearing, is hereby amended by striking out clause (f).

SECTION 3. Section 40 of chapter 15A of the General Laws is hereby amended by striking out, in line 83, as so appearing, the word “ninety”and inserting in place thereof the following figure:- 180.

SECTION 4. Section 1 of chapter 30B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word ”services”, in line 56, the following words:- ; provided, however, that the procurements shall take place under section 23B of chapter 32.

SECTION 5. The definition of “maximum age” in section 1 of chapter 32, as so appearing, is hereby amended by striking out the figure ”55” and inserting in place thereof the following figure:- 65.

SECTION 6. The first sentence of the definition of “regular compensation” in said section 1 of said chapter 32, as so appearing, is hereby amended by inserting after the word “date” the following words:- ; provided, however, that if the employee receives compensation for wages in whatever form from the federal government and such wages were not reported to any employing authority, such wages shall not be counted as regular compensation for the purposes of the benefits provided in this chapter.

SECTION 7. The definition of “wages” in section 1 of said chapter 32, as so appearing, is hereby amended by inserting after the word ”firefighters” the following words:- , correctional officers.

SECTION 8. Paragraph (g) of subdivision (2) of section 3 of said chapter 32, as so appearing, is hereby amended by inserting after the word “groups” in line 229, the following:-; provided that a member entering service prior to April 2, 2012 must be actively employed in a Group 2 or Group 4 position by a governmental unit which is subject to a retirement system under chapter 32, and must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding termination or retirement in order to qualify for the

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retirement allowance calculation of said group contained in subdivision (2) of section 5.

SECTION 9. Paragraph (b) of subdivision (8) of section 3 of said chapter 32, as so appearing, is hereby amended by inserting after the third sentence the following sentence:- Notwithstanding any provision of this chapter to the contrary, a member who is reinstated to, or re-enters the active service of, a governmental unit, or who is eligible to receive credit for other service under this section, and who does not, (i) pay into the annuity savings fund of the system make-up payments of an amount equal to the accumulated regular deductions withdrawn by the member, together with buyback interest; or (ii) make provision for the repayment in installments, upon such terms and conditions as the board may prescribe, to pay into the annuity savings fund of the system make-up payments of an amount equal to the accumulated regular deductions withdrawn by the member, together with buyback interest, within 1 year from the date of reinstatement or re-entry or within 1 year after April 2, 2012, whichever is later, shall pay actuarial assumed interest instead of buyback interest on all make-up payments to be entitled to creditable service resulting from the previous employment.

SECTION 10. Subdivision (1) of said section 4 of said chapter 32, as so appearing, is hereby amended by inserting after paragraph (g½) the following paragraph:-
(g¾) The period or periods before 1975 during which any retired member of the Teachers Retirement System or any retired member of the Boston Teachers Retirement System who (i) is living and retired before September 1, 2000, (ii) resigned for the purposes of maternity leave or was on unpaid leave of absence for such purposes from the governmental unit in which the member was employed as a teacher, and (iii) had established membership in a Massachusetts contributory retirement system shall be allowed under this paragraph a maximum of creditable service not to exceed 4 years creditable service. No credit shall be allowed under this paragraph for any member who was not retired as of September 1, 2000. The credit allowed under this paragraph shall increase the retirement allowance payments beginning on April 2, 2012.

SECTION 11. Section 5 of said chapter 32, as so appearing, is hereby amended by striking out, in line 3, the word “fifty-five” and inserting in place thereof the following words:- 55 or any member in service or any member inactive on authorized leave of absence classified in Group 1 who became such a member on or after April 2, 2012 who has attained age 60.

SECTION 12. Said section 5 of said chapter 32, as so appearing, is hereby further amended by inserting after the word ”service”, in line 38, the following words:- , together with buyback interest, and shall satisfy the requirements for reinstatement under subsection (a) of section 105.

SECTION 13. Said section 5 of said chapter 32, as so appearing, is hereby further amended by inserting after the word ”retirement”, in line 97, the following words:- ; provided, however that for a member who became a member on or after April 2, 2012, the total amount of regular compensation shall be based on the average annual rate of regular compensation received by such member during

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any period of 5 consecutive years of creditable service for which such rate of compensation was the highest, or on the average annual rate of regular compensation received by such member during the period or periods, whether consecutive or not, constituting the member's last 5 years of creditable service preceding retirement, whichever is the greater.

SECTION 14. Paragraph (a) of subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby amended by inserting after the first sentence the following 4 sentences:- Notwithstanding the previous sentence, if in the 5 years of creditable service immediately preceding retirement, the difference in the annual rate of regular compensation between any 2 consecutive years exceeds 100 per cent, the normal yearly amount of the retirement allowance shall be based on the average annual rate of regular compensation received by the member during the period of 5 consecutive years preceding retirement. Any active member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group; further, the retirement allowance for members who became members on or after April 2, 2012, and who served in more than 1 group, shall receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that member rendered in each group. The pro-rated benefits shall be calculated in a manner prescribed by the commission. A member who entered service on or before April, 2, 2012 and seeks Group 2 or Group 4 classification and is no longer a public employee at the time of the member's retirement shall be classified based on the position from which the member was last employed.

SECTION 15. The table in said paragraph (a) of said subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby amended by striking out the title and inserting in place thereof the following title:-

Table showing Percentage of the Amount of Average Annual Rate of Regular Compensation to be multiplied by the Number of Years of Creditable Service for individuals who became members before April 2, 2012.

SECTION 16. Said paragraph (a) of said subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby further amended by adding the following 2 tables:-

Table Showing Percentage of the Amount of Average Annual Rate of Regular Compensation to be multiplied by the Number of Years of Creditable Service for individuals who become members on or after April 2, 2012

Per Cent Group 1 Group 2 Group 4

2.50	67 or older	62 or older	57 or older

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2.35	66	61	56
2.20	65	60	55
2.05	64	59	54
1.90	63	58	53
1.75	62	57	52
1.60	61	56	51
1.45	60	55	50

Table Showing Percentage of the Amount of Average Annual Rate of Regular Compensation to be multiplied by the Number of Years of Creditable Service for individuals who become members on or after April 2, 2012 and with at least 30 years of creditable service at the time of retirement

Per Cent Group 1 Group 2 Group 4

2.50	67 or older	62 or older	57 or older
2.375	66	61	56
2.250	65	60	55
2.125	64	59	54

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2.0	63	58	53
1.875	62	57	52
1.750	61	56	51
1.625	60	55	50

SECTION 17. Paragraph (c) of said subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby amended by adding the following sentence:- The total normal yearly amount of the retirement allowance of any member of Group 1 or Group 2 or Group 4, who becomes such a member on or after April 2, 2012, shall not exceed four-fifths of the average annual rate of such member's regular compensation received during any period of 5 consecutive years of creditable service for which such rate of compensation was the highest or on the average annual rate of regular compensation received by such member during the period or periods, whether or not consecutive, constituting such member's last 5 years of creditable service preceding retirement, whichever is the greater.

SECTION 18. Said subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby further amended by adding the following paragraph:-
(f) In calculating the average annual rate of regular compensation for purposes of this section, regular compensation in any year shall not include regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 10 per cent. This paragraph shall not apply to an increase in the annual rate of regular compensation that results from an increase in hours of employment, from overtime wages, from a bona fide change in position, excluding a modification in the salary or salary schedule negotiated for bargaining unit members under chapter 150E, or in the case of a teacher, from the performance of any services set forth in the third sentence of the first paragraph of the definition of "regular compensation" in section 1. Any withholdings excluded from the calculation of a member's average annual rate of regular compensation under this paragraph, shall be returned to the member with interest at the assumed actuarial rate.

SECTION 19. Paragraph (b) of subdivision (3) of said section 5 of said chapter 32, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Any duly authorized leave or period of absence for which any member is allowed creditable service under sections 1 to 28, inclusive, and any such leave or period of absence not in excess of 1 year for which such member is not allowed creditable service, shall be included in any applicable 3-year or 5-year period to determine the average annual rate of such member's regular compensation therefor to the extent such leave or period of absence falls within such applicable 3-year or 5-year

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period, anything in such sections to the contrary notwithstanding.

SECTION 20. Paragraph (i) of subdivision (4) of said section 5 of said chapter 32, as so appearing, is hereby amended by inserting after the tenth sentence the following sentence:- In the case of an employee who becomes a member on or after April 2, 2012, and has at least 30 years of creditable service, the on-going rate of contribution under this paragraph shall be reduced by 3 per cent.

SECTION 21. Paragraph (ii) of said subdivision (4) of said section 5 of said chapter 32, as so appearing, is herby amended by inserting after the words “creditable service”, in line 298, the following words:- , and in the case of any employee who becomes a member on or after January 1, 2012, to be increased by 2 per cent per year for each full year of service in excess of 23 years of creditable service.

SECTION 22. Said subdivision (4) of said section 5 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-
The total normal yearly amount of the retirement allowance, as determined under this subdivision of any employee who becomes such a member on or after April 2, 2012, and retires and receives an additional benefit under the alternative superannuation retirement benefit program shall not exceed four-fifths of the average annual rate of such member’s regular compensation received during any period of 5 consecutive years of creditable service for which the rate of compensation was the highest or of the average annual rate of such member’s regular compensation received during the period or periods, whether or not consecutive, constituting the member’s last 5 years of creditable service preceding retirement, whichever is greater.

SECTION 23. Subdivision (2) of section 6 of said chapter 32, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-
(a) The normal yearly amount of such allowance for any member classified in Group 1, Group 2 or Group 4 other than a veteran as defined in section 1 shall be equal to that to which the member would be entitled under section 5 as prescribed for a member of the member’s group, if the member were to be retired for superannuation upon the attainment of age 55, or for any member classified in Group 1 who became such a member on or after April 2, 2012 if such member were to be retired for superannuation upon the attainment of age 60, with an amount of creditable service equal to that with which the member is credited at the date of the member’s actual retirement for ordinary disability; provided, however, that if the member has attained age 55, or for a member classified in Group 1 who became such a member on or after April 2, 2012 if the member has attained age 60, the normal yearly amount of such allowance shall in no event be less than that to which the member would be entitled if the member were to be retired for superannuation under section 5 as prescribed for a member in the member’s group; and provided, further, that the normal yearly amount of such allowance for a member who became such a member before April 2, 2012 shall not exceed four-fifths of: (i) the average annual rate of the member’s regular compensation during any period of 3 consecutive years of creditable service for which such rate of compensation was the highest, and (ii) the average annual rate of

regular compensation received by such member during the period or periods, whether or not consecutive, constituting the member's last 3 years of creditable service preceding retirement, whichever is greater; and provided, further, that for a member who became such a member on or after April 2, 2012 the normal yearly amount of such amount shall not exceed four-fifths of: (i) the average annual rate of the member's regular compensation during any period of 5 consecutive years of creditable service for which such rate of compensation was the highest, and (ii) the average annual rate of regular compensation received by such member during the period or periods, whether or not consecutive, constituting the member's last 5 years of creditable service preceding retirement, whichever is greater.

SECTION 24. Subdivision (1) of section 10 of said chapter 32, as so appearing, is hereby amended by adding the following sentence:-This subdivision shall not apply to any member who entered service on or after April 2, 2012.

SECTION 25. Subdivision (2) of said section 10 of said chapter 32, as so appearing, is hereby amended by adding the following sentence:- This subdivision shall not apply to any member who entered service on or after April 2, 2012.

SECTION 26. Said section 10 of said chapter 32, as so appearing, is hereby further amended by inserting after subdivision (2) the following subdivision:-
(2A) Notwithstanding subdivision (1) or (2) any member classified in Group 1, Group 2 or Group 4, who became a member on or after April 2, 2012, has completed 10 or more years of creditable service, and:
(a) who fails of reappointment;
(b) who is removed or discharged from the member's office or position without moral turpitude on the member's part;
(c) who accepts, during or prior to the expiration of a term for which the member was elected, appointment to an office or position the acceptance of which requires under the constitution of the commonwealth resignation from the general court;
(d) whose office or position is abolished; or
(e) who resigns or voluntarily terminates the member's service, who leaves the member's accumulated total deductions in the annuity savings fund of the system of which the member is a member, shall have the right upon attaining the minimum retirement age for the member's Group, or at any time thereafter, to apply for a superannuation retirement allowance to become effective under subdivision (3).
Such allowance shall be determined under section 5 or any other section governing superannuation retirement applicable to such member upon the basis of the member's age on the date when the retirement allowance becomes effective, with an amount of creditable service equal to that with which the member was credited on the date of the member's termination of service.

SECTION 27. Said section 10 of said chapter 32, as so appearing, is hereby further amended by

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striking out, in lines 112 and 113, the words “or (2)” and inserting in place thereof the following words:- ,(2) or (2A).

SECTION 28. Option (d) of subdivision (2) of section 12 of said chapter 32, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-
If such member dies before attaining age 55 and before being retired, such nominated eligible beneficiary shall receive the Option (c) allowance to which such member would have been entitled had the member attained age 55 at the time of the member’s death and had the member’s retirement taken place on the date of the member’s death. Notwithstanding the previous sentence, if a member of Group 1 who became such a member on or after April 2, 2012 dies before attaining age 60 and before being retired, such nominated eligible beneficiary shall receive the Option (c) allowance to which such member would have been entitled had the member attained age 60 at the time of the member’s death and had the member’s retirement taken place on the date of the member’s death.

SECTION 29. Said section 12 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 211 and 212, the words ”two hundred and fifty dollars” and inserting in place thereof the following words:- $250 or $500 a month, whichever is applicable to such spouse.

SECTION 30. Option (d) of said section 12 of said chapter 32, as so appearing, is hereby amended by inserting after the tenth paragraph the following paragraph:-
Beginning April 2, 2012, the normal monthly member-survivor allowance provided for under this option to a spouse of a deceased member shall not be less than $500 for members of the state teachers’ and state employees’ retirement system. This paragraph shall take effect for the members of a retirement system of any other political subdivision by a majority vote of the board of such system and by the local legislative body. For the purpose of this paragraph, a vote of the legislative body shall take place in the following manner: in a city, by a vote of the city council subject to its charter; in a town, by a vote at a town meeting; in a county, by a vote of the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, by a vote of the district members; and for an authority, by a vote of its governing body. Acceptance shall be deemed to have occurred upon the filing of a certification of such vote with the commission.

SECTION 31. Section 15 of said chapter 32, as so appearing, is hereby amended by adding the following subdivision:-
(6) If a member’s final conviction of an offense results in a forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the member to repay, all benefits received after the date of the offense of which the member was convicted.

SECTION 32. Paragraph (b) of subdivision (1) of section 16 of said chapter 32, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following:-
(i) Any member in service, classified in Group 1, Group 2 or Group 4 who has attained age 55 and completed 15 or more years of creditable service;

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(ii) any member in service, classified in Group 1, Group 2 or Group 4 who has not attained age 55 but who has completed 20 or more years of creditable service;
(iii) any member in service, who entered such service on or after April 2, 2012, classified in Group 1 who has attained age 60 and completed 15 or more years of creditable service; or
(iv) any member in service, who entered such service on or after April 2, 2012, classified in Group 1 who has not attained age 60 but who has completed 20 or more years of creditable service, for whom an application for such member's retirement is filed by the head of such member's department under paragraph (a) of this subdivision, may, within 15 days of the receipt of such member's copy of such application, file with the board a written request for a private or public hearing upon such application.

SECTION 33. Section 20 of said chapter 32, as so appearing, is hereby amended by inserting after subdivision (4 7/8D) the following subdivision:-
(4 7/8E) No employee, contractor, vendor or person receiving remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from a person doing business with a retirement board shall be eligible to serve on a retirement board; provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which the person is employed; and provided further, this subdivision shall apply only to individuals who first become members of a retirement board on or after April 2, 2012.

SECTION 34. Said section 20 of said chapter 32, as so appearing, is hereby further amended by striking out subdivision (6) and inserting in place thereof the following subdivision:-
(6) *Retirement Board Members Compensation*.-The elected and appointed members of a city, town, county, regional, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend; provided, however, that the stipend shall not be less than $3,000 per year and not more than $4,500 per year; provided, further, that the stipend shall be paid from funds under the control of the board as shall be determined by the commission; and provided, further, that an ex-officio member of a city, town, county, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend of not more than $4,500 per year in the aggregate for services rendered in the active administration of the retirement system.

SECTION 35. Said section 20 of said chapter 32, as so appearing, is hereby further amended by adding the following subdivision:-
(7) *Retirement Board Member Training*.- During each full term of service retirement board members shall undertake 18 hours of training; provided, however, that not less than 3 hours of such training shall take place each year and not more than 9 hours may take place in any single year; provided, however, that nothing in this subdivision shall prohibit such retirement board members from undertaking more than 18 hours of training.
Such training shall consist of 9 hours sponsored by the commission, which shall include, at a minimum, the topics of fiduciary responsibility, ethical conduct and conflict of interest and 9 hours of training on topics prescribed by the commission provided by the Massachusetts Association of

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Contributory Retirement Systems or other local, state, regional and national organizations recognized by the commission as having expertise in retirement issues of importance to retirement board members or other entities, as the commission may determine.
The commission shall arrange for at least 18 sessions during each year for members to complete this requirement. In addition, the commission shall schedule additional sessions or otherwise make accommodations to ensure that members are afforded the maximum opportunity to complete this requirement.
The commission shall annually provide retirement boards with a statement of completion of education form on or before December 31. The board shall provide the forms to their members. The form shall set forth the training as required by this subdivision the member has undertaken during that year. Board members shall submit the completed form to the commission by January 31 of the year following. The commission shall annually provide the member with a summary of the member's status regarding the completion of this requirement by March 1.
Failure to successfully complete the requirements of this subdivision shall prohibit a board member from serving beyond the conclusion of the term in which the failure took place. If the non-complying member is an ex-officio member or a second member, of a board the appointing authority for the second member shall appoint a different individual to serve on the board; provided, however, that the replacement of an ex-officio member shall be an individual experienced in the field of finance or auditing; and provided further, that in a regional retirement system non-complying members shall be replaced in the same manner as is set forth for the selection of the members.
Each retirement board shall notify all board members and prospective board members of the requirement to complete education requirements at the time of receiving information about seeking election to a retirement board or prior to being appointed to a retirement board.
The commission shall annually notify board members of the requirement to complete continuing education.

SECTION 36. Said chapter 32 is hereby further amended by inserting after section 20B the following section:-
Section 20C. *Retirement Board Member Statement of Financial Interest*.- (a) Every member of a retirement board shall file a statement of financial interests for the preceding calendar year with the commission: (i) within 30 days of becoming a member of a retirement board; (ii) by May 1 of each year thereafter that the person is a member of a retirement board; and (iii) by May 1 of the year after the person ceases to be a member of a retirement board.
(b) The commission shall, upon receipt of a statement of financial interests under this section, issue to the person filing the statement a receipt verifying the fact that a statement of financial interests has been filed and a receipted copy of the statement.
(c) No member of a retirement board may continue in the member's duties unless the member has filed a statement of financial interests with the commission as required by this section.
(d) The statement of financial interests filed under this section shall be on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person.
(e) A reporting person shall disclose, to the best of the person's knowledge, the following information

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for the preceding calendar year, or as of the last day of the year with respect to the information required by clauses (2), (3) and (6); provided, however, that the person shall also disclose the same information with respect to the person's immediate family; and provided further, that no amount need be given for the information about the reporting person's immediate family:
(1) the name and address of, the nature of association with, the share of equity in, if applicable, each business with which the person is associated;
(2) the identity of all securities and other investments with a fair market value of greater than $1,000 which were beneficially-owned, not otherwise reportable hereunder;
(3) the name and address of each creditor to whom more than $1,000 was owed; provided, however, that obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debts incurred in the ordinary course of business and any obligation to make alimony or support payments, shall not be reported; and provided further, that such information need not be reported if the creditor is a relative of the reporting person within the third degree of consanguinity or affinity;
(4) the name and address of the source and the cash value of any reimbursement for expenses aggregating more than $100 in the calendar year if the recipient is a member of a retirement board and the source of the reimbursement is a person having a direct interest in a matter before the retirement board of which the recipient is a member;
(5) the name and address of the donor and the fair market value, if determinable, of any gifts aggregating more than $100 in the calendar year, if the recipient is a member of a retirement board and the source of the gift is a person having a direct interest in a matter before the retirement board of which the recipient is a member;
(6) the name and address of the source and the fair market value of any honoraria aggregating more than $100 if the recipient is a member of a retirement board and the source of such honoraria is a person having a direct interest in a matter before a retirement board;
(7) the name and address of any creditor who has forgiven an indebtedness of over $1,000 and the amount forgiven if the creditor is a person having a direct interest in a matter before a retirement board; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative; and
(8) the name and address of any business from which the reporting person is taking a leave of absence.
Nothing in this section shall be construed to require the disclosure of information, which is privileged by law.
Failure of a reporting person to file a statement of financial interests within 30 days of receipt of the notice in writing from the commission which states in detail the deficiency and the penalties for failure to file a statement of financial interests or the filing of an incomplete statement of financial interests after receipt of a notice shall result in the removal of the reporting person from the board and the reporting person shall not serve on a retirement board established under this chapter, under chapter 34B or the retirement board of the Massachusetts Water Resources Authority; provided, however, that, if the reporting person has filed an incomplete statement of financial interests the removal shall

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be stayed upon the filing of an appeal under subdivision (4) of section 16. If the non-complying member is an ex-officio member, the member's appointing authority shall appoint a different individual to serve on the board or if the member is directly elected by the people, a different individual shall be appointed to serve on the board by the mayor, county commissioners or board of selectman as the case may be.

SECTION 37. Paragraph (a) of subdivision (1) of section 21 of said chapter 32, as so appearing, is hereby amended by inserting after the fourth sentence the following sentence:- Each board shall maintain a copy of all collective bargaining agreements which cover the system's members and shall make the agreements available to the commission for review at such time as the commission shall specify.

SECTION 38. Said chapter 32 is hereby further amended by inserting after section 21 the following section:-
Section 21A. *Debarment or Suspension of Contractors or Vendors*.- (a) As used in this section the following words shall, unless the context requires otherwise, have the following meanings:-
"Affiliates", entities which are affiliates of each other when either directly or indirectly 1 concern or individual controls or has the power to control another or when a third party controls or has the power to control both.
"Contract", a contract for the furnishing of supplies or services to a retirement board.
"Debarment", an exclusion from contracting or subcontracting with a retirement board for a reasonable and specified period of time commensurate with the seriousness of the offense.
"Person", a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.
"Retirement board", a board established under chapter 32, chapter 34B or the retirement board of the Massachusetts Water Resources Authority, excluding the pension reserves investment management board.
"Suspension", the temporary disqualification of a vendor who is suspected upon adequate evidence of engaging or having engaged in conduct which constitutes grounds for debarment.
"Vendor", a person that has furnished or seeks to furnish supplies or services under a contract with a retirement board.
(b) The commission shall establish and maintain a consolidated list of vendors to whom contracts shall not be awarded and from whom offers, bids or proposals shall not be solicited. The list shall show at a minimum the following information:
(1) the names of those persons debarred or suspended in alphabetical order with appropriate cross reference where more than 1 name is involved in a single debarment or suspension;
(2) the basis of authority for each debarment or suspension;
(3) the extent of restrictions imposed;
(4) the termination date of each debarment or suspension; and
(5) in the case of a suspension, the hearing date, if and when set, for debarment proceedings.
The commission shall cause the list to be kept current by the issuance of notices of additions and

deletions. The list shall be published on a periodic basis, together with notices of additions and deletions, in the goods and services bulletin and the central register published by the state secretary and in other publications as the commission shall designate. The commission shall also forward the list to the inspector general, the attorney general and the state auditor.
(c) Debarment may be imposed for the following causes:
(1) conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:
(i) a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
(ii) a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the vendor's present responsibility as a public contractor;
(iii) a violation of state or federal antitrust laws arising out of the submission of bids or proposals;
(iv) a violation of chapter 268A; or
(v) a violation of this chapter.
(2) substantial evidence, as determined by the commission, of any of the following acts:
(i) willfully supplying materially-false information incident to obtaining or attempting to obtain or performing any public contract or subcontract;
(ii) willful failure to comply with record-keeping and accounting requirements prescribed by law or regulation;
(iii) a record of failure to perform or of unsatisfactory performance under the terms of 1 or more public contracts; provided, however, that the failure to perform or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar; and provided further, that the failure to perform or unsatisfactory performance was not caused by factors beyond the vendor’s control;
(iv) the submission to the board or the commission of an inaccurate disclosure statement;
(v) the failure to disclose to the board and the commission compensation provided to a person in regards to attempting to obtain or the performance of a public contract or subcontract, including, but not limited to, compensation provided by third parties retained by the vendor to another person; or
(vi) any other cause affecting the responsibility of a vendor which the commission determines to be of a serious and compelling nature as to warrant debarment.
(d) No vendor may be suspended unless the commission has first informed the vendor by written notice of the proposed suspension mailed by registered or certified mail to the vendor's last known address, except when the commission determines that immediate suspension is necessary to prevent serious harm to the retirement system, in which case the suspension shall take effect immediately upon signing by the executive director of the commission of an order of suspension and notice shall be mailed to the vendor as soon as possible. The notice shall inform the vendor of the reasons for the proposed suspension and shall state that the vendor may, within 14 days, respond in writing and may in the response request a hearing. The commission may extend the period for response at the request of the vendor. The commission shall determine whether to impose the suspension or, in the case of an

emergency suspension imposed prior to notice to the vendor, whether to continue the suspension after reviewing the vendor's response, if any, and making an investigation as the commission determines is necessary and appropriate. An indictment, or any information or other filing by a public agency charging a criminal offense, for any of the offenses listed in paragraph (1) of subsection (c) shall constitute adequate evidence to support a suspension.
If the vendor requests a hearing and the suspension is not based on an indictment, the commission shall conduct a hearing according to the rules for the conduct of adjudicatory hearings established by the secretary of administration under chapter 30A. The hearing shall be initiated within 30 days of the imposition of the suspension, unless the vendor requests that the hearing be delayed. Officers and employees of the commission and records of the commission shall not be subject to subpoena for such hearing, if in the opinion of the commission production of records or testimony would prejudice any pending investigation by the commission.
A suspension shall not exceed 12 months unless a pending administrative or judicial proceeding in which the vendor is a party may result in a conviction or final adjudication of an offense listed in paragraph (1) of subsection (c).
(e) No vendor may be debarred under this section unless the commission has first informed the vendor of the proposed debarment by written notice mailed by registered or certified mail to the vendor's last known address. The notice shall inform the vendor of the reasons for the debarment and shall state that the vendor will have an opportunity for a hearing if the vendor so requests within 14 days of receipt of the notice. A hearing requested under this paragraph shall be conducted by the commission within 60 days of receipt of the request, unless the commission grants additional time at the request of the vendor. The hearing shall be conducted according to the rules for the conduct of adjudicatory hearings established by the secretary of administration under chapter 30A. A debarment shall not be imposed until (i) 14 days after receipt by the vendor of notice of the proposed debarment if no hearing is requested; or (ii) the issuance of a written decision by the commission which makes specific findings that there is sufficient evidence to support the debarment and that debarment for the period specified in the decision is required to protect the integrity of the public contracting process. A vendor shall be notified forthwith by registered or certified mail of the decision and of the vendor's right to judicial review in the event that the decision is adverse to the vendor. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
(f) A debarment or suspension may include all known affiliates of a vendor. The decision to include a known affiliate within the scope of a debarment or suspension shall be made on a case-by-case basis, after giving due regard to all relevant facts and circumstances. The offense or act of an individual justifying suspension, or the evidence justifying a suspension, may be imputed to the entity with which the individual is connected when such offense or act occurred in connection with the individual's performance of duties for or on behalf of the entity or with the knowledge, approval, or acquiescence of the entity or 1 or more of its principals. The entity's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence. The offense or act of an entity justifying debarment, or the evidence justifying a suspension, may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the entity who participated in, knew of, or had reason to know of the entity's act. An entity may not be suspended or debarred

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except in accordance with the procedures in this section.
(g) In determining whether to debar a vendor, or the period of a debarment, all mitigating facts and circumstances shall be taken into consideration. A debarment may be removed or the period of debarment may be reduced by the commission upon the submission of an application supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a judgment or conviction, bona fide change of ownership or management or the elimination of the cause for which the debarment was imposed.
(h) During the period for which a person has been debarred or suspended, that person shall not submit or cause to be submitted offers, bids, or proposals to any retirement board, nor shall any retirement board solicit or consider offers, bids, or proposals from, nor execute, renew, or extend any contract with, a debarred or suspended vendor and a vendor shall not contract for services from a debarred or suspended subcontractor on any contract with a retirement system.

SECTION 39. Paragraph (b) of subdivision (1) of section 22 of said chapter 32, as appearing in the 2010 Official Edition, is hereby amended by striking out clauses (v) and (vi) and inserting in place thereof the following 4 clauses:-
(v) withhold on each pay day 12 per cent of the regular compensation of each employee who is a member of the state police appointed pursuant to section 10 of chapter 22C, and is a member in service of the system, which is received on the day by the member on account of service rendered by the employee on or after July 1, 1996, and not later than the date of his attaining the maximum age for his group in the case of an employee who entered the service of the state police on or after July 1, 1996;
(vi) withhold on each pay day 11 per cent of the regular compensation of each employee who participates in the alternative superannuation retirement benefit program established under subdivision (4) of section 5 on account of such service rendered by him on or after July 1, 2001;
(vii) withhold on each pay day 6 per cent of the regular compensation of each employee in group 1 who is a member in service of the system, in the case of an employee who became a member of a retirement system of the commonwealth or a political subdivision thereof on or after April 2, 2012 and who has least 30 years of creditable service; and
(viii) withhold on each pay day 8 per cent of the regular compensation of each employee who is a member in service of the system and participates in the alternative superannuation retirement benefit program established under subdivision (4) of section 5, in the case of an employee who became a member of a retirement system of the commonwealth or a political subdivision thereof on or after April 2, 2012 and who has least 30 years of creditable service.

SECTION 40. Subdivision (2) of section 23 of said chapter 32, as so appearing, is hereby amended by striking out paragraph (b) and inserting in place thereof the following paragraph: -
(b) The board of each system shall invest and reinvest the funds of the system in the PRIT Fund under subdivision (8) of section 22, in the PRIT Fund by purchasing shares of the fund, as provided for in the trust agreement adopted by the PRIM board under subdivision (2A), or under the standards in subdivision (3), provided that: (i) no investment of funds shall be made in stocks, securities or other

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obligations of a company which derives more than 15 per cent of its revenues from the sale of tobacco products; (ii) in investing funds the board shall employ an investment manager or investment managers who shall invest the funds of the system; and (iii) no funds shall be invested directly in mortgages or collateral loans.
(c) No investment of funds shall take place until the board has received from the commission an acknowledgement of receipt of the following: (i) certification that, in making the selection, the board has complied with the process established in section 23B; (ii) a copy of the vendor certification required under section 23B; (iii) copies of disclosure forms submitted by the selected vendor; (iv) a certification that the investment is not a prohibited investment as set forth in regulations of the commission; (v) if the board has retained a consultant, a copy of the consultant reports pertaining to the investment and the selected vendor; and (F) a copy of the board certification required under section 23B.
The commission may withhold the acknowledgement if it determines that it is in the best interest of the retirement system; provided, however, that it must so notify the board within 10 days of receipt of completed documents as required by this section.
(d) Prior to the retention of an investment consultant the board shall have received from the commission an acknowledgement of receipt of the following: (i) certification that, in making the selection, the board has complied with the process established in section 23B; (ii) copy of the vendor certification required under section 23B; (iii) copies of disclosure forms submitted by the selected consultant; and (iv) copy of the board certification required under section 23B.

SECTION 41. Subdivision (3) of said section 23 of said chapter 32, as so appearing, is hereby amended by adding the following sentence:-
Each member of a retirement board established under this chapter shall upon the commencement of the member's term file with the commission a statement acknowledging the member is aware of and will comply with the standards set forth in chapter 268A, this chapter and rules and regulations promulgated under this chapter.

SECTION 42. Said chapter 32 is hereby further amended by inserting after section 23 the following section:–
Section 23B. (a) This section shall apply to every retirement board contract for the procurement of investment, actuarial, legal and accounting services.
(b) As used in this section the following words shall, unless the context requires otherwise, have the following meanings:-
"Contract", an agreement for the procurement of services, regardless of what the parties may call the agreement.
"Contractor", a person having a contract with a retirement board.
"Majority vote", as to any action by or on behalf of a retirement board, a simple majority of the board.
"Minor informalities", minor deviations, insignificant mistakes and matters of form rather than substance of the proposal or contract document which can be waived or corrected without prejudice to other offerors, potential offerors or the retirement board.

“Person”, a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.
“Procurement”, buying, purchasing, renting, leasing, or otherwise acquiring a supply or service, and all functions that pertain to the obtaining of a supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
“Procurement officer”, an individual duly authorized by the retirement board to assist in a procurement.
“Proposal”, a written offer to provide a service at a stated price submitted in response to a request for proposals.
“Purchase description”, the words used in a solicitation to describe the services to be purchased, including specifications attached to or incorporated by ref erence into the solicitation.
“Request for proposals”, the documents utilized for soliciting proposals, including documents attached or incorporated by reference.
“Responsible bidder or offeror“, a person who has the capability to perform fully the contract requirements and the integrity and reliability which as sures good faith performance.
“Responsive bidder or offeror“, a person who has submitted a bid or proposal which conforms in all respects to the request for proposals.
“Retirement board”, a board established under this chapter, chapter 34B or the retirement board of the Massachusetts Water Resources Authority excluding the pension reserves investment management board.
“Services”, the furnishing of labor, time or effort by a contractor, not involving the furnishing of a specific end product other than reports; provided, however, that the term shall not include employment agreements, collective bargaining agreements or grant agreements.
(c) A retirement board shall enter into procurement contracts for investment, actuarial, legal and accounting services utilizing competitive sealed proposals, in accordance with this section.
(d) A retirement board that awards a contract shall maintain a file on each contract and shall include in the file a copy of all written documents required by this section. Written documents required by this section shall be retained by the retirement board for at least 6 years from the date of final payment under the contract.
(e) The retirement board or its procurement officer shall give public notice of the request for proposals and a reasonable time prior to the date for the opening of proposals. The notice shall:
(1) indicate where, when and for how long the request for proposal may be obtained;
(2) describe the service desired and reserve the right of the retirement board to reject any or all bids;
(3) remain posted, for at least 2 weeks, in a conspicuous place in or near the offices of the retirement board until the time specified in the request for proposals; and
(4) be published at least once, not less than 2 weeks prior to the time specified for the receipt of proposals, in a newspaper of general circulation within the area served by the retirement board and in the case of a procurement for investment, accounting, actuarial or legal services in a publication of interest to those engaged in providing such services.
The retirement board or its procurement officer shall also place the notice in a publication established by the state secretary for the advertisement of such procurements.

The retirement board or its procurement officer may distribute copies of the notice to prospective bidders and may compile and maintain lists of prospective bidders to which notices may be sent.
(f) The retirement board shall unconditionally accept a proposal without alteration or correction, except as provided in this section. A bidder may correct, modify or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for the proposal opening. After proposal opening, a bidder may not change the price or any other provision of the proposal in a manner prejudicial to the interests of the retirement board or fair competition. The retirement board shall waive minor informalities or allow the bidder to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the procurement officer shall correct the mistake to reflect the intended correct proposal and so notify the bidder in writing and the bidder may not withdraw the proposal. A bidder may withdraw a proposal if a mistake is clearly evident on the face of the proposal document but the intended correct proposal is not similarly evident.
(g) The retirement board shall solicit proposals through a request for proposals. The request for proposals shall include:
(1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered and the maximum time for proposal acceptance by the retirement board;
(2) the purchase description and all evaluation criteria that may be utilized under subsection (h); and
(3) all contractual terms and conditions applicable to the procurement; provided, however, that the contract may incorporate by reference a plan submitted by the selected offeror for providing the required services.
The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain the documents. The retirement board or its procurement officer shall make copies of the request for proposals available to all persons on an equal basis.
(h) The retirement board or its procurement officer shall not open the proposals publicly, but shall open them in the presence of 1 or more witnesses at the time specified in the request for proposals. Notwithstanding section 7 of chapter 4, until the completion of the evaluations or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the retirement board or its procurement officer shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection.
(i) The retirement board or its consultant retained under this chapter shall be responsible for the initial evaluation of the proposals. The retirement board or its consultant retained under this chapter shall prepare initial evaluations based solely on the criteria set forth in the request for proposals. The evaluations shall specify in writing:
(1) a rating of each proposal evaluation criteria as highly advantageous, advantageous, not advantageous or unacceptable, and the reasons for the rating;
(2) a composite rating for each proposal and the reasons for the rating; and
(3) revisions, if any, to each proposed plan for providing the required services which should be

obtained by negotiation prior to awarding the contract to the offeror of the proposal.
If the initial evaluation is conducted by a consultant retained under this chapter the consultant shall review all initial evaluations with the retirement board and provide to each member of the retirement board the initial evaluation of each proposal.
(j) The retirement board shall determine the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement. The retirement board may condition an award on successful negotiation of the revisions specified in the evaluation and shall explain in writing the reasons for omitting any revision from a plan incorporated by reference in the contract.
(k) (1) In the event of a competitive process to select an investment service provider the request for proposals shall include mandatory contractual terms and conditions to be incorporated into the contract including provisions:
(a) stating that the contractor is a fiduciary with respect to the funds which the contractor invests on behalf of the retirement board;
(b) stating that the contractor shall not be indemnified by the retirement board;
(c) requiring the contractor to annually inform the commission and the board of any arrangements in oral or in writing, for compensation or other benefit received or expected to be received by the contractor or a related person from others in connection with the contractors services to the retirement board or any other client;
(d) requiring the contractor to annually disclose to the commission and the retirement board compensation, in whatever form, paid or expected to be paid, directly or indirectly, by the contractor or a related person to others in relation to the contractors services to the retirement board or any other client; and
(e) requiring the contractor to annually disclose to the commission and the retirement board in writing any conflict of interest the contractor may have that could reasonably be expected to impair the contactor’s ability to render unbiased and objective services to the retirement board. Other mandatory contractual terms and conditions shall address investment objectives, brokerage practices, proxy voting and tender offer exercise procedures, terms of employment and termination provisions.
The retirement board shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals.
The retirement board or its duly designated agent, subject to the approval of the retirement board, may negotiate all terms of the contract not deemed mandatory or non-negotiable with the offeror.If, after negotiation with the offeror, the retirement board, in consultation with its duly designated agent and its consultant retained under this chapter, determines that it is in the best interests of the retirement board to not award the contract to that offeror, the retirement board may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals and may negotiate all terms of

the contract with the offeror.
The retirement board shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, the evaluated criteria set forth in the request for proposals, and the terms of the negotiated contract. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The time for acceptance may be extended for up to 45 days by mutual agreement between the retirement board and the responsible and responsive offeror offering the most advantageous proposal as determined by the retirement board.
On or before January 1 of each year the contractor shall file the disclosures required with the board and the commission. Failure to file disclosures or the filing of inaccurate disclosures shall subject the contractor to proceedings under section 21A.
(2) The retirement board may cancel a request for proposals or may reject in whole or in part any and all proposals when the retirement board determines that cancellation or rejection serves the best interests of the system. The retirement board shall state in writing the reason for a cancellation or rejection.
(3) A person submitting a proposal for the procurement or disposal of services to a retirement board shall certify in writing on the proposal as follows:
The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

_____
(Signature of individual submitting bid or proposal)

_____
(Name of business)
(4) Each retirement board member shall certify to the commission in writing with respect to a procurement subject to this section, as follows:
The undersigned certifies under penalties of perjury that, to the best of the members knowledge and belief, this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

_____
(Signature of individual retirement board member)

_____
(Name of retirement board)
(5) No person shall cause or conspire to cause the splitting or division of a request for proposals, proposal, solicitation or quotation for the purpose of evading a requirement of this section.
(6) Unless otherwise provided by law and subject to clause (i), a retirement board may enter into a contract for a period of time which serves the best interests of the retirement board; provided, however, that the retirement board shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any.

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(i) A retirement board shall not award a contract for a term exceeding 5 years, including any renewal, extension or option; provided, however, that a retirement board may participate in a limited partnership, trust or other entity with a term for a period longer than 5 years as part of an investment of system assets.

When a contract is to contain an option for renewal, extension or purchase, the solicitation shall include notice of the provision. The retirement board shall retain sole discretion in exercising the option and no exercise of an option shall be subject to agreement or acceptance by the contractor.

(ii) The retirement board shall not exercise an option for renewal, extension or purchase unless the retirement board, after reasonable investigation of costs and benefits, has determined in writing that the exercise of the option is more advantageous than alternate means of procuring comparable services.

(7) All specifications shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary service or procurement from a sole source.

(8) All contracts shall be in writing and the retirement board shall make no payment for a service rendered prior to the execution of the contract.

(i) A contract made in violation of this section shall not be valid and the retirement board shall make no payment under such contract. Minor informalities shall not require invalidation of a contract.

(ii) A person who causes or conspires with another to cause a contract to be solicited or awarded in violation this section shall forfeit and pay to the appropriate retirement board not more than $2,000 for each violation. In addition, the person shall pay double the amount of damages sustained by the retirement board by reason of the violation, together with the costs of any action. If more than 1 person participates in the violation, the damages and costs may be apportioned among them.

(iii) The commission or the retirement board may file a civil action in the superior court to enforce clause (ii).

SECTION 43. Subdivision (3) of section 26 of chapter 32, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 75 and 82, the word “fifty-five” and inserting in place thereof, in each instance, the following figure:- 65.

SECTION 44. Said subdivision (3) of said section 26 of said chapter 32, as so appearing, is hereby amended by striking out paragraph (c) and inserting in place thereof the following paragraph:-

(c) Upon retirement under this subdivision, a member shall receive a retirement allowance to become effective on the date of the member’s retirement. Payments under such retirement allowance shall be made as provided for in sections 12 and 13 and the normal yearly amount of the retirement allowance shall be equal to 60 per cent of the average annual rate of the member’s regular compensation during the 12-month period of the member’s creditable service immediately preceding the date the member’s retirement allowance becomes effective; provided, that for members who became members in service before April 2, 2012, the total amount of the allowance shall be increased by one-twelfth of 3 per cent for each full month of service in excess of 20 years of service and prior to the last day of the month in which such member will reach the age of 55; provided, further, that for a member who became a member in service on or after April 2, 2012, the normal yearly amount of the retirement allowance

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shall be equal to 50 per cent of the average annual rate of the member's regular compensation during the 12-month period of the member's creditable service immediately preceding the date the member's retirement allowance becomes effective, and the total amount of the allowance shall be increased by one-twelfth of 2.5 per cent for each full month of service in excess of 20 years of service and prior to the last day of the month in which such member will reach the age of 55; provided, further, that such retirement allowance shall in no case exceed 75 per cent of such regular compensation; provided, further, that for a member who became such a member before April 2, 2012, if such member shall reach the member's fifty-fifth birthday and shall not have completed such 20 years of service, the amount of the member's retirement allowance shall be calculated by subtracting from such normal yearly amount one-twelfth of 3 per cent for each full month of service that the member's service is less than 20 years; and provided, further, that for a member who became such a member on or after April 2, 2012, if such member shall reach the member's fifty-fifth birthday and shall not have completed such 20 years of service, the amount of the member's retirement allowance shall be calculated by subtracting from such normal yearly amount one-twelfth of 2.5 per cent for each full month of service that the member's service is less than 20 years. Any member retired under this subdivision who is a veteran as defined in section 1 shall receive an additional yearly retirement allowance of $15 for each year of creditable service or fraction of such a year; provided, that the total amount of said additional retirement allowance shall not exceed $300 in any case.

SECTION 45. Section 28K of said chapter 32, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-
Any employee of the commonwealth or its political subdivisions who is a representative of an employee organization, which has included in its membership employees of the commonwealth or its political subdivisions shall, while on a full-time or part-time leave of absence for the purpose of acting as a representative of said employee organization, be considered on leave of absence, without pay, for the period of the employee's assignment as a representative of such employee organization. Such employee shall, however, be credited with the creditable service the employee would have received had the employee been in active service for the full or part-time leave and shall contribute each month to the retirement fund in an amount which the employee would have contributed had the employee remained in the service of the commonwealth or its political subdivisions. Such employee of the commonwealth or its political subdivisions shall be entitled to all benefits and privileges, except the payment of salary as provided under this chapter and chapters 30 and 31 during the leave of absence.

SECTION 46. Section 65D½ of said chapter 32, as so appearing, is hereby amended by inserting after the word "service", in lines 11 and 12, the following words:- , together with buyback interest.

SECTION 47. Section 90C½ of said chapter 32, as so appearing, is hereby amended by striking out, in line 6, the figure "$10,000" and inserting in place thereof the following figure:— $15,000.

SECTION 48. Said chapter 32 is hereby further amended by inserting after section 90D the following section:—

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Section 90D½. Any retirement system of a city, town, county, region, district or authority may, upon the majority vote of the board of such system and by the local legislative body, increase the retirement allowance of any member of the retirement system, who has been retired under this chapter or similar provision of earlier law on a superannuation, accidental disability or ordinary disability retirement allowance and who has completed at least 25 years of creditable service, to an amount not to exceed $15,000. For the purposes of this section, a vote of the legislative body shall take place in the following manner: in a city, by a vote the city council subject to its charter; in a town, by a vote at a town meeting; in a county, by a vote of the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, by a vote of the district members; and for an authority, by a vote of its governing body.

SECTION 49. Section 91 of said chapter 32, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “people”, in line 16, the following words:- ; provided, that the position from which the elected official retired was not a public office to which the elected official had been elected by direct vote of the people, unless at least 1 year has passed from the last day the elected official held said public elected office.

SECTION 50. Said section 91 of said chapter 32, as so appearing, is hereby further amended by inserting after the word “terminated” in line 92, the following words:- plus $15,000; provided however that in the first year immediately following the effective date of retirement, the earnings received by any person when added to any pension or retirement allowance the person is receiving shall not exceed the salary that is being paid for the position from which the person was retired or in which the person’s employment was terminated.

SECTION 51. Section 91A of said chapter 32, as so appearing, is hereby amended by inserting after the word “commission”, in line 9, the following words:- ; provided, however, that the commission may waive such filing by a member, if said member shall have been retired for more than 20 years, has not reported any earnings for the prior 10 years and signs an affidavit under the pains and penalties of perjury indicating that should the member realize any earned income in the future the member will forthwith notify the commission of that fact and again report under this section.

SECTION 52. Paragraph (c) of section 102 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 32, 36 and 43, the figure “$12,000” and inserting in place thereof, in each instance, the following figure:- $13,000.

SECTION 53. Section 19 of chapter 34B of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-
(m) No employee, contractor, vendor or person receiving remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from a person doing business with a retirement board shall be eligible to serve on a retirement board; provided however, that an employee of a retirement

board may serve on a retirement board other than the retirement board by which the person is employed; and provided further, that this paragraph shall apply only to individuals who first become members of a retirement board on or after April 2, 2012.

SECTION 54. Section 7 of chapter 150E of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-
An employer entering into a collective bargaining agreement with an employee organization shall provide a copy of the agreement to the retirement board to which the employees covered by the agreement are members. All retirement systems shall maintain files of all active collective bargaining agreements which cover the systems members. The retirement board shall review collective bargaining agreements for compliance with chapter 32.

SECTION 55. Notwithstanding any general or special law to the contrary, any member of a retirement system presently receiving a retirement allowance who:
(a) retired under chapter 32 of the General Laws on or before May 17, 2004;
(b) elected Option (a) or Option (b) of subdivision (2) of section 12 of said chapter 32; and
(c) married a person of the same sex on or before May 17, 2005 may change such selection to Option (c) of said subdivision (2) of said section 12 of said chapter 32 at the rate that was in effect for that option on the member's retirement date. The surviving spouse of a member that would otherwise meet the requirements of clauses (a) to (c), inclusive, may change the election made by the deceased member to Option (c) of said subdivision (2) of said section 12 of said chapter 32 at the rate that was in effect for that option on the member's retirement date.
In paying the retirement allowance under the new election, the board, as defined in section 1 of said chapter 32, shall make appropriate adjustments, or arrange for appropriate repayments, upon such terms and condition as the board may prescribe, so as to recover any overpayments resulting from the prior election. The change of election under this section shall be made and received by the applicable board not later than July 1, 2012, and shall be retroactive to the date of retirement. The election to change retirement option under this section shall be in a manner prescribed by the board, as defined in said section 1 of said chapter 32 and said board shall have 180 days after the submission of an application to implement the change.

SECTION 56. There shall be a special commission to study the Massachusetts public employees' pension classification system. The commission shall review and make recommendations for reform regarding the Massachusetts public employees' group classification system, with consideration of the work by the Blue Ribbon Panel on the Massachusetts Public Employees Pension Classification system. The commission shall consist of 13 members: 1 of whom shall be the secretary of administration and finance, or the secretary's designee; 1 of whom shall be the treasurer, or the treasurer's designee; 1 of whom shall be the executive director of the public employee retirement administration commission, or the director's designee; 1 of whom shall be a private citizen, appointed by the governor, who shall serve as chair of the commission and shall not be a member of any of the 105 contributory retirement systems; 3 members of the house of representatives, 1 of whom shall be

appointed by the minority leader; 3 of whom shall be members of the senate, 1 of whom shall be appointed by the minority leader; 1 of whom shall be selected by the governor from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; 1 of whom shall be a member of the Massachusetts Municipal Association; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts.
The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall file a report of its recommendations, together with the actuarial analysis and proposed legislation, if any, with the clerks of the house and senate, the chairs of the house and senate committee on ways and means and the chairs of the joint committee on public service not later than April 15, 2012.

SECTION 57. The state treasurer shall investigate and study ways to increase public employee participation in state sponsored deferred compensation plans, including increased outreach and access for new employees. The state treasurer shall file a report with his findings and any legislative recommendations with the house and senate clerks and the house and senate chairs of the joint committee on public service on or before April 30, 2012.

SECTION 58. Notwithstanding any general or special law to the contrary, there shall be a special commission to investigate and study retiree healthcare and other non-pension benefits. The commission shall consider the range of benefits that are or should be provided as well as the current and anticipated future cost of providing them. The commission shall consider and may make recommendations on how best to divide the costs between the commonwealth and employees. The commission shall also study the operation and structure of the group insurance commission or any other aspects of employee healthcare the commission deems appropriate. Upon appropriation of sufficient funds, the commission shall engage professional advisors as needed to accomplish its purposes.
The commission shall consist of 11 members: 1 of whom shall be the secretary of administration and finance, or the secretary's designee; 1 of whom shall be the treasurer, or the treasurer's designee; 1 of whom shall be the executive director of the group insurance commission, or the director's designee; 1 of whom shall be a private citizen, appointed by the governor, who shall serve as chair of the commission and shall not be a member of any of the 105 contributory retirement systems; 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 2 of whom shall be members of the senate, 1 of whom shall be appointed by the minority leader; 1 of whom shall be selected by the governor from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; 1 of whom shall be a member of the Massachusetts Municipal Association; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts.
The commission shall file a report of its recommendations and proposed legislation, if any, with the clerks of the house and senate, the chairs of the house and senate committee on ways and means and the chairs of the joint committee on public service not later than March 1, 2012.

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SECTION 59. There shall be a special commission to investigate and study all aspects of the ordinary and accidental disability provisions of the Massachusetts contributory retirement system as well as the provisions of injured on duty benefits and presumptions for public employees contained in the general laws. The commission shall consist of the chairs of the joint committee on public service, who shall co-chair the commission, the chairs of the house and senate committees on ways and means, the secretary of administration and finance, or a designee, the state treasurer, or a designee, executive director of the public employee retirement administration commission, or a designee; the house minority leader or a designee, the senate minority leader or a designee and 3 members to be appointed by the governor, one selected from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; 1 member who shall be a member of the Massachusetts Municipal Association; and 1 member who shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall file a report of its recommendations, together with the actuarial analysis and proposed legislation, if any, with the clerks of the house and senate, the chairs of the house and senate committee on ways and means and the chairs of the joint committee on public service not later than October 1, 2012.

SECTION 60. (1) Notwithstanding any general or special law to the contrary, any active member of the optional retirement system established under subsection (3) of section 40 of chapter 15A of the General Laws, or inactive member of the optional retirement system who is currently an active member of the state retirement system, or optional retirement plan enrollee on an approved leave of absence, shall have 1 opportunity to transfer to the state employees' retirement system, governed by chapter 32 of the General Laws, with creditable service allowed for any such time they were active participants of the optional retirement program. Any such employee choosing to transfer shall also be allowed creditable service for any years of participation, or portions thereof, in the state employee retirement system immediately prior to their enrollment in the optional retirement program.

(2) Eligibility for creditable service for time spent in the optional retirement program and service relinquished in the state employees' retirement system by enrollment in the optional retirement program shall be conditioned upon the payment, in 1 lump sum or in installments upon such terms as the state retirement board may provide, the larger of (a) an amount equal to the contributions such employee would have otherwise paid into the state employees retirement system had they been a member, plus actuarial-assumed interest for the years spent as an actively contributing member in the optional retirement plan or (b) an amount equal to all such assets, accrued under the Massachusetts optional retirement program to the state employees' retirement system, providing that such assets shall be credited toward the purchase of creditable service, minus employer-funded assets. Optional retirement program participants electing to transfer to the state retirement system shall, upon the transfer, forfeit all benefits, rights and privileges attributable to employer-funded assets in the optional retirement program. The optional retirement program administrator will take immediate steps to ensure that such employer-funded assets are transmitted to the Pension Reserve Fund as assets of the state employees' retirement system.

(3) Within 180 days of the effective date of this section the state retirement board and the department of higher education shall request of the Internal Revenue Service the necessary letters of determination or ruling on whether this section may be implemented without impairing the compliance of either or both the optional retirement plan and the state employees' retirement system with the Internal Revenue Code of 1986 including, but not limited to, subsection 414(h). The state employees' retirement system shall also request a determination or ruling from the Internal Revenue Service on whether this section may be implemented, without impairing the above mentioned compliance, provided that it only applies to any employee who elected, prior to May 16, 2004, to participate in the optional retirement program because the option of marriage did not become available to that employee under the laws of the commonwealth prior to May 16, 2004. Subsections (1), (2) and (4) to (7), inclusive, of this section shall not take effect unless and until the Internal Revenue Service issues a favorable ruling or determination, as the case may be, which determines that the transfers described in this section will not result in non-compliance of either or both the optional retirement program and the state employees' retirement system with the Internal Revenue Code including, but not limited to, subsection 414(h).

(4) Within 30 days of a favorable ruling or determination from the Internal Revenue Service , the department of higher education shall notify active members of the optional retirement program, inactive members of the optional retirement system who are currently active members of the state retirement system and those members on an excused leave of absence of 2 years or less, of their eligibility for this 1-time transfer opportunity to the state employee retirement system. Eligible employees who choose to transfer to the state employees' retirement system apply for such transfer to the state retirement board within 180 days of notification by the department of higher education of their eligibility for this transfer. Any elections under this section shall apply to current active members of the optional retirement plan, inactive members of the optional retirement system who are currently active members of the state retirement system and those on an approved leave of absence of 2 years or less on the effective date of this section, and shall be for one time. No further changes in participation, either into the state retirement plan or out of the optional retirement program, shall be permitted.

(5) Within 30 days of application for transfer to the state retirement system, such employees, subject to the rules and regulations of the state board of retirement, shall be notified by the state retirement board of their eligibility for transfer and the cost of such transfer. If eligible, such members shall have 180 days from notification to make the transfers to the state employees' retirement system, as set forth in subsection (2). Any money remaining in an optional retirement program account following the transfer of an employee to the state employees' retirement system and the complete payment for such transfer, as set forth above, shall continue to be held on behalf of the member under the optional retirement program and shall continue to be subject to the terms of the optional retirement program.

(6) If an employee has a residual account remaining in the optional retirement program under paragraph (4), the employee shall continue to be a member of the optional retirement program as long as such employee has an account under such program but shall not be permitted to make further contributions and shall not be eligible for any employer contributions thereunder. The department of higher education and the state board of retirement shall take such actions that are required or appropriate to ensure that the optional retirement program and the state employees' retirement

system, as hereby amended, continue to be tax-qualified plans in accordance with the Internal Revenue Code of 1986, as amended.
(7) The application of chapter 32 of the General Laws to a member of the optional retirement program who elects to transfer to the state employees' retirement system shall be those provisions that were in effect on the date such employee was initially appointed.
Upon the effective date of this section the public employee retirement administration commission shall perform an actuarial study relative to the potential cost to the commonwealth of implementation of this section and shall submit a report to the joint committee on public service.

SECTION 61. For the purposes of section 26 of chapter 32 of the General Laws, any state police trainee who completes and graduates from the state police training academy on or before June 1, 2012 shall be considered a member in service before April 2, 2012.

SECTION 62. The secretary of administration and finance shall commission a comprehensive, independent analysis of the costs and benefits of further structural reforms to the current pension system that will provide a public benefit while ensuring the ability to attract and retain public employees. For the purposes of this analysis, "public benefit" shall include, but not be limited to, the following principles: the long-term sustainability of the pension system; the maintenance of competitive, quality benefits for public employees; the equitable distribution of benefits to members of the system; and, a reduction in cost and risk to the taxpayers.
The analysis shall include, but not be limited to, a review of costs and public benefits for the current defined benefit plan, the creation of an optional defined contribution plan and an optional hybrid plan, consisting of defined benefit and defined contribution components. The analysis shall describe the costs and benefits to the commonwealth as a whole, to the 105 contributory retirement systems in the commonwealth and to current and future members of the retirement system. The analysis shall also compare the pension systems of both public and private organizations of similar size.
The organization commissioned by the secretary to conduct the analysis shall be drawn from a list of qualified research organizations which are: (a) competitively bid through a process established by the secretary; and (b) acceptable to the state treasurer and the public employee retirement administration commission.
The organization shall provide a preliminary report to the public employee retirement administration commission not later than 60 days prior to the legislative filing deadline. The public employee retirement administration commission may conduct an additional actuarial analysis to determine the costs of any recommendations made by the organization, which shall be included in the report prepared by the organization.
The organization shall file a report of its findings, together with the actuarial analysis provided by the public employee retirement administration commission, if any, with the clerks of the house and senate, the chairs of the house and senate committee on ways and means and the chairs of the joint committee on public service not later than October 15, 2012.

SECTION 63. Notwithstanding any general or special law to the contrary and except as expressly

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provided otherwise, sections 13, 16, 17, 20 to 22, inclusive, 26 and 27 shall apply only to members who become members on or after April 2, 2012. Sections 12 and 46 shall apply only to repayments and purchases of creditable service on or after April 2, 2012.

SECTION 64. Sections 5, 8 to 11, inclusive, 14, 15, 19, 23 to 25, inclusive, 28, 32, 35, 39, 43, 44, 47, 48 and 50 shall take effect on April 2, 2012.

SECTION 65. Section 18, 31 and 49 shall apply only to members retiring on or after April 2, 2012.

Approved, November 16, 2011.

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CHAPTER 21 AN ACT PROVIDING RESPONSIBLE REFORMS IN THE PENSION SYSTEM

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to reform pension laws for public employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience

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

SECTION 1. Section 1 of chapter 32 of the General Laws is hereby amended by inserting after the word “forty-five”, in line 399, as appearing in the 2006 Official Edition, the following words:- through June 30, 2009.

SECTION 2. The definition of “Regular compensation” in said section 1 of said chapter 32, as so appearing, is hereby further amended by adding the following sentence:- “Regular Compensation”, during any period subsequent to June 30, 2009, shall be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.

SECTION 3. Said section 1 of said chapter 32, as amended by section 15 of chapter 130 of the acts of 2008, is hereby further amended by adding the following definition:-
“Wages”, the base salary or other base compensation of an employee paid to that employee for employment by an employer; provided, however, that “wages” shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member’s retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers’ retirement system, salary payable under the terms of an annual contract for additional services in such school and

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compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by section 47 of chapter 71 shall be regarded as “regular compensation” rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers’ retirement system.

SECTION 4. Section 4 of said chapter 32 of the General Laws is hereby amended by striking out, in lines 5 to 7, inclusive, as so appearing, the words “, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further”.

SECTION 5. Subdivision (1) of said section 4 of said chapter 32 is hereby amended by striking out paragraphs (o) and (o ½), as so appearing, and inserting in place thereof the following paragraph:-
(o) The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than $5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

SECTION 6. Section 5 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 69 and 70, the words “, except for elected officials subject to the provisions of paragraph (b) of subdivision (2) of section ten,”.

SECTION 7. Subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-
(e) A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.

SECTION 8. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 69 to 73, inclusive, the words “or equal to seventy-two per cent of the average annual rate of his regular compensation for the twelve-month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective, whichever is greater; provided, however” and inserting in place thereof the following words:- ; provided, however, that if an individual was in a temporary or acting position on the date such injury was sustained or hazard undergone the amount to be provided under this subdivision shall be based on the average annual rate of the individual’s regular compensation during the previous 12-month period for which he last received regular compensation immediately preceding the date such injury was sustained or such hazard was undergone; provided, further,.

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SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended by striking out, in line 4, the words “, or fails of nomination or re-election”.

SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 7 to 9, inclusive, the words “, or fails of nomination or re-election, or fails to become a candidate for nomination or re-election”.

SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words “fails of nomination or re-election, or”.

SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 72 to 77, inclusive, the words “one of the following circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the employee has failed of reappointment, (3) that the employee’s office or position has been abolished, or (4) that” and inserting in place thereof the following words:- : (1) the employee has failed of reappointment; (2) the employee’s office or position has been abolished; or (3).

SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in line 79, the word “six” and inserting in place thereof the following figure:- 10.

SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-
(d) If a member is entitled to a return of his accumulated total deductions and requests such a return from the board on the prescribed form, then prior to the return of such accumulated total deductions, the board shall contact the member’s employer to determine whether the member owes an obligation to the employer under an employee benefit plan, including a cafeteria plan established pursuant to 26 U.S.C. section 125. If it is determined that the member owes the employer under any such plan, the board shall not return the accumulated total deductions until it has received notice from the employer that the obligation has been satisfied.

SECTION 15. Said chapter 32 is hereby further amended by inserting after section 12C the following section:-
Section 12D. A retirement system subject to this chapter shall pay all benefits in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan as defined in section 414(d) of the Internal Revenue Code.

SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:-
(c) A retirement board may require a member entitled to receive a retirement allowance to designate a financial institution to which shall be directly deposited any payments under any annuity, pension or

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retirement allowance.

SECTION 17. Section 19A of said chapter 32 is hereby amended by striking out the first paragraph, as so appearing, and inserting in place thereof the following paragraph:-

Any employee of the commonwealth, a city, town, district or other member unit of a retirement system who is retired under this chapter shall, upon the request of the retiring authority paying such pension or retirement allowance, or otherwise may, by assignment made in writing authorize the retiring authority paying such pension or retirement allowance to withhold each month such amount as he may designate for the payment of subscriber premiums applicable to any hospitalization, medical or surgical insurance in effect with a nonprofit hospital and medical service corporation or insurance company at the time of his retirement. In the event that the amount of a retiree's pension check is insufficient to accommodate the entire deduction and upon notice from the retirement board, the employer for whom the retiree last worked and from whom he is retired shall bill the retiree for the employee share of the premiums.

SECTION 18. Section 22D of said chapter 32, as so appearing, is amended by striking out, in line 25, the figure "2028" and inserting in place thereof the following figure:- 2030.

SECTION 19. Said chapter 32 is hereby further amended by inserting after section 22D the following section:-

Section 22E. (a) For the purposes of this section, "statutory adjustment to the commonwealth pension liability" shall mean an adjustment that changes the benefits or contributions of classes of members including, but not limited to, early retirement incentive programs, cost-of-living adjustments, the membership of those classes or any amendments to chapter 32 that may change the actuarial liability of the commonwealth pension system.

(b) Upon request of a joint standing committee of the general court having jurisdiction or upon request of the committee on ways and means of either branch, the actuary of the public employee retirement administration commission shall conduct and prepare a review, evaluation and financial impact of the statutory adjustment to the commonwealth pension liability, in consultation with other relevant state agencies, and shall report to the committee within 90 days of the request.

SECTION 20. Section 91 of said chapter 32 is hereby amended by striking out, in line 3, as appearing in the 2006 Official Edition, the words "or district," and inserting in place thereof the following words:- , district or authority.

SECTION 21. Said section 91 of said chapter 32 is hereby further amended by inserting after the word "authority", in line 84, the following words:- , including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

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SECTION 22. Chapter 182 of the acts of 2008 is hereby amended by striking out section 111 and inserting in place thereof the following section:-

Section 111. There shall be a special commission to study the Massachusetts contributory retirement systems. The commission shall consist of the secretary of administration and finance or her designee; the state auditor or his designee; the executive director of the public employee retirement administration commission or his designee; the executive director of the state retirement board or his designee; the executive director of the teachers' retirement board or her designee; 3 members of the house of representatives, 1 of whom shall be appointed by the house minority leader; 3 members of the senate, 1 of whom shall be appointed by the senate minority leader; and 6 members to be appointed by the governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting not later than June 1, 2009.

The commission shall make a comprehensive study of the Massachusetts contributory retirement systems. The study shall include, but not be limited to: contribution rates paid by employers and employees; vesting periods; the weight given to age versus years of service in the current system; the portability of benefits in the current system; the definition of regular compensation including, but not limited to, whether all forms of compensation taxable under the federal income tax code should constitute regular compensation; cost-of-living-adjustments with special attention paid to the cost of increasing the cost-of-living-adjustments base; current and future employee pension plans and contribution structures; termination allowances pursuant to section 10 of chapter 32 of the General Laws; group classification systems, including the classification of department of correction employees under section 28M of said chapter 32; capping annual pension benefits; penalties for pension fraud; eligibility and level of benefits for employees who participate under 2 or more retirement systems; potential costs, savings or benefits related to moving from a defined benefit retirement system to a defined contribution retirement system for new employees, including a system that maintains eligibility for employees to participate in the Social Security system; qualifications for credit for service pursuant to section 4 of said chapter 32, including minimum compensation limits for officials to be eligible for credit for service, and the cost of any recommendations the commission may make.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall prepare a report of its findings and recommendations, together with the actuarial analysis and any recommendations for legislation, if any, to implement those recommendations by filing the same with the clerks of the senate and house of representatives, the chairs of the house and senate committee on ways and means and the senate and house chairs of the joint committee on public service not later than September 1, 2009.

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SECTION 23. Notwithstanding any special or general law to the contrary, any amount, benefit or payment included in the definition of “regular compensation” by law or by regulation prior to the effective date of this act and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of “regular compensation” during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after June 30, 2012 shall not be considered regular compensation.

SECTION 24. Section 1 of this act shall take effect July 1, 2009.

SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however, that creditable service shall be granted for the service of any state, county or municipal employee serving in a paid position earning less than $5,000 after July 1, 2009, if such service is subject to a specified term as a result of an election, appointment or contract and the election, appointment or contract occurred or was executed prior to July 1, 2009, and if the service is otherwise eligible for creditable service under chapter 32 of the General Laws; and provided further, that such creditable service shall be granted until the expiration of the term, appointment or contract or July 1, 2012, whichever first occurs.

SECTION 26. Notwithstanding any general or special law to the contrary and except as expressly provided otherwise, this act shall apply to all members of retirement systems who retire after July 1, 2009.

Approved June 2 , 2009

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Acts 2008 **CHAPTER 233** AN ACT FINANCING AN ACCELERATED STRUCTURALLY-DEFICIENT BRIDGE IMPROVEMENT PROGRAM.

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

SECTION 1. To provide for an accelerated structurally deficient bridge improvement program, the sums set forth in sections 2 and 2A for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds, which sums are in addition to amounts previously appropriated for these purposes.

SECTION 2.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS.

Department of Highways.

6033-0800.. For the design, construction, reconstruction and repair of or improvements to bridges and approaches; provided, that expenditures from this item may include the costs of engineering, design, permitting and other services essential to these projects rendered by department employees or by consultants; provided further, that amounts expended for department employees may include salary and salary related expenses of these employees to the extent that they work on or in support of these projects; and provided further that no amounts appropriated under this item shall be expended for bridges or approaches owned by or under the control of the Massachusetts Turnpike Authority or the Massachusetts Bay Transportation Authority..... $2,078,000,000

SECTION 2A.

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS.

Department of Conservation and Recreation.

2890-0800.. For the design, construction, reconstruction and repair of or improvements to bridges and approaches under the control of the department of conservation and recreation; provided, that expenditures from this item may include the costs of engineering, design, permitting and other services essential to these projects rendered by department employees or by consultants; provided further, that amounts expended for department employees may include salary and salary related expenses of these employees to the extent that they work on or in support of these projects; and provided further that no amounts appropriated under this item shall be expended for bridges or approaches owned by or under the control of the Massachusetts Turnpike Authority or the

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Massachusetts Bay Transportation Authority..... $906,000,000

SECTION 3. The first paragraph of section 2O of chapter 29 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- There shall be credited to the Infrastructure Fund 47.69 per cent of the receipts paid into the treasury of the commonwealth and directed to be credited to the Highway Fund under clause (a) of section 13 of chapter 64A. This amount, together with investments earnings thereon, shall be referred to as “special receipts” and shall be used in accordance with this section.

SECTION 4. Chapter 64A of the General Laws is hereby amended by striking out section 13, as so appearing, and inserting in place thereof the following section:—

Section 13. All sums received from the excise imposed on aviation fuel, and related penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited to the Highway Fund and may be used for airport development projects approved and carried out at airports and landing facilities under 49 U.S.C. App. s 2210; and all other sums received under the excise imposed in section 4, and relative penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under said sections 7 and 7A, shall be credited as follows:— (i) 99.85 per cent shall be credited to the Highway Fund to be used for transportation-related purposes; and (ii) 0.15 per cent shall be credited to the Inland Fisheries and Game Fund, established by section 2C of chapter 131.

SECTION 5. Section 20 of chapter 86 of the acts of 2008 is hereby repealed.

SECTION 6. Chapter 6A of the General Laws is hereby amended by inserting after section 8B the following new section:-

Section 8C. (a) There shall be established a structurally deficient bridge improvement program coordination and oversight council. The council shall consist of a chair appointed by the governor, the secretary of administration and finance, or his designee, the secretary of transportation and public works, the secretary of energy and environmental affairs, the commissioner of highways, the commissioner of the department of conservation and recreation and the commissioner of capital asset management and maintenance.

(b) the council shall coordinate and oversee the accelerated structurally deficient bridge improvement program including, without limitation:- (i) ensuring regular communication and coordination between the department of highways and the department of conservation and recreation as to their bridge development projects, programs and plans and any regulations or guidelines promulgated pursuant thereto; (ii) establishing and implementing project controls to ensure adequate tracking and reporting of program progress, cost and schedules; (iii) establishing an annual structurally deficient bridge improvement plan which shall include the number and location of bridges which shall be replaced or

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rehabilitated in the preceding year and the cost estimates of said replacement or rehabilitation; provided, however, that the council shall annually submit a report pursuant to this clause (iii) of subsection (b) not later than December 31st to the chairs of the house and senate committees on ways and means, the chairs of the joint committee on bonding, capital expenditures and state assets and the chairs of the joint committee on transportation; (iv) directing appropriate agencies to provide technical assistance as necessary to accomplish the objectives of the structurally deficient bridge improvement program; (v) coordinating and resolving any inconsistencies between capital investments made pursuant to the bridge improvement program and capital improvements made pursuant to the commonwealth's capital plan; and (vi) establish criteria for project selection relative to funding from the structurally deficient bridge improvement program.

(c) The council shall annually, not later than December 31st, submit a report of its activities to the chairs and ranking members of the house and senate committees on ways and means, the chairs and ranking members of the joint committee on bonding, capital expenditures and state assets and the chairs and ranking members of the joint committee on transportation.

(d) The council shall meet at least quarterly. The secretary of executive office of transportation shall provide personnel necessary to coordinate the activities of the council and to provide administrative support to the council, as requested.

SECTION 7. Notwithstanding any general or special law to the contrary and to meet a portion of the expenditures necessary in carrying out sections 2 and 2A, the state treasurer shall, upon request of the governor, issue and sell federal grant anticipation notes of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $1,108,000,000. Notes issued under this section shall be in addition to those notes previously issued under section 9 of chapter 11 of the acts of 1997 and under section 53A of chapter 29 of the General Laws to refund, in part, such previously issued notes. The notes authorized under this section shall be issued and may be renewed for such maximum terms as the governor may recommend to the general court in accordance with Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that the final maturity of such notes, whether original or renewal, shall be not later than June 30, 2027.

Notwithstanding any general or special law to the contrary, notes issued under this section and the interest thereon shall be special obligations of the commonwealth secured by the Federal Highway Grant Anticipation Note Trust Fund established in section 10 of said chapter 11 of the acts of 1997. Sections 10, 10A and 10B of said chapter 11 shall apply to the notes issued under this section in the same manner and with the same effect as set forth in said sections 10, 10A and 10B with respect to the notes previously issued under said section 9 of said chapter 11 of the acts of 1997 and said section 53A of said chapter 29 of the General Laws, except as otherwise provided in a trust agreement pertaining to the notes authorized under this section; provided, however, that any pledge of federal highway construction funds and other funds to secure the notes issued under this section, to

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the extent that those funds are subject to a prior pledge, shall be subordinate to the pledge of those funds to secure the outstanding notes issued under said section 9 of said chapter 11 and said section 53A of said chapter 29.

A trust agreement entered into with respect to notes authorized under this section shall be considered to be a trust agreement under said section 10B of said chapter 11 of the acts of 1997. The principal or purchase price of, redemption premium, if any, and interest on notes issued hereunder, fees and expenses related to those notes, deposits to reserves, if any, under such trust agreement or such credit enhancement agreement and any reimbursement amounts shall be considered to be trust agreement obligations for purposes of said sections 10A and 10B.

Notwithstanding any general or special law to the contrary, the commonwealth shall covenant with the purchasers and all subsequent owners and transferees of any notes issued under this section that while any note shall remain outstanding and any trust agreement obligation remains unpaid, federal highway construction trust funds shall not be diverted from the purposes identified in said section 10B, except as provided in the trust agreement or credit enhancement agreement relating thereto, nor shall the trusts with which they are impressed be broken, and the pledge and dedication in trust of these funds shall continue unimpaired and unabrogated.

Notwithstanding any general or special law to the contrary, the trust and the Federal Highway Grant Anticipation Note Trust Fund, each established in accordance with said section 10 of said chapter 11, shall terminate on the date of the final payment or defeasance in full by the commonwealth of all trust agreement obligations under said section 10 and this act.

SECTION 8. To meet a portion of the expenditures necessary in carrying out sections 2 and 2A, the state treasurer shall, upon request of the governor, issue and sell special obligation bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $1,876,000,000. Bonds issued by the state treasurer under this section shall be issued as special obligation bonds under section 2O of chapter 29 of the General Laws. All special obligation bonds issued under this section shall be designated on their face, Special Obligation Commonwealth Accelerated Structurally-Deficient Bridge Improvement Loan Act of 2008 and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the General Court under Section 3 of Article LXII of the Amendments to the Constitution. All bonds issued under this section shall be payable not later than June 30, 2046. All principal and interest on special obligation bonds issued under this section shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29 and shall be payable solely in accordance with said section 2O of said chapter 29.

SECTION 9. Notwithstanding any provision of section 7 or 8 to the contrary, the state treasurer shall, upon the request of the governor: (a) issue any portion of the amount authorized to be issued as

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federal grant anticipation notes under said section 7 as special obligation bonds in addition to the amount authorized in said section 8 and otherwise under said section 8; or (b) issue any portion of the amount authorized to be issued as special obligation bonds under said section 8 as federal grant anticipation notes in addition to the amount authorized in said section 7 and otherwise pursuant to said section 7; provided, however, that the aggregate amount issued under said sections 7, 8 and this section shall not exceed $2,984,000,000; and provided further, that no bonds shall be issued under this section unless the governor and the state treasurer jointly determine that issuing bonds or notes under this section instead of as authorized under said section 7 8, as applicable, is necessary or is in the best financial interests of the commonwealth based on their consideration of: (i) the commonwealth's authority under federal law to issue federal grant anticipation notes pursuant to said section 7; (ii) generally prevailing financial market conditions; (iii) the impact of each financing approach on the overall capital financing plans and needs of the commonwealth; (iv) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds or notes proposed to be issued; and (v) any applicable provisions of chapter 29 of the General Laws.

SECTION 10. Notwithstanding any general or special law to the contrary, bonds or notes issued under sections 7 to 9, inclusive, shall not be included in the computation of outstanding bonds for purposes of the limit imposed by the second paragraph of section 60A of chapter 29 of the General Laws, nor shall debt service with respect to these bonds and notes be included in the computation of the limit imposed by section 60B of said chapter 29.

SECTION 11. (a) In implementing sections 2 and 2A, the executive office of transportation and public works, the department of highways and the department of conservation and recreation, hereinafter referred to as the agencies, may enter into such contracts or agreements as may be necessary or appropriate for the implementation of this act, including without limitation contracts or agreements with cities and towns or such other political subdivisions as may be necessary or appropriate to mitigate the effects of projects undertaken pursuant to this act or to otherwise carry out projects pursuant to this act. Such contracts or agreements shall contain minority business enterprise and women business enterprise participation goals and minority and women work force goals as determined by the secretary of administration and finance and the secretary of transportation and public works in accordance with state and federal law. Said contracts and agreements may relate to such matters as the agencies shall determine including, without limitation, the design, layout, permitting, bidding, procurement, construction, reconstruction or management of all or any portion of the projects to be funded in whole or in part with funds made available by this act and the extent to which management and oversight of the projects shall be coordinated between and among the agencies; provided, however, that nothing in this act shall relieve any party to such agreement from compliance with the procurement laws; provided further, that no integrated project organization or management structure shall be authorized pursuant to this act; and provided further, that no person employed by the commonwealth as a consultant pursuant to this act shall directly or indirectly set program policy or supervise a temporary or permanent employee of the commonwealth. Said agreements may also

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include provisions for the sharing of services between and among the agencies, and such other reforms, efficiency initiatives or actions related to the projects that the agencies determines could result in operating cost savings or other benefits for the commonwealth and the agencies including, without limitation, eliminating or consolidating duplicative functions and facilities, sharing or coordinating equipment, expertise, personnel, bidding and procurement, and sharing resources, including administrative, financial, payroll, information technology, legal, engineering, human resources and other services; provided, however, that all such measures and agreements shall be submitted to the inspector general and state auditor no later than 14 days prior to the date of implementation or execution. Said agreements shall provide that all work undertaken on or with respect to any bridge or approach under the control of the department of conservation and recreation shall be carried out according to standards developed by the department of conservation and recreation to protect the scenic and historic integrity of the bridges and related infrastructure under its control. Said agreements shall also provide that the commissioner of conservation and recreation shall review and approve preliminary and final design plans to determine whether the plans are consistent with these standards. In relation to any agreements with cities, towns or other political subdivisions, the agencies may advance to such entities, without prior expenditure by such entities, monies necessary to carry out such agreements; provided, however, that the agencies shall certify to the comptroller the amount so advanced; and provided further, that all monies not expended under such agreement shall be credited to the account of the department from which they were advanced. The agencies shall report to the house and senate committees on ways and means on any transfers completed pursuant to this subsection.

(b) Subject to the contracts and agreements executed in accordance with this section and the other requirements of this act, the agencies shall adopt such consolidated bidding, procurement and permitting practices as may be convenient or necessary in carrying out this act; provided, however, that notwithstanding any general or special law to the contrary, the selection of engineering services shall be conducted pursuant to the procurement laws including, but not limited to, chapters 7, 30, 149 and 149A of the General Laws, and any other general or special law, regulation, ordinance or bylaw providing for the advertising, bidding or awarding of contracts for design, construction or improvement to property shall also apply; provided further, that such consolidated bidding, procurement and permitting practices shall not diminish or otherwise inhibit the participation goals for minority business enterprises or women business enterprises. Design build project delivery may be utilized for any such projects or multiple projects taken together without regard to the minimum cost of any project as provided in section 14 of said chapter 149A; provided, however, that if an agency utilizes design build project delivery for any project that falls below such minimum cost, the agency shall submit additional procedures governing such procurement to the inspector general for approval under subsection (d) of section 16 of said chapter 149A. The contracts for these services may also provide for the use of performance-based design, extended work hours, procurement that considers the value of accelerated project delivery in a manner consistent with this act and with procurement procedures that consider the value of accelerated project delivery but only after such procurement procedures have received the written approval of the inspector general and, in the case of federally-aided projects, the written

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approval of the Federal Highway Administration, lane rental costs, bonus payments and penalties for performance and other measures aimed at accelerating project delivery.

(c) The secretary of the transportation and public works shall establish an interagency working group which shall consist of the assistant secretary for access and opportunity, the executive director of the state office of minority and women business assistance, the executive director of the affirmative market program, the director of labor, the director of civil rights within the executive office of transportation and public works, the director of affirmative action within the executive office of transportation and public works, a representative of the affirmative market program within the division of capital asset management and maintenance and, in consultation with the commissioner of conservation and recreation, a representative of said department, the inspector general, the state treasurer and the state auditor. The interagency working group shall develop and oversee efforts to ensure minority business enterprise and women business enterprise participation and the minority and women work force participation goals established pursuant to the contracts or agreements of subsection (a) and adherence to state advertising, bidding and procurement laws.

SECTION 12. Notwithstanding any general or special law to the contrary, any appropriated amounts funded from the proceeds of bonds that are to be expended for the general purpose of designing, constructing, maintaining and repairing highways, roadways, boulevards, parkways bridges and approaches other than those monies authorized by this act shall be transferred to the Transportation Deferred Maintenance Trust Fund established in section 69A of chapter 10 of the General Laws and expended in accordance with that section. The comptroller shall make the transfers required by this section from the accounts, in the amounts and at the times directed by the secretary of administration and finance. To the extent sufficient appropriations exist therefor, the governor shall make every effort to provide for at least 20 per cent of the total bond-funded expenditures in each fiscal year for the department of highways' statewide road and bridge program and for improvements to the department of conservation and recreation's roadways, boulevards, parkways and bridges exclusive of bond-funded expenditures under sections 2 and 2A, to be applied to the general purpose of designing, constructing, maintaining and repairing of highways, roadways, boulevards, parkways bridges and approaches in accordance with this section.

SECTION 13. Section 61 to 62I, inclusive, of chapter 30 of the General Laws, chapter 91 of the General Laws and section 40 of chapter 131 of the General Laws shall not apply to the repair, reconstruction, replacement or demolition by the department of highways, pursuant to section 2, of existing state highway or municipally-owned bridges, including the immediate approaches necessary to connect the bridges to the existing adjacent highway or rail system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced; provided, however, that the provisions of said section 61 and said sections 62 to 62I, inclusive, of said chapter 30 shall apply to the repair, reconstruction, replacement or demolition project where such project requires a mandatory environmental impact report pursuant to 301 CMR 11.00;

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provided further, that all such work shall be subject to the requirements of the then current edition of the department of highways' Stormwater Handbook as approved by the department of environmental protection in accordance with applicable law, that notice shall be published in the Environmental Monitor of any application to the department of environmental protection for a water quality certification, and that said work shall be subject to performance standards prescribed by the department of environmental protection pursuant to section 401 of the Federal Clean Water Act, if applicable; and provided further, that notwithstanding the foregoing, the said section 61 and said sections 62 to 62I, inclusive, of said chapter 30, said chapter 91 and said section 40 of said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing of the Charles river for the Central Artery/Tunnel Project.

If a state highway or municipal bridge crosses over a railroad right-of-way or railroad tracks, the department of highways shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the bridge; provided, however, that the department of highways and their agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for purposes that the department of highways may consider necessary or convenient for the administration of this section. If a flagman is needed to administer this section, the railroad company or its assigns shall provide the flagman.

For the purposes of this section, "bridge" shall include, but not be limited to, any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility or other area.

Any project exempt from said section 61 and said sections 62 to 62I, inclusive, of said chapter 30, said chapter 91 or said section 40 of said chapter 131 pursuant to this section shall be subject to the public consultation process required by the then current version of the Project Development and Design Guidebook of the department of highways.

SECTION 14. Nothing in this act shall be construed to transfer any lands, roadways, boulevards, bridges, approaches or other facilities under the care, custody or control of the department of conservation and recreation.

SECTION 15. Notwithstanding any general or special law to the contrary, a private entity engaged in a construction, development, renovation, remodeling, reconstruction, rehabilitation or redevelopment project receiving funds pursuant to this act shall properly classify individuals employed on the project and shall comply with all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes and income taxes with respect to all such employees. All construction contractors engaged by an entity on any such project shall furnish documentation to the appointing authority showing that all employees employed on the project have hospitalization and medical benefits that meet the minimum requirements of the connector board established in chapter 176Q of the General Laws.

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SECTION 16. The council shall submit a report on the progress and all expenditures related to the bridge projects specified to be completed in this act and any other department of highways bridge projects that may not be authorized through this act to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets. The report shall include, but not be limited to: the total amount appropriated for each project, the total estimated cost of each project, the amount expended for the planning and design of each project up to the time the report is filed, the amount expended on construction of each project up to the time the report is filed, the timeline from advertisement through contract award and from the start of actual design and construction by the design build team to project completion, the time saved, if any, by employing the design build procurement method; and whether, in the opinion of the council with consultation from the commissioner of highways, design build was an effective procurement method for each project; the total amount currently expended on each project, the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project and the current anticipated completion date of each project. This report shall also include the total number of employees and outside contractors and amount expended on salaries and benefits for employees and outside contractors that are specifically working on projects to be carried out as part of the accelerated bridge repair program. The report shall be submitted on June 30 and December 31 of each year for a period of 8 years after the effective date of this act.

SECTION 17. The council shall establish and implement project controls to ensure that projects carried out under this act shall be done in the most efficient possible manner. The council shall create an internal project controls function to oversee all such work. Section 29A of chapter 29 of the General Laws shall be complied with in all respects. In connection with such oversight, the council shall file a report with the chairs of the house and senate committees on ways and means, the house and senate chairs of the joint committee on transportation and the house and senate chairs of the joint committee on bonding, capital expenditures and state assets a report not later than December 15, 2008 and every 2 years for the life of the authorizations within this bill detailing the internal project controls referred to above. In addition, the financing of and expenditures under the program shall be subject to a joint public oversight hearing conducted by the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets not less than two times per year.

SECTION 18. The following reforms contained in chapter 86 of the acts of 2008 shall apply to the projects performed with funds made available pursuant this act: a reporting system to track periodic and substantial completion estimates pursuant to section 12, expedited notices to proceed pursuant to section 13 and provisions pertaining to contracts or agreements between agencies.

SECTION 19. (a) Not later than November 30, 2008, the council shall file with the clerks of the house of representatives and the senate, the joint committee on transportation, the joint committee on

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bonding, capital expenditures and state assets and the house and senate committees on ways and means a bridge preservation and repair plan for calendar years 2009 to 2011, inclusive. The plan shall include the cost estimates and the scope of work to be performed on specific bridges for each year, as well as the key annual milestones, cost estimates and work to be performed for all bridges for which funds will be allocated but for which completion will require multiple years.

(b) Not later than October 31, 2011, the council shall submit to the clerks of the house of representatives and the senate, the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets a report documenting whether: (i) based on the bridge preservation and repair plan submitted pursuant to subsection (a), at least 90 per cent of those bridges expected to be completed in 2009, 2010 and 2011 have been completed on time and on budget; and (ii) based on the bridge preservation and repair plan submitted pursuant to said subsection (a), at least 90 per cent of the milestones for each bridge for which funds have been allocated in 2009, 2010 and 2011, but for which completion requires multiple years, have been achieved on time and on budget.

SECTION 20. The secretary of administration and finance, in consultation with the state treasurer and the commissioner of revenue, shall submit, not later than October 31 of each year during which projects funded under this act are ongoing, to the clerks of the house of representatives and the senate the house and senate committees on ways and means and the joint committee on bonding, capital expenditures and state assets a report establishing that the commonwealth's current fiscal condition, debt structure and bond ratings will not be adversely affected by commencement of projects to be funded by bonds authorized in section 8. The report shall contain an analysis by the department of revenue, based on a semi-annual review, of gas tax revenue collections.

Approved August 4, 2008

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Print

Acts 2012

CHAPTER 238 AN ACT RELATIVE TO INFRASTRUCTURE INVESTMENT, ENHANCED COMPETITIVENESS AND ECONOMIC GROWTH IN THE COMMONWEALTH.

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

SECTION 1. To provide for certain unanticipated obligations of the commonwealth, and to meet certain requirements of law, for fiscal year 2012 the sums set forth in section 2 are hereby appropriated from the General Fund for the several purposes and subject to the conditions specified in said section 2 and subject to laws regulating the disbursement of public funds. For the purpose of making available in fiscal year 2013 balances of appropriations which otherwise would revert on June 30, 2012, the unexpended balances of the maintenance appropriations listed below, not to exceed the amount specified below for each item, are hereby re-appropriated for the purposes of and subject to the conditions stated for the corresponding item in section 2 of the general appropriation act for fiscal year 2013. Amounts in this section are re-appropriated from the fund or funds designated for the corresponding item in section 2 of the general appropriation act; provided, however, that for items which do not appear in section 2 of the general appropriation act, the amounts in this section are re-appropriated from the fund or funds designated for the corresponding item in section 2 of this act or in prior appropriation acts.

SECTION 2.

EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

Department of Housing and Community Development

7004-2027.. For the community investment grant program established in section 81..... $1,500,000

Massachusetts Office of Business Development

7007-1200.. For the Massachusetts Technology Park Corporation doing business as the Massachusetts Technology Collaborative, established under section 3 of chapter 40J of the General Laws, to establish a talent pipeline program that provides paid internships to technology startups and innovation companies; provided, that the Massachusetts Technology Collaborative shall seek private funds necessary to match contributions equal to $1 for every $1 contributed by Massachusetts Technology Collaborative through a matching internship program; provided further, that $1,000,000 shall be expended to establish an entrepreneur and startup venture capital mentoring program, in consultation with the Massachusetts Technology Development Corporation established under section

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2 of chapter 40G of the General Laws, that would provide assistance, mentoring, and advice to startups and innovation companies by connecting early-stage entrepreneurs, technology startups, and small businesses with venture capital financing; provided further, that in the design and implementation of these programs, the Massachusetts Technology Collaborative shall consult with and review the talent pipeline and mentoring programs that are administered by the Venture Development Center at the university of Massachusetts at Boston established under chapter 123 of the acts of 2006 in order to model and bring to scale successful talent pipeline programs and practices; provided further, that as a condition of such grants being awarded, the Massachusetts Technology Park Corporation shall reach agreement with the grant recipient on performance measures and indicators that will be used to evaluate the performance of the grant recipient in carrying out the activities described in the recipient's application; provided further, that the Massachusetts Technology Collaborative shall file annual reports for the duration of the programs with the chairs of the house and senate committee on ways and means and the chairs of the joint committee on economic development and emerging technologies, on or before January 1; provided further, the report shall include an overview of the activities of the programs, the number of participants in the programs, and an analysis of the impact of said programs on the innovation economy and workforce..... $2,000,000

Executive Office of Housing and Economic Development
Massachusetts Office of Business Development

7007-1641.. For a grant for the Small Business Association of New England for the layoff aversion through management assistance program for consultant and technical assistance to manufacturing companies to prevent business closure and employee displacement; provided, that the expenditure of the layoff aversion through management program in this item shall leverage at least $1 in matching funds for every $1 granted pursuant to this item; provided further, that the president of the Small Business Association of New England shall file a quarterly report with the house and senate committees on ways and means, the joint committee on economic development and emerging technologies and the joint committee on labor and workforce development on the number of employees and manufacturing-based companies that have received financial assistance through this item, a detailed description of the services provided to manufacturing companies through the layoff aversion through management program and a detailed account of the expenditures of the layoff aversion through management program, including administrative costs $250,000

SECTION 2B. To provide for a program of infrastructure development and improvements, the sums set forth in section 2B for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds and approval thereof.
Massachusetts Technology Park Corporation

7066-0099.. For the Scientific and Technology Research and Development Matching Grant Fund

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established in 4G of chapter 40J of the General Laws..... $25,000,000

SECTION 3. Subsection (l) of section 16G of chapter 6A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-

The economic development planning council shall organize a yearly economic development summit. The summit shall be a forum for discussion of the following:- (i) major economic development initiatives of the administration; (ii) updates from regional workforce development councils; and (iii) any industry-specific policy concerns or initiatives.

SECTION 4. Sections 47 and 48 of chapter 6C of the General Laws are hereby repealed.

SECTION 5. Paragraph (4) of section 43 of chapter 21 of General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the fourth sentence the following sentence:- The director may also suspend this paragraph for public notice and hearing by promulgating regulations establishing a process for renewal of a previously issued permit where renewal of such permit does not require significant changes.

SECTION 6. Section 3 of chapter 23A of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(c) MOBD, with assistance from the office of small business and entrepreneurship, and in consultation with the secretary of housing and economic development, the office of consumer affairs and business regulation and the department of housing and community development, shall develop, operate and maintain a searchable website accessible by the public at no cost, to provide information on public and private resources available to small businesses and to promote small businesses in the commonwealth. Information made available through the searchable website shall include, but shall not be limited to:

(1) information on state, local, federal and private sector small business counseling and technical assistance programs;
(2) information on state, local and federal financing programs;
(3) information on state, local and federal procurement and contracting programs and opportunities, including information on the regional economic development organizations under the program established in sections 3J and 3K and opportunities;
(4) information on state incorporation laws and regulations, and the changes to state incorporation laws and regulations;
(5) information on state tax credits;
(6) small business impact statements, as required under sections 2 and 3 of chapter 30A;
(7) information on workers' compensation laws, unemployment insurance laws and the health insurance obligations and options for employers; and

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(8) other information and resources, as determined by the director of business development.

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 7.** Section 3A of said chapter 23A, as so appearing, is hereby amended by inserting after the word "below", in line 139, the following words :- 100.5 per cent,.~~

SECTION 8. Section 3H of said chapter 23A, as so appearing, is hereby amended by adding the following paragraph:-

The secretary shall appoint a regulatory ombudsman to address regulatory matters of interest to the business community. The regulatory ombudsman shall work in partnership with the state permitting ombudsman to provide assistance to businesses in the process of complying with state regulations and other requirements of law that affect businesses. The regulatory ombudsman shall facilitate communication between individual businesses and state agencies and provide periodic training to regulatory personnel in state agencies on how to identify the small business impacts of regulation, how to reduce those impacts and how to expedite and streamline the process or compliance. The regulatory ombudsman shall establish an advisory group representing business interests to advise and inform on the impact of regulations on various business and industry sectors and on the cost of doing business in the commonwealth.

SECTION 9. Said chapter 23A is hereby further amended by inserting after section 10A the following section:-

Section 10B. The secretary of housing and economic development shall establish a Massachusetts advanced manufacturing collaborative, hereinafter referred to as the collaborative, within the executive office of housing and economic development, which shall be responsible for developing and implementing the commonwealth's manufacturing agenda to foster and strengthen the conditions necessary for growth and innovation of manufacturing within the commonwealth. The collaborative shall include, but not be limited to: the secretary of housing and economic development,or a designee, who will serve as chair,; the secretary of labor and workforce development, or a designee; 1 member of the house of representatives; 1 member of the senate; the director of the office of business development; the executive director of the Massachusetts clean energy center; the executive director of the Massachusetts Life Sciences Center; the executive director of the John Adams Innovation Institute; the director of the Massachusetts Technology Transfer Center; a representative from the Associated Industries of Massachusetts; a representative from a local chamber of commerce appointed by the governor; two2 representatives of advanced manufacturing companies appointed by the governor; a representative from the Massachusetts Workforce Board Association; and a representative from the Massachusetts Development Finance Agency. The collaborative shall partner with stakeholders in the public and private sector in the development and operation of the commonwealth's manufacturing plan, identify emerging priorities within the commonwealth's

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manufacturing sector in order to make recommendations for high impact projects and initiatives, and facilitate the implementation of goals established under the plan, which shall include, but not be limited to: (1) education and workforce development, including workforce training programs and partnerships; (2) technical assistance and innovation in support of manufacturing growth, including access to capital, workforce development, compliance and certification programs, and export assistance; (3) enhancing the competitiveness of manufacturing companies, including examining ways to ease the cost of doing business and examining the current regulatory impacts upon small to medium sized manufacturers; and (4) promoting the manufacturing industry, including attracting a talented workforce and expanding opportunities for in-state marketing of the commonwealth's supply chain capabilities.

SECTION 10. Section 56 of said chapter 23A, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 33 and 34, the words "and the Massachusetts Technology Transfer Center established in chapter 75" and inserting in place thereof the following words:- the Massachusetts Technology Transfer Center established in chapter 75 and the Massachusetts Business Development Corporation established in chapter 671 of the acts of 1953.

SECTION 11. Said chapter 23A is hereby further amended by adding the following 2 sections:-

Section 63. (a) There shall be established within the executive office of housing and economic development a MassWorks infrastructure program to issue public infrastructure grants to municipalities and other public instrumentalities for design, construction, building, land acquisition, rehabilitation, repair and other improvements to publicly-owned infrastructure including, but not limited to, sewers, utility extensions, streets, roads, curb-cuts, parking,water treatment systems, telecommunications systems, transit improvements and pedestrian and bicycle ways. The program shall provide for commercial and residential transportation and infrastructure development, improvements and various capital investment projects under the growth districts initiative administered by the executive office of housing and economic development. The grants shall be used to assist municipalities to advance projects that support job creation and expansion, housing development and rehabilitation, community development projects, and small town transportation projects authorized under subsection (e); provided, however, that projects supporting smart growth as defined by the state's sustainable development principles shall be preferred. The program may be used to match other public and private funding sources to build or rehabilitate transit-oriented housing located within .25 miles of a commuter rail station, subway station, ferry terminal, or bus station, at least 25 per cent of which shall be affordable.

(b) Eligible public infrastructure shall be located on public land or on public leasehold, right-of-way or easement. A project that uses grants to municipalities for public infrastructure provided by this section shall be procured by a municipality in accordance with chapter 7, section 39M of chapter 30, chapter 30B and chapter 149.

(c) There shall be at least 1 open solicitation period each year to accept and consider new

applications. Not less than 12 weeks before the annual open solicitation period, the executive office of housing and economic development shall release the criteria upon which the applications shall be judged including, but not limited to, a minimum project readiness standard, overall spending targets by project type, preferences for projects that align with the state's sustainable development principles, and other preferences applying to that funding round. Grants may be made outside of the open solicitation period at the discretion of the secretary of housing and economic development subject to subsections (d) and (e). All grant awards shall be made only after consultation with the appropriate regional planning agency.

(d) An eligible city or town, acting by and through its municipal officers or by and through any agency designated by such municipal officers to act on their behalf, may apply to the program for a grant in a specific amount to fund a specified project. Two or more municipalities may apply jointly, with 1 municipality acting as fiscal agent, or through a regional planning agency acting as fiscal agent. The grants may be made in addition to other forms of local, state, and federal assistance.

(e) Within the program, at least 10 per cent of the grant funds shall be dedicated annually to assist towns with populations of 7,000 or less in undertaking projects to design, construct, reconstruct, widen, resurface, rehabilitate, and otherwise improve roads and bridges or for the construction of chemical storage facilities, that support economic or community development. Such towns shall be eligible for a grant not to exceed $1,000,000, and towns shall be eligible to receive 1 grant every 3 fiscal years. Two or more towns eligible under this subsection may file a joint application for a single project serving those towns; provided, however, the total amount distributed to any 1 town shall not exceed the maximum amount allowed under this section. Receipt of a grant which is part of a joint application shall not preclude a town from receiving additional funds under a separate application.

(f) The secretary of housing and economic development may establish rules and regulations to govern the application and distribution of grants under the program. The rules and regulations may include provisions for joint applications by 2 or more eligible towns for a single project serving those towns.

(g) The secretary of housing and economic development shall report annually to the clerks of the house of representatives and the senate, who shall forward the report to the houses of representatives and the senate, the chairs of the joint committee on transportation, the chairs of the joint committee on economic development and emerging technologies, the chairs of the senate and house committees on ways and means, and the chairs of the joint committees on state administration and regulatory oversight on the activities and status of the program. The report shall include a list and description of all projects that received grant funds under the program, the amount of the grant awarded to the project, other sources of public funds that supported the project, a detailed analysis of the economic impact of each project including, where applicable, the number of construction and full time equivalent jobs to be created, number of housing units to be created, the private investment in the project and the expected tax revenue generated from the project.

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Section 64. (a) There shall be established within the executive office of housing and economic development a Massachusetts creative economy network, hereinafter referred to as the network, which shall be directed by a state creative economy director. The network shall consist of private, public and non-profit organizations and cultural districts, designated as such under section58A of chapter 10, engaged in cross-industry collaboration between many interlocking industry sectors that provide creative services including, but not limited to, advertising, architecture, or intellectual property products such as arts, films, electronic media, video games, interactive digital media, multimedia, or design. The creative economy director, in consultation with the creative economy council, established under chapter 354 of the acts of 2008, shall establish criteria for participation in the network.

(b) The duties of the network, under the leadership of the creative economy director, shall include: quantifying the creative economy sector and measuring its impact on the commonwealth's economy; creating a mentorship network within the creative economy sector; developing strategies to increase access to traditional market sectors and within state government; developing a certification for Massachusetts creative economy businesses; increasing opportunities to attract private investment to creative economy businesses through venture capital, microlending and other means; and marketing and branding the creative economy sector.

(c) The network may accept gifts or grants of money or property from any public, private or non-profit source, which shall be held in trust and used for the purpose of promoting the growth and development of the creative economy sector in the commonwealth.

(d) The creative economy director shall file an annual report with the clerks of the house of representatives and senate; the house and senate chairs of the committees on ways and means; the house and senate chairs of the joint committee on economic development and emerging technologies; the house and senate chairs of the joint committee on tourism, arts and cultural development; and the house and senate chairs of the joint committee on community development and small business on or before January 1. The report shall include an overview of the activities of the network, and an update on the number of creative economy businesses in the commonwealth and their impact on the state economy, and an accounting of gifts or grants held in trust by the network and the uses of any funds expended by the trust.

SECTION 12. Chapter 23G of the General Laws is hereby amended by adding the following section:-

Section 45. There shall be established within the agency a commonwealth advanced manufacturing futures program. The purpose of the program shall be to support commonwealth companies engaged in manufacturing through programs and shall be administered in a manner that takes into account the needs of manufacturers in all regions of the commonwealth and supports growth in the manufacturing sector statewide. The agency, in consultation with the secretary of housing and economic development and the Massachusetts advanced manufacturing collaborative established under section 10B of chapter 23A, shall design and implement the program. The program shall be eligible to receive

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funds as appropriated by the general court, including from the Manufacturing Fund, established under section 98 of chapter 194 of the acts of 2011, the board, federal grants and programs, and transfers, grants and donations from state agencies, foundations and private parties, to be held in a separate account or accounts segregated from other funds. The program shall: (i) promote the development of advanced manufacturing through supporting technical assistance for small and mid-sized manufacturers; (ii) foster collaboration and linkages among larger manufacturing companies and smaller supplier manufacturers; (iii) advance workforce development initiatives through training, certification, and educational programs; and (iv) encourage development of innovative products, materials, and production technologies by manufacturers through the transfer of technological innovations and partnerships with research universities, colleges, and laboratories; and promoting regional approaches through sector strategies that allow for various programs, resources and strategies to be aligned and leveraged.

The agency shall, through grants, contracts, or loans, administer the program for the purpose of facilitating growth and competitiveness in the field of manufacturing. Loans under the program may be made to manufacturing companies. Grants under this program shall include, but not be limited to, consideration of the following goals:

(i) improving access to technical assistance for small and mid-sized manufacturers, including launching pilot demonstrations of best practices in delivering innovation-based technical assistance;
(ii) encouraging the adoption of new technologies and advanced manufacturing capabilities into existing companies to improve manufacturing processes and operations;
(iii) educating individuals about opportunities for career advancement within high tech and advanced manufacturing through middle school and high school education to support the future manufacturing worker pipeline;
(iv) education and skills training through individualized career pathways programs that develop skills and certifications for career growth and opportunities for available jobs or job openings that are anticipated in manufacturing, including internships and on-the-job training which result in an employer or industry recognized credentials and ultimate job placement;
(v) fostering academic and industry collaboration, including encouraging technology transfer and commercialization efforts between not-for-profit research institutions, research universities, colleges, and laboratories and advanced and high-tech manufacturers; and
(vi) supporting and partnering with existing systems within the commonwealth, including the Massachusetts Manufacturing Extension Partnership, Inc., the Massachusetts Technology Park Corporation doing business as the Massachusetts Technology Collaborative, the Massachusetts Technology Transfer Center, the state workforce investment board, regional employment boards, vocational schools, community colleges and other higher education institutions.

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The agency shall solicit applications through a request for proposals and shall review such applications according to criteria established by the agency; provided, however, that the applications, at a minimum, shall include: (i) a description of the parties involved in the project, including the professional expertise and qualifications of the principals; (ii) a description of the scope of work that shall be undertaken by each party involved in the project; (iii) the proposed budget, including verification of funding from other sources; (iv) a statement of the project objective, including specific information on how the project shall enhance the competitiveness of the manufacturer or manufacturing sector and create or preserve jobs; (v) a statement that sets forth the plan of procedure, the facilities and resources available or needed for the project, and the proposed commencement and termination dates of the project; (vi) a description of the expected significance of the project, including the estimated number of manufacturers or workers served and the estimated number of jobs that could be created, retained or filled as a result of the project; (vii) timely deadlines for the submission of applications and recommendations of grant awards or contracts including provisions for an expedited process of consideration and recommendation in instances when the secretary of housing and economic development certifies the need for timely evaluation and disposition of the application; and (viii) any other information that the agency shall deem necessary. The agency shall reach agreement, with each eligible entity that receives a grant or enters into a contract under this section, on performance measures and indicators that shall be used to evaluate the performance of the eligible entity in carrying out the activities described in their application, or any other indicators determined to be necessary to evaluate the performance of the eligible entity. Each eligible entity shall submit an annual report for the duration of the program or partnership funded through the collaborative for its review.

The agency shall be reimbursed from the fund for all reasonable and necessary direct costs and expenses incurred in any fiscal year associated with its administration, management and operation of the fund, including reasonable staff time and out-of-pocket expenses and the reasonable and approved administrative costs.

The agency may promulgate such rules and regulations as are necessary to implement the purposes of the program, including procedures describing the application process and criteria to be used in evaluating application for grants under this section.

The agency, in consultation with the collaborative under said section 10B of said chapter 23A, shall submit an annual report to the clerks of the house of representatives and the senate who shall forward the report to the senate and house committees on ways and means, the joint committee on economic development and emerging technologies and the joint committee on labor and workforce development on or before December 31. The report shall include a current assessment of the progress of each program funded through the manufacturing grant program and the progress of the advanced manufacturing collaborative activity, including any recommendations for legislation.

SECTION 13. Section 7 of chapter 23H of the General Laws, as amended by section 88 of chapter 3

of the acts of 2011, is hereby further amended by adding the following subsection:-

(g) The board, in consultation with the president of the Commonwealth Corporation, shall undertake an annual review of local and regional labor market information to develop regional plans to coordinate training and education activities to target employer needs and to meet the commonwealth's demand for workers. The board shall convene regional meetings that shall include representatives from each local workforce investment area, established by the Workforce Investment Act of 1998, 29 U.S.C. § 2801, et seq and, at a minimum, the presidents of any of the region's community colleges, the principals of any vocational-technical high schools, the executive director of the appropriate workforce investment boards, the fiscal agents for Workforce Investment Act funding, and labor, education and industry leaders in each of the regions to review labor market information and develop the regional plans. The Commonwealth Corporation shall aggregate these findings annually and make a report, which shall be filed with the clerks of the house of representatives and senate, on or before June 30.

SECTION 14. The General Laws are hereby amended by inserting after chapter 23K the following chapter:-

CHAPTER 23L
LOCAL INFRASTRUCTURE DEVELOPMENT PROGRAM

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Agency", the Massachusetts Development Finance Agency established in section 2 of chapter 23G.

"Amended improvement plan", a plan describing any change to the improvement plan with respect to the boundaries of a development zone or any material change to the method of assessing costs, description of improvements, the maximum cost of the improvements or method of financing the improvements that is approved through the same procedures as the original improvement plan adopted under this chapter.

"Assessing party", the municipalities identified in the improvement plan to assess any infrastructure assessments in the development zone.

"Cost", the cost of: (i) construction, reconstruction, renovation, demolition, maintenance and acquisition of all lands, structures, real or personal property, rights, rights-of- way, utilities, franchises, easements and interests acquired or to be acquired by the public facilities owner; (ii) all labor and materials, machinery and equipment, including machinery and equipment needed to expand or enhance services from the municipality, the commonwealth or any other political subdivision thereof to the development zone; (iii) financing charges and interest prior to and during construction, and for 1 year after completion of the improvements, interest and reserves for principal and interest, including

costs of municipal bond insurance and any other type of credit enhancement or financial guaranty and costs of issuance; (iv) extensions, enlargements, additions, and enhancements to improvements; (v) architectural, engineering, financial and legal services; (vi) plans, specifications, studies, surveys and estimates of costs and revenues; (vii) administrative expenses necessary or incident to the construction, acquisition and financing of the improvements; and (viii) other expenses necessary or incident to the construction, acquisition, maintenance and financing of the improvements.

“Development zone”, 1 or more parcels of real estate in the municipality, contiguous or not, described in the improvement plan and to be benefited by the improvements and subject to infrastructure assessments as described in the improvement plan.

“Improvement plan”, a plan set forth in the petition for the establishment of a development zone setting forth the proposed improvements, services and programs, revitalization strategy, replacement and maintenance plan, the cost estimates for the improvements and the replacement and maintenance program, the identity of the public facilities’ owners and the administrator of the plan, the boundaries of the development zone, the analysis of any costs of financing the improvements, the identification of the assessing party, the method and structure of the infrastructure assessments, the allocation of assessments among parcels, the selection of any or all of the assessing powers listed in section 4 that shall be utilized by the assessing party within the development zone, a statement that no funds of the municipality shall be used to pay infrastructure assessments, a description of the infrastructure development project within the development zone, the proposed use of any bonds or notes to finance the project by the agency, including the possible use of any refunding bonds or notes, the participation of the agency, if any, in a district improvement financing program as described in section 7, and if so, a description of any assessing powers to be utilized and the amount of assessments to be levied and assessed on the real estate in the development zone.

“Improvements”, the acquiring, laying, constructing, improving and operating of capital improvements to be owned by a public facilities’ owner including, but not limited to, storm drainage systems, dams, sewage treatment plants, sewers, water and well systems, roads, bridges, sound barriers, culverts, tunnels, streets, sidewalks, lighting, traffic lights, signage and traffic control systems, parking, including garages, public safety and public works buildings, marine facilities, such as piers, wharfs, bulkheads and sea walls, transportation stations and related facilities, fiber and telecommunication systems, facilities to produce and distribute electricity, including alternate energy sources such as co-generation and solar installations, and other infrastructure-related improvements; provided, however, that “improvements” shall not include improvements located in, or serving, gated communities, other than age-restricted developments operated by nonprofit organizations, that prohibit access to the general public and any type of improvement that is specifically prohibited in the United States Internal Revenue Code from using tax-exempt financing.

“Infrastructure assessments”, assessments, betterments, special assessments, charges or fees as described in this chapter and the improvement plan and assessed by the assessing party upon the

real estate within the development zone to defray the cost of improvements financed under this chapter.

“Infrastructure development project”, the acquisition, construction, expansion, improvement or equipping of improvements serving any new or existing commercial, retail, industrial, residential or mixed use project.

“Municipal governing body”, in a city, the city council with the approval of the mayor, in a city having a Plan D or Plan E form of charter, the city council with the approval of the city manager, in a town with a town council form of government, the town council, and the board of selectmen in a town with a town meeting form of government.

“Municipality”, a city or town, or multiple cities and towns, if the development zone is located in more than 1 municipality.

“Person”, an individual or corporation, including a body politic and corporate, public department, office, agency, authority or political subdivision of the commonwealth, other corporation, trust, limited liability company, society, association or partnership or a subordinate instrumentality of a political subdivision of the commonwealth.

“Petition”, the document initiating the creation of a development zone as described in subsection (b) of section 2.

“Project”, an infrastructure development project.

“Public facilities’ owner”, a municipality, the commonwealth or any other political subdivision, agency or public authority of the commonwealth identified in the improvement plan as an owner of the improvements described in an improvement plan or an amended improvement plan.

Section 2. (a) Notwithstanding any general or special law or charter provision to the contrary, a municipality, acting through its municipal governing body, may establish development zones under this chapter. In the event that 2 or more municipalities elect to jointly establish or consolidate contiguous development zones, the municipal governing body of each municipality wherein the development zone shall be located shall approve by a majority vote the petition for the establishment of such a development zone.

(b) The establishment of a development zone shall be initiated by the filing of a petition signed by all persons owning real estate within the proposed development zone in the office of the clerk of the municipality and the office of the agency. The petition shall contain at least:

(1) a legal description of the boundaries of the proposed development zone;
(2) the written consent to the establishment of the development zone and to the adoption of

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the improvement plan or an amended improvement plan, by the persons with the record ownership of 100 per cent of the acreage to be included in the development zone; provided, however, that any real estate owned by the commonwealth or an agency or political subdivision thereof, included in the boundaries of the development zone, shall not be included in the count of persons owning tax parcels or acreage in the proposed development zone for the purposes of this clause;

(3) the name of the proposed development zone;

(4) a map of the proposed development zone, showing its boundaries and any current public improvements which may be added to or modified by any improvements;

(5) the estimated timetable for construction of the improvements;

(6) estimates of any other private or public funding sources;

(7) the improvement plan for the proposed development zone; and

(8) the procedure by which the municipality shall be reimbursed for any costs incurred by it in establishing the development zone and for any administrative costs to be incurred in the administration and collection of infrastructure assessments imposed within the proposed development zone.

Section 3. (a) Upon receipt of a petition under section 2, the municipal governing body shall, within 120 days of such receipt, hold a public hearing on the petition. Written notification of the hearing and a summary of the petition and the improvement plan shall be provided by the clerk of the municipality to all owners and tenants of properties in the proposed development zone and to the regional planning agency, not later than 14 days before the hearing, by mailing a notice to the address listed in the municipality's property tax records or other appropriate listings of owners and residents. Notification of the hearing shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the municipality and in a newspaper of general circulation in all municipalities within one-half mile of the borders of the proposed development zone, the first publication shall be at least 14 days before the hearing. The public notice shall state the proposed boundaries of the development zone, the improvements proposed to be provided in the development zone, the proposed basis for determining any infrastructure assessments with respect to those improvements and any locations for viewing and copying the petition, including the improvement plan.

(b) A public hearing under subsection (a) shall be held to determine if the petition satisfies the criteria of this chapter for a development zone and to obtain public comment regarding the improvement plan and the effect that the development zone may have on the owners of real estate, tenants and other persons within the development zone and on the municipality or adjacent communities. Within 90 days after the conclusion of the public hearing, the municipal governing body shall issue recommendations on the petition; provided, however, that the recommendations shall include, but not be limited to, the following findings:

(1) whether the establishment of the development zone is consistent with any applicable element or portion of a master plan of the municipality, which shall be confirmed in writing

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by the municipality's planning board; and

(2) whether the proposed improvements in the development zone will be compatible with the capacity and uses of existing local and regional infrastructure services and facilities.

(c) Within 21 days after receipt of the recommendations required under subsection (b), the municipal governing body shall vote on the petition to establish the development zone and the improvement plan.

(d) Upon the approval of the petition by a majority vote of the municipal governing body under subsection (c), notice of such approval shall be promptly filed with the clerk of the municipality, the agency and the secretary of the commonwealth. Upon such filing, the development zone shall be deemed established and the improvement plan shall be deemed approved.

(e) The public facilities' owner shall have all rights and powers necessary or convenient to carry out and effectuate this chapter that are consistent with the improvement plan as approved by the municipal governing body, including, but not limited to, the authority:

(1) to make and enter into all contracts and agreements necessary or incidental to the exercise of any power granted by this chapter, including agreements with the municipality, the commonwealth, the agency and any other municipality or political entity or utility for the provision of services that are necessary to the acquisition, construction, operation or financing of the improvements within the development zone;

(2) to purchase or acquire by lease, lease-purchase, sale and lease-back, gift or devise, or to obtain or grant options for the acquisition of, any property, real or personal, tangible or intangible, or any interest therein, in the exercise of its powers and the performance of its duties and to acquire real estate or any interest therein, within the boundaries of the development zone itself, if authorized in the improvement plan, and to acquire real estate or any interest therein outside the boundaries of the development zone, necessary for the acquisition, construction and operation of the improvements or services relating thereto that are located within the development zone or are related to or provided by the public facilities' owner;

(3) to construct, improve, extend, equip, enlarge, repair, maintain and operate and administer the improvements for the benefit of the development zone within or without the development zone and to acquire existing improvements or construct new improvements, including those located under or over any roads, public ways or parking areas and to enter upon and excavate any private land within the development zone for the purpose of constructing the improvements or repairing the same;

(4) to accept goods or gifts of funds, property or services from any source, public or private;

(5) to sell, lease, mortgage, exchange, transfer or otherwise dispose of or grant options for any such purposes with respect to any of the improvements, real or personal, tangible or

intangible, within the development zone or serving the development zone or any interest therein;
(6) to pledge or assign any money, infrastructure assessments or other revenues relating to any improvements within or related to the development zone and any proceeds derived therefrom;
(7) to enter into contracts and agreements with the municipality, the agency, the commonwealth or any political subdivision thereof, the property owners of the development zone and any public or private party with respect to all matters necessary, convenient or desirable for carrying out this chapter including, but not limited to, the acquisition of existing improvements, collection of revenue, data processing and other matters of management, administration and operation and to make other contracts of every name and nature and execute and deliver all instruments necessary or convenient for carrying out any of its purposes;
(8) to exercise the powers and privileges of, and to be subject to the limitations upon, municipalities under sections 38 to 42K, inclusive, of chapter 40 and chapters 80 and 83, insofar as such provisions may be applicable and consistent with this chapter; provided, however, that any requirement in said sections 38 to 42K, inclusive, of said chapter 40 and in said chapters 80 and 83 for a vote by the governing body of a municipality or for a vote by the voters of a municipality, shall be satisfied by a vote or resolution duly adopted by the board of selectmen, city council or town council as the case may be;
(9) to invest any funds in such manner and to the extent permitted under the General Laws for the investment of such funds by the treasurer of a municipality;
(10) to employ such assistants, agents, employees and persons as may be necessary in the public facilities' owner's judgment and to fix their compensation according to the terms of the improvement plan;
(11) to procure insurance against any loss or liability that may be sustained or incurred in carrying out this chapter in such amount as the public facilities' owner shall deem necessary and appropriate with insurers licensed to furnish such insurance in the commonwealth;
(12) to apply for any loans, grants or other types of assistance from the United States government, the commonwealth or any political subdivision thereof that are described in the improvement plan or any amended improvement plan;
(13) to adopt an annual budget and to raise, appropriate and assess funds in amounts necessary to carry out the purposes for which development zone is formed as described in this chapter and the improvement plan;
(14) to sue and be sued in its own name, plead and be impleaded; and
(15) to do all things necessary, convenient or desirable for carrying out this chapter.

Section 4. (a) Consistent with the improvement plan, the assessing party may fix, revise, charge, collect and abate infrastructure assessments, for the cost, maintenance, operation and administration of the improvements imposed on the real estate, leaseholds or other interests therein, located in the

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development zone. All real estate within a development zone owned by the commonwealth or any political subdivision, political instrumentality, agency or public authority thereof shall be exempt from such charges unless the charges are specifically accepted by the commonwealth, political subdivision, political instrumentality, agency or public authority. In providing for the payment of the cost of the improvements or for the use of the improvements, the assessing party may avail itself of all other laws relative to the assessment, apportionment, division, fixing, reassessment, revision, abatement and collection of infrastructure assessments by cities and towns or the establishment of liens therefor and interest thereon and the procedures set forth in sections 5 and 5A of chapter 254 for the foreclosure of liens arising under section 6 of chapter 183A, as it shall deem necessary and appropriate for purposes of the assessment and collection of infrastructure assessments. The assessing party shall file copies of the improvement plan and any amendments thereof and all schedules of assessments with the appropriate registry of deeds and the municipality's assessors so that notice thereof shall be reported on a municipal lien certificate for any real estate parcel located in a development zone. Notwithstanding any general or special law to the contrary, the assessing party may pay the entire cost of any improvements, including the acquisition thereof, during construction or after completion, or the debt service of notes or bonds used to fund such costs, from infrastructure assessments and may establish such infrastructure assessments before, during or within 1 year after completion of construction or acquisition of any improvements. The assessing party may establish a schedule for the payment of infrastructure assessments not to exceed 25 years. The assessing party shall hold at least 1 public hearing on its schedule of infrastructure assessments or any revision thereof prior to adoption by the assessing party, notice of which shall be delivered to the municipality and published in a newspaper of general circulation in the municipality at least 14 days in advance of the hearing. Not later than the date of the publication, the assessing party shall make available to the public and deliver to the municipality the proposed schedule of infrastructure assessments.

Notwithstanding any general or special law to the contrary, the assessing party may contract with the agency for any services required by the assessing party regarding the assessment, apportionment, division, fixing, reassessment, revision, collection and enforcement of infrastructure assessments under this chapter and the fees, costs and other expenses for these services may be included in the calculation of the infrastructure assessments levied by the assessing party under this chapter.

The infrastructure assessments established by the assessing party in accordance with this chapter shall be fixed in respect of the aggregate thereof so as to provide revenues at least sufficient to: (i) pay the administrative expenses of the assessing party and the agency; (ii) pay the principal of, premium, if any, and interest on bonds, notes or other evidences of indebtedness of the agency under this chapter as the same becomes due and payable; (iii) create and maintain such reasonable reserves as may be reasonably required by any trust agreement or resolution securing bonds; (iv) provide funds for paying the cost of the operation and necessary maintenance, repairs, replacements and renewals of the improvements; and (v) pay or provide for any amounts that the agency, including reasonable administrative fees, may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes.

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Notwithstanding any general or special law to the contrary, the agency shall not be precluded from carrying out its obligations under this chapter if it has previously provided technical, real estate, lending, financing or other assistance to: (i) an infrastructure development project including, but not limited to, a project in which the agency may have an economic interest; (ii) a development zone; or (iii) a municipality associated with, or that may benefit from, an infrastructure development project.

(b) As an alternative to levying infrastructure assessments under this chapter or any other law, the assessing party may levy special assessments on real estate, leaseholds or other interests therein within the development zone to finance the cost of the improvements and the maintenance, repair, replacement and renewal thereof, and the expense of administration thereof. In determining the basis for and amount of the special assessment, the cost of the improvements and the maintenance, repair, replacement and renewal thereof, and the expense of administration thereof, including the cost of the repayment of the debt issued or to be issued by the agency to finance the improvements, may be calculated and levied using any of the following methods that result in fairly allocating the costs of the improvements to the real estate in the development zone:

(i) equally per length of frontage or by lot, parcel or dwelling unit or by the square footage of a lot, parcel or dwelling unit;
(ii) according to the value of the property as determined by the municipality's board of assessors; or
(iii) in any other reasonable manner that results in fairly allocating the cost, administration and operation of the improvements according to the benefit conferred or use received, including, but not limited to, by classification of commercial or residential use or distance from the improvements.

The assessing party, consistent with the improvement plan, may also provide for the following:

(1) a maximum amount to be assessed with respect to any parcel;
(2) a tax year or other date after which no further special assessments under this section shall be levied or collected on a parcel;
(3) annual collection of the levy without subsequent approval of the assessing party;
(4) the circumstances under which the special assessments may be reduced or abated; and
(5) the prepayment of infrastructure assessments under this chapter under procedures that may be established by the assessing party.

(c) Infrastructure assessments levied under this chapter shall be collected and secured in the same manner as property taxes, betterments and assessments and fees owed to the municipality unless otherwise provided by the assessing party and shall be subject to the same penalties and the same

procedures, sale and lien priority in case of delinquency as is provided for such property taxes, betterments, assessments and fees owed to the municipality. Any liens imposed by the municipality for the payment of property taxes and any betterments and assessments and fees within the development zone shall have priority in payment over any liens placed on real estate within the development zone.

(d) Notwithstanding any general or special law to the contrary, the agency, the municipality or any other public facilities' owner may contract with owners of real estate within a development zone to acquire or undertake improvements within the development zone. Upon completion, such improvements shall be conveyed to the public facilities' owner; provided, however, that the consideration for the conveyance shall be limited to the cost thereof.

Section 5. (a) In addition to the powers granted under chapters 23G and 40D, the agency may borrow money and issue and secure its bonds for financing improvements as provided in and subject to this chapter; provided, however, that said chapters 23G and 40D shall apply to bonds issued under this section, except that subsection (b) of section 8 of said chapter 23G and section 12 of said chapter 40D shall not apply to bonds issued under this chapter or the improvements financed thereby; and provided further, that the improvements financed by the agency under this chapter shall constitute a project within the meaning of section 1 of said chapter 23G and section 1 of said chapter 40D, but shall not be considered facilities to be used in a commercial enterprise. With respect to the issuance of bonds or notes for the purposes of this chapter in the event of a conflict between this chapter and chapter 23G, this chapter shall control.

Nothing in this chapter shall be construed to limit or otherwise diminish the power of the agency to finance the costs of projects authorized under said chapters 23G and 40D within the development zone or the municipality upon compliance with said chapters 23G and 40D.

(b) The agency may provide by resolution of its board of directors for the issuance of bonds or notes of the agency for any of the purposes set forth in this chapter. Bonds issued hereunder shall be special obligations payable solely from particular funds and revenues generated from infrastructure assessments levied under this chapter as provided in the resolution. No bonds or notes shall be issued by the agency under this chapter until the agency's board of directors has determined that the bonds or notes trust agreement and any related financing documents are reasonable and proper and comply with this chapter. The agency may charge a reasonable fee in connection with the review of such documentation by its staff and board of directors. Without limiting the generality of the foregoing, such bonds may be issued to pay or refund notes issued under this chapter, to pay the cost of acquiring, laying, constructing and reconstructing the improvements. The bonds of each issue shall be dated, shall bear interest at the rates, including rates variable from time to time, and shall mature at such times not exceeding 25 years from the dates of the bonds, as determined by the agency, and may be redeemable before maturity, at the option of the agency or the holder thereof, at such price and under such terms and conditions as may be fixed by the agency before the issuance of the bonds.

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The agency shall determine the form of the bonds and the manner of execution of the bonds and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the commonwealth and such other locations as designated by the agency. In the event an officer whose signature or a facsimile of whose signature shall appear on any bonds shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall be valid and sufficient for all purposes to the same extent as if the officer had remained in office until the delivery. The bonds shall be issued in registered form. The agency may sell the bonds in a manner and for a price, either at public or private sale, as it may determine to be for the best interests of the development zone.

Before the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The agency may also provide for the replacement of any bonds that shall become mutilated, destroyed or lost. The issuance of the bonds, the maturities, and other details thereof, the rights of the holders thereof, and the agency in respect of the same, shall be governed by this chapter insofar as the same may be applicable.

While any bonds or notes of the agency remain outstanding, its powers, duties or existence shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of such bonds or notes. Bonds or notes issued under this chapter, unless otherwise authorized by law, shall not be deemed to constitute a debt of the commonwealth or the municipality or a pledge of the faith and credit of the commonwealth or of the municipality, but the bonds or notes shall be payable solely by the agency as special obligations payable from particular funds collected from infrastructure assessments levied under this chapter and any revenues derived from the operation of the improvements. Any bonds or notes issued by the agency under this chapter shall contain on their face a statement to the effect that neither the commonwealth, nor the municipality, shall be obliged to pay the same or the interest thereon, and that the faith and credit or taxing power of the commonwealth, the municipality or the agency is not pledged to the payment of the bonds or notes. All bonds or notes issued under this chapter shall have all the qualities and incidents of negotiable instruments as defined in section 3-104 of chapter 106.

Issuance by the agency of bonds or notes for any purpose shall not preclude the agency from issuing other bonds or notes in connection with the same project or any other project; provided, however, that the resolution or trust indenture wherein any subsequent bonds or notes may be issued shall recognize and protect any prior pledge made for any prior issue of bonds or notes unless, in the resolution or trust indenture authorizing such prior issue, the right is reserved to issue subsequent bonds on a parity with such prior issue.

(c) In the discretion of the agency, bonds issued under this chapter may be secured by a trust agreement between the agency and the bond owners or a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust

agreement may pledge or assign, in whole or in part, the revenues, funds and other assets or property held or to be received by the assessing party or the agency including, without limitation, all monies and investments on deposit from time to time in any fund of the assessing party or the agency or any account thereof and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the assessing party or the agency, and the proceeds thereof. A trust agreement may pledge or assign, in whole or in part, assessments, development zone revenues, funds and other assets or property relating to the development zone held or to be received by the assessing party or the agency. A trust agreement may contain, without limitation, provisions for protecting and enforcing the rights, security and remedies of the bondholders, provisions defining defaults and establishing remedies, which may include acceleration, and may also contain restrictions on the remedies by individual bondholders. A trust agreement may contain covenants of the agency concerning the custody, investment and application of monies, the issue of additional or refunding bonds, the use of any surplus bond proceeds, the establishment of reserves and the regulation of other matters customarily treated in trust agreements. A bank or trust company may act as a depository of any fund of the assessing party or the agency or trustee under a trust agreement if the bank or trust company furnishes such indemnification and reasonable security as the agency may require. Any assignment or pledge of revenues, funds and other assets and property made by the assessing party or the agency shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and property, rights therein and thereto and proceeds so pledged and then held or thereafter acquired or received by the assessing party or the agency shall immediately be subject to the lien of such pledge without any physical delivery or segregation or further act, and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the trust, whether or not such parties have notice thereof. The trust agreement by which a pledge is created shall not be required to be filed or recorded to perfect the pledge except in the records of the agency and no filing shall be required under said chapter 106. Any pledge or assignment made by the agency shall be an exercise of its political and governmental powers, and revenues, funds, assets, property and contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this chapter shall not be applied to any purposes not permitted by the pledge or assignment.

(d) The agency may issue notes of the agency in anticipation of federal, state or local grants for the cost of acquiring, constructing or improving the development zone's improvements or in anticipation of bonds to be issued under this chapter. Such notes shall be authorized, issued and sold in the same manner as, and shall otherwise be subject to, the other provisions of this chapter. Such notes shall mature at such times as provided by the issuing resolution of the agency and may be renewed from time to time; provided, however, that all such notes and renewals thereof shall mature on or before 20 years from their date of issuance.

(e) In addition to other security provided herein, or otherwise provided by law, bonds, notes or obligations issued by the agency under this chapter may be secured, in whole or in part, by a letter of

credit, line of credit, bond insurance policy, liquidity facility or other credit facility for the purpose of providing funds for payments in respect of bonds, notes or other obligations required by the holder thereof to be redeemed or repurchased prior to maturity or for providing additional security for such bonds, notes or other obligations. In connection therewith, the agency may enter into reimbursement agreements, remarketing agreements, standby bond purchase agreements and any other necessary or appropriate agreements. The assessing party may pledge or assign any of its revenues as security for the reimbursement by it to the agencies or providers of such letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities of any payments made under the letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities.

(f) In connection with, or incidental to, the issuance of bonds, notes or other obligations, the agency may enter into such contracts as the agency may determine to be necessary or appropriate relative to the issuance thereof and the interest payable thereon or to place the bonds, notes or other obligations of the agency, as represented by the bonds or notes, or other obligations in whole or in part, on such interest rate or cash flow basis as the agency may determine appropriate including, without limitation, interest rate swap agreements, insurance agreements, forward payment conversion agreements, futures contracts, contracts providing for payments based on levels of, or changes in, interest rates or market indices, contracts to manage interest rate risk including, without limitation, interest rate floors or caps, options, puts, calls and similar arrangements. Such contracts shall contain such payment, security, default, remedy and other terms and conditions as the agency may deem appropriate and shall be entered into with such parties as the agency may select, after giving due consideration, where applicable, for the creditworthiness of any counter party, including any rating by a nationally recognized rating agency, the impact on any rating on outstanding bonds, notes or other obligations or any other criteria the agency may deem appropriate.

(g) The agency may use any funds available therefor to purchase its bonds or notes. The agency may hold, pledge, cancel or resell such bonds or notes, subject to and in accordance with agreements with bondholders. The agency may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. Refunding bonds may be issued at such times prior to the maturity or redemption of the refunded bonds as the agency deems to be in the public interest. Refunding bonds may be issued in sufficient amounts to pay or provide for the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expense of issuing the refunding bonds, the expense of redeeming bonds being refunded and such reserves for debt service or other capital from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing the bonds and, if considered advisable by the agency, for the additional purpose of the acquisition, construction or reconstruction and extension or improvement of improvements. All other provisions relating to the issuance of refunding bonds shall be as set forth in this chapter insofar as the same may be applicable.

(h) All moneys received under this chapter, whether as proceeds from the issue of bonds or notes or

as revenue or otherwise, shall be deemed trust funds to be held and applied solely as provided in this chapter.

(i) Bonds or notes issued under this chapter shall be securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by the General Laws, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control and belonging to them and the bonds shall be obligations that may properly and legally be made eligible for the investment of savings deposits and income thereof in the manner provided in section 2 of chapter 167E. The bonds or notes shall be securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law.

Notwithstanding any general or special law to the contrary or any provision in their respective charters, agreements of associations, articles or organization or trust indentures, domestic corporations organized for the purpose of carrying on business within the commonwealth including, without limitation, any electric or gas company as defined in section 1 of chapter 164, railroad corporation as defined in section 1 of chapter 160, financial institutions, trustees and the municipality may acquire, purchase, hold, sell, assign, transfer or otherwise dispose of any bonds, notes, securities or other evidences of indebtedness of the agency provided that they are rated similarly to other governmental bonds or notes and make contributions to the agency, all without the approval of any regulatory authority of the commonwealth.

(j) Any holder of bonds or notes issued under this chapter, and a trustee under a trust agreement, except to the extent its rights may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights under the laws of the commonwealth or granted hereunder or under the trust agreement and may enforce and compel the performance of all duties required by this chapter or by the trust agreement, to be performed by the agency or by any officer thereof.

(k) Notwithstanding this chapter or any recitals in any bonds or notes issued under this chapter, all such bonds or notes shall be deemed to be investment securities under chapter 106.

(l) Bonds or notes may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth or the municipality, and without any proceedings or the happening of any other conditions or things other than those proceedings, conditions or things that are specifically required by this chapter, and the validity of and security for any bonds or notes issued by the agency shall not be affected by the existence or nonexistence of any

such consent or other proceedings, conditions or things.

Section 6. Bonds or notes issued by the agency and their transfer and their interest or income, including any profit on the sale thereof, and the improvements belonging to the public facilities' owner shall at all times be exempt from taxation within the commonwealth; provided, however, that nothing in this chapter shall limit or restrict the ability of the commonwealth or the municipality to otherwise tax the individuals and companies or their real or personal property or any person living or business operating within the boundaries of the development zone.

Section 7. For purposes of this chapter, the agency may issue bonds secured by infrastructure assessments under and according to the terms of chapter 40Q. With the approval of the municipal governing body, the agency may issue its bonds in place of those of the municipality under chapter 40Q provided that the municipality has fulfilled all requirements set forth in said chapter 40Q that would be required of the municipality if it were itself issuing bonds under said chapter 40Q. In addition, the municipality shall include in its invested revenue district development program as defined in said chapter 40Q, a description of the rights and responsibilities of the assessing party, the agency and the municipality with respect to the program. In such case, the municipality may designate the agency as the issuer of bonds under said chapter 40Q for the purpose of financing any of the project costs as defined in said chapter 40Q and that are located in, or functionally serving the needs of, the development zone. The municipality shall determine the percentage of the captured assessed valuation, as defined in said chapter 40Q, of property within the boundaries of the development zone that the municipality is pledging under an invested revenue district development program as defined in said chapter 40Q for the payment of the agency's bonds. With the written agreement of the persons owning specific tax parcels in the development zone, the assessing party may adopt a plan whereby any of the assessing powers described in this chapter are made applicable exclusively to those parcels in order to secure and fund the debt service for the bonds. The project costs as defined in said chapter 40Q shall not be reduced by the amount of the revenues derived under this chapter and the revenues derived from such a plan may be made contingent upon or abated, in whole or in part, by the assessing party upon the receipt of the anticipated revenues generated through the pledged captured assessed valuation. At its option, the municipality may waive any adjustment for the inflation factor as defined in said chapter 40Q in order to increase the captured assessed valuation available to finance improvements benefiting the development zone. The assessing party, the agency and the municipality shall enter into an agreement delineating the rights and responsibilities of each under such district improvement financing.

Section 8. The agency may make representations and agreements for the benefit of the holders of the agency's bonds and notes or other obligations to provide secondary market disclosure information. The agreement may include: (i) covenants to provide secondary market disclosure information; (ii) arrangements for such information to be provided with the assistance of a paying agent, trustee, dissemination or other agent; and (iii) remedies for breach of the agreements, which remedies may be limited to specific performance.

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Section 9. The collector-treasurer of each municipality, at the option of the municipality and the agency, may collect any infrastructure assessments, including any recording fees, on behalf of the agency under an agreement between the municipality and the agency and to disburse the funds to any designated management entity or financial institution selected by the agency. The collector-treasurer shall disburse revenues to the management entity or financial institution within 30 days after the collection of such fees, together with the interest earned on the holding of such fees.

Section 10. (a) If any provision of this chapter is inconsistent with any general or special law, administrative order or regulation or any resolution or ordinance of the municipality, this chapter shall control. Without limiting the generality of the foregoing, no provision of any resolution or ordinance of the municipality requiring ratification by the voters of certain bond issues shall apply to the issuance of bonds or notes of the agency under this chapter, nor shall any such provision be applicable to the manner of voting or the limitations as to the amount and time of payment of debts incurred by the agency.

(b) Except as specifically provided in this chapter, all other statutes, ordinances, resolutions, rules and regulations of the commonwealth and the municipality shall be fully applicable to the property, property owners, residents and businesses located in the development zone. This chapter shall not obligate the municipality or the agency to pay any costs for the acquisition, construction, equipping or operation and administration of the improvements located within the development zone.

SECTION 15. Section 2WWW of chapter 29 of the General Laws, as amended by section 105 of chapter 3 of the acts of 2011, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) There shall be credited to the fund any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, including funds transferred from the Gaming Economic Development Fund established under section 2DDDD, and any gifts, grants, private contributions, investment income earned on the fund's assets and all other sources. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund.

SECTION 16. Said section 2WWW of said chapter 29, as amended by section 105 of chapter 3 of the acts of 2011, is hereby further amended by inserting after subsection (h) the following subsection:-

(h½) A portion of the grant fund shall be used to address the gap between the skills held by workers and the skills needed by employers for jobs that require more than a high school diploma but less than a 4-year degree. Grants awarded under this program shall focus on building relationships and partnerships among geographic clusters of high schools, vocational-technical schools, community colleges, state universities, institutions of higher education, local employers, industry partners, local workforce investment boards , labor organizations to support the creation of training opportunities for civilians or for veterans who have recently separated from the military, and workforce development

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entities, in order to create multiple and seamless pathways to employment through enhanced coordination of existing institutions and resources. Each cluster shall designate 1 entity or organization as the lead partner for each cluster and approved procurements shall be jointly applied for by, at a minimum, a public educational institution including a community college, at least 1 regional workforce investment board, and at least 1 regional employer in a high growth sector. Grants made under this program shall include consideration of, but not be limited to: defining and establishing the process for students to transition from adult basic education programs to college-based programs; programs accessible to working, unemployed or underemployed adults; programs that focus on the recruitment, training and employment of older workers; programs to prepare low income or underemployed adults for employment in emerging industries;support of education and workforce development initiatives that collaborate with the efforts or initiatives of public educational institutions, including development of stackable certificates and credentials, non-semester-based modular programs and accelerated associate degree programs, provided however that the grants issued from this fund shall serve to supplement, and not supplant, ongoing initiatives at community colleges; providing sector-based training including developmental education and certification programs; providing student support services; using competency-based placement assessments; leveraging regional resources, including shared equipment and funding; partnering with 2 or more training organizations in a region; implementing effective short-term, high-intensity training programs;and partnering with 2 or more employers in a region. This portion of the grant fund may also be used to develop regional centers of excellence, which shall be aligned to the commonwealth's economic development strategies to meet the needs of employers in high growth sectors including, but not limited to, health care, life sciences, information technology and advanced manufacturing. Each center of excellence shall be located at a community college, state university, vocational or technical high school or collaboration between these entities.

A project grant program shall be designed by Commonwealth Corporation, in consultation with a middle skills subcommittee of the advisory committee, which shall include, at a minimum, a representative from the business community to be appointed by the secretary of labor and workforce development; the director of the Center for Labor Market Studies at Northeastern University or a designee; a representative of adult basic education or non-traditional college students in the commonwealth to be appointed by the secretary of education; the Massachusetts Workforce Board Association; the Massachusetts Workforce Professionals Association; a representative from a non-profit trade association with a state approved apprenticeship program; and the Massachusetts AFL-CIO, as well as any representatives of the other mandatory advisory committee constituencies under subsection (b).

SECTION 17. Said section 2WWW of said chapter 29, as amended by section 105 of chapter 3 of the acts of 2011, is hereby further amended by striking out subsection (k) and inserting in place thereof the following subsection:-

(k) The director of workforce development and the advisory committee established under subsection

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(b) shall examine and make an ongoing assessment of the effectiveness of the grant fund, considering any similar educational or workforce development grant programs funded by the commonwealth. The director and committee shall encourage coordination of existing workforce development initiatives and strategies of employers and employer associations, local workforce investment boards, labor organizations, community-based organizations, including adult basic education providers; institutions of higher education, vocational education institutions, one-stop career centers, local workforce development entities, and nonprofit education, training or other service providers, and, when applicable, shall inform grant applicants of the availability and eligibility for other workforce training funds. The establishment of the Workforce Competitiveness Trust Fund shall not be determined to replace, displace or serve as a substitute for any other workforce training fund, including community college workforce development programs or the Workforce Training Fund established in section 2RR, and an award of any grant funds from the Workforce Competitiveness Trust Fund shall not make an applicant ineligible for any other funds.

SECTION 17A. Said section 2WWW of said chapter 29 is hereby further amended by adding the following subsection:-

(l) Each grant recipient shall submit an annual report for the duration of the program or partnership funded through a grant to the committee for its review. Before grants are awarded, the Commonwealth Corporation shall reach agreement with each eligible entity that receives a grant on performance measures and indicators that will be used to evaluate the performance of the eligible entity in carrying out the activities described in their application.

SECTION 18. Chapter 40J of the General Laws is hereby amended by inserting after section 4F the following section:-

Section 4G. (a) In order to assist in fostering additional scientific and technology research and development in the state, there is hereby established a fund to be known as the Scientific and Technology Research and Development Matching Grant Fund, hereinafter referred to as the matching grant fund, to which shall be credited the proceeds of bonds or notes of the commonwealth issued for the purpose, and any appropriations designated by the general court to be credited thereto. The matching grant fund shall be administered by the corporation. The corporation shall hold the matching grant fund in an account or accounts separate from other funds of the corporation. The purpose of the matching grant fundshall be to provide matching funds for capital expenditures to be made in connection with projects which are sponsored by the University of Massachusetts, research universities, non-profit entities, or non-profit research institutions in the commonwealth for scientific or technology research and development and funded in part by the federal government or other public or private funds including, but not limited to, venture capital; provided, however, that any grant awarded in accordance with this section shall leverage at least $3, in the aggregate, during activities funded by such grant, from sources other than an agency as defined in section 39 of chapter 6 for each dollar granted; provided further, funds expended specifically for this matching fund from the higher education

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bond bill, established by chapter 258 of the acts of 2008, shall not count towards the $3 of financing that is required for the matching fund; provided further, that as a condition of such grants being awarded, the Massachusetts Technology Park Corporation shall reach agreement with the grant recipient on performance measures and indicators that will be used to evaluate the performance of the grant recipient in carrying out the activities described in the recipient's application; provided further, that prior to awarding any grant under this section the corporation shall determine that the grant will advance the purposes of this section; provided further, that priority shall be given to large-scale, long-term research and development activities that have the greatest potential to support scientific and technological innovation and stimulate economic and employment opportunities in the commonwealth through industry partnerships; and provided, further that at least 50 per cent of the grant funds under this section shall be reserved for award, over the term of each authorization or appropriation, subject to qualification, to the University of Massachusetts. The University of Massachusetts may, if it deems necessary to help ensure efficient and effective research and development efforts, enter into collaborative agreements with other higher education institutions in the commonwealth to undertake parts of any research and development project for which grant funding under this section is sought.

(b) To support effective planning and implementation of the matching grant fund, the corporation shall develop program guidelines or regulations in consultation with the University of Massachusetts and such other institutions or persons as deemed appropriate by the corporation. The corporation shall annually file a report with the joint committee on higher education and the house and senate committees on ways and means detailing the grants awarded under this section.

SECTION 19. Section 1 of chapter 40O of the General laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 11, the words "elects to participate" and inserting in place thereof the following word:- participates.

SECTION 20. Section 4 of said chapter 40O, as so appearing, is hereby amended by striking out, in lines 9 to 11, inclusive, the words ", the basis for determining the district fee, and the process by which a property owner may elect not to participate in or benefit from such BID" and inserting in place thereof the following words:- and the basis for determining the district fee.

SECTION 21. Said section 4 of said chapter 40O, as so appearing, is hereby further amended by striking out, in lines 24 to 26, inclusive, the words "for property owners to follow who elect not to participate in or benefit from said BID in accordance with the provisions of this section" and inserting in place thereof the following words:- by which eligible property owners may vote not to renew such BID.

SECTION 22. Said section 4 of said chapter 40O, as so appearing, is hereby further amended by striking out the fifth and sixth paragraphs and inserting in place thereof the following 3 paragraphs:-

Notice of the declaration of the organization of the BID shall be mailed or delivered to each property owner within the proposed BID. The notice shall explain that membership in the BID is irrevocable until

the failure to renew the BID as provided in this section or the dissolution under section 10, and shall include a description of the basis for determining the district fee, the projected fee level and the proposed services to be provided by the BID. Such notice shall be published for 2 consecutive weeks in a newspaper of general circulation in the area, the last publication being not more than 30 days after the vote to declare the district organized.

Participation in the BID shall be permanent until after the discontinuation of the BID as provided in this section, or until the dissolution of the BID under section 10. A non-participating owner in the district shall become a participating member on the date of a renewal vote, as provided below. On or before the fifth anniversary of the organization of a newly created BID and on or before January 1, 2018 and the fifth anniversary thereafter of the darte of the most recent renewal of the BID under this section, the board of directors of the BID or of its designated management entity shall call a renewal meeting of the BID members to review the preceding 5-year history of the BID, to propose an updated improvement plan to succeed the then current improvement plan and to consider whether to continue the BID. The renewal meeting shall be held at a location within the district. Notice of the meeting shall be given to participating members in the manner provided in the by-laws, at least 30 days prior to the meeting. The BID shall continue after each renewal meeting if a majority of participating property owners who are not more than 30 days in arrears in any payment due to the BID and are present at the renewal meeting, in person or by proxy, vote to renew the BID for a term of 5 years commencing on the first day of the next fiscal year of the BID.

If the eligible participating property owners elect not to continue the BID, the board shall conclude the business of the BID prior to the sixth anniversary of the BID’s creation, or of the prior renewal vote, as the case may be, and proceed to discontinue the BID. Notice of the discontinuation vote shall be given to the local municipal governing board, which shall formally declare the BID dissolved as of such sixth anniversary; provided, however, that the BID shall not be dissolved until it has received the accounts receivable due to the BID and until it has satisfied or paid in full all of its outstanding indebtedness, obligations and liabilities, or until funds are on deposit and available therefor, or until a repayment schedule has been formulated and approved by the local municipal governing board. Except as necessary to conclude the business of the BID, the BID shall not incur any new or increased financial obligations after such sixth anniversary. Upon the dissolution of a BID, the remaining assets shall first be applied to repay obligations of the BID, and then in accordance with the improvement plan, as updated.

SECTION 23. Section 9 of said chapter 40O, as so appearing, is hereby amended by striking out, in lines 30 and 31, the words “and may elect not to participate in the BID as provided in such section”.

SECTION 24. Section 2 of chapter 40Q of the General Laws, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) Notwithstanding any general or special law to the contrary, any city or town by vote of its town

meeting, town council or city council with the approval of the mayor where required by law may designate development districts within the boundaries of the city or town provided, however, a development district may consist of 1 or more parcels or lots of land, whether or not contiguous, or 1 or more buildings or structures, whether or not adjacent, on 1 or more parcels of land, provided that the total area of all development districts shall not exceed 25 per cent of the total area of a city or town; and provided that the boundaries of a development district may be altered only after meeting the requirements for adoption under this subsection. The city or town shall find that the designation of the development district is consistent with the requirements of this section and will further the public purpose of encouraging increased residential, industrial and commercial activity in the commonwealth.

SECTION 25. Section 2 of chapter 43D of the General Laws, as so appearing, is hereby amended by striking the definition of “Priority development site” and inserting in place thereof the following definition:-

“Priority development site”, a privately or publicly owned property that is: (1) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (2) designated as an appropriate priority development site by the board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in underutilized buildings or facilities or close to appropriate transit services.

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 26.** Section 6 of chapter 62, as most recently amended by section 65 of chapter 68 of the acts of 2011, is hereby amended by striking out, in line 273, the figure “2013” and inserting in place thereof the following figure:- 2015.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 27.** Said section 6 of said chapter 62, as so appearing, is hereby further amended by striking out, in line 278, the figure “2014” and inserting in place thereof the following figure:- 2016.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 28.** Section 6J of said chapter 62, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 39, the figure “$50,000,000” and inserting in place thereof the following figure:- $60,000,000.~~

SECTION 29. Said chapter 62 is hereby further amended by inserting after section 6L the following section:-

Section 6M. (a) The purpose of this section shall be to enable local residents and stakeholders to work with and through community development corporations to partner with nonprofit, public and private

entities to improve economic opportunities for low and moderate income households and other residents in urban, rural and suburban communities across the commonwealth.

(b) For this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-"Community development corporation", a corporation certified as a community development corporation by the department consistent with chapter 40H.

"Community investment plan", an organizational business plan developed by a certified community development corporation that details its goals, outcomes, strategies, programs and activities for a 3 to 5 year period and its financial plans for supporting its strategy; provided, however, that the plan shall be designed to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural or suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income households; and provided further that the specific format and content of a community investment plan may be adapted to the particular organization and community, but shall include the following elements:

(i) a description of the community to be served by the organization, including the neighborhoods, towns, or cities to be served as well as any particular constituencies that the organization is dedicated to serving;
(ii) a description of how community residents and stakeholders were engaged in the development of the plan and their role in monitoring and implementing the organization's activities during the time period of the plan;
(iii) the goals sought to be achieved during the time period of the plan, including how low and moderate income households or low and moderate income communities will benefit and how the entire community will benefit;
(iv) the activities to be pursued to achieve those goals;
(v) the manner in which success shall be measured and evaluated;
(vi) a description of the collaborative efforts that shall support implementation of the plan, including collaborative efforts with nonprofit, for-profit or public entities;
(vii) a description of how the different activities within the plan fit together and how the entire plan fits into a larger strategy or vision for the community;
(viii) the financial strategy to be deployed to support these activities; and
(ix) other information regarding the history and track record of the organization as determined by the department.

"Community investment tax credit", the tax credit described in subsection (d).

"Community investment tax credit allocation", an award provided by the department through a competitive process that enables the recipient of the allocation to solicit and receive qualified investments from taxpayers and to provide those taxpayers with a community investment tax credit.

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“Community partner”, a community development corporation or a community support organization selected by the department through a competitive process to receive a community investment tax credit allocation.

“Community partnership fund”, a fund administered by a nonprofit organization selected by the department to receive qualified investments from taxpayers for the purpose of allocating such investments to community partners.

“Community support organization”, any nonprofit organization which is not a community development corporation but has a focus on and track record of providing capacity building services to community development corporations.

“Department”, the department of housing and community development.

“Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

“Low and moderate income community”, an economic target area as defined in section 3A of chapter 23A, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development, or 1 or more contiguous census tracts as designated by a city or town, in which either: (i) a majority of the households are low and moderate income households as defined herein; or (ii) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is less than or equal to 5 per cent or the unemployment rate is at least 10 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is greater than 5 per cent.

“Low and moderate income households”, households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the secretary of the United States Department of Housing and Urban Development pursuant to 42 U.S.C. 1437(a)(B)(2) or any successor legislation and the regulations promulgated thereunder.

“Qualified investment”, a cash contribution made to a specific community partner to support the implementation of its community investment plan or to a community partnership fund, as defined by this section.

“Taxpayer”, any person, firm, or other entity subject to the personal income tax under the provisions of this chapter or any corporation subject to an excise under the provisions of chapter 63.

(c) The department shall promulgate regulations concerning the process by which community development corporations apply to become a community partner and receive qualified investments,

provided, however, that:

(1) the department shall design a competitive process to review applications by community development corporations and community support organizations; provided, however, that community support organizations may qualify, but not more than 2 such organizations shall, at any given time, be awarded community investment tax credits.
(2) the selection process shall favor community development corporations with the highest quality community investment plans and strong track records and shall strive to ensure that all regions of the commonwealth are able to fairly compete for allocations, including gateway municipalities, rural areas and suburban areas; provided, however, that at least 30 per cent of the community partners shall be located in or serving gateway municipalities and at least 20 per cent of the community partners shall be located in or serving rural areas, as defined by the department, unless the department finds that there are not a sufficient number of qualified applications from those areas.
(3) the department shall implement at least one such allocation process each year; provided, however that each tax credit allocation shall be valid for a period of up to 3 years, contingent upon the community partner satisfactorily meeting the reporting requirements of the department; provided further, that community partners who have not fully utilized their community investment tax credit allocations within 3 years may apply to the department for a 1 year extension; and provided further, that community investment tax credit allocations may be revoked after 2 years from the date of the award by the department if (i) the community partner has been unable to secure donation commitments for at least 50 per cent of total allocation by that time, (ii) if the community partner is found to be in noncompliance with this statute or the department's regulations promulgated hereunder, (iii) if the community partner is determined by the department to be making inadequate progress on its community investment plan, or (iv) for other good cause as determined by the department.
(4) no community partner shall receive a community investment tax credit allocation of less than $50,000 or more than $150,000 in any 1 fiscal year andno community partner shall receive a subsequent allocation unless it has utilized at least 95 per cent of the 3 year total of any prior allocation.
(5) community partner may receive qualified investments directly from 1 or more taxpayers or it may transfer some or all of its community investment tax credit allocation to a community partnership fund and receive qualified investments from that fund.
(6) before receiving a qualified investment from a taxpayer or from a community partnership fund, the community partner shall first receive certification from the department that it has been awarded a community investment tax credit allocation.
(7) the department may authorize up to 2 nonprofit organizations to operate community investment partnership funds. In selecting 1 or 2 nonprofit organizations to serve in this function the department shall seek organizations which demonstrate that they have the capacity to solicit, administer and re-grant qualified investments and can advance the

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purposes of this statute.

(8) the department, in consultation with the commissioner shall prescribe regulations necessary to carry out this subsection. Such regulations shall include requirements for annual reports from community partners and community partnership funds regarding outcomes achieved during the prior year . and those reports shall be made available to the public; provided further, that the department shall maintain a list of all community partners and community partnership funds on its website; and provided further, that the department shall produce an annual report not later than April 30 for the general court and the public that describes the outcomes achieved through the program.

(d) There is hereby established a Massachusetts community investment tax credit.

(f) The total of all tax credits available to a taxpayer under this section shall not exceed $1,000,000 in any 1 tax year and no tax credit shall be allowed to any taxpayer for participating in a qualified community investment activity of less than $1,000.

(g) A taxpayer that makes a qualified investment shall be allowed a credit, to be computed as hereinafter provided, against taxes owed to the commonwealth under chapter 62 or chapter 63 or other applicable law. The credit shall be equal to 50 per cent of the total qualified investments made by the taxpayer, subject to the cap described in paragraph (4) of subsection (c). The department shall issue a certification to the taxpayer after the taxpayer makes a qualified investment. Such certification shall be acceptable as proof that the expenditures related to such investment qualify as qualified investment for purposes of the credit allowed under this section.

(h) The credit allowable under this section shall be allowed for the taxable year in which a qualified investment is made. A taxpayer allowed a credit under this section for a taxable year may carry over and apply against such taxpayer’s tax liability in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.

(i) Community investment tax credits allowed to a partnership or a limited liability company taxed as a partnership shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or pursuant to an executed agreement among the persons designated as partners, members or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity.

(j) Taxpayers eligible for the community investment tax credit may, with prior notice to and in accordance with regulations adopted by the commissioner, transfer the credits, in whole or in part, to any taxpayer, and the transferee shall be entitled to apply the credits against the tax with the same effect as if the transferee had made the qualified investment itself. The transferee shall use the credit in the year it is transferred. If the credit allowable for any taxable year exceeds the transferee’s tax liability for that tax year, the transferee may carry forward and apply in any subsequent taxable year,

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the portion, as reduced from year to year, of those credits which exceeds the tax for the taxable year; provided, however, the carryover period shall not exceed 5 taxable years after the close of the taxable year during which the qualified investment was made as provided for in this section.

(k) The commissioner, in consultation with the department, shall prescribe regulations necessary to carry out the tax credit established in subsection (d).

SECTION 30. Section 6M of said chapter 62 is hereby repealed.

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 31.** Section 2 of chapter 63 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the figure "$456", in line 27, the following words:- ; and provided further that, qualifying corporations under section 38DD shall receive a credit of $456 against the excise imposed under this section.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 32.** Section 2B of said chapter 63, as so appearing, is hereby amended by inserting after the figure "$456", in line 40, the following words:- ; provided, however, that qualifying corporations under section 38DD shall receive a credit of $456 against the excise imposed under this section.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 33.** Section 38Q of said chapter 63, as so appearing, is hereby amended by striking out, in line 3, the figure "2013" and inserting in place thereof the following figure:- 2015.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 34.** Said section 38Q of said chapter 63, as so appearing, is hereby further amended by striking out, in line 8, the figure "2014" and inserting in place thereof the following figure:- 2016.~~

SECTION 35. Said chapter 63 is hereby further amended by inserting after section 38CC the following 2 sections:-

Section 38DD. (a) A corporation formed under chapter 156D and taxable under this chapter shall receive a nontransferrable credit against an excise tax imposed under subsection (b) of section 2, subsection (b) of section 2B or subsection (b) of section 39.

(b) A corporation shall only be eligible for a credit under subsection (a) for the first 3 years in which it is required to file a return under this chapter; provided, however, that such credit shall not be allowed to any corporation with 50 per cent or more of its voting stock owned by another corporation, whether or not such owning corporation is taxable in the commonwealth.

Section 38EE. (a) The purpose of this section shall be to enable local residents and stakeholders to work with and through community development corporations to partner with nonprofit, public and

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private entities to improve economic opportunities for low and moderate income households and other residents in urban, rural and suburban communities across the commonwealth.

(b) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Community development corporation”, a corporation certified as a community development corporation by the department consistent with chapter 40H.

“Community investment plan”, an organizational business plan developed by a certified community development corporation that details its goals, outcomes, strategies, programs and activities for a 3 to 5-year period and its financial plans for supporting its strategy; provided, however, that the plan shall be designed to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural or suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income households; and provided further, that the specific format and content of a community investment plan may be adapted to the particular organization and community, but shall include the following elements:

(i) a description of the community to be served by the organization, including the neighborhoods, towns, or cities to be served as well as any particular constituencies that the organization is dedicated to serving;
(ii) a description of how community residents and stakeholders were engaged in the development of the plan and their role in monitoring and implementing the organization’s activities during the time period of the plan;
(iii) the goals sought to be achieved during the time period of the plan, including how low and moderate income households or low and moderate income communities will benefit and how the entire community will benefit;
(iv) the activities to be pursued to achieve those goals;
(v) the manner in which success shall be measured and evaluated;
(vi) a description of the collaborative efforts that shall support implementation of the plan, including collaborative efforts with nonprofit, for-profit or public entities;
(vii) a description of how the different activities within the plan fit together and how the entire plan fits into a larger strategy or vision for the community;
(viii) the financial strategy to be deployed to support these activities; and
(ix) other information regarding the history and track record of the organization as determined by the department.

“Community investment tax credit”, the tax credit described in subsection (c).

“Community investment tax credit allocation”, an award provided by the department through a

competitive process that enables the recipient of the allocation to solicit and receive qualified investments from taxpayers and to provide those taxpayers with a community investment tax credit.

“Community partner”, a community development corporation or a community support organization selected by the department through a competitive process to receive a community investment tax credit allocation.

“Community partnership fund”, a fund administered by a nonprofit organization selected by the department to receive qualified investments from taxpayers for the purpose of allocating such investments to community partners.

“Community support organization”, any nonprofit organization which is not a community development corporation but has a focus on and track record of providing capacity building services to community development corporations.

“Department”, the department of housing and community development.

“Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

“Low and moderate income community”, an economic target area as defined in section 3A of chapter 23A, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development, or 1 or more contiguous census tracts as designated by a city or town, in which either: (i) a majority of the households are low and moderate income households as defined herein; or (ii) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is less than or equal to 5 per cent or the unemployment rate is at least 10 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is greater than 5 per cent.

“Low and moderate income households”, households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the secretary of the United States Department of Housing and Urban Development pursuant to 42 U.S.C. 1437(a)(B)(2) or any successor legislation and the regulations promulgated thereunder.

“Qualified investment”, a cash contribution made to a specific community partner to support the implementation of its community investment plan or to a community partnership fund, as defined by this section.

“Taxpayer”, any person, firm, or other entity subject to the personal income tax under the provisions of this chapter or any corporation subject to an excise under the provisions of chapter 63.

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(c) The department shall promulgate regulations concerning the process by which community development corporations apply to become a community partner and receive qualified investments; provided, however, that:

(1) the department shall design a competitive process to review applications by community development corporations and community support organizations; provided, however, that community support organizations may qualify but not more than 2 such organizations shall, at any given time, be awarded community investment tax credits;
(2) the selection process shall favor community development corporations with the highest quality community investment plans and strong track records and shall strive to ensure that all regions of the commonwealth are able to fairly compete for allocations, including gateway municipalities, rural areas and suburban areas; provided, however, that at least 30 per cent of the community partners shall be located in or serving gateway municipalities and at least 20 per cent of the community partners shall be located in or serving rural areas, as defined by the department, unless the department finds that there are not a sufficient number of qualified applications from those areas;
(3) the department shall implement at least 1such allocation process each year; provided, however, that each tax credit allocation shall be valid for a period of up to 3 years, contingent upon the community partner satisfactorily meeting the reporting requirements of the department; provided further, that community partners who have not fully utilized their community investment tax credit allocations within 3 years may apply to the department for a 1 year extension; and provided further, that community investment tax credit allocations may be revoked after 2 years from the date of the award by the department if: (i) the community partner has been unable to secure donation commitments for at least 50 per cent of total allocation by that time, (ii) if the community partner is found to be in noncompliance with this statute or the department's regulations promulgated hereunder, (iii) if the community partner is determined by the department to be making inadequate progress on its community investment plan, or (iv) for other good cause as determined by the department;
(4) no community partner shall receive a community investment tax credit allocation of less than $50,000 or more than $150,000 in any 1 fiscal year; provided, however, that no community partner shall receive a subsequent allocation unless it has utilized at least 95 per cent of the 3-year total of any prior allocation;
(5) a community partner may receive qualified investments directly from taxpayers or it may transfer some or all of its community investment tax credit allocation to a community partnership fund and receive qualified investments from that fund;
(6) before receiving a qualified investment from a taxpayer or from a community partnership fund, the community partner shall first receive certification from the department that it has been awarded a community investment tax credit allocation;
(7) the department may authorize up to 2 nonprofit organizations to operate community investment partnership funds; provided, however, that in selecting at least 1 such nonprofit

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organization to serve in this function, the department shall seek an organization which demonstrates that it has the capacity to solicit, administer and re-grant qualified investments and can advance the purposes of this section; and

(8) the department, in consultation with the commissioner shall prescribe regulations necessary to carry out this subsection; provided, that such regulations shall include requirements for annual reports from community partners and community partnership funds regarding outcomes achieved during the prior year and those reports shall be made available to the public; provided further, that the department shall maintain a list of all community partners and community partnership funds on its website; and provided further, that the department shall produce an annual report not later than April 30 for the general court and the public that describes the outcomes achieved through the program.

(d) There is hereby established a Massachusetts community investment tax credit.

(e) The total of all tax credits available to a taxpayer under this section shall not exceed $1,000,000 in any 1 tax year and no tax credit shall be allowed to any taxpayer for participating in a qualified community investment activity of less than $1,000.

(f) A taxpayer that makes a qualified investment shall be allowed a credit, to be computed as hereinafter provided, against taxes owed to the commonwealth under chapter 62 or chapter 63 or other applicable law. The credit shall be equal to 50 per cent of the total qualified investments made by the taxpayer, subject to the cap described in paragraph (4) of subsection (c). The department shall issue a certification to the taxpayer after the taxpayer makes a qualified investment. Such certification shall be acceptable as proof that the expenditures related to such investment qualify as qualified investment for purposes of the credit allowed under this section.

(g) The credit allowable under this section shall be allowed for the taxable year in which a qualified investment is made. A taxpayer allowed a credit under this section for a taxable year may carry over and apply against such taxpayer’s tax liability in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.

(h) Community investment tax credits allowed to a partnership or a limited liability company taxed as a partnership shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or under an executed agreement among the persons designated as partners, members or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity.

(i) Taxpayers eligible for the community investment tax credit may, with prior notice to and under regulations adopted by the commissioner, transfer the credits, in whole or in part, to any taxpayer, and the transferee shall be entitled to apply the credits against the tax with the same effect as if the transferee had made the qualified investment itself. The transferee shall use the credit in the year it is

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transferred. If the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced from year to year, of those credits which exceeds the tax for the taxable year; provided, however, the carryover period shall not exceed 5 taxable years after the close of the taxable year during which the qualified investment was made as provided for in this section.

(j) The commissioner, in consultation with the department, shall prescribe regulations necessary to carry out the tax credit established in subsection (d).

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 35A.** Section 38R of said chapter 63, as so appearing, is hereby amended by striking out, in line 37, the figure "$50,000,000" and inserting in place thereof the following figure: $60,000,000.~~

SECTION 36. Section 38EE of said chapter 63 is hereby repealed.

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 37.** Section 39 of said chapter 63, as appearing in the 2010 Official Edition, is hereby amended by inserting after the figure "$456", in line 49, the following words: ; provided, however, that qualifying corporations under section 38DD shall receive a credit of $456 against the excise imposed under this section.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 38.** Subsection (c) of section 3 of chapter 63B of the General Laws, as so appearing, is hereby amended by striking out the first and second sentences and inserting in place thereof the following 3 sentences:~~

~~For purposes of this chapter, there shall be 4 required installments for each taxable year, except as otherwise provided by this chapter. The first installment shall be paid on or before the fifteenth day of the third month of the taxable year; the second installment shall be paid on or before the fifteenth day of the sixth month of the taxable year; the third installment shall be paid on or before the fifteenth day of the ninth month of the taxable year; and the fourth installment shall be paid on or before the fifteenth day of twelfth month of the taxable year. The amount of any installment shall be 25 per cent of the required annual payment.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 39.** Section 4A of said chapter 63B, as so appearing, is hereby amended by striking out, in line 4, the word "sixty-five percent" and inserting in place thereof the following words: 50 per cent.~~

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 40.** Said section 4A of said chapter 63B, as so appearing, is hereby further amended by striking out, in line 9, the word "ten percent" and inserting in place thereof the following words: 25 per~~

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~~cent.~~

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 41.** Said section 4A of said chapter 63B, as so appearing, is hereby further amended by striking out, in line 14, the word "ninety percent" and inserting in place thereof the following words:- 25 per cent.~~

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 42.** Said section 4A of said chapter 63B, as so appearing, is hereby further amended by striking out, in lines 16 and 17, the word "ten percent" and inserting in place thereof the following words:- 25 per cent.~~

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 43.** Section 4B of said chapter 63B, as so appearing, is hereby amended by striking out, in lines 7 and 8, the word "thirty percent" and inserting in place thereof the following words:- 25 per cent.~~

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 44.** Said section 4B of said chapter 63B, as so appearing, is hereby further amended by striking out, in line 10, the word "twenty-five percent" and inserting in place thereof the following words:- 25 per cent.~~

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 45.** Said section 4B of said chapter 63B , as so appearing, is hereby further amended by striking out, in line 13, the word "twenty-five percent" and inserting in place thereof the following words:- 25 per cent.~~

Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 46.** Said section 4B of said chapter 63B, as so appearing, is hereby further amended by striking out, in lines 15 and 16, the word "twenty percent" and inserting in place thereof the following words:- 25 per cent.~~

SECTION 46A. Subsection (b) of section 12 of chapter 90D of the General Laws, as so appearing, is hereby amended by adding the following sentence: This section shall not apply to a vehicle described in subsection (e) of section 20.

SECTION 46B. Section 13 of said chapter 90D, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) Except as provided for in subsection (e) of section 20, the applicant is not the owner of the vehicle; or

SECTION 46C. Section 15 of said chapter 90D, as so appearing, is hereby amended by striking out

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subsection (a) and inserting in place thereof the following subsection:-

(a) Except as provided for in subsection (e) of section 20, if an owner of a vehicle for which a certificate of title has been issued under this chapter transfers the owner's interest therein, other than by the creation of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment including the actual odometer reading and warranty of title to the transferee in the space provided therefor on the certificate, or such other form as the registrar shall prescribe, and cause the certificate and assignment to be mailed or delivered to the transferee or to the registrar.

SECTION 46D. Section 19 of said chapter 90D, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) The registrar, upon receipt of a properly assigned certificate of title, except as provided for in subsection (e) of section 20, with an application for a new certificate of title, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner and mail it to the first lienholder named in it or, if none, to the owner. If under subsection (e) of section 20, the outstanding certificate of title is not delivered to him, the registrar shall make demand therefor from the holder thereof.

SECTION 46E. Section 20 of said chapter 90D,as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) Except as provided for in subsection (e), whenever an insurer acquires ownership of a motor vehicle which it has determined to be a total loss salvage motor vehicle, it shall, within ten days from the date of acquisition, surrender the certificate of title to the registrar and shall apply for a salvage title.

SECTION 46F. Said section 20 of said chapter 90D, as so appearing, is hereby further amended by adding the following subsection:-

(e)(1) Whenever an insurer acquires a motor vehicle which it has determined to be a total loss salvage motor vehicle but is unable to obtain the certificate of title, the insurer may apply for a salvage title in its name without surrendering the certificate of title. Such application shall be accompanied by evidence that the insurer has paid a total loss claim on the vehicle and made at least 2 written attempts, addressed to the last known owner of the vehicle and any known lienholder, to obtain the certificate of title. In lieu of a salvage title, the insurer may similarly apply for a certificate of title in its name for a vehicle if the age of the vehicle precludes issuance of a salvage title.

(2) Whenever an insurer requests that Class 2 or Class 3 dealer take possession of a motor vehicle that is the subject of an insurance claim and subsequently a total loss claim is not paid by the insurer with respect to such motor vehicle, the Class 2 or Class 3 dealer may, if such motor vehicle has been

abandoned at the facility of the Class 2 or Class 3 dealer for more than 30 days, apply for a salvage title in such dealer's name without surrendering the certificate of title. Such application shall be accompanied by evidence that the Class 2 or Class 3 dealer made at least 2 written attempts, addressed to the last known owner of the vehicle and any known lienholder, to have the vehicle removed from the facility. In lieu of a salvage title, the Class 2 or Class 3 dealer may similarly apply for a certificate of title in the dealer's name for a vehicle if the age of the vehicle precludes issuance of a salvage title.

SECTION 46G. Section 20A of said chapter 90D, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) The application for the salvage title shall be made by the owner, except as provided for in subsection (e) of section 20, to the registrar on such form or forms as the registrar shall prescribe and shall be accompanied by: (1) a properly assigned certificate of title, except as provided for in said subsection (e) of said section 20; (2) any other information and documents the registrar may reasonably require to establish ownership of the vehicle and the existence or nonexistence of a lien to the extent not inconsistent with said subsection (e) of said section 20; and (3) the required fee.

SECTION 47. Section 57A of chapter 121B of the General Laws is hereby repealed.

SECTION 48. Section 40 of chapter 131 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "gas", in line 8, the following word:- , sewer.

SECTION 49. The second paragraph of said section 40 of said chapter 131, as so appearing, is hereby amended by inserting after the first sentence the following 4 sentences:- When a notice of intent proposes activities on land under water bodies and waterways or on a tract of land greater than 50 acres, written notification shall be given to all abutters within 100 feet of the proposed project site. For the purposes of this section, "project site" shall mean lands where the following activities are proposed to take place: dredging, excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways and the installation of drainage, sewerage and water systems, and "land under water bodies and waterways" shall mean the bottom of, or land under, the surface of the ocean or an estuary, creek, river stream, pond or lake. When a notice of intent proposes activity on a linear shaped project site longer than 1,000 feet in length, notification shall be given to all abutters within 1,000 feet of the proposed project site. If the linear project site takes place wholly within an easement through another person's land, notice shall also be given to the landowner.

SECTION 50. The twenty-sixth paragraph of said section 40 of said chapter 131, as so appearing, is hereby further amended by adding the following 5 sentences:- The permitting and emergency provisions in this paragraph shall not apply to severe weather emergencies as declared by the commissioner of environmental protection following a destructive weather event requiring widespread

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recovery efforts, debris cleanup or roadway or utility repair. A severe weather emergency declaration shall allow for emergency related work to occur as necessary for the protection of the health or safety of the residents of the commonwealth. A severe weather emergency declaration by the commissioner shall describe the types of work allowed without filing a notice of intent, any general mitigating measures to condition the work that may be required in performing such work, any notification or reporting requirements, the geographic area of the declaration's effect and the period of time the declaration shall be in effect which, in no event, shall be longer than 3 months unless extended by the commissioner. A severe weather emergency declared by the commissioner shall be sent electronically to all conservation commissions in the geographic area of the severe weather emergency and shall be made widely available to the general public through appropriate channels for emergency communications. A declaration of a severe weather emergency by the commissioner shall not impact the department's ability to enforce any general or special law or rule or regulation that is not altered by the commissioner's declaration.

SECTION 51. Section 188 of chapter 149 of the General Laws, as so appearing, is hereby amended by adding the following 6 subsections:-

(f) The division of unemployment assistance and the division of health care finance and policy may waive or mitigate an employer's fair share contributions, fines, interest and related fees.

(g) Pending an appeal decision, the division of unemployment assistance shall not continue to accrue or collect interest, penalties or fees on the fair share contribution.

(h) The division of unemployment assistance or any entity of the commonwealth shall not take any funds out of an employer's bank account if the employer has filed a fair share contributions appeal or is in the process of mediation and is awaiting a decision.

(i) The division of unemployment assistance's help center staff shall not request identifying information from an employer that is seeking assistance from the division of unemployment assistance helpline, nor shall the staff share customer information with the audit department staff. No information recorded by the helpline may be used in an audit proceeding or be used to initiate an audit.

(j) An employer aggrieved by a determination of the director with respect to its liability for the fair share employer contribution or with respect to the amount it is required to pay may appeal such determination within 60 days and in the form and manner as specified by the division of unemployment assistance.

(k) Upon completion of a hearing on an appeal with respect to an employer's liability for the fair share employer contribution or to the amount it is required to pay, the division of unemployment assistance shall render a written decision within 90 days for an employer with more than 50 full-time equivalent employees and within 30 days for an employer with 50 or fewer full-time equivalent employees.

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SECTION 52. The General Laws are hereby amended by inserting after chapter 156D the following chapter:-

CHAPTER 156E
BENEFIT CORPORATIONS

Section 1. This chapter shall be known and may be cited as the Massachusetts Benefit Corporation Act.

Section 23. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:-

“Benefit corporation”, a corporation incorporated under chapter 156A or chapter 156D that has elected to be a benefit corporation under section 4 or 5 and has not ceased to be a benefit corporation by terminating its benefit corporation status underof section 6.

“Benefit director”, either: (i) the director designated as the benefit director of a benefit corporation under subsection (a) of section 11; or (ii) a person with any of the powers, duties or rights of a benefit director to the extent provided in the bylaws underto subsection (e) of section 11.

“Benefit enforcement proceeding”, a claim or action brought directly by a benefit corporation, or derivatively as authorized by this chapter on behalf of a benefit corporation, against a director or officer for: (i) failure to pursue the general public benefit purpose of the benefit corporation or a specific public benefit purpose set forth in its articles; or (ii) a violation of any obligation, duty or standard of conduct under this chapter.

“Benefit officer”, the individual designated as the benefit officer of a benefit corporation under section 13.

“General public benefit”, a material, positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

“Independent”, having no material relationship with a benefit corporation or a subsidiary of the benefit corporation; provided, however, that serving as a benefit director or benefit officer shall not preclude a person from being independent; provided further, that a material relationship between a person and a benefit corporation or any of its subsidiaries shall be presumed to exist if 1 or more of the following apply: (1) the person is, or has been within the last year, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation;;(2) an immediate family member of the person is, or has been within the last year, an executive officer other than a benefit officer of the benefit corporation or its subsidiary; (3) there is beneficial or record ownership of 5 per cent or more of the outstanding shares of the benefit corporation by: (i) the person; or (ii) an association of which the

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person is a director, an officer or a manager or in which the person owns beneficially or of record 5 per cent or more of the outstanding equity interests.

“Minimum status vote”, (1) in the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions: (i) the holders of every class or series shall be entitled to vote on the corporate action regardless of a limitation stated in the articles of organization or bylaws on the voting rights of any class or series; and (ii) the corporate action shall be approved by the affirmative vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; (2) in the case of a domestic entity other than a business corporation, in addition to any other required approval, vote or consent, the satisfaction of the following conditions:

(i) the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and
(ii) the action shall be approved by the affirmative vote or consent of the holders described in clause (1) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

“Specific public benefit”, any of the following: (1) providing low-income or underserved individuals or communities with beneficial products or services; (2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; (3) promoting the preservation and conservation of the environment; (4) improving human health; (5) promoting the arts, sciences, access to and advancement of knowledge; (6) increasing or facilitating the flow of capital and assets to entities with a general public benefit purpose; or (7) conferring any other particular benefit on society or the environment.

“Third-party standard”, a standard for defining, reporting and assessing overall corporate social and environmental performance which is: (1) comprehensive in that it assesses the effect of the business and its operations upon the interests listed in subclauses (ii), (iii), (iv) and (v) of clause (1) of subsection (a) of section 10; (2) developed or performed by a person or organization independent of the benefit corporation and not more than one-third of the members of the governing body of the organization are representatives of any of the following: (i) an association of businesses operating in a specific industry the performance of whose members is measured by the standard; (ii) a business from a specific industry or an association of businesses in that industry; or (iii) a business whose performance is assessed against the standard; (3) not materially financed by an association of business described in clause (2); (4) credible because the standard is developed by a person that: (i) has access to necessary expertise to assess overall corporate social and environmental performance; and (ii) uses a balanced multi-stakeholder approach, including a public comment period of at least 30 days to develop the standard; (5) transparent, because the following information is publicly available about the standard: (i) the criteria considered when measuring the overall social and environmental

performance of a business; (ii) the relative weighting of those criteria; (iii) the identity of the directors, officers, material owners and governing body of the organization that developed and control revisions to the standard; and (iv) an accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationship that could reasonably be considered to present a potential conflict of interest.

Section 3. (a) Except as otherwise provided in this chapter, a benefit corporation doing business in the commonwealth shall comply with all applicable laws regarding corporations, including chapters 156A and 156D. Chapter 156D shall apply to benefit corporations and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of corporations organized under said chapter 156D except where inconsistent with this chapter. The existence of this chapter shall not excuse or exempt any business organized under the laws of the commonwealth from complying with all relevant laws and regulations in the commonwealth, except to the extent they are inconsistent with this chapter.

(b) The articles of organization, bylaws or shareholder agreement of a benefit corporation may not relax, be inconsistent with or supersede this chapter. A benefit corporation’s articles of organization, bylaws or shareholder agreement that is inconsistent with this chapter shall be void and unenforceable under this subsection and shall not render the entirety or remaining provisions of the articles of organization, bylaws or shareholder agreement void or unenforceable.

Section 4. A benefit corporation shall be organized under either chapter 156A or chapter 156D, as applicable, except that a benefit corporation’s articles of organization shall make clear reference that it is a benefit corporation.

Section 5. An existing corporation organized under chapter 156A or chapter 156D may elect to become a benefit corporation by amending its articles of organization to include a statement that the corporation is a benefit corporation. In order to be effective, the amendment shall be adopted by at least the minimum status vote. Such amendment shall be treated as an amendment of the articles under clause (4) of subsection (a) of section 13.02 of said chapter 156D and the shareholders of the corporation shall be entitled to appraisal rights under sections 13.01 to 13.31, inclusive, of said chapter 156D.

Section 6. A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of organization to delete the statement required by sections 4 and 5 that the corporation is a benefit corporation. In order to be effective, the amendment shall be adopted by at least the minimum status vote.

Section 7. A business corporation organized under the laws of the commonwealth shall not hold itself out as, advertise itself as, or indicate in any way that it is a benefit corporation unless it was organized under and in full compliance with this chapter.

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Section 8. (a) An entity that is not a benefit corporation shall become a benefit corporation and shall be subject to this chapter if:

(1) the entity that is not a benefit corporation is a party to a merger or conversion or the entity that is not a benefit corporation is the exchanging corporation in a share exchange; and
(2) the surviving corporation in the merger, share exchange or conversion is to be a benefit corporation.

(b) In order to be effective, a plan of merger or share exchange subject to this section, shall be adopted by the minimum status vote.

(c) If a corporation that is not a benefit corporation is a party to a merger, share exchange or conversion in which the surviving or resulting corporation is a benefit corporation, the transaction shall be treated as if it were a conversion to nonprofit status for purposes of section 13.02 of chapter 156D and the shareholders of the corporation shall be entitled to appraisal rights under sections 13.01 to 13.31, inclusive, of said chapter 156D. 156D.

Section 9. (a) In addition to its purposes under chapter 156D as a business corporation, a benefit corporation shall have the purpose of creating general public benefit.

(b) The articles of organization of a benefit corporation may identify 1 or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purpose as a business corporation and under subsection (a). The identification of a specific public benefit under this subsection shall not limit the obligation of a benefit corporation under subsection (a).

(c) The creation of a general public benefit and a specific public benefit under subsections (a) and (b) shall be in the best interest of the benefit corporation.

(d) A benefit corporation may amend its articles of organization to add, amend or delete the identification of a specific public benefit under chapter 156D; provided, however, that the elimination of an optional specific public benefit shall not significantly diminish or eliminate the general public benefit required in this subsection.

(e) A professional corporation that is a benefit corporation shall not be in violation of section 3 of chapter 156A by having the purpose to create a general public benefit or a specific public benefit.

Section 10. (a) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board and individual directors of a benefit corporation:

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(1) shall consider the effects of any action upon:

(i) the shareholders of the benefit corporation;
(ii) the employees and workforce of the benefit corporation, its subsidiaries and its suppliers;
(iii) the interest of customers or clients as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
(iv) community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries or its suppliers are located;
(v) the local, regional and global environment;
(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and
(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose; and

(2) may consider:

(i) the interests of the economy of the state, the region and the country under clause (3) of subsection (a) of section 8.30 of chapter 156D; or
(ii) other pertinent factors or the interests of any other group that they considerdeem appropriate.

(b) Directors shall consider the factors in clause (1) of subsection (a) using sound and reasonable judgment in determining corporate actions and the best interests of the benefit corporation. Directors shall not be required to give priority to the interests of a particular person or group referred to in clauses (1) or (2) of said subsection (a) over the interests of any other person or group unless the benefit corporation has stated in its articles its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles.

(c) The consideration of interests and factors in the manner required by subsection (a) shall not constitute a violation of section 8.01 of chapter 156D.

(d) A director shall not be personally liable for monetary damages for:

(1) any action or inaction as a director if the director performed the duties of office in compliance with section 8.30 of chapter 156D and this section; or
(2) failure of the benefit corporation to pursue or create general public benefit or a specific

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public benefit.

(e) A director shall not have a fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of a benefit corporation arising from the status of the person as a beneficiary.

Section 11. (a) The board of directors of a benefit corporation shall include 1 director who shall:

(1) be designated the benefit director; and
(2) have, in addition to the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this chapter.

(b) The benefit director shall be elected, and may be removed, in the manner provided under chapter 156D and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of organization, bylaws or shareholder agreement of a benefit corporation may prescribe additional qualifications of the benefit director consistent with this section.

(c) The benefit director shall prepare and the benefit corporation shall include in the annual shareholder's report the opinion of the benefit director on the following:

(1) whether the benefit corporation acted in accordance with its general public benefit and any specific public benefit purpose in all material respects during the period covered by the report;
(2) whether the directors and officers complied with subsection (a) of section 10 and subsection (a) of section 12;
(3) whether, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with subsection (b) and, if so, a description of the ways in which the benefit corporation or its directors or officers failed to comply; and
(4) what impact the corporation's status as a benefit corporation is having on its business, including client or consumer opinion, return on investment, impact on shareholders and impact on employees.

(d) The action or inaction of an individual in the capacity of a benefit director shall constitute, for all purposes, an action or inaction of that individual in the capacity of a director of the benefit corporation.

(e)(1) A shareholder agreement of a benefit corporation adopted under subsection (a) of section 7.32 of chapter 156D shall provide that the persons or shareholders who perform the duties of the board of directors shall include a person with the powers, duties, rights and immunities of a benefit director specified under subsection (d) of section 10.).

(2) A person that exercises 1 or more of the powers, duties or rights of a benefit director under this

subsection shall:

(i) not be required to be independent of the benefit corporation;
(ii) have the immunities of a benefit director;
(iiiiv) not be subject to the procedures for election or removal of directors in chapter 156D unless the person is also a director of the benefit corporation or the shareholder agreement makes those procedures applicable; and.
(iv) may share the powers, duties and rights of a benefit director with 1 or more other persons.

(f) The benefit director of a professional corporation shall not be required to be independent.

(g) Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by chapter 156D, a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful and intentional misconduct or a knowing violation of the law.

Section 12. (a) Each officer of a benefit corporation shall consider the interests and factors described in clause (1) of subsection (a) of section 10 in the manner provided in said subsection (a) if:

(1) the officer has discretion to act with respect to a matter; and
(2) it reasonably appears to the officer that the matter may have a material effect on the creation of a general public benefit or a specific public benefit by the benefit corporation.

(b) The consideration of interests and factors in the manner described in clause (1) of subsection (a) shall not constitute a violation of section 8.41 of chapter 156D.

(c) An officer shall not be personally liable for monetary damages for:

(1) any action or inaction as an officer if the officer performed the duties of the position in compliance with chapter 156D and this section; or
(2) failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

(d) An officer shall not have a fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of a benefit corporation arising from the status of the person as a beneficiary.

Section 13. (a) A benefit corporation may have an officer designated as the benefit officer. A benefit officer shall have:

(1) the powers and duties relating to the purpose of the corporation to create a general public benefit or a specific public benefit provided:

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(i) by the bylaws; or

(ii) absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(2) the duty to oversee and prepare the annual benefit report required by subsection (a) of section 15.

Section 14. (a) (1) The duties under this chapter and the general public benefit purpose and any specific public benefit purpose of a benefit corporation may be enforced only in a benefit enforcement proceeding.

(2) Except in a benefit enforcement proceeding, no person shall bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) failure to pursue or create general or specific public benefits set forth in its articles; or

(ii) a violation of a duty or standard of conduct under this chapter.

(3) A benefit corporation shall not be liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

(b) A benefit enforcement proceeding shall be commenced or maintained only:

(1) directly by the benefit corporation; or

(2) derivatively by:

(i) a shareholder;

(ii) a director;

(iii) a person or group of persons that owns beneficially or of record 5 per cent or more of the equity interests in an association of which the benefit corporation is a subsidiary; or

(iv) other persons as specified in the articles of organization, bylaws or shareholder agreement of the benefit corporation.

Section 15. (a) A benefit corporation shall prepare an annual benefit report, including all of the following information:

(1) a narrative description of:

(i) the ways in which the benefit corporation pursued a general public benefit

during the year and the extent to which general public benefit was created;
(ii) the ways in which the benefit corporation pursued a specific public benefit that the articles of organization state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created;
(iii) any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit; and
(iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(2) an assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(i) applied consistently with any application of that standard in prior benefit reports; or
(ii) accompanied by an explanation of the reasons for any inconsistent application;

(3) the name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(4) the compensation paid by the benefit corporation during the year to each director in the capacity of a director;

(5) the name of each person that owns 5 per cent or more of the outstanding shares of the benefit corporation either: (i) of record; or (ii) beneficially, to the extent known to the benefit corporation without investigation;

(6) the statement of the benefit director described in subsection (c) of section 11;

(7) a statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5 per cent or more of the governance interests in the organization, and the benefit corporation or its directors, officers or any holder of 5 per cent or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard; and

(8) if the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of:

(i) the persons that exercise the powers, duties and rights and who have the immunities of the board of directors; and

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(ii) the benefit director, as required by subsection (d) of section 11.

(b) Nothing in this chapter shall require the benefit report or the assessment of the performance of the benefit corporation in the benefit report required by clause (2) of subsection (a) to be audited or certified by a third party standards provider.

Section 16. (a) The annual benefit report shall be sent to each shareholder at the same time that the benefit corporation delivers any other annual report to its shareholders, or within 120 days following the end of the fiscal year of the benefit corporation.

(b) A benefit corporation shall post its most recent annual benefit report on the public portion of its website, if any, but the compensation paid to directors and financial, confidential or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(c) If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(d) The benefit corporation shall deliver a copy of the benefit report to the state secretary with its annual report required by section 16.22 of chapter 156D, but the compensation paid to directors and financial, confidential or proprietary information included in the benefit report may be omitted from the benefit report as filed. The state secretary shall charge a fee of $75 for filing a benefit report in addition to the fee required for the annual report.

SECTION 53. Section 14C of chapter 167 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the third and fourth paragraphs and inserting in place thereof the following 3 paragraphs:-

The small business loan review boards shall meet on a regular basis or, as demand for their services requires, to review small business loan denials that applicants believe were unreasonably denied. The small business loan review board shall review a small business loan denial submitted by an applicant and report the results of its findings to the applicant within 30 days of submission of request for review; provided however, that the board may, at its discretion, extend the review period to within 60 days of a request for review. Upon making a determination for reason of denial, the small business loan review boards shall be required to provide information on their findings to the applicant and commissioner of banks and shall provide information to the applicant on alternative sources of financing, including information on any small business financing programs or other relevant programs offered by the commonwealth. The commissioner shall file annual reports regarding the activities of the small business loan review boards with the chairs of the joint committee on community development and small business, chairs of the joint committee on economic development and emerging technologies,

and chairs of the joint committee on revenue, not later than January 1 of each year.

In addition, the small business loan review boards shall conduct annual studies and issue annual reports on the availability of credit to small businesses within their regions and report back to the commissioner of banks on their findings. The reports shall be published and made available to the public through the website of the office of consumer affairs and business regulation or the small business website established under section 3 of chapter 23A.

Notwithstanding this chapter, the commissioner may promulgate rules and regulations governing the establishment, operation and procedures of said small business loan review boards. In addition, the commissioner shall be required to market and promote the small business loan review boards as a resource for small businesses located in the commonwealth.

SECTION 54. Section 19 of chapter 186 of the General Laws, as so appearing, is hereby amended by inserting after the word “agreement”, in line 12, the following words:- for residential use.

SECTION 55. Item 6033-9013 of section 2 of chapter 246 of the acts of 2002 is hereby amended by inserting after the word “item”, in line 19, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item shall be transferred to the executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8005 within the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 56. Item 6033-0428 of section 2B of chapter 291 of the acts of 2004 is hereby amended by inserting after the figure “$500,000”, in line 17, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided, further, that any uncommitted balance as of August 12012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8010 within the executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012;

provided, further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided, further, that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 57. Item 6033-0499 of said section 2B of said chapter 291 is hereby amended by inserting after the word “item”, in line 19, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8015 within the executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided ,further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 58. Item 6001-0421 of section 2I of said chapter 291 is hereby amended by inserting after the word “item”, in line 43, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided, further, that any uncommitted balance as of August 12012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to the item 7002-8020 within executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 59. Item 1100-8000 of section 2B of chapter 123 of the acts of 2006 is hereby amended by inserting after the word “item”, in line 31, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to the executive office of housing and economic development; provided further, that any

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unexpended balance as of September 1, 2012 from this item shall be transferred to item 7005-8025 within the executive office of housing and economic development; and provided, further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided, further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committee on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 60. The definition "Public infrastructure improvements" in section 5 of chapter 293 of the acts of 2006 is hereby amended by inserting after the words " facilities", in line 6, the following words:- , parking garages.

SECTION 61. Subsection (d) of section 7 of chapter 293 of the acts of 2006, as amended by section 7 of chapter 129 of the acts of 2008, is hereby further amended by striking out, in line 2, the figure "$250,000,000" and inserting in place thereof the following:- $325,000,000, excluding bonds issued to refinance bonds previously issued under section 6; provided further that the secretary shall not approve more than 31 per cent of the total amount for projects, in the aggregate, for any one municipality.

SECTION 62. The second sentence of subsection (e) of said section 7 of said chapter 293, as appearing in section 7 of said chapter 129, is hereby amended by striking out, in line 3, the figure "2" and inserting in place thereof the following figure:- 3.

SECTION 63. Said chapter 293 is hereby further amended by inserting after section 12A the following section:-

Section 12B. Notwithstanding any other provision of this act, new revenue and new state tax revenues may, respectively, and to the extent and in the manner approved by the secretary with consideration of economic conditions and the characteristics of the project, include revenue and state tax revenue attributable to construction-related activity and purchases in connection with an economic development project, and all calculations of any matter under the act, including, without limitation, calculation of infrastructure assessments and shortfalls, shall reflect such inclusion in the manner approved by the secretary. The commissioner shall certify the amount of new state tax revenues attributable to such construction-related activity and purchases in the manner and at the times specified in the secretary's certification of the economic development project.

SECTION 64. Item 6033-0887 of section 2B of chapter 86 of the acts of 2008 is hereby amended by inserting after the word “bridge”, in line 6, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from

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this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to the item 7002-8030 within executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 65. Item 7004-0035 of section 2 of chapter 119 of the acts of 2008 is hereby amended by inserting after the word “department”, in line 14, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to the item 7005-8035 within executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 66. Item 7100-1000 of section 2 of chapter 258 of the acts of 2008 is hereby amended by inserting after the word “Worcester”, in line 92, the following words:- ; provided further, that not less than $25,000,000 shall be expended at the direction of the Massachusetts Technology Collaborative in conjunction with funds granted under section 4G of chapter 40J of the General Laws; provided further, that funds expended for such purpose shall leverage at least $3, in the aggregate, during activities funded by such grant, from sources other than an agency as defined by section 39 of chapter 6 of the General Laws, for each dollar granted and that funds expended for this purpose shall not qualify as meeting the requirements for leveraged dollars required under said section 4G.

SECTION 67. Item 6033-0877 of section 2B of chapter 303 of the acts of 2008, as amended by section 33 of chapter 26 of the acts of 2009, is hereby amended by inserting after the word “item”, in line 12, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item shall be transferred to the executive office of housing and economic development; provided further, that any

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unexpended balance as of September 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8045 within the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 68. Item 6033-0887 of said section 2B of said chapter 303, as amended by section 34 of said chapter 26, is hereby amended by inserting after the word “bridges”, in line 6, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to the item 7002-8040 within executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 69. Item 6001-0803 of section 2C of chapter 303 of the acts of 2008 is hereby amended by inserting after the word “Holyoke”, in line 23, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, as established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8050 within the executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 70. Item 6001-0817 of said section 2C of said chapter 303 is hereby amended by inserting

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after the word “purpose”, in line 20, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to the item 7002-8055 within executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 71. Item 1100-8020 of section 2C of chapter 304 of the acts of 2008, is hereby amended by inserting after the word “applicable”, in line 35, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8060 within the executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets.

SECTION 72. Item 6001-0817 of section 2B of chapter 240 of the acts of 2010, as amended by section 1 of chapter 412 of the acts of 2010, is hereby amended by inserting after the figure “2008”, in line 24, the following words:- ; provided, that after August 1, 2012 this item shall be used for the MassWorks infrastructure program, established by section 63 of chapter 23A of the General Laws; provided further, that any uncommitted balance as of August 1, 2012 from this item or its successor item established as a result of chapter 25 of the acts of 2009 shall be transferred to item 7002-8060 within the executive office of housing and economic development; provided further, that any unexpended balance as of September 1, 2012 from this item shall be transferred to the executive office of housing and economic development; and provided further, that before October 1, 2012 the executive office of housing and economic development shall submit a report on the amount of authorization expended from this item before August 1, 2012; provided further, that said report shall detail awards expected to utilize this authorization after August 1, 2012 and the schedule plan for

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completing awards; and provided further that said report shall be delivered to the house and senate committees on ways and means and the house and senate committee son bonding, capital expenditures and state assets.

SECTION 73. Section 171 of said chapter 240 is hereby amended by striking out, in lines 4 and 5, the words “$25,000,000 and not more than $50,000,000 in banks or financial institutions” and inserting in place thereof the following words:- $50,000,000 and not more than $100,000,000 in banks, financial institutions or other investment funds

SECTION 74. Section 173 of said chapter 240 is hereby amended by striking out the definition of “Tolling period” and inserting place thereof the following definition:-

“Tolling period”, the period beginning August 15, 2008, and continuing through August 15, 2012.

SECTION 75. Subsection (b) of said section 173 of said chapter 240 is hereby amended by striking out, in line 2, the figure “2” and inserting in place thereof the following figure:- 4.

SECTION 76. Notwithstanding any general or special law to the contrary, the comptroller shall transfer $5,000,000 from the General Fund to the Workforce Competitiveness Trust Fund established in section 2WWW of chapter 29 of the General Laws.

SECTION 77. To meet expenditures necessary in carrying out section 2B, the state treasurer shall, upon the request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time, but not exceeding, in the aggregate, $25,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, the Massachusetts Technology Park Corporation Scientific and Technology Research and Development Matching Grant Fund Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the General Fund. Bonds and interest thereon issued pursuant to this section shall, notwithstanding any other provision of this act, be general obligations of the commonwealth.

SECTION 78. Notwithstanding any general or special law to the contrary, the University of Massachusetts Building Authority shall be allowed to enter into long-term leases for the purposes of alleviating educational space overcrowding at university campuses and for the purpose of stimulating economic development in gateway municipalities, as defined by section 3A of chapter 23A of the General Laws, across the commonwealth. The University of Massachusetts Building Authority shall report annually to the house and senate committees on ways and means a list of any square footage leased pursuant to this section, the educational programs offered in said square footage, and the economic development projects leveraged by the individual leases in each gateway municipality.

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SECTION 79. Notwithstanding the last paragraph of section 2H of chapter 29 of the General Laws, $4,000,000 received from proceeds of one-time settlements or judgments that would otherwise be transferred to the Commonwealth Stabilization Fund shall instead be deposited in the Smart Growth Housing Trust Fund, established in section 35AA of chapter 10 of the General Laws.

SECTION 80. (a) Notwithstanding any general or special law to the contrary, for the days of August 11, 2012 and August 12, 2012, an excise shall not be imposed upon nonbusiness sales at retail of tangible personal property as defined in section 1 of chapter 64H of the General Laws. For the purposes of this section, tangible personal property shall not include telecommunications, tobacco products subject to the excise imposed by chapter 64C of the General Laws, gas, steam, electricity, motor vehicles, motorboats, meals or a single item the price of which is in excess of $2,500.

(b) Notwithstanding any general or special law to the contrary, for the days of August 11, 2012 and August 12, 2012, a vendor shall not add to the sales price or collect from a nonbusiness purchaser an excise upon sales at retail of tangible personal property, as defined in section 1 of chapter 64H of the General Laws. The commissioner of revenue shall not require a vendor to collect and pay excise upon sales at retail of tangible personal property purchased on August 11, 2012 and August 12, 2012. An excise erroneously or improperly collected during the days of August 11, 2012 and August 12, 2012, shall be remitted to the department of revenue. This subsection shall not apply to the sale of telecommunications, tobacco products subject to the excise imposed by chapter 64C of the General Laws, gas, steam, electricity, motor vehicles, motorboats, meals or a single item the price of which is in excess of $2,500.

(c) Reporting requirements imposed upon vendors of tangible personal property, by law or by regulation, including, but not limited to, the requirements for filing returns required by chapter 62C of the General Laws, shall remain in effect for sales for the days of August 11, 2012 and August 12, 2012.

(d) On or before December 31, 2012, the commissioner of revenue shall certify to the comptroller the amount of sales tax forgone, as well as new revenue raised from personal and corporate income taxes and other sources, under this section. The commissioner shall file a report with the joint committee on revenue and the house and senate committees on ways and means detailing by fund the amounts under general and special laws governing the distribution of revenues under chapter 64H of the General Laws which would have been deposited in each fund without this section.

(e) The commissioner of revenue shall issue instructions or forms, or promulgate rules or regulations, necessary for the implementation of this section.

(f) Eligible sales at retail of tangible personal property under subsections (a) and (b) shall be restricted to those transactions occurring on August 11, 2012 and August 12, 2012. Transfer of possession of or payment in full for the property shall occur on 1 of those days and prior sales or layaway sales shall be

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ineligible.

(g) Not later than December 31, 2012, the commissioner of revenue shall certify to the comptroller the amount of foregone revenue from any sales tax holiday enacted by the General Court in calendar year 2012. Notwithstanding the last paragraph of section 2H of chapter 29 of the General Laws, for the purpose of compensating for that amount of foregone revenue the comptroller shall transfer to the General Fund such amount of foregone revenue, the proceeds of one-time settlements or judgements that would otherwise be transferred to the Commonwealth Stabilzation Fund, according to a schedule approved by the secretary of administration and finance and considering the cash flow needs of the commonwealth.

SECTION 81. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Community investment plan”, an organizational business plan developed by a certified community development corporation that details its goals, outcomes, strategies, programs and activities for a 3 to 5-year period and its financial plans for supporting its strategy; provided, however, that the plan shall be designed to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural or suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income households; provided further, that the specific format and content of a community investment plan may be adapted to the particular organization and community, but shall include the following elements: (i) a description of the community to be served by the organization, including the neighborhoods, towns or cities to be served and any particular constituencies that the organization is dedicated to serving; (ii) a description of how community residents and stakeholders were engaged in the development of the plan and their role in monitoring and implementing the organization’s activities during the time period of the plan; (iii) the goals sought to be achieved during the time period of the plan, including how low and moderate income households or low and moderate income communities will benefit and how the entire community will benefit; (iv) the activities to be pursued to achieve those goals; (v) the manner in which success shall be measured and evaluated; (vi) a description of the collaborative efforts that shall support implementation of the plan, including collaborative efforts with nonprofit, for profit or public entities; (vii) a description of how the different activities within the plan fit together and how the entire plan fits into a larger strategy or vision for the community; (viii) the financial strategy to be deployed to support these activities; and (ix) other information regarding the history and track record of the organization as determined by the department.

“Community partner”, a community development corporation or a community support organization selected by the department through a competitive process to receive a community investment grant.

“Community support organization”, any nonprofit organization which is not a community development corporation but has a focus on and track record of providing capacity building services to community

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development corporations.

“Department”, the department of housing and community development.

“Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

“Low and moderate income community”, an economic target area as defined in section 3A of chapter 23A, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development or 1 or more contiguous census tracts as designated by a city or town, in which either: (i) a majority of the households are low and moderate income households; or (ii) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is less than or equal to 5 per cent or the unemployment rate is at least 10 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is greater than 5 per cent.

“Low and moderate income households”, households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the secretary of the United States Department of Housing and Urban Development under 42 U.S.C. 1437(a)(B)(2) or any successor legislation and the regulations promulgated thereunder.

(b) The department shall promulgate regulations concerning the process by which community development corporations apply to become a community partner; provided, however, that:

(1) the department shall design a competitive process to review applications by community development corporations and community support organizations; provided, however, that community support organizations may qualify but not more than 2 such organizations may, at any given time, be awarded community investment grants;
(2) the selection process shall favor community development corporations with the highest quality community investment plans and strong track records and shall strive to ensure that all regions of the commonwealth are able to fairly compete for allocations, including gateway municipalities, rural areas and suburban areas; provided, however, that at least 30 per cent of the community partners shall be located in or serving gateway municipalities and at least 20 per cent of the community partners shall be located in or serving rural areas, as defined by the department, unless the department finds that there are not a sufficient number of qualified applications from those areas;
(3) the department shall, subject to appropriation, implement at least 1 such allocation process each year; provided, however, that each grant shall be valid for up to 3 years, contingent upon the community partner satisfactorily meeting the reporting requirements of the department; provided further, that community partners who have not fully utilized their

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community investment grant within 3 years may apply to the department for a 1-year extension; provided further, that community investment grants may be revoked after 2 years from the date of the award by the department if: (i) the community partner is found to be in noncompliance with this section or the department's regulations promulgated hereunder; (ii) if the community partner is determined by the department to be making inadequate progress on its community investment plan; or (iii) for other good cause as determined by the department; and

(4) no community partner shall, subject to appropriation, receive a community investment grant of less than $25,000 or more than $150,000 in any 1 fiscal year. No community partner shall receive a subsequent allocation unless it has utilized at least 95 per cent of the 3 year total of any prior allocation.

SECTION 82. The commissioner of revenue, in consultation with the department of housing and community development and the office of commonwealth performance, accountability and transparency, shall review the community investment tax credit in section 6M of chapter 62 of the General Laws and section 38EE of chapter 63 of the General Laws and report on the estimate of the anticipated foregone revenue from the tax credit, whether this tax credit achieves the desired outcome and stated public policy purpose of the tax credit and if the tax credit is the most cost effective means of achieving this public policy purpose and whether the tax credit should be subject to a recapture if certain conditions are not met. The commissioner shall file a report, together with any recommendations regarding whether there should be legislative changes to the tax credit or whether the goals of the tax credit can better be served through other means, to the governor and to the clerks of the house and senate who shall forward the report to the joint committee on revenue, the joint committee on economic development and emerging technologies, the house and senate chairs of the joint committee on community development and small businesses and the house and senate ways and means committees not later than March 1, 2013.

SECTION 83. The commissioner of revenue, in consultation with the department of housing and community development, shall authorize annually an amount not to exceed $3,000,000 in 2014 and $6,000,000 in 2015 to 2019, inclusive, for the community investment tax credit in section 6M of chapter 62 of the General Laws and section 38EE of chapter 63 of the General Laws.

SECTION 86. Notwithstanding any general or special law to the contrary, the commissioner of the division of capital asset management and maintenance, in consultation with the president of Massasoit community college and the department of higher education, may enter into a lease or other contractual arrangement with Marine and Environmental Education Alliance, Inc., a not-for-profit corporation, to allow the college to utilize facilities now or hereafter owned, leased or operated by the corporation for the purpose of providing post-secondary career and training opportunities in marine and environmental studies. The lease or other contractual arrangement shall be for a term, including extensions, of up to 30 years, and shall be on such terms and conditions as the commissioner of the division of the division of capital asset management and maintenance, in consultation with the

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president of Massasoit community college and the department of higher education, considers appropriate.

SECTION 87. Notwithstanding any general or special law to the contrary, the comptroller may, not later than June 30, 2014, transfer not more than $200,000,000 to the General Fund from the Commonwealth Stabilization Fund; provided, the Commonwealth Stabilization Fund shall be reimbursed the full amount of the transfer by December 31, 2014. The comptroller, in consultation with the secretary of administration and finance, may take the overall cash flow needs of the commonwealth into consideration in determining the timing of any transfer of funds. The comptroller shall provide a schedule of transfers to the secretary of administration and finance and to the house and senate committees on ways and means.

SECTION 88. Notwithstanding any general or special law to the contrary, the Massachusetts marketing partnership established under section 13A of chapter 23A of the General Laws shall submit a report on the partnership's activities in fiscal years 2011 and 2012. The report shall include, but shall not be limited to: (i) the partnership's efforts to implement chapter 240 of the acts of 2010; (ii) efforts to promote common, coordinated, and concerted marketing efforts on behalf of the commonwealth; (iii) efforts to work in collaboration with governmental entities, regional economic development organizations established under sections 3J and 3K of said chapter 23A, local entities, local authorities, public bodies and private corporations to advanced the commonwealth's interests and investments in travel and tourism, international trade and economic development; (iv) development of a common internet portal; and (v) the partnership's plans for marketing and collaboration efforts in fiscal years 2013 and 2014. The partnership shall submit the report to the executive office of housing and economic development, the house and senate committees on ways and means and the joint committee on economic development and emerging technologies not later than December 30, 2012

SECTION 89. Notwithstanding any general or special law to the contrary, the Massachusetts School Building Authority shall give priority to school projects that will replace or renovate a school that was damaged as a result of an emergency or disaster declared by the federal government between June 1, 2011 and August 1, 2012.

SECTION 90. Notwithstanding any general or special law to the contrary, the Massachusetts School Building Authority may, at its sole discretion, exempt from the maximum grant percentage established under section 10 of chapter 70B of the General Laws projects that will replace or renovate a school that was damaged as a result of an emergency or disaster declared by the federal government between June 1, 2011 and August 1, 2012.

SECTION 91. There shall be a special commission to conduct an investigation and study of the definition of independent contractors as stated in section 148B of chapter 149 of the General Laws. The commission shall consist of 9 members: 2 representatives from the labor and workforce development, including the secretary of labor and workforce development or designee and 1

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representative of the Massachusetts joint task force on the underground economy and employee misclassification; the attorney general or designee; 1 representative from AFL-CIO; 1 National Federation of Independent Businesses; 2 members of the senate, 1 shall serve as co-chair of the commission; and 2 members of the house of representatives, 1 shall serve as co-chair of the commission.

The study shall include, but not be limited to, an analysis of said section 148B of said chapter 149: (1) the impact of the current law and interpretation by the attorney general on individuals who have independently established businesses as: (i) a freelance writer, editor, proofreader or indexer in the publishing industry and who works out of the individual's own residence; (ii) an artist, whose work constitutes intellectual property to which copyright laws apply, and who works out of the artist's own residence or studio; or (iii) a salesperson; and (2) recommendations to clarify the classifications of these individuals, and others identified by the commission, under said section 148B of said chapter 149.

The commission shall report the results of its investigation and study, together with drafts of legislation, if any, necessary to carry its recommendations into effect, by filing the report with the clerks of the senate and house of representatives, who shall forward the report to the joint committee on labor and workforce and the house and senate committees on ways and means not later than December 31, 2012.

SECTION 92. The executive office of energy and environmental affairs, in consultation with the executive office of housing and economic development and the executive office of the administration and finance, shall conduct a study of the viability, fiscal impact, potential benefits, statutory and regulatory barriers and anticipated results of establishing a Massachusetts Energy Conservation Project Fund in order to make loans for the acquisition, design, construction, repair, renovation, rehabilitation or other capital improvement or deferred maintenance of an energy conservation project undertaken by a public body, municipality, institution or person. The study shall consider how the fund would be administered, including the designation of the Massachusetts development finance agency established in section 2 of chapter 23G of the General Laws or a special purpose entity as the administrator of the fund; how the administrator would issue energy project bonds on behalf of the fund; how monies would be disbursed from the fund, including the process and criteria for determining the eligibility of energy conservation projects; how security would be provided for the fund, including the use of first priority lien on the system benefit charge funds; and the long-term impact on the energy efficiency programs funded through the system benefits charge. The study shall also consider the energy efficiency program process under section 21 of chapter 25 of the General Laws and the functions of the department of energy resources, the energy efficiency advisory council, and the electric and natural gas distribution companies and municipal aggregators to ensure that the program would complement and be coordinated with the energy efficiency programs designed and approved through the existing energy efficiency advisory council process. The study shall further consider the process for securing department of public utilities approval to provide for the first priority lien on the

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system benefit charge funds that would be used as security for the loans from the project fund.

The executive office of energy and environmental affairs shall submit a copy of the study and recommendations, together with any drafts of legislation necessary to establish a Massachusetts Energy Conservation Project Fund to the clerks of the house of representatives and the senate, who shall forward a copy of the study to the joint committee on telecommunications, utilities and energy not later than December 31, 2012.

SECTION 93. The division of marine fisheries shall make an investigation and study into the commonwealth's laws and policies regarding the processing, possession and sale of frozen lobster parts including, but not limited to, section 44 of chapter 130 of the General Laws.

The investigation and study shall include, but not be limited to: (1) the on-shore processing of live lobsters of legal length into a food product of frozen lobster parts; (2) the possession and sale of such processed food by wholesale dealers; (3) the licensing of wholesale dealers by the department of public health under section 77G of chapter 94; (4) the labeling requirements for packaged frozen lobster parts under applicable federal and state law; and (5) the impacts of permitting frozen lobster parts that have been processed as a food product to be possessed, sold, or offered for sale by wholesale dealers, retail dealers, and consumers.

The division shall report to the general court the results of its study, together with drafts of legislation necessary to carry such recommendations into effect, by filing the report with the clerks of the senate and house of representatives not later thanbefore December 31, 2012.

SECTION 94. The searchable website established under subsection (c) of section 3 of chapter 23A of the General Laws shall be accessible to the public not later than February 1, 2013.

SECTION 95. The first annual report required by clause (8) of subsection (c) of section 6M of chapter 62 of the General Laws and by clause (8) of subsection (c) of section 38EE of chapter 63 of the General Laws shall be completed not later than April 30, 2015.

Governor dissapproved of the following section (for message see H.4387)
~~**SECTION 96.** The credit allowed in sections 31, 32 and 37 and the credit allowed in section 38DD of chapter 63 of the General Laws shall apply to companies that first begin to pay the excise due under sections 2, 2B and 39 of said chapter 63 in tax year 2014 or any year thereafter.~~

SECTION 97. Section 38EE of chapter 63 of the General Laws inserted by section 35, shall take effect on January 1, 2014.

SECTION 97A. Section 29 shall take effect on January 1, 2014.

SECTION 98. Sections 30 and 36 shall take effect on December 31, 2019.

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Governor dissapproved of the following section (for message see H.4387)

~~**SECTION 99.** Sections38 to 46, inclusive, shall take effect beginning January 1, 2014~~

SECTION 100. Section 52 shall take effect on December 1, 2012.

Approved (in part), August 7, 2012.

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Acts 2009

CHAPTER 25 AN ACT MODERNIZING THE TRANSPORTATION SYSTEMS OF THE COMMONWEALTH

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to reorganize and restructure transportation agencies in the commonwealth to help address anticipated funding deficiencies, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Section 17 of chapter 6 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 13, the words ”, the Massachusetts aeronautics commission”.

SECTION 2. The second sentence of section 17A of said chapter 6, as most recently amended by section 1 of chapter 27 of the acts of 2008, is hereby amended by striking out the words “secretary of transportation and public works” and inserting in place thereof the following words:- “secretary of transportation”.

SECTION 3. Sections 57, 58 and 59 of said chapter 6 are hereby repealed.

SECTION 4. Section 8C of chapter 6A of the General Laws, inserted by section 6 of chapter 233 of the acts of 2008, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-
(a) There shall be established a structurally deficient bridge improvement program coordination and oversight council. The council shall consist of a chair appointed by the governor, the secretary of administration and finance, the secretary of transportation, the secretary of energy and environmental affairs, the administrator of the division of highways of the Massachusetts Department of Transportation, and the commissioner of capital asset management and maintenance, or their designees.

SECTION 5. Sections 19, 19 1/2 and 19A of said chapter 6A are hereby repealed.

SECTION 6. Section 103 of said chapter 6A is hereby repealed.

SECTION 7. Section 104 of said chapter 6A is hereby repealed.

SECTION 8. The General Laws are hereby amended by inserting after chapter 6A the following chapter:-

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Chapter 6C
MASSACHUSETTS DEPARTMENT of TRANSPORTATION

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

”Board”, the board of directors of the Massachusetts Department of Transportation established pursuant to section 2.

“Boston extension”, all roadways and tunnels for vehicular traffic that constitute that portion of interstate highway route 90 beginning at and including the interchange of interstate highway route 90 and state highway route 128 in the town of Weston and ending in the city of Boston at the interchange of interstate highway route 90 and interstate highway route 93 and such additional highway and bridge components as the general court may from time to time determine and including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land acquired or leased in connection with or incident to the construction, ownership, operation, rehabilitation, reconstruction, improvement, repair, maintenance or administration of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance or which are otherwise convenient or desirable to carry out the purposes of this chapter.

“Callahan tunnel”, the tunnel for vehicular traffic constructed under chapter 598 of the acts of 1958 between the North End section of the city of Boston and the East Boston section of said city and including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land acquired or leased in connection with or incident to the construction, ownership, operation, rehabilitation, reconstruction, improvement, repair, maintenance or administration of such tunnel as are necessary for its safe and efficient operation and maintenance or which are otherwise convenient or desirable to carry out the purposes of this chapter.

“Central artery”, all roadways and tunnels for vehicular traffic constructed by the highway division that constitute that portion of interstate highway route 93 beginning at a point immediately south of the Southampton street interchange, so-called, and continuing to and including the interchange of interstate highway route 93 and Massachusetts avenue in the South End section of the city of Boston and continuing to and including the interchange of interstate highway route 90 and interstate highway route 93 in the South Bay section of the city of Boston, so-called, and continuing to and including the interchange of state highway route 1 and interstate highway route 93 in the Charlestown section of the city of Boston including, but not limited to, the so-called Charles river crossing portion of interstate highway route 93 and such additional highway and bridge components as the general court may from time to time determine, but excluding the central artery north area. ”Central artery” shall also include such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land acquired or leased in connection with or incident to the construction, ownership, operation, rehabilitation, reconstruction, improvement, repair, maintenance or administration of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance or which are otherwise convenient or desirable to carry out the purposes of this chapter.

“Central artery north area”, all roadways and tunnels for vehicular traffic constructed by the highway

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division consisting of a portion of state highway route 1 beginning at, but not including, the southern boundary of the Tobin memorial bridge and continuing to the interchange of interstate highway route 93 and state highway route 1, including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land acquired or leased in connection with or incident to the construction, ownership, operation, rehabilitation, reconstruction, improvement, repair, maintenance or administration of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance or which are otherwise convenient or desirable to carry out the purposes of this chapter.

“Cost”, as applied to any project of the department any or all costs, whenever incurred, of carrying out and placing such projects in operation, including, without limiting the generality of the foregoing, amounts for the following: acquisition, construction expansion improvement and rehabilitation of facilities; acquisition of real or personal property; demolitions and relocations; labor, materials, machinery and equipment; services of architects, engineers and environmental and financial experts and other consultants; feasibility studies, plans, specifications and surveys; interest prior to and during the carrying out of any project and for a reasonable period thereafter; reserves for debt service or other capital or current expenses; costs of issuance; and working capital, administrative expenses; legal expenses and other expenses necessary or incidental to the aforesaid, to the financing thereof and to the issuance therefor of bonds under this chapter.

“Costs of issuance”, any amounts payable or reimbursable directly or indirectly by the department and related to the sale and issuance of bonds and the investment of the proceeds thereof and of revenues securing the same including, without limiting the generality of the foregoing, printing costs, filing and recording fees, fees and charges of trustees, depositories, authenticating agents and paying agents, legal and auditing fees and charges, financial consultant fees, costs of credit ratings, premiums for insurance of the payment of bonds and fees payable for letters or lines of credit or other credit facilities securing bonds, underwriting or placement costs, fees and charges for execution, transportation and safekeeping of bonds, costs and expenses of refunding and other costs, fees and charges in connection with the foregoing.

“Current expenses”, the department's current expenses, whether or not annually recurring, of maintaining, repairing and operating the assets under the possession, custody and control of the department and engaging in other activities authorized by this chapter including, without limiting the generality of the foregoing, amounts for administrative expenses of the department including costs of salaries and benefits, as provided in this chapter, cost of insurance, payments for engineering, financial, accounting, legal and other services rendered to the department, taxes upon the department or its income, operations or property and payments in lieu of such taxes, costs incurred or payable by the department with respect to the assets under the possession, custody and control of the department, costs of issuance not financed in the cost of a project, and other current expenses required or permitted by law to be paid by the department, including the funding of reasonable reserves for upgrading, maintenance, repair, replacements, insurance, emergency contingencies or operations.

“Department”, the Massachusetts Department of Transportation established in section 2.

“Designated parkways,” McGrath and O’Brien Highways in the cities of Cambridge and Somerville, the

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Carrol parkway, Middlesex avenue in the city of Medford, William Casey highway overpass in the Jamaica Plain section of the city of Boston, Columbia road in the South Boston section of the city of Boston, Morton Street in Boston and Gallivan boulevard in the Dorchester section of the city of Boston, all formerly operated and maintained by the department of conservation and recreation.
“Fund”, the Massachusetts Transportation Trust Fund established in section 4.
“Independent agencies”, shall include, without limitation, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Woods Hole, Martha’s Vineyard, and Nantucket Steamship Authority, and the Massachusetts association of regional transit authorities.
“Massachusetts Port Authority”, the Massachusetts Port Authority established pursuant to chapter 465 of the acts of 1956.
“Massachusetts Bay Transportation Authority”, the Massachusetts bay transportation authority; established by chapter 161A.
“Maurice J. Tobin Memorial Bridge”, the bridge formerly known as the Mystic River Bridge in the cities of Chelsea and Boston.
“Metropolitan highway system”, the integrated system of roadways, bridges, tunnels, overpasses, interchanges, parking facilities, entrance plazas, approaches, connecting highways, service stations, restaurants, tourist information centers and administration, storage, maintenance and other buildings that the department owns, constructs or operates and maintains pursuant to this chapter which consists of the Boston extension, the Callahan tunnel, the central artery, the central artery north area, the Tobin memorial bridge, the Sumner tunnel and the Ted Williams tunnel and any additional highway, tunnel and bridge components as the general court may from time to time determine.
“Metropolitan highway system revenues”, (i) all rates, fees, tolls, rentals or other charges and other earned income and receipts as derived from or with respect to the ownership, operation, lease, rent or other use or disposition of the metropolitan highway system or any part thereof; and (ii) all other funds received by the department, from whatever source, relating to the metropolitan highway system.
“Notes or bonds”, the notes, bonds or other evidences of indebtedness of the department issued pursuant to this chapter.
“Revenues”, all charges and other receipts derived by the department from operation of the assets under the possession, custody and control of the department and all other activities or properties of the Office of Planning and Programming including, without limiting the generality of the foregoing, proceeds of grants, gifts or appropriations to the department, investment earnings and proceeds of insurance or condemnation and the sale or other disposition of real or personal property.
“Secretary”, the secretary of the Massachusetts Department of Transportation.
“State agencies”, shall include, without limitation, the department, the department of conservation and recreation and such other state agencies as may be involved in transportation related functions from time to time.
“State highway system”, all roadways, bridges, tunnels, overpasses, interchanges, parking facilities, entrance plazas, approaches, connecting highways, service stations, restaurants, tourist information centers and administration, storage, maintenance and other buildings that the department owns, constructs or operates and maintains pursuant to this chapter, including the designated parkways, and

any additional highway, tunnel and bridge components as the general court may from time to time determine.
“State public transit system”, all publicly funded modes of transportation, but not including roads and bridges.
“Sumner tunnel”, the vehicular tunnel under Boston harbor, heretofore constructed and financed by the city of Boston under chapter 297 of the acts of 1929, including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land acquired or leased in connection with or incident to the construction, ownership, operation, rehabilitation, reconstruction, improvement, repair, maintenance or administration of such tunnel as are necessary for its safe and efficient operation and maintenance or which are otherwise convenient or desirable to carry out the purposes of this chapter.
“Ted Williams tunnel”, all or any segments of the roadways, bridges, viaducts and tunnels for vehicular traffic constructed by the highway department that constitute the interstate highway route 90 extension and its connecting roadways and tunnels, including: (i) the harbor tunnel crossing beneath Boston harbor, beginning at and including the interchanges of state highway route 1A and the Logan airport access and egress roadways with interstate highway route 90 and continuing beneath Boston harbor to and including the interchange of interstate highway route 90 and South Boston bypass road, but excluding the Logan airport access and egress roadways owned by the Massachusetts Port Authority on March 1, 1997 and any additional access and egress roadways acquired by the Massachusetts Port Authority after March 1, 1997; (ii) the seaport access highway, so-called, beginning at the interchange of interstate highway routes 90 and 93 and continuing to the interchange of interstate highway route 90 and South Boston bypass road; and (iii) South Boston bypass road, a portion of which is also known as South Boston haul road, beginning at the interchange of interstate highway route 93 and South Boston bypass road and continuing to the interchange of the seaport access highway, so-called, in the South Boston section of the city of Boston, including such real property and any improvements thereon, personal property, equipment, licenses, appurtenances and interests in land acquired or leased by the highway department in connection with or incident to the construction, ownership, operation, rehabilitation, reconstruction, improvement, repair, maintenance or administration of such roadways and tunnels as are necessary for their safe and efficient operation and maintenance or which are otherwise convenient or desirable to carry out the purposes of this chapter.
“Turnpike”, the limited access express toll highway, designated as interstate highway route 90, and all bridges, tunnels, overpasses, underpasses, interchanges, parking facilities, entrance plazas, approaches, connecting highways, service stations, restaurants, tourist information centers and administration, storage, maintenance and other buildings that the department may own, construct or operate and maintain pursuant to this chapter and any additional highway, tunnel and bridge components as the general court may from time to time determine, extending from the town of West Stockbridge on the commonwealth’s border with New York state to, but not including, the interchange of interstate highway route 90 and state highway route 128 in the town of Weston.
“Turnpike corridor”, the cities and towns of the commonwealth from the New York state border to state highway route 128 through which the turnpike runs and municipalities contiguous to such cities and

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towns.
“Turnpike revenues”, (i) all rates, fees, tolls, rentals or other charges and other earned income and receipts derived from or with respect to the ownership, operation, lease, rent or other use or disposition of the turnpike or any part thereof; and (ii) all other funds received by the department, from whatever source, relating to the turnpike.

Section 2. (a) There is hereby created a body politic and corporate to be known as the Massachusetts Department of Transportation. The department is hereby constituted a public instrumentality and the exercise by the department of the powers conferred by this chapter shall be considered to be the performance of an essential governmental function.
The department is hereby placed in the executive office of the governor but shall not be subject to the supervision or control of said office, or of any board, bureau, department or other center of the commonwealth, except as specifically provided in this chapter.
(b) The authority shall be governed and its corporate powers exercised by a board of directors. The board shall consist of 5 members appointed by the governor for a term of 4 years, 2 of whom shall be experts in the field of public or private transportation finance; 2 of whom shall have practical experience in transportation planning and policy; and 1 of whom shall be a registered civil engineer with at least 10 years experience. One of the members shall be appointed by the governor to serve as chairperson of the board; provided, however, that said designee shall not be an employee of the department, department or any division thereof. Not more than 3 of the directors shall be members of the same political party. Each director shall serve without compensation but may be reimbursed for actual and necessary expenses reasonably incurred in the performance of their duties, including reimbursement for reasonable travel; provided, however that that such reimbursement shall not exceed $500 annually. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such former member. Any director shall be eligible for reappointment. Any director may be removed from his appointment by the governor for cause. The board shall annually elect 1 of its members to serve as vice-chairperson.
(c) Four directors shall constitute a quorum and the affirmative vote of a majority of directors present at a duly called meeting, if a quorum is present, shall be necessary for any action to be taken by the board. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if all of the directors' consent in writing to such action and such written consent is filed with the records of the minutes of the meetings of the board. Such consent shall be treated for all purposes as a vote at a meeting. Each director shall make full disclosure, under subsection (d), of his financial interest, if any, in matters before the board by notifying the state ethics commission, in writing, and shall abstain from voting on any matter before the board in which he has a financial interest, unless otherwise permissible under chapter 268A.
(d) Chapters 268A and 268B shall apply to all ex-officio directors or their designees and employees of the department. Said chapters 268A and 268B shall apply to all other directors of the department, except that the department may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any person in which any director of the department is in any way interested or involved;

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provided, however, that such interest or involvement is disclosed in advance to the members of the board and recorded in the minutes of the board; and provided, further, that no director having such an interest or involvement may participate in any decision of the board relating to such person. Employment by the commonwealth or service in any agency thereof shall not be deemed to be such an interest or involvement.
(e) The governor shall have the power to appoint and employ a secretary of the department, whose term of service shall be coterminous with the term of the governor, and to fix his compensation and conditions of employment. The secretary shall be the chief executive, administrative and operational officer of the department and shall direct and supervise the administrative affairs and the general management of the department. The secretary shall appoint and employ a chief financial and accounting officer and may, subject to the general supervision of the board, employ other employees, consultants, agents, including legal counsel and advisors, and shall attend meetings of the board. The chief financial and accounting officer of the department shall be in charge of its funds, books of account and accounting records. No funds shall be transferred by the department without the approval of the board and the signatures of the chief financial and accounting officer and the treasurer, as elected by the board pursuant to subsection (f).
(f) The board shall bi-annually elect 1 of its members as treasurer and 1 of its members as secretary. The secretary of the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed by the board and of its minute book and seal. The secretary of the board shall cause copies to be made of all minutes and other records and documents of the department and shall certify that such copies are true copies, and all persons dealing with the department may rely upon such certification.
(g) All officers and employees of the department having access to its cash or negotiable securities shall give bond to the department at its expense in such amounts and with such surety as the board may prescribe. The persons required to give bond may be included in 1 or more blanket or scheduled bonds.
(h) Board members and officers who are not compensated employees of the department shall not be liable to the commonwealth, to the department or to any other person as a result of their activities, whether ministerial or discretionary, as such board members or officers except for willful dishonesty or intentional violations of law. Neither members of the department nor any person executing bonds or policies of insurance shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof. The board of directors may purchase liability insurance for board members, officers and employees and may indemnify such persons against claims of others.
(i) The department shall continue as long as it shall have bonds or insurance or guarantee commitments outstanding and until its existence is terminated by law. Upon the termination of the existence of the department, all right, title and interest in and to all of its assets and all of its obligations, duties, covenants, agreements and obligations shall vest in and be possessed, performed and assumed by the commonwealth.
(j) Any action of the department may take effect immediately and need not be published or posted unless otherwise provided by law. Meetings of the department shall be subject to section 11A 1/2 of

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chapter 30A, except that said section 11A 1/2 shall not apply to any meeting of members of the department serving ex officio in the exercise of their duties as officers of the commonwealth so long as no matter relating to the official business of the department is discussed and decided at the meeting. The department shall be subject to all other provisions of said chapter 30A, and records pertaining to the administration of the department shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the department shall be considered to be public funds for purposes of chapter 12A.

Section 3. The department shall have all powers necessary or convenient to carry out and effectuate its purposes including, without limiting the generality of the foregoing, the power to:
(1) adopt and amend by-laws, regulations and procedures for the governance of its affairs and the conduct of its business for the administration and enforcement of this chapter; provided, however, that regulations adopted by the department shall be adopted pursuant to chapter 30A;
(2) adopt an official seal and a functional name;
(3) exercise any powers necessary for the commonwealth to be in compliance with 23 U.S.C. section 302;
(4) maintain offices at places within the commonwealth as it may determine and to conduct meetings of the department in accordance with the by-laws of the department and the second paragraph of section 59 of chapter 156B;
(5) direct, operate, administer and implement the programs of roadway, general aviation, rail and transit, and vehicular registration and regulation and, in cooperation with the office of planning and programming for the design, construction, repair, maintenance, capital improvements, development, and planning of the transportation facilities throughout the department, as appropriate;
(6) direct, coordinate and supervise the administration of the department to promote economy and efficiency and to leverage federal funding and private sector investment;
(7) develop and administer a long-term statewide transportation plan for the commonwealth, in conjunction with the executive office of administration and finance, that includes planning for intermodal and integrated transportation;
(8) develop and administer procedures to be used for transportation project selection;
(9) establish criteria, including criteria to reduce greenhouse gases, for project selection for use in the procedures developed pursuant to clause (7);
(10) enter into agreements and transactions with federal, state and municipal agencies and other public institutions and private individuals, partnerships, firms, corporations, associations and other entities on behalf of the department;
(11) institute and administer the Massachusetts Transportation Trust Fund for the purposes of making appropriations, allocations, grants or loans to leverage development and investments in transportation investment;
(12) sue and be sued in its own name, plead and be impleaded;
(13) own, construct, maintain, repair, reconstruct, improve, rehabilitate, use, police, administer, control and operate the state highway system, the metropolitan highway system and the turnpike, or any part thereof; provided, however, that chapter 91 shall not apply to the department, except for any parts or

areas thereof subject to said chapter 91 on March 1, 1997;
(14) acquire sites abutting the state highway system, the metropolitan highway system or the turnpike, and to construct or contract for the construction of buildings and appurtenances for gasoline stations, restaurants, parking facilities, tourist information centers and other services and to lease such facilities in such manner and under such terms as it may determine;
(15) issue notes or bonds for any of its corporate purposes related to the turnpike payable solely from turnpike revenues or portions thereof pledged for their payment and to refund its notes or bonds pertaining to the turnpike or any part thereof or payable from such revenues, as provided in this chapter;
(16) issue notes or bonds for any of its corporate purposes related to the metropolitan highway system payable solely from the metropolitan highway system revenues or portions thereof pledged for their payment and to refund its notes or bonds pertaining to the metropolitan highway system or any part thereof or payable from such revenues, as provided in this chapter;
(17) issue bonds, notes and other evidences of indebtedness as provided in this chapter;
(18) fix and revise from time to time and charge and collect tolls for transit over the metropolitan highway system and the turnpike; provided, however, that it shall furnish upon request to a user of the metropolitan highway system and turnpike a toll receipt showing the amount of toll paid, the classification of the vehicle, the date of payment and place of exit from said metropolitan highway system and turnpike; provided, further, that the department shall convene at least 2 public hearings, each to be held in a community within the turnpike corridor, at least 30 days prior to the effective date of any proposed change in toll structure on the turnpike and shall allow for a 1 week comment period, after each such hearing, during which written testimony and comments shall be accepted;
(19) appoint officers and employees and to engage accountants, architects, attorneys, engineers, planners, real estate experts and other consultants as may be necessary in its judgment to carry out the purposes of this chapter and fix their compensation; provided, however, that the department shall engage consultants to perform only those services for the department which regular employees of the department are unable to perform owing to lack of special expertise or other inability to perform such services on the schedule or in the manner required by the department;
(20) acquire, lease, hold and dispose of real and personal property or any interest therein in the exercise of its powers and the performance of its duties pursuant to this chapter; provided, however, that the department shall issue semi-annual reports to the secretary of administration and finance, the house and senate committees on ways and means, the joint committee on transportation and the house and senate committees on bonding, capital expenditures and state assets, detailing the financial transactions and revenues associated with the sale, concession or lease of real property held in the name of or under the control of the department, whether by purchase or otherwise, and any transactions relating to real property currently pending; and provided further, that the semi-annual report shall include the current market value of the real properties related to the transactions;
(21) place and maintain or grant permission by easement or otherwise to any public utility, corporation or person to place and maintain on or under or within the state highway system, the metropolitan highway system or the turnpike, or any part thereof, ducts, pipes, pipelines, mains, conduits, cables,

wires, towers, poles or other structures to be so located as not to interfere with the safe and convenient operation and maintenance of the state highway system, the metropolitan highway system or the turnpike, and to contract with any such public utility, corporation or person for such permission on such terms and conditions as may be fixed by the department; provided, however, that in case of any such relocation or removal of facilities, the public utility, corporation or person owning or operating the same, its successors or assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location for as long a period and upon the same terms and conditions as it had the right to maintain and operate such facilities in their former location; and provided further, that otherwise, the department shall have the power to grant such easements over any real property held by the department as will not, in the judgment of the department, unduly interfere with the operation of any of its mass transportation facilities;

(22) designate the locations and establish, limit and control such points of ingress to and egress from the state highway system, the metropolitan highway system or the turnpike, as may be necessary, convenient or desirable, in the judgment of the department, to insure the proper operation and maintenance of the state highway system, the metropolitan highway system or the turnpike, and to prohibit entrance to the state highway system, the metropolitan highway system or the turnpike from any point or points not so designated;

(23) (i) construct grade separations at locations where the state highway system, the metropolitan highway system or the turnpike, intersect with or abut public highways or rail lines and to change and adjust the lines and grades of such highways or rail lines so as to accommodate the same to the design of such grade separation; and (ii) change the location of any portion of any public highway or rail line which intersects or abuts the state highway system, the metropolitan highway system or the turnpike, in order to improve the safety or efficiency of the state highway system, the metropolitan highway system or the turnpike; provided, however, that if the department shall find it necessary to change the location of a public highway, it shall reconstruct the same in as good a condition as the original highway and at such location as the department deems most favorable; provided, however, that all costs incident to construction, realignment or reconstruction conducted pursuant to this clause shall be borne by the department;

(24) enter upon any lands, waters and premises in the commonwealth, after 30 days notice by registered or certified mail and without the necessity of any judicial orders or other legal proceedings, for the purpose of making surveys, soundings, drillings and examinations as the department may deem necessary, convenient or desirable for carrying out the purposes of this chapter and such entry shall not be deemed a trespass nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending; provided, however, that the department shall provide reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities; and provided, further, that the commonwealth hereby consents to the use of all lands owned by it, including lands lying underwater, which are deemed by the department to be necessary, convenient or desirable for the construction, operation or maintenance of the state highway system, the metropolitan highway system or the turnpike;

(25) make and enter into all contracts and agreements necessary, convenient or desirable in the performance of its duties and the execution of its powers under this chapter; provided, however, that

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sections 26 to 29, inclusive, and sections 44A to 44J, inclusive, of chapter 149 and sections 39F to 39M, inclusive, of chapter 30 shall apply to contracts of the department to the same extent and in the same manner as they are applicable to the commonwealth; provided, however, that notwithstanding this clause, the department may, with the approval of the secretary of administration and finance, without competitive bids and notwithstanding any general or special law to the contrary, award a contract, otherwise subject to this section, limited to the performance of emergency repairs necessary to preserve the safety of persons or property;
(26) invest any funds held in reserves or sinking funds, or the Massachusetts Transportation Trust Fund, or any funds not required for immediate disbursement, in such investments as may be provided in any financing document relating to the use of such funds or, if not so provided, as the board may determine;
(27) review and recommend changes in laws, rules, programs and policies of the commonwealth and its agencies and subdivisions to further transportation financing, infrastructure and development within the commonwealth;
(28) appear in its own behalf before boards, commissions, departments or other agencies of municipal, state or federal government;
(29) obtain insurance;
(30) apply for and accept subventions, grants, loans, advances and contributions from any source of money, property, labor or other things of value to be held, used and applied for its corporate purposes;
(31) adopt a fiscal year to conform with the fiscal year of the commonwealth;
(32) receive and apply its revenues to the purposes of the department without appropriation or allotment by the commonwealth or any political subdivision thereof;
(33) enter into agreements with other parties including, without limiting the generality of the foregoing, government agencies, municipalities, authorities, private transportation companies, railroads, and other concerns, providing: (i) for construction, operation and use of any mass transportation facility and equipment held or later acquired by the department; provided, however, that any agreement entered into by the department for the construction or acquisition of mass transportation facilities or equipment of more than $1,000,000, which is financed in whole or in part from the proceeds of bonds, the debt service payments on which are assisted by the commonwealth or made from the dedicated revenue source, shall not become effective until approved by the secretary of administration and finance; (ii) for joint or cooperative operation of any mass transportation facility and equipment with another party; (iii) for operation and use of any mass transportation facility and equipment for the account of the department, for the account of another party or for their joint account; or (iv) for the acquisition of any mass transportation facility and equipment of another party if the whole or any part of the operations of such other party takes place within the area constituting the department; provided, further, that any such other party may enter into any such agreements, subject to such provisions of law as may be applicable; and provided, further, that any agreement with a private company under this chapter which is to be financed from the proceeds of bonds or bond anticipation notes and which provides for the rendering of transportation service by such company and for financial assistance to such company by subsidy, lease or otherwise shall include such service quality standards for such service as the department may deem appropriate and shall not bind the department for a period of

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longer than 1 year from its effective date, but this shall not prohibit agreements for longer than 1 year if the department's obligations thereunder are subject to annual renewal or annual cancellation by the board's authority; and provided, further, that such agreements may provide for cash payments for services rendered, but not more than will permit any private company a reasonable return;

(34) establish transit facilities and related infrastructure, including terminals, stations, access roads, and parking, pedestrian access facilities and bicycle parking and access facilities as may be deemed necessary and desirable; and provided, further, that the department may charge reasonable fees for the use of such facilities as it deems desirable;

(35) lend money to and to acquire or hold obligations issued by public bodies or other users at such prices and in such manner as the department shall deem advisable and sell such bonds acquired or held by it at prices without relation to cost and in such manner as the department shall deem advisable and to secure its own issues of bonds with such obligations held by it;

(36) act as the central entity and coordinating organization for transportation initiatives on behalf of the commonwealth and to work in collaboration with governmental entities, bodies, centers, institutes and facilities to advance the commonwealth's interests and investments in transportation;

(37) enter into agreements with public and private entities that deal primarily with transportation and infrastructure development, in order to distribute and provide leveraging of monies or services for the purposes of furthering transportation development in the commonwealth and promoting overall economic growth within the commonwealth by fostering collaboration and investments in transportation initiatives in the commonwealth;

(38) provide and pay for such advisory services and technical assistance as may be necessary or desired to carry out the purposes of this chapter;

(39) establish and collect such fees and charges as the department without further appropriation shall determine to be reasonable and consistent with this chapter; and to receive and apply revenues from fees and charges to the purposes of the department or allotment by the commonwealth or any political subdivision thereof;

(40) disburse, appropriate, grant, loan or allocate funds for the purposes of investing in transportation initiatives as directed in this chapter;

(41) provide assistance to local entities, local authorities, public bodies and private corporations for the purposes of maximizing opportunities for transportation and development initiatives in the commonwealth;

(42) prepare, publish and distribute, with or without charge, as the department may determine, such studies, reports and bulletins and other material as the department deems appropriate;

(43) exercise any other powers of a corporation organized under chapter 156B;

(44) take any actions necessary or convenient to the exercise of any power or the discharge of any duty provided for by this chapter;

(45) enter into agreements or other transactions with any person including, without limitation, any public entity or other governmental instrumentality or agency in connection with the powers and duties provided the department under this chapter;

(46) delegate any of the foregoing powers to an administrator or to a director having charge of an

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administrative unit within the department;
(47) ensure regional equity related to transportation planning, construction, repair, maintenance, capital improvement, development and funding; and
(48) designate a representative to act in its interest in labor relations matters with its employees.

Section 4. There shall be established and placed within the department a separate fund to be known as the Massachusetts Transportation Trust Fund which shall be used for financing transportation-related purposes of the Massachusetts Department of Transportation. The secretary shall be authorized to enter into agreements with the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the regional transit authorities and, for so long as it shall continue to exist, the Massachusetts Turnpike Authority to commit any funds generated from fares, fees, tolls or any other revenue sources including, but not limited to, from federal sources of these authorities to the fund. There shall be credited to the fund all turnpike revenues and other toll and non-toll revenue collected by the department after assumption of the assets, obligations and liabilities of the Massachusetts Turnpike Authority, all tolls collected by the department after transfer of the Maurice J. Tobin Memorial Bridge by the Massachusetts Port Authority to the department, all refunds and rebates made on account of expenditures on ways by the department, any revenues from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, any gifts, grants, private contributions, investment income earned on the fund's assets, all monies received by the department for the sale or lease of property, all monies received by the department in satisfaction of claims by the department for damage to highway and bridge safety signs, signals, guardrails, curbing and other highway and bridge related facilities, and other receipts of the department. Money remaining in the fund at the end of the year shall not revert to the General Fund. The fund, which shall be under the control of the department and not subject to appropriation, shall be used as follows:
(a) for expenditures to meet any debt obligations of the department following the dissolution of the Massachusetts Turnpike Authority and assumption of assets, obligations and liabilities by the department;
(b) for expenditure by the department for maintaining, repairing, improving and constructing municipal ways and bridges, sidewalks adjacent to such ways and bridges, bikeways and other projects eligible for funding as a transportation enhancement project as described in the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, salt storage sheds, bikeways and public use off-street parking facilities related to mass transportation, for engineering services and expenses related to highway transportation enhancement and mass transportation purposes, for care, repair, storage, replacement, purchase and long-term leasing of road building machinery, equipment and tools, for the erection and maintenance of direction signs and warning signs and for necessary or beneficial improvements to unpaved municipal ways together with any money which any municipality may appropriate for such purposes to be used on the same ways, sheds, bikeways, bridges, machinery, equipment, tools and facilities. Such engineering services, including surveying services, shall only be performed by architectural, engineering or surveying firms prequalified by the department; provided, however, that a municipality may seek a waiver of this requirement from the department if the

municipality demonstrates to the satisfaction of the department that it is cost prohibitive to use a prequalified firm. Such ways, sheds, bikeways, bridges, machinery, equipment, tools and facilities shall remain municipal ways, sheds, bikeways, bridges, machinery, equipment, tools and facilities. The department shall withhold or withdraw the unexpended balance of any funds assigned by it under this clause if the municipality fails to comply with the official standards for traffic control established by the department or with any provision of a traffic control agreement negotiated between the department and the municipality, as required by the United States Secretary of Commerce under section 109 of Title 23 of the United States Code;
(c) for expenditure by the department for maintaining, repairing and improving state highways and bridges in the state highway system designated parkways and for the turnpike and the metropolitan highway system managed by the Massachusetts Turnpike Authority until its dissolution ;
(d) for expenditure by the department, in addition to federal aid payments received under section 30 of chapter 81, for construction of state highways;
(e) for expenditure by the department for engineering services and expenses, for care, repair, storage, replacement and purchase of road building machinery and tools, for snow removal, for the erection and maintenance of direction signs and warning signs, for the care of shrubs and trees on state highways and for expenses incidental to the foregoing or incidental to the purposes specified in clause (b), (c) or (d);
(f) for expenditure for the operations of the department and any divisions thereof;
(g) for expenditure by the department for infrastructure improvements to transportation facilities throughout the commonwealth;
(h) for regional expenditure by the department for highway division projects in the 5 geographic regions of the commonwealth consistent with the boundaries of the 5 highway division districts as existing on July 1, 2009;
(i) for expenditure for highway field services and transportation support programs including, but not limited to, state police highway patrols and accident teams; and
(j) for any other expense of the department necessary to carry out its purposes.

Section 5. (a) The department shall be organized and shall function as a single state agency for administrative purposes including, but not limited to, for the purposes of the accounting and financial system of the commonwealth. The secretary shall, notwithstanding any general or special law to the contrary, identify and consolidate administrative activities and functions common to the separate offices, and divisions within the department and may designate such functions 'core administrative functions' in order to improve administrative efficiency and preserve fiscal resources; provided, however, that common functions that shall be designated core administrative functions shall include, but shall not be limited to, human resources, financial management, information technology, legal, procurement and asset management. All employees performing functions so designated shall be employed directly by the secretary.
The department may enter into agreements under section 22A and 22B of chapter 7 and in all respects not governed by general or special laws expressly made applicable to the department shall adhere to good business practices to be determined by the department in its procurement of

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equipment, materials, property, supplies and services.
(b) On December 15 and at 6-month intervals thereafter, the secretary shall report to the joint committee on transportation, the house and senate committees on bonding, capital expenditures and state assets and the house and senate committees on ways and means on the department's progress in implementing the requirements of this section, the operating and capital expenditures made by the department in implementing the requirements of this section and on the administrative savings that have been achieved through the implementation of the requirements of this section.
(c) The secretary shall appoint a manager to serve as director of system integration, whose primary responsibility shall be to develop a plan and oversee the implementation of the merger and integration of the organizations and assets comprising the department.
In advance of each fiscal year, the director of system integration shall develop an annual information technology plan concerning the topics identified in the preceding sentence, the development of new systems for the department and the development of applications for existing systems at the department. The plan shall be delivered to the chief executive officer of the department, the chief information officer of the commonwealth, the chairs of the house and senate committees on ways and means, the chairs of the house and senate committees on bonding, capital expenditures and state assets and the house and senate chairs of the joint committee on transportation.

Section 6. (a) The secretary shall operate and administer an office of performance management and innovation within the department that shall, without limitation, administer this section. The divisions of the department shall report to the office of performance management and innovation with regard to setting goals and establishing performance measures to improve the department and divisions' operations and the delivery of transportation services and projects in the commonwealth.
(b) The secretary shall establish a performance measurement system for the divisions of the department, which shall establish program goals, measure program performance against those goals and report publicly on progress to improve the effectiveness of transportation design and construction, service delivery and policy decision making. Performance measurements shall include, for at least the then current fiscal year and the previous 5 fiscal years, all modes of transportation. Performance measurements shall include the number of projects completed, the percentage of projects completed early or on time, the percentage of projects completed under budget or on-budget, the number of projects in construction phase and the percentage of projects advertised early or on time. Performance measurements shall include usage information for all modes of transportation, including measures of throughput, utilization and ridership. This information shall be presented with measurements of congestion, on-time performance, if appropriate, and incidents that have caused delays or closures. Performance measurements shall include assessments of maintenance performance by asset class, mode and region, including a breakdown of highway pavement, bridge and track, for subway, commuter and commonwealth-owned freight rail, by condition level, with an explanation of current year and future year planned maintenance expenditures and the expected result thereof. Reporting on planned maintenance programming shall include an assessment of the categories of maintenance-related activity as described in the American Association of Highway and Transportation Officials' Maintenance Manual for Roadways and Bridges. The division of highways

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shall expand and enhance its project information system and shall develop additional means to establish a centralized system, available on the internet, to document performance measurements and the progress and status of all planning, design, construction and maintenance projects undertaken by the department, and all road and bridge projects of any city or town that are funded, in whole or in part, by the commonwealth. A municipality shall have access to the system at no cost, shall enter such information into the system as may be required by the division of highways and shall otherwise fully participate in the system as a condition of receiving financial assistance from the commonwealth. All information in the project information system shall be a public record unless otherwise exempted by law. A report of the project information system and performance measurements shall be published annually and made available to the public not later than December 31. The report shall also be filed annually with the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the senate and house chairs of the joint committee on transportation. The performance measurement system shall require each division to develop a strategic plan for program activities and performance goals. The system shall require annual program performance reports which shall be submitted to the house and senate committees on ways and means and the joint committee on transportation.

(c) The office of performance management and innovation shall be charged with evaluating the goals and measures established by the department and its divisions and monitoring the results reported. The office shall recommend changes to proposed goals and measures as are appropriate to align goals and measures with the strategic priorities of the secretary. The office shall report regularly to the public on the progress the department and its divisions are making at achieving stated goals. The office shall be responsible for the establishment and, in cooperation with each of the divisions, operation of an asset management system for all divisions and shall report regularly on the condition of assets and infrastructure. Reports on performance shall include measures of: (i) maintenance activity and results; (ii) usage on all modes of transportation; (iii) operational performance; and (iv) planning, design and construction, including on-time and on-budget project delivery.

The office shall annually publish a ”scorecard” identifying the number of projects actively under construction and those completed in the previous year by type, value and location and those planned for the following year. Notwithstanding any other provision of law, the office shall determine the appropriate measures and standards of performance in all categories and reporting on performance trends.

The office shall be responsible for reporting publicly and transparently and making all reports available through an on-line system.

The secretary shall use the performance criteria established in this section to determine the quality of service of all private entities, including commuter rail providers, that perform transportation services on behalf of the department. The results of such performance measures shall be criteria used in negotiating any contracts.

Section 7. Unless otherwise required by section 6A of chapter 31 or any other general or special law to the contrary, the secretary shall design and implement a program for performance evaluation of employees. The sole purpose of the program shall be the improvement of the performance of

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individual employees and the department and, notwithstanding any general or special law to the contrary, all information compiled by said program shall be confidential and shall not be public records under section 10 of chapter 66 or clause Twenty-sixth of section 7 of chapter 4. The department may consult with individuals and organizations and may contract for technical assistance for the purpose of the program to the extent it deems necessary.

Section 8. All moneys received pursuant to this chapter, whether as proceeds from the issue of refunding bonds or as revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the refunding bonds or the trust agreement securing such notes or bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution or trust agreement may provide.

Section 9. (a) There shall be within the department, but not subject to the control of the department, an internal special audit unit. The inspector general council established in section 3 of chapter 12A shall appoint a director of the internal special audit unit for a term of 6 years. The governor may remove the director only for cause, and shall fill any vacancy for the unexpired term. The director shall devote his full time and attention to the duties of this office.
(b) The internal special audit unit shall monitor the quality, efficiency and integrity of the department's operating and capital programs and seek to prevent, detect and correct fraud, waste and abuse in the expenditure of public or private transportation funds.
(c) The director may appoint such persons as he shall deem necessary to perform the functions of the internal special audit unit; provided, however, that section 9A of chapter 30 and chapter 31 shall not apply to any person holding any such appointment. Employees of the internal special audit unit shall have experience with accounting, auditing, financial analysis, applicable law, business management and public administration and shall devote their full-time efforts to the unit and shall not be assigned direct operating responsibilities. Every person so appointed to any position in the internal special audit unit shall have experience and skill in the field of such position.
(d) The director may report and refer his findings to the inspector general for investigation pursuant to chapter 12A and the results of such investigation may be referred to the attorney general for appropriate action.

Section 10. There shall be within the department an office of transportation planning which shall oversee and administer the planning responsibilities of the office of planning and programming, and which shall be under the supervision and control of the secretary. The secretary shall appoint an executive director who shall be skilled and experienced in the field of transportation planning and shall not be subject to chapter 31 or to section 9A of chapter 30. Said director may be removed for cause by the secretary. Said office shall serve as the principal source of transportation planning for state-level transportation projects, and shall develop the commonwealth's transportation-related programs as more particularly set forth in this section. In addition, the office of planning and programming shall

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work in coordination with regional planning agencies in the commonwealth, which shall serve as the principal source of transportation planning for local and regional transportation projects. Said office shall conduct research, surveys, demonstration projects and studies in cooperation with the federal government, said regional planning agencies, regional transit authorities, municipalities, other governmental agencies, and appropriate private organizations in order to support local and regional planning, deliver transportation programs, and execute demonstration projects.
Said office of transportation planning shall be responsible for the preparation of a comprehensive and coordinated intermodal transportation plan for the commonwealth. Said plan shall include planning to improve and maintain facilities and equipment for all modes of transportation in the Commonwealth, including highways and roads, passenger rail and other public transportation, freight rail, aviation, shipping, pedestrian facilities, bicycle facilities, and water transportation. Said plan shall ensure an equitable allocation of investments in transportation across the regions of the commonwealth. Said plan shall include any program for the disposition of capital assets. Said plan shall include transportation improvement projects for the office of planning and programming and all of its constituent divisions and authorities that own or operate transportation facilities, including the Massachusetts Bay Transportation Authority, the regional transit authorities, and the Massachusetts Port Authority. Said plan shall be developed in consultation with said divisions and authorities, the commonwealth development coordinating council, the executive office for administration and finance, the metropolitan planning organizations, the regional planning agencies, and the transportation finance commission. Said plan shall be prepared in coordination with comprehensive urban development plans and in cooperation with said other agencies so far as practicable. Said plan shall include an analysis of the operation of each regional transit authority, with the purpose of identifying ways in which each regional transit authority can improve efficiency of existing service, and provide new or expanded services to the communities. The analysis shall include an examination of the ridership per vehicle in each regional transit authority to determine the feasibility of converting fleets from large buses to smaller, more energy-efficient vehicles. The analysis shall identify the potential reduction in operating costs that such a conversion could provide for each regional transit authority, and shall outline the ways in which costs savings attained by this conversion could then be applied to improve service by expanding service areas and increasing hours of service.
The office of transportation planning shall be responsible for planning and programs that promote sustainable transportation, and that will: (i) maintain and expand transportation options that maximize mobility, reduce congestion, conserve fuel, and improve air quality; (ii) prioritize alternative modes including rail, bus, boat, rapid and surface transit, shared-vehicle and shared-ride services, bicycling, and walking; and (iii) invest strategically in existing and new passenger and freight transportation infrastructure that supports sound economic development consistent with established smart growth objectives. The office of transportation planning shall be responsible for bicycle and pedestrian planning, water transportation planning, and the management of transportation programs promoting congestion mitigation and air quality improvements, travel options, safe routes to school, alternative fuels, and other planning initiatives and programs that promote sustainable transportation working in coordination with the regional planning agencies and the metropolitan planning organization.
The office of transportation planning shall be responsible for research and planning in support of the

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implementation of chapter 21N. The office shall undertake planning and research tasks and coordinate with the executive office of energy and environmental affairs on issues related to historic, current, and projected future transportation-generated emissions of carbon dioxide and other greenhouse gases and technology, policy, and legal issues related to developing and implementing market-based compliance mechanisms for transportation-generated greenhouse gases. Such planning shall include comprehensive climate change adaptation planning to ensure that the commonwealth's transportation infrastructure is designed to tolerate increased environmental stress due to climate change, including, but not limited to increased temperatures, increased stormwater runoff, and extreme weather events. The office of transportation planning shall conduct plans and work with the divisions, municipalities, other public agencies, private organizations, and other parties as appropriate in order to ensure the implementation of measures that facilitate equitable bicycle and pedestrian access in the planning and development of all transportation facilities. Consistent with the most current edition of the MassHighway Project Development and Design Guide, or its successor, the office of planning and programming shall in the design, construction, and maintenance of transportation facilities for all new construction and reconstruction projects, including resurfacing, restoring and rehabilitation improvement projects, ensure safe and contiguous routes for all users, including individuals of all ages and abilities, pedestrians, bicyclists, transit vehicles and riders, and motorists.

The office of transportation planning shall work with other commonwealth agencies to identify measures that agencies can take to facilitate fuel conservation, travel demand management for agency employees, and sustainable transportation, to develop programs that consolidate and promote these measures in a user-friendly manner, and to provide programmatic support to help other commonwealth agencies implement these measures.

?? The office of transportation planning shall utilize life-cycle cost modeling for all projects. Life-cycle costs shall mean all relevant costs of a transportation asset's lifespan including, but not limited to, planning, study, design, purchase or lease, operation, maintenance, repair, replacement and disposal. The office shall utilize life-cycle cost modeling during the project planning and selection processes for all of its divisions, agencies, and authorities, as defined herein. Life-cycle cost information shall be presented as part of the public disclosure process in all project planning documents in equal proportion to initial delivery cost estimates. Project planning shall include the identification of funding to minimize life-cycle costs throughout the life of each asset.

Section 11. Every 5 calendar years, beginning not later than April 30, 2010, the secretary of the department shall, after conducting public hearings, prepare and publish in the Massachusetts Register a comprehensive state transportation plan for the 5 succeeding fiscal years, beginning with the period of fiscal year 2011 to 2015, inclusive. The plan shall be consistent with such priorities as may be established by legislation. The plan shall be designed to ensure construction and maintenance of a safe, sound and efficient public highway, road and bridge system, to relieve congestion, to reduce greenhouse gas emissions, particulates and other pollutants, and to improve the quality of life in the commonwealth by promoting economic development and employment in the commonwealth by meeting, cost effectively, the diverse transportation needs of all residents of the commonwealth, including urban, suburban and rural populations. The plan shall also include an engineering assessment to anticipate highway, road and bridge needs throughout the commonwealth as

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determined by objective engineering measurements of condition, safety and service. The secretary shall consult with the executive office of environmental affairs, the executive office for administration and finance, and the executive office of housing and economic development in the development of the plan. The plan shall provide for meeting not less than 5 per cent annually of the estimated construction, reconstruction and repair needs of public highways and bridges of the commonwealth, its counties, cities and towns. The department shall determine and certify to the secretary of administration and finance its estimate of the total value of all construction, reconstruction and repair needs of the commonwealth's highway and bridge infrastructure. The total value estimate shall be based on satisfying current safety and maintenance standards of the Federal Highway Administration and the American Association of State Highway and Transportation Officials. The estimate shall be substantiated by documented objective engineering estimates. The secretary of transportation shall make plans, and updates thereto, based upon such certified estimates and make such plans or updates available for public review.
The department shall report annually, not later than February 1, to the house and senate committees on ways and means and the joint committee on transportation on their compliance with the plan and their efforts to satisfy the 5 per cent construction, reconstruction and repair needs to the commonwealth's public highways and bridges.
The long range transportation plan developed by the secretary of transportation under this section shall ensure that the commonwealth's total 5 year capital expenditures for road and bridge projects across all capital programs for such projects managed by the executive office, excluding competitive grant programs, shall be equitable across the districts established in section 3 of chapter 57. For the purposes of this paragraph, "equitable" shall mean not less than 75 per cent of the annual percentage of the total statewide collections of motor vehicle fuel tax generated by each such district; provided, however, that the minimum percentage shall be 85 per cent for districts in which the revenue generated by registered vehicles that have a Fast Lane transponder exceeds the average revenue generated by registered vehicles that have a Fast Lane transponder in districts statewide.

Section 12. The department shall develop and implement a single integrated asset management system to oversee and coordinate the maintenance, preservation, reconstruction and investment of all of the assets in its possession, custody and control. The department may use programs and services offered by the division of capital asset management and maintenance and the information technology division or separate offices, divisions, and authorities within the department to aid in its development of an integrated asset management system as long as, in the judgment of the department, such programs and services compare favorably with those available from private vendors and are offered at competitive prices.

Section 13. (a) The department may charge and collect and, from time to time, fix and revise tolls for transit over the turnpike and the different parts or sections thereof, subject to such classifications of vehicles and manners of collection as the department determines desirable and subject to section 3. Such tolls shall be so fixed and adjusted as to provide, at a minimum, funds sufficient with other revenues, if any, to pay: (i) costs incurred in furtherance of this chapter related to the turnpike

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including, but not limited to, the cost of owning, maintaining, repairing, reconstructing, improving, rehabilitating, policing, using, administering, controlling and operating the turnpike; and (ii) the principal of, redemption premium, if any, and the interest on notes or bonds relating to the turnpike as the same shall become due and payable and to create and maintain reserves established for any of the department's corporate purposes. Such tolls shall not be subject to supervision, regulation, approval or disapproval by any department, division, commission, board, bureau or agency of the commonwealth or any political subdivision thereof. The department shall maintain the confidentiality of all information including, but not limited to, photographs or other recorded images and credit and account data relative to account holders who participate in its electronic toll collection system. Such information shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66 and shall be used for enforcement purposes only with respect to toll collection regulations. An account holder may, upon written request to the department, have access to all information pertaining solely to the account holder. For each violation of applicable department regulations related to electronic toll collection, a violation notice shall be sent to the registered owner of the vehicle in violation. The notice shall include the registration number of the vehicle, the state of issuance of such registration and the date, time and place of the violation. The notice may be based, in whole or in part, upon inspection of any photographic or other recorded image of a vehicle and the written certification by a state police officer or other person employed by or under contract with the department or its electronic toll collection system contractor that it is so based shall be prima facie evidence of the facts contained therein and shall be admissible in any administrative or judicial proceeding to adjudicate the liability for such violation.

(b) The department may charge and collect and, from time to time, fix and revise tolls for transit over or through the metropolitan highway system or any part thereof subject to such classifications of vehicles and manners of collection as the department determines desirable and subject to clause (j) of section4. Such tolls shall be so fixed and adjusted as to provide, at a minimum, a fund sufficient with other revenues, if any, to pay: (i) costs incurred in furtherance of this chapter related to the metropolitan highway system including, but not limited to, the cost of owning, constructing, maintaining, repairing, reconstructing, improving, rehabilitating, policing, using, administering, controlling and operating the metropolitan highway system; and (ii) the principal of, redemption premium, if any, and the interest on notes or bonds relating to the metropolitan highway system as the same shall become due and payable and to create and maintain reserves established for any of the department's corporate purposes. The department shall not charge or collect a toll for transit through the Callahan tunnel or the Sumner tunnel or over the Tobin memorial bridge or through the Ted Williams tunnel by official emergency vehicles of the commonwealth or any municipality, political subdivision or instrumentality thereof, while such vehicles are on official business; provided, however, that the department may not charge and collect tolls for transit through the Callahan tunnel, the Sumner tunnel or the Ted Williams tunnel by private passenger vehicles registered in the East Boston section of the city of Boston or the South Boston section of the city of Boston, as the Boston transportation department has determined the geographical boundaries of said sections of Boston, that are greater than the tolls in effect for such vehicles registered in said East Boston section at existing tunnel toll facilities on the effective date of section 14 of chapter 102 of the acts of 1995;

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provided, further, that the department may not charge and collect tolls for transit through the Callahan or Sumner tunnels to private passenger vehicles registered in the North End section of the city of Boston, as the Boston transportation department has determined the geographical boundaries of such section, that are greater than the tolls in effect for such transit through either the Sumner tunnel or Callahan tunnel for such vehicles on the effective date of said section 14 of said chapter 102; provided further, that the department shall continue operation of the 50 per cent toll discount program for account holders who participate in the department's electronic toll collection system approved by the Massachusetts Turnpike Authority board of directors on June 28, 2002 and provided in section 45 of chapter 246 of the acts of 2002 and such 50 per cent discount shall be applied to all toll increases implemented after the effective date of this act; and provided further, that the tolls collected for transit over or through the Maurice J. Tobin Memorial Bridge by private passenger vehicles registered in the city of Chelsea or the Charlestown neighborhood of the city of Boston, as the Boston transportation department has determined the geographical boundaries of such section, shall not be greater than the tolls in effect for such vehicles as of January 1, 2009 pursuant to the Resident Commuter Permit Program, so called. The department shall maintain the confidentiality of all information including, but not limited to, photographs or other recorded images and credit and account data, relative to account holders who participate in its electronic toll collection system. Such information shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66 and shall be used for enforcement purposes only with respect to toll collection regulations. An account holder may, upon written request to the department, have access to all information pertaining solely to the account holder. For each violation of applicable department regulations related to electronic toll collection, a violation notice shall be sent to the registered owner of the vehicle in violation. The notice shall include the registration number of the vehicle, the state of issuance of such registration and the date, time and place of the violation. The notice may be based, in whole or in part, upon inspection of any photographic or other recorded image of a vehicle and the written certification by a state police officer or other person employed by or under contract with the department or its electronic toll collection system contractor that it is so based shall be prima facie evidence of the facts contained therein and shall be admissible in any administrative or judicial proceeding to adjudicate the liability for such violation.
(c) All revenue received from tolls, rates, fees, rentals and other charges for transit over or through all tolled roads, bridges or tunnels shall be applied exclusively to: (i) the payment of existing debt service on such tolled roads; and (ii) the cost of owning, maintaining, repairing, reconstructing, improving, rehabilitating, policing, using, administering, controlling and operating such tolled roads.

Section 14. The department shall be deemed to be a public agency for purposes of, and shall be subject to, section 39M of chapter 30 and sections 44A to 44H, inclusive, of chapter 149 and shall comply with requirements applicable to an independent public authority for publication of contract information in the central register established pursuant to section 20A of chapter 9.

Section 15. The department shall, for the purposes of compliance with state finance law, operate as a state agency as defined in section 1 of chapter 29 and shall be subject to the provisions applicable to

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agencies under the control of the governor including, but not limited to, chapter 29, chapter 7A, chapter 7 and chapter 10; provided, however, that the comptroller may identify any additional instructions or actions necessary for the department to manage fiscal operations in the state accounting system and meet statewide and other governmental accounting and audit standards. The department shall properly classify the department's operating and capital expenditures, and shall not include any salaries of employees in the department's capital expenditures. Unless otherwise exempted by law or the applicable central service agency, the department shall participate in any other available commonwealth central services including, but not limited, to the state payroll system pursuant to section 31 of chapter 29, and may purchase other goods and services provided by state agencies in accordance with comptroller provisions. This section shall not apply to the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority or the regional transit authorities. The comptroller may chargeback the department for the transition and ongoing costs for participation in the state accounting and payroll systems and may retain and expend such costs without further appropriation for the purposes of this section. The department shall be subject to section 5D of chapter 29 and subsection (f) of section 6B of chapter 29.

Section 16. Each fiscal year the department shall submit an annual finance plan to the secretary of administration and finance, and updates to such plan, in accordance with instructions issued by said secretary.

Section 17. (a) The department may provide by resolution at 1 time or from time to time for the issuance of bonds of the department to refinance the bonds issued prior to July 1, 2009 pursuant to chapter 81A and the financing obligations of the Massachusetts Turnpike Authority relating to the turnpike and the metropolitan highway system. Any such bonds shall be special obligations of the department payable solely from monies credited to the fund. Bonds issued pursuant to this section shall not be general obligations of the commonwealth or any political subdivision thereof and shall not constitute a debt or a pledge of the faith and credit of the commonwealth or any such political subdivision.

(b) Bonds may be issued and sold in such manner and on such terms and conditions as the department may determine, with the approval of the secretary of administration and finance. The bonds shall be signed by the chairperson and treasurer of the department or shall bear their facsimile signature and shall bear the official seal of the department or a facsimile thereof, attested to by the signature of a duly appointed officer of the department.

(c) Bonds may be secured by a trust agreement entered into by the department, which trust agreement may pledge or assign all or part of the monies credited to the fund and rights to receive the same, whether existing or coming into existence and whether held or thereafter acquired, and the proceeds thereof. The department may enter into additional security, insurance or other forms of credit enhancement which may be secured on a parity or subordinate basis with the bonds. A pledge in any such trust agreement or credit enhancement agreement shall be valid and binding from the time such pledge shall be made without any physical delivery or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise, whether

or not such parties have received notice thereof.
Any such pledge shall be perfected by filing of the trust agreement or credit enhancement agreement in the records of the department, and no filing need be made pursuant to chapter 106. Any such trust agreement or credit enhancement agreement may establish provisions defining defaults and establishing remedies and other matters relating to the rights and security of the holders of the bonds or other secured parties as may be reasonable and proper, including provisions relating to the establishment of reserves, acceleration of maturities, restrictions on the individual right of action by bondholders and covenants setting forth the duties of and limitations on the department, and may regulate the custody, investment and application of monies.
(d) Any such bonds shall be deemed to be investment securities pursuant to chapter 106, shall be securities in which any public officer, fiduciary, insurance company, financial institution or investment company may properly invest funds and shall be securities which may be deposited with any public custodian for any purpose for which the deposit of bonds is authorized by law.
(e) Any such bonds, their transfer and the income therefrom, including profit on the sale thereof, shall at all times be exempt from taxation by and within the commonwealth.
(f) The provisions hereof relating to bonds shall also be applicable to the issuance of notes insofar as such provisions may be appropriate therefore.
(g) Notwithstanding the foregoing, no existing rights of the holders of the bonds issued by the Massachusetts Turnpike Authority pursuant to chapter 81A shall be impaired hereby, and the department, as successor in interest to the Massachusetts Turnpike Authority, shall maintain the covenants of the trust indentures pertaining to such bonds so long as such bonds shall remain outstanding.
(h) The department shall be subject to section 98 of chapter 6.

Section 18. The office of the attorney general shall appear for the department, its divisions, departments, agencies and officers, but not including the Massachusetts Bay Transportation Authority, the regional transit authorities and the Massachusetts Port Authority and their officers, in all suits and other civil proceedings in which the department is a party or interested, or in which the official acts and doings of said divisions, departments, agencies and officers are called into question, to the same extent and in the same manner as provided to the commonwealth and state departments, officers and commissions under section 3 of chapter 12. The department and its divisions, departments and agencies, but not including the Massachusetts Bay Transportation Authority, the regional transit authorities and the Massachusetts Port Authority, shall be generally considered to be an agency of the commonwealth for purposes of chapter 12.

Section 19. (a) The department may take by eminent domain in accordance with the provisions of chapter 79 or any alternative method now or hereafter provided by general law, any public land and any fee simple absolute or lesser interest in private property or part thereof or rights therein as it may deem necessary for carrying out the provisions of this chapter.
(b) Whenever a parcel of private property so taken is used in whole or in part for residential purposes, the owner of such parcel may, within 30 days of the date of the department’s notice to vacate such

parcel, appeal to the department for a postponement of the date set for such vacating, whereupon the department shall grant to the owner a postponement of 3 months from the date of such appeal; provided, however, that the appeal for such postponement shall be in the form of a written request to the department sent by registered mail, return receipt requested; and provided, further, that section 40 of said chapter 79 shall govern the rights of the department and of any person whose property shall be so taken.
(c) The department shall have power, in the process of constructing, reconstructing, repairing, rehabilitating, improving, policing, using or administering all or any part of the state highway system to take by eminent domain pursuant to chapter 79, such land abutting the state highway system as it may deem necessary or desirable for the purposes of removing or relocating all or any part of the facilities of any public utility, including rail lines, and may thereafter lease the same or convey an easement or any other interest therein to such utility company upon such terms as it, in its sole discretion, may determine. Notwithstanding any general or special law to the contrary, the relocation of the facilities of any public utility, including rail lines, in accordance with this section shall be valid upon the filing of the plans thereof with the department of telecommunications and energy, if applicable.

Section 20. Except as otherwise provided by law, any sale of real property shall be awarded, after advertisement for bids, to the bidder who is the highest responsible bidder. The department shall have the right to reject all bids and to read-advertise for bids. Before any real property shall be so sold or conveyed, notice that such real property is for sale shall be publicly advertised in 2 daily newspapers of general circulation published in the city of Boston and, if such real property is located in any other city or town, in a newspaper of general circulation published in such other city or town, once a week for 3 successive weeks. Such advertisements shall state the time and place where all pertinent information relative to the real property to be sold or conveyed may be obtained and the time and place of opening the bids in answer to such advertisements and that the department reserves the right to reject any or all such bids. All bids in response to advertisements shall be sealed and shall be publicly opened by the department. The department may require, as evidence of good faith, that a deposit of a reasonable sum, to be fixed by the department, accompany the proposals. This paragraph shall not be applicable to any sale of real property by the department to the commonwealth or any city, town or public instrumentality nor to a sale of real property which is determined by the department to have a fair market value of $5,000 or less.
The department may sell buildings or other structures upon any lands taken by it or may remove the same and shall sell, if a sale be practicable or, if not, shall lease, if a lease be practicable, any lands or rights or interest in lands or other property taken or purchased for the purposes of this chapter, whenever the same shall, in the opinion of the department, cease to be needed for such purpose.

Section 21. Notwithstanding chapters 134 and 147, if money, goods or other property which has been abandoned, mislaid or lost on the premises of the department comes into the possession of the department and remains unclaimed for a period of 120 days, the department may sell the same, excepting money so unclaimed, at public auction after notice of such sale has been published for 3 successive weeks in a newspaper published in the city or town wherein such sale shall occur. The net

proceeds of such sale, after deducting the cost of storage and the expenses of the sale, and all money so unclaimed, shall be paid into and become the property of the department and may be deposited in the Massachusetts Transportation Trust Fund. If such property is in the possession of the department and remains unclaimed for a period of 120 days and is of the value of $3 or less, the department may donate the same to a charitable organization.

Section 22. The superior court department of the trial court shall have jurisdiction to enforce rights and duties created by this chapter and, on complaint of the department, may restrain violations of the department's regulations and otherwise enforce by any appropriate remedy including, without limiting the generality of the foregoing, injunctive relief, the regulations, licenses, permits, orders, penalties and charges of the department. Penalties and charges established by or under authorization of this chapter shall be collected for the account of the department and paid over to the department. Except for rights of action expressly conferred upon the department, no provision of this chapter shall create private rights of action in enforcement proceedings.

Section 23. The department and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the department shall have bonds outstanding without adequate provision for the complete payment or satisfaction thereof. Upon termination of the department, the title to all funds and other properties owned by it which remain after the payment or satisfaction of all bonds of the department shall vest in the commonwealth. The obligations, debts and liabilities of the department shall be assumed by and imposed upon the commonwealth.

Section 24. (a) All local bodies and all public agencies, instrumentalities, commissions and authorities of the commonwealth may undertake activities, programs and projects in conjunction with the department in furtherance of the purposes of this chapter including, without limiting the generality of the foregoing, to join in investigations and studies and to submit grant applications and applications for project approvals.
(b) Except with respect to real property acquired or held for purposes described in Article XCVII of the amendments to the constitution of the commonwealth, all local bodies and all public agencies, instrumentalities, commissions and authorities of the commonwealth may lease, lend, grant or convey to the department, upon such terms and conditions as the proper authorities of such public bodies, public agencies, instrumentalities, commissions and authorities of the commonwealth may deem appropriate and without the necessity of any action or formality other than the regular and formal action of such public bodies, agencies, instrumentalities, commissions and authorities of the commonwealth, any interest in any real or personal property which may be necessary or convenient to effect the purposes of the department.

Section 25. The secretary, administrators, and directors of the department shall be sworn to the faithful performance of their official duties. The secretary and each administrator, and director shall: conduct themselves in a manner so as to render decisions that are fair and impartial and in the public

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interest; avoid impropriety and the appearance of impropriety in all matters under their jurisdiction; avoid all prohibited communications; require staff and personnel subject to their direction and control to observe the same standards of fidelity and diligence; disqualify themselves from proceedings in which their impartiality might reasonably be questioned; refrain from financial or business dealings which would tend to reflect adversely on impartiality, although the secretary, administrators, and directors may hold and manage investments which are not incompatible with the duties of their office or of this section; and conform to such additional rules as may be prescribed by the secretary from time to time.

Section 26. Chapter 12A shall apply to the department.

Section 27. (a) The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the commonwealth and for the improvement of their health and living conditions and as the operation and of the department shall constitute the performance of essential governmental functions, the department shall not be required to pay any taxes or assessments, except as otherwise provided by this chapter and the notes or bonds issued under this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, at all times shall be free from taxation by and within the commonwealth.
(b) The lands and tangible personal property of the department shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments.

Section 28. In order to promote transparency, accountability and equity, the Massachusetts Department of Transportation, shall not later than October 31, submit an annual revenue and expenditure report to the house and senate chairs of the joint committee on transportation and the chairpersons of the house and senate committees on ways and means. The report shall also be posted on the Massachusetts Department of Transportation’s website.
The annual revenue and expenditure report shall provide a full accounting of the operational and capital revenues received and expended by the Massachusetts Department of Transportation, the registry of motor vehicles, the aeronautics division and the division of highways and the division of mass transit during the preceding fiscal year ending the preceding June 30, including fiscal activity during the accounts payable period for that fiscal year.
The report shall include, among other information necessary to provide a full accounting, the following information relative to revenues: (i) revenues raised by the various state motor fuels taxes, broken down by category, such as gasoline, special fuels and aviation fuel; (ii) revenues raised through fares, which shall be broken down to reflect fares collected for commuter rail, rapid transit, bus service, water transportation, regional transit service and any other similar fares; (iii) tolls collected, broken down by those collected for travel on the metropolitan highway system, for travel on the turnpike and any other similar tolls; (iv) fees collected by the registry of motor vehicles, which shall be broken down by each specific fee; (v) revenues raised by the portion of the sales tax credited to the Massachusetts Transportation Trust Fund and the Commonwealth Transportation Fund; (vi) assessments deposited

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into the Massachusetts Transportation Trust Fund and the Commonwealth Transportation Fund, broken down by source; (vii) federal funds received from the Federal Highway Administration, funds received from the Federal Transit Administration and (viii) any other similar federal funds; and any other revenues received by the Massachusetts Department of Transportation and any of its divisions. To provide a full accounting, the report shall also provide the following information relative to expenditures: expenditures by the Massachusetts Department of Transportation and its divisions of highways, division of mass transit, registry of motor vehicles, and aeronautics division, including operating and capital expenditures. In addition to the above-referenced expenditures, the report shall also detail the overall expenditures for commuter rail, rapid transit, water transportation; regional transit services; the statewide road and bridge program, the chapter 90 program, which funds town and county ways; the accelerated bridge program, and any other capital programs administered by the Massachusetts Department of Transportation.
The report shall include an accounting of debt of the Massachusetts Department of Transportation, including those projects and programs for which the debt was incurred, and what revenues have been pledged to repay that debt.

Section 29. (a) There shall be within the department an office of planning and programming which shall be under the supervision, direction and control the secretary. The secretary shall be appointed by the governor pursuant to paragraph 2 of section 2. The secretary shall be the executive and administrative head of the department and shall be responsible for administering and enforcing the provisions of law relative to the department and to each administrative unit thereof. The secretary shall act as the executive officer in all matters pertaining to the administration, management, operation, regulation, planning, fiscal and policy development functions and affairs of the departments, agencies, commissions, offices, boards, divisions, and other agencies within the executive office. The secretary shall serve at the pleasure of the governor, shall receive such salary as may be determined by law, and shall devote his full time to the duties of his office. In the case of an absence or vacancy in the office of the secretary, or in the case of disability as determined by the board, the board may designate an acting secretary to serve as secretary until the vacancy is filled or the absence or disability ceases. The acting secretary shall have all the powers and duties of the secretary and shall have similar qualifications as the secretary.
(b) The office of planning and programming shall contain the following administrative units: the highway division, the mass transit division, the aeronautics division; and the registry of motor vehicles.
(c) The secretary shall, notwithstanding the provisions of chapter 30 and section 9A of chapter 31 and subject to the approval of the governor, appoint 4 administrators: 1 of whom shall be the administrator for highways and shall be a person of skill and experience in the fields of highway management and public works; 1 of whom shall be the administrator for mass transit and shall be a person of skill and experience in the fields of rail transportation or mass transit; 1 of whom shall be the administrator for aeronautics and shall be a person of skill and experience in the field of aeronautics; and 1 of whom shall be the administrator for motor vehicle enforcement, who shall be known as the registrar of motor vehicles and shall be a person of skill and experience in management and motor vehicle law. Each administrator shall receive such salary as the secretary shall determine, subject to the approval of the

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board, and shall devote his full time to the duties of his office.
(d) Subject to appropriation and consistent with subsection (e), the secretary may appoint such persons as he shall deem necessary to perform the functions of the department; provided, however, that section 9A of chapter 30 and chapter 31 shall not apply to any person holding any such appointment. Every person so appointed to any position in the department shall have experience and skill in the field of such position. So far as practicable in the judgment of the secretary, appointments to such positions in the executive office shall be made by promoting or transferring employees of the commonwealth serving in positions which are classified under said chapter 31, and such appointments shall at all times reflect the professional needs of the administrative unit affected. If an employee serving in a position which is classified under said chapter 31 or in which an employee has tenure by reason of said section 9A of said chapter 30 shall be appointed to a position within this office which is not subject to the provisions of said chapter 31, the employee shall upon termination of his service in such position be restored to the position which he held immediately prior to such appointment; provided, however, that his service in such position shall be determined by the civil service commission in accordance with the standards applied by said commission in administering said chapter 31. Such restoration shall be made without impairment of his civil service status or tenure under said section 9A of said chapter 30 and without loss of seniority, retirement or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

Section 30. (a) The office of planning and programming shall serve as the principal agency of the executive department for the following purposes: (1) developing, coordinating, administering and managing transportation policies, planning and programs related to design, construction, maintenance, operations and financing; (2) supervising and managing the organization and conduct of the business affairs of the divisions, agencies, commissions, offices, boards, divisions, and other entities within the department to improve administrative efficiency and program effectiveness and to preserve fiscal resources; (3) developing and implementing effective policies and programs to assure the coordination and quality of roadway, transit, airport and port infrastructure and security provided by the secretary and all of the divisions, agencies, commissions, offices, boards, divisions, authorities and other entities within the department.
(b) The following state agencies shall be within the office of planning and programming: the highway division, including the government center commission established by section 1 of chapter 635 of the acts of 1960, the mass transit division, the aeronautics division, the registry of motor vehicles division and all other state agencies within the department, except the division of motorboats and the division of waterways. The Massachusetts Bay Transportation Authority, the the Massachusetts Turnpike Authority and any regional transportation authorities established under chapter 161 or 161B shall also be within the jurisdiction of the department.
(c) Subject to the approval of the board the secretary may: (1) operate and administer the programs of roadway design, construction, repair, maintenance, capital improvement, development, and planning through the division of highways and other agencies within the department, as appropriate; (2)

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coordinate and supervise the administration of the department and its agencies to promote economy and efficiency and to leverage federal funding; (3) develop, in consultation with the commonwealth development coordinating council, and administer a long-term state-wide transportation plan for the commonwealth that includes planning for intermodal and integrated transportation; (4) develop, based on a public hearing process, procedures to be used for transportation project selection; (5) establish criteria for project selection to be used in the procedures developed pursuant to clause (4); (6) enter into agreements with commissions, offices, boards, divisions, authorities and other entities within the department to improve divisions, agencies, administrative efficiency and program effectiveness and to preserve fiscal resources; (7) pursuant to chapter 30A, make, amend and repeal rules and regulations for the management and administration of the department and agencies within the department; (8) execute all instruments necessary for carrying out the business of the department and its agencies; (9) acquire, own, hold, dispose of, lease and encumber property in the name of the department and its agencies; (10) enter into agreements and transactions with federal, state and municipal agencies and other public institutions and private individuals, partnerships, firms, corporations, associations and other entities on behalf of the department or its agencies; and (11) apply for and accept funds, including grants, on behalf of the commonwealth in accordance with applicable law. The secretary may delegate any of the foregoing powers to an officer having charge of a division, office, division or other administrative unit within the executive office.
(e) The secretary shall collaborate with other state agencies to reduce greenhouse gas emissions to achieve the greenhouse gas emission limits established in chapter 21N.

Section 31. (a) The secretary may from time to time, subject to appropriation, establish within the office of planning and programming such administrative units as may be necessary for the efficient and economical administration of the office of planning and programming, and when necessary for such purpose, may abolish any such administrative unit, or may merge any 2 or more units, as the secretary deems advisable. The secretary shall prepare and keep current a statement of the organization of the office of planning and programming, of the assignment of its functions to its various administrative units, offices and employees, and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the department's description of organization. A current copy of the description of organization shall be kept on file in the office of the secretary of state and in the office of the secretary of administration.

Section 32. The secretary shall apply for, accept and expend, subject to appropriation, on behalf of the commonwealth, any gift, loan or grant-in-aid from the federal government, or any agency or instrumentality thereof for demonstration projects and programs as may become available to the commonwealth for the purpose of energy conservation for improved transportation management systems or for improved transportation management systems.

Section 33. There shall be established within the department a healthy transportation compact. The secretary and the secretary of health and human services shall work cooperatively to adopt best practices to increase efficiency to achieve positive health outcomes through the coordination of land

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use, transportation and public health policy. The compact shall consist of the secretary or his designee, the secretary of health and human services or his designee, the secretary of energy and environmental affairs or his designee, the administrator of transportation for highways or his designee, the administrator of transportation for mass transit or his designee, and the commissioner of public health or his designee.

The secretary and the secretary of health and human services, or their designees, shall serve as co-chairpersons of the compact. The chairpersons shall convene and preside at meetings of the compact, determine the agenda of the compact, direct its work and, as appropriate to particular subject matters, establish and direct subgroups of the compact, which shall consist exclusively of the compact's members. The compact shall: (i) promote inter-secretariat cooperation and the establishment of a healthy transportation policy, including appropriate mechanisms to minimize duplication and overlap of state and federal programs and services; (ii) develop a healthy transportation framework that increases access to healthy transportation alternatives that reduce greenhouse gas emissions, improves access to services for persons with mobility limitations and increases opportunities for physical activities; (iii) develop methods to increase bicycle and pedestrian travel, incorporate the principles, findings and recommendations of the Massachusetts bicycle transportation plan and establish a framework for implementation of the Bay State Greenway Network; (iv) develop and implement, in consultation with the bicycle and pedestrian advisory board established in section 11A of chapter 21A, administrative and procedural mechanisms, including the promulgation of rules and regulations, consistent with the most current edition of the Project Development and Design Guide, or its successor, to encourage the construction of complete streets, designed and operated to enable safe access for pedestrians, bicyclists, motorists and bus riders of all ages to safely move along and across roadways in urban and suburban areas; (v) establish methods to implement the use of health impact assessments to determine the effect of transportation projects on public health and vulnerable populations; (vi) facilitate access to the most appropriate, cost-effective transportation services within existing resources for persons with mobility challenges; (vii) expand service offerings for the Safe Routes to Schools program; (viii) explore opportunities and encourage the use of public-private partnerships with private and nonprofit institutions; (ix) seek to establish an advisory council with private and nonprofit advocacy groups as the compact sees fit; (x) institute a health impact assessment for use by planners, transportation administrators, public health administrators and developers; and (xi) develop and implement a method for monitoring progress on achieving the goals of this section and provide any other recommendations that would, in the judgment of the compact, advance the principles set forth in this section.

Section 34. Prior to the final approval of a transportation infrastructure project, including mass transit expansion or the construction of new roadways with a projected capital cost of more than $15,000,000, and prior to expending any funds for the planning, design and construction of any such project, the secretary of transportation shall request that the administrator of the appropriate division of the Massachusetts Department of Transportation prepare a fiscal analysis, including life cycle costs, demonstrating that sufficient revenues exist or will be generated to operate and maintain in good repair a new transportation asset. This analysis shall be also be submitted to any advisory boards to

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the respective divisions of the Massachusetts Department of Transportation.
If a project for the expansion of mass transit has a projected total cost in excess of $200,000,000, the secretary of transportation shall submit the analysis to the secretary of administration and finance for a determination as to which costs, if any, will become part of the commonwealth's plan of capital expenditures.

Section 35. The secretary shall annually submit a complete and detailed report of the department's activities within 90 days after the end of the fiscal year to the clerk of the house of representatives, the clerk of the senate, the chairs of the joint committee on transportation and the chairs of the house and senate committees on ways and means.

Section 36. As used in sections 41 to 56, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-
'Division', the division of highways.
'Administrator', the administrator of transportation for highways.

Section 37. There shall be within the department a division of highways, which shall perform such functions as the secretary may determine in relation to the administration, implementation and enforcement of the department's authority over state highways. The division shall be under the supervision and control of the administrator. The administrator shall be the executive and administrative head of the division and shall be responsible for administering and enforcing the provisions of law relative to the division and to each administrative unit thereof. The duties given to the administrator in this chapter and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the secretary.
The administrator shall be exempt from chapter 31 and the position of administrator shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The administrator shall be appointed with due regard to his fitness, by reason of his experience in matters relating to transportation infrastructure, including roads and bridges, such as the construction, operations or financing thereof or other relevant experience relative to the efficient exercise of his powers and duties. The administrator shall administer this section and the General Laws, rules and regulations that grant powers to or impose duties upon the division, subject to the supervision of the secretary.

Section 38. The division shall be responsible for the administration and enforcement of chapter 81 and for the administration and management of the state highway system. The division shall: (1) administer the design, construction, reconstruction, repair, rehabilitation, improvement, operation and maintenance of roads and bridges within the commonwealth; (2) enter into any contracts and agreements necessary or desirable to carry out its purposes; (3) make, and from time to time revise, regulations for the conduct of the business of the division and all regulations otherwise required by law; (4) collaborate with other agencies and authorities as may be appropriate in fields related to transportation, development, public safety and security; (5) prepare and submit to the governor, the

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board and the general court an annual report describing the organization of the division, and with the approval of the secretary, reviewing the work of the division, recommending legislation and other action by the governor and the general court, and (6) submit such other reports as the secretary or the general court may require from time to time.

Section 39. (a) The administrator may from time to time, subject to the approval of the secretary, establish within the division such administrative units, district or other offices as may be necessary for the efficient and economical administration of the division, and when necessary for such purpose, may abolish any such administrative unit, or may merge any 2 or more units, as the administrator deems advisable; provided, however, that the administrator shall establish the following units: highway engineering, highway construction and highway maintenance. Each such unit shall be under the direction, control and supervision of the administrator. The administrator shall assign to all officials, agents and employees of the units their respective duties. The administrator shall prepare and keep current a statement of the organization of the division, of the assignment of its functions to its various administrative units, offices and employees and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the division's description of organization. A current copy of the description of organization shall be kept on file in the office of the secretary of state and in the office of the secretary of administration.
(b) The administrator may appoint and remove without regard to chapter 31, but with the approval of the secretary: a chief engineer; 5 deputy chief engineers; an assistant chief engineer; a highway and structures engineer; a bridge engineer; highway engineers; district highway engineers; a general counsel to serve in the office of the administrator; a director to serve in the division of administrative services; 4 executive assistants to the administrator; a personnel director; a director of the right of way bureau; and a director of public information. The total number of appointments to be made by the administrator under this subsection shall not exceed 35. No person holding an appointment under this subsection shall be subject to section 9A of chapter 30 or chapter 31. Nothing in this section shall be deemed to exempt the positions named herein from sections 45 to 50, inclusive, of said chapter 30. So far as practicable in the judgment of the administrator, appointments to said positions not classified under said chapter 31 shall be made by promoting employees of the commonwealth serving in positions so classified. Any person appointed to the position of chief engineer, deputy chief engineer, assistant chief engineer, highway and structures engineer, bridge engineer, highway engineer or district highway engineer shall be a person of experience and skill as an engineer and shall be: (i) an employee of the division holding an office or position classified under said chapter 31 with permanent status of senior civil engineer or higher; (ii) a registered professional engineer; or (iii) a person who has received the degree of bachelor of science in an appropriate engineering discipline from an accredited college or university. If an employee of the commonwealth having permanent status in a position classified under or having tenure by reason of section 9A of said chapter 30 is so promoted to such unclassified position, upon termination of service in such unclassified position, the employee shall: be restored to the position from which he was promoted or to a position equivalent thereto in the salary grade in the same state agency; or if he had been promoted in accordance with said chapter 31 in the unclassified position, to the position to which he was so promoted or to a position equivalent

thereto in salary grade in the same state agency. In cases of restoration under said section 9A of said chapter 30 or said chapter 31, such restoration shall be without impairment of civil service status or tenure under said section 9A of said chapter 30, and without loss of the seniority, retirement and other rights to which uninterrupted service in the position would have entitled the employee; provided, however, that if his service in such unclassified position has been terminated for cause, the employee's right to be restored shall be determined by section 43 of said chapter 31. During the period of such appointment the person so appointed shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

Section 40. The administrator shall establish a procedure for recommending to the secretary approval or disapproval of all contracts, including specifications, made by the division and any changes, alterations, amendments or modifications thereof and for contract appeals of all claims made under any contract with the division with the exception of claims subject to section 39Q of chapter 30. Any person aggrieved by a decision of the secretary acting in regard to contract appeals may bring suit against the commonwealth for recovery of damages based on such claim under chapter 258.
To assist the secretary and administrator in performing this function, the governor may appoint and remove a person of legal training and experience, who shall be a member of the bar of the commonwealth, to the position of hearing examiner. The hearing examiner shall devote his full time during business hours to the duties of this position. The position shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The secretary may refer any dispute concerning contracts, contract specifications or the execution of contracts not subject to said section 39Q of said chapter 30 to the hearing examiner for a report on the matter, including a recommendation as to the disposition of the dispute.
The hearing examiner shall hear all claims by contractors from determinations of the division with the exception of claims subject to said section 39Q of said chapter 30 and shall, after hearing, render to the secretary a report of the matter including a recommendation as to the disposition of the claim. The examiner shall, at the request of the contractor or of the division or on his own motion, summon witnesses and require the production of books and records and take testimony under oath. Such reports shall be maintained as public records in a place and form fully accessible to the public.

Section 41. With the approval of the personnel administrator, the administrator may establish in the division a program of engineering internship and may recruit qualified persons to serve in the division as highway engineer interns. Every effort shall be made to recruit qualified persons who reflect the diversity of the commonwealth.
The number of persons employed in the division as highway engineer interns shall at no time exceed 7, nor may such highway engineer interns employed by the division be placed in a salary grade higher than that of a junior civil engineer in the division.
No person shall be appointed or employed as a highway engineer intern except upon requisition made by the administrator and upon certification by the personnel administrator from an eligible list prepared in accordance with chapter 31 and the rules made thereunder; provided, however, that the administrator shall establish such eligible list before June 1 in each calendar year by holding a

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competitive examination which shall be open only to persons who, as candidates for the degree of bachelor of science in engineering are enrolled in at least the junior year as students in any college of the commonwealth, or are Massachusetts residents attending a college of recognized standing outside the commonwealth and to persons who, within the 4 years next preceding, have been awarded the degree of bachelor of science in engineering from a college of recognized standing. The eligible list established each year shall expire upon the establishment of the eligible list in the following year. No person shall be certified for appointment as a highway engineer intern unless he has been awarded the degree of bachelor of science in engineering.

Upon appointment as a highway engineer intern, made in accordance with chapter 31 and the rules made thereunder, the appointee shall sign an agreement binding him to serve as highway engineer intern for a minimum of 2 years unless his employment is sooner terminated by the administrator. It shall be the duty of the administrator to rotate the assignments of each intern during his period of employment in order that such intern may acquire diversified experience in the engineering programs of the department.

The names of persons appointed as highway engineer interns shall be entered in order of date of appointment on a list to be known as “highway engineer intern list” in the division of civil service. Upon completion of 2 years of employment as interns under agreements provided for in this section, persons shall be eligible without further examination for appointment as junior civil engineers, providing a vacancy exists in said title in the department and, upon requisition of the administrator, the names of such persons shall be certified for appointment by the personnel administrator from the highway engineer intern list in accordance with the rules of the civil service commission, except that the basis of certification shall be the order of appointment to such highway engineer intern list.

Section 42. The administrator may establish a co-operative engineer program and may enter into agreements with colleges of recognized standing within the commonwealth, including colleges which have summer programs, which have established a curriculum leading to a degree of bachelor of science in engineering on a co-operative basis, contemplating regularly rotating work activity in the field of engineering and an equal period of classroom training. The administrator may employ persons enrolled as candidates for the degree of bachelor of science in engineering in any such college to serve in the department in the position of student engineer; provided, however, that the position of student engineer shall be in a grade lower than that of junior civil engineer in the department; and provided, further, that at no time shall the number of persons employed in the department as student engineers exceed 8. Upon completion of not less than 2 years of employment as student engineer, a person shall be eligible to apply for the examination for highway engineer intern. No person shall be employed as a student engineer for more than 6 years.

Section 43. (a) There shall be within the division a real estate appraisal review board. The board shall consist of not less than 3 nor more than 5 members to be appointed by the governor, 2 of whom shall be certified general real estate appraisers licensed by the board of real estate appraisers pursuant to section 92 of chapter 13. Members of the board shall be appointed for terms of 3 years or until a successor is appointed. Members shall be eligible to be reappointed and may be compensated at a

rate to be determined by the division. Members of the board shall be state employees for the purposes of chapter 268A. A chairman of the board shall be elected annually from the membership. The division shall provide administrative support to the council as requested. In the event of a vacancy on the board, the governor shall appoint a new member consistent with this section to fulfill the remainder of the unexpired term.
(b) The division shall not purchase or acquire by eminent domain any real property or any interest in real property with a value in excess of $300,000 without the written approval of the board.
(c) The board shall meet periodically, but not less than twice each year. The board shall keep a public record of all meetings, votes and other business.
(d) The board shall submit an annual report of its activities during the preceding fiscal year not later than September 1 to the governor, the secretary of the Massachusetts Department of Transportation, the administrator, the chairs of the joint committee on transportation and the chairs of the house and senate committees on ways and means.

Section 44. (a) The division of highways may provide functional replacement of real property in public ownership whenever the division has acquired such property, in whole or in part, under this chapter or when such property is significantly and adversely affected as a result of the acquisition of property for a highway or highway-related project and whenever the division determines that functional replacement is necessary and in the public interest. For the purposes of this section, ”functional replacement” shall mean the replacement, pursuant to chapter 7, requiring authorization of the general court prior to disposition of real property, including either land or facilities thereon, or both, which shall provide equivalent utility, For the purposes of this SECTION ”real property in public ownership” shall mean any present or future interest in land, including rights of use, now existing or hereafter arising, held by an agency, authority, board, bureau, commission, department, division or other unit, body, instrumentality or political subdivision of the commonwealth. This section shall not constitute authorization by the general court as required by said chapter 7.
(b) Whenever the division determines it is necessary that a utility or utility facility, as defined under federal law, be relocated because of construction of a project which is to be reimbursed federally, in whole or in part, such facility shall be relocated by the division or by the owner thereof in accordance with an order from the division. The commonwealth shall reimburse the owner of such utility or utility facility for the cost of relocation subject to the limitations in subsections (e) and (f) and in accordance with the following formula: (1) for any utility facility that is to be reimbursed federally, in whole or in part, the division shall reimburse the owner to the extent that the cost of relocating the utility facility is reimbursed by the federal government; and (2) for the relocation of any utility facility ,the cost of which exceeds $50,000, and that does not qualify for federal reimbursement, the division may reimburse the owner in accordance with the owner’s ability to meet the following schedule: if the utility performs the relocation in a manner consistent with the division's policies and not later than the target date established by the division for the project, the division shall reimburse the utility at least 50 per cent but not more than 80 per cent of the costs of relocating the utility facility. Failure to comply with an order from the department shall be subject to enforcement under chapter 81.
(c) Any relocation of facilities carried out under this section which is not performed by employees of

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the owner shall be subject to sections 26 to 27F inclusive of chapter 149.
(d) Notwithstanding any general or special law to the contrary, any utility facility that is required to be relocated because of the construction of a project federally funded under the Federal-Aid Highway Act of 1982 and the Federal-Aid Highway Act of 1987 may be relocated temporarily above ground during the construction of the project.
(e) The total cost to the commonwealth for reimbursements for utility relocations under this section that are not reimbursed federally in whole or in part shall not exceed $25,000,000 annually and shall not be credited toward the costs of the annual statewide road and bridge program.
(f) A utility relocation shall be eligible for reimbursement under this section only if it is completed to the satisfaction of the division within target dates established by the division and in accordance with design criteria set forth by the division for the relocation in a manner that facilitates the timely completion of the affected project.

Section 45. Notwithstanding clause (f) of section 4 or any other general or special law to the contrary, the commonwealth, through the division of highways, may reimburse the owner of an underground utility or utility facility whenever such underground utility or utility facility has been relocated because of construction of a project which is to be reimbursed federally in whole or in part. The reimbursement authorized herein shall be to the extent that the cost of relocating the facility is reimbursed by the federal government.

Section 46. In addition to any other power the department may have to enter into leases, the department may lease, at 1 time or from time to time, for terms not to exceed 99 years, upon such terms and conditions as the department in its discretion deems advisable, air rights over land owned or held by the department in connection with the turnpike and the Boston extension portion of the metropolitan highway system, including rights for support, access, utilities, light and air for such purposes as, in the opinion of the department, shall not impair the construction, full use, safety, maintenance, repair, operation or revenues of the turnpike or the metropolitan highway system but any such lease for a period of 40 years or more shall be subject to the approval of the governor. Any lease granted under this section may, with the consent of the department, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be foreclosed by appropriate action.
Use of air rights leased under this section relative to land within the territorial limits of the city of Boston and the construction and occupancy of buildings or other things erected or affixed pursuant to any such lease shall be made in accordance with the state building code enacted pursuant to chapter 143 and such other requirements as the department deems necessary or advisable to promote the public health, convenience and safety of persons and property, but shall not be subject to any other building, fire, garage, health or zoning law or any building, fire, garage, health or zoning ordinance, rule or regulation applicable in the city of Boston.
The department shall not lease any air rights in a particular location unless it shall find that the construction and use of buildings or other things to be erected or affixed pursuant to any such lease shall be in no way detrimental to the maintenance, use and operation of the turnpike or the metropolitan highway system and, in the city of Boston, unless the department shall also find, after

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consultation with the mayor of said city of Boston, that the construction and use of such buildings or other things shall preserve and increase the amenities of the community.
The construction or occupancy of any building or other thing erected or affixed under any lease under this section of air rights relative to land outside the territorial limits of the city of Boston shall be subject to the building, fire, garage, health and zoning laws and the building, fire, garage, health and zoning ordinances, by-laws, rules and regulations applicable in the city or town in which such building or other thing is located.
A copy of all leases granted by the department under this section shall be filed by the department with the governor and with the mayor or chairperson of the board of selectmen of the respective city or town and such leases shall be deemed to be public records within the meaning of section 10 of chapter sixty-six.
Neither such air rights nor any buildings or other things erected or affixed pursuant to any such lease nor the proceeds from any such lease shall be taxed or assessed to the department under any general or special law; provided, however, that buildings and other things erected or affixed pursuant to any such lease shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee; provided, further, that no part of the value of the land shall be included in any such assessment; and provided, further, that payment of any such taxes shall not be enforced by a lien upon or sale or taking of such land except that the leasehold estate may be sold or taken by the collector of taxes of the city or town wherein such real estate is situated for the nonpayment of any tax assessed as aforesaid in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes. Such collector shall have, for the collection of taxes assessed under this section, all other remedies provided by the General Laws for the collection of taxes by collectors of cities and towns.
The department shall include in any lease of such air rights a provision whereby the lessee agrees, in the event that the foregoing tax provision is determined by any court of competent jurisdiction to be inapplicable, to pay annually to the city or town wherein such building or other thing leased is located, a sum of money in lieu of taxes which would otherwise be assessed for such year.

Section 46A.. In addition to any other power the authority may have to make leases, the authority may lease at one time or from time to time for terms not to exceed ninety-nine years, upon such terms and conditions as the authority in its discretion deems advisable, land owned by the authority and no longer required for the maintenance, repair, reconstruction, improvement, use, administration or operation of the turnpike or the Boston extension of the metropolitan highway system; provided, however, that any such lease for a period of forty years or more shall be subject to the approval of the governor. A lease granted under this section may, with the consent of the authority, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be foreclosed by appropriate action.
The construction or occupancy of any building or other thing erected or affixed under any lease of land under this section shall be subject to the building, fire and zoning laws, ordinances or by-laws applicable in the city or town wherein such building or other thing is located.
A copy of all leases granted by the authority under the provisions of this section shall be filed by the

authority with the governor and with the mayor or chairman of the board of selectmen of the respective city or town and such leases shall be deemed to be public records within the meaning of chapter sixty-six.
Neither such land nor any buildings or other things erected or affixed pursuant to any such lease nor the proceeds from any such lease shall be taxed or assessed to the authority under any general or special law; provided, however, that such land and buildings and other things erected or affixed pursuant to any such lease shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee; provided, further, that payment of any such taxes shall not be enforced by a lien upon or sale or taking of such land except that the leasehold estate may be sold or taken by the collector of taxes of the city or town wherein such land is situated for the nonpayment of any tax assessed as aforesaid in the manner provided by law for the sale or taking of real estate for nonpayment of local taxes. Such collector shall have for the collection of taxes assessed under this section all other remedies provided by the General Laws for the collection of taxes by collectors of cities and towns.
The authority shall include in any lease of such land a provision whereby the lessee agrees, in the event that the foregoing tax provision is determined by any court of competent jurisdiction to be inapplicable, to pay annually to the city or town in which such leased land is located a sum of money in lieu of taxes which would otherwise be assessed for such year.

Section 47. (a) The administrator may establish a small town rural assistance program to assist towns with populations of 7,000 or less in undertaking projects to design, construct, reconstruct, widen, resurface, rehabilitate and otherwise improve roads and bridges or for the construction of chemical storage facilities. The program shall provide grant funds to towns for projects authorized by this section, and towns shall be eligible to receive one grant every 5 fiscal years. The amount of the grant shall not exceed $500,000.
(b) The administrator shall establish rules and regulations to govern the application and distribution of grants under this section. The rules and regulations shall include provisions for joint applications by 2 or more eligible towns for a single project serving those towns. Funds so distributed may be apportioned to reflect the percentage of the project located in each town. Receipt of a grant which is part of a joint application shall not preclude a town from receiving additional funds under a separate application; provided, however, that the total amount distributed to any 1 town shall not exceed the maximum amount allowed under this section. Any rules or regulations, or any amendment or repeal of any rules or regulations promulgated pursuant to this section shall be filed with the clerks of the senate and house of representatives.
(c) A town with a population of 7,000 or less may, by vote at an annual town meeting or at a special town meeting called for that purpose or, in a municipality having a town council form of government, by the town council, make application to the administrator for financial assistance in undertaking a project described in this section. The application shall include the proposed cost of the project, the proposed location of the project and any other information specified by the rules or regulations.
(d) In evaluating the project and the level of funding, the administrator shall consider, without limitation, the following: (1) the extent to which the project will have a beneficial impact upon the

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economy and public safety of an applicant town; (2) the availability of funds for the project under other state or federal programs; (3) the likelihood of funding under other state or federal programs; (4) the financial ability of the town to fund the project from its own sources; (5) the ability of the town to enter the capital markets to obtain borrowed funds for the project; and (6) the amount of state and federal highway funds expended or to be expended in the town.
(e) The administrator shall report annually to the house and senate committees on ways and means and the joint committee on transportation on the status of all small town rural assistance applicants.

Section 48. (a) The administrator may establish a program to assist municipalities with non-federally-reimbursable public works economic development projects, to design, construct, repair and improve roads, roadways and other related public works facilities, as deemed necessary for economic development by the administrator upon the petition of an appropriate local governmental body in accordance with this section and any rules or regulations promulgated by the secretary in accordance with this section. The rules and regulations shall govern the criteria by which the funds shall be distributed and the method by which a municipality may apply for such funds. Any rules or regulations or any amendment or repeal of any rules or regulations shall be filed with the clerks of the senate and house of representatives.
(b) The administrator may, upon approval of the board, commit the funds pursuant to this section by executing a grant or other contractual agreement with a municipality and, upon execution, the funds so committed shall be made available as a grant directly to the municipality which has entered into an agreement without further review or approval of the department. Each agreement shall contain assurances satisfactory to the administrator that the municipality will award a construction contract for the project which is the subject of the agreement not later than 180 days after the date of execution of the agreement.
(c) In the event that a contract is not awarded by the municipality within the period provided in subsection (b), the administrator may require, by written notification to the municipality, that the funds paid to it by the commonwealth pursuant to the agreement shall be returned forthwith to the commonwealth.
(d) The administrator may, through execution of a grant or other contractual agreement as provided in subsection (b), commit an amount of funds up to but not exceeding the aggregate amount of funds returned by municipalities under subsection (c) to any other municipality which has otherwise complied with the applicable requirements for such projects, including the terms and conditions provided in this section.
(e) The administrator shall report annually to the house and senate committees on ways and means and the joint committee on transportation on the status of all public works economic development applicants.

Section 50. (a) The administrator shall establish a regional mobility assistance program to assist cities and towns in geographic regions of the commonwealth with public works improvements and enhancements for transportation-related projects as deemed necessary by the department for the (1) development, rehabilitation, and improvement of tourism expansion corridors, (2) protection of historic

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centers, (3) promotion of improved mobility and access from neighboring states, and (4) promotion of local economic growth and reliability for transportation facilities in rural and less accessible regions of the commonwealth. The administrator may promulgate rules or regulations or implement such other procedures in accordance with this section, which shall govern the criteria by which the funds shall be distributed and the method by which a regional project shall be selected.
(b) The administrator may, subject to appropriation, commit the funds pursuant to this section through projects to be undertaken by the division or by executing a grant or other contractual agreement with a municipality and, upon execution, the funds so committed shall be made available as a grant directly to the municipality which has entered into an agreement without further review or approval of the department. Each agreement shall contain assurances satisfactory to the secretary that the municipality will award a construction contract for the project which is the subject of the agreement not later than 180 days after the date of execution of the agreement.
(c) In the event that a contract is not awarded by the municipality within the period provided in subsection (b), the administrator may require, by written notification to the municipality, that the funds paid to it by the commonwealth pursuant to the agreement shall be returned forthwith to the commonwealth.
(d) The administrator may, through execution of a grant or other contractual agreement as provided in subsection (b), commit an amount of funds up to but not exceeding the aggregate amount of funds returned by municipalities under subsection (c) to any other municipality which has otherwise complied with the applicable requirements for such projects, including the terms and conditions provided in this section.

Section 51. As used in sections 52 to 54, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-
“Division”, the Mass Transit division.
“Administrator”, the administrator of transportation for the Mass Transit division.

Section 52. There shall be within the department a Mass Transit division, which shall perform such functions as the secretary may determine in relation to the administration, implementation and enforcement of the department’s authority over mass transit systems. The division shall be under the supervision and control of the administrator. The administrator shall be the executive and administrative head of the division and shall be responsible for administering and enforcing the provisions of law relative to the division and to each administrative unit thereof. The duties of the administrator in this chapter and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the secretary.
The administrator shall be exempt from chapter 31 and the position of administrator shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The administrator shall be appointed with due regard to his fitness, by reason of his experience in matters relating to transportation infrastructure, including roads and bridges, such as the construction, operations or financing thereof or other relevant experience relative to the efficient exercise of his powers and duties. The administrator shall administer this section and

the General Laws, rules and regulations that grant powers to or impose duties upon the division, subject to the supervision of the secretary.

Section 53. The division shall be responsible for overseeing, coordinating and planning all transit and rail matters throughout the commonwealth. The division shall administer and manage: the freight and rail programs of the department pursuant to chapter 161C and the intercity bus capital assistance program pursuant to chapter 161D. The division shall oversee and coordinate the activities of the Massachusetts Bay Transportation Authority established pursuant to chapter 161A, the regional transit authorities and regional transit authority council established pursuant to 161B. The division shall take such steps as may be necessary to provide for the development, promotion, preservation and improvement of an adequate, safe, efficient and convenient rail system for the movement of passengers. In carrying out the purposes of this section, the division shall seek to encourage and develop rail services which promote and maintain the economic well-being of citizens and which preserve the environment and natural resources.

Section 54. The administrator may from time to time, subject to the approval of the secretary, establish within the division such administrative units as may be necessary for the efficient and economical administration of the division and, when necessary for such purpose, may abolish any such administrative unit or may merge any 2 or more units, as the administrator deems advisable; provided, however, that the administrator shall establish the following units: highway engineering, highway construction and highway maintenance. Each such unit shall be under the direction, control and supervision of the director. The director shall assign to all officials, agents and employees of the units their respective duties. The administrator shall prepare and keep current a statement of the organization of the division, of the assignment of its functions to its various administrative units, offices and employees, and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the division’s description of organization. A current copy of the description of organization shall be kept on file in the office of the state secretary and in the office of the secretary of administration and finance.

Section 55. As used in sections 56 to 57, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-
“Registry”, the registry of motor vehicles.
“Administrator”, the administrator of transportation for motor vehicles.

Section 56. There shall be within the department a registry of motor vehicles, which shall perform such functions as the secretary may determine in relation to the administration, implementation and enforcement of the department’s authority over motor vehicles. The registry shall be under the supervision and control of the administrator, who shall be known as the registrar of motor vehicles. The administrator shall be the executive and administrative head of the registry and shall be responsible for administering and enforcing the provisions of law relative to the registry and to each administrative unit thereof. The duties given to the administrator in this chapter and in any other

general or special law shall be exercised and discharged subject to the direction, control and supervision of the secretary. The administrator shall appoint a deputy registrar, assistant to the registrar, hearings officers and supervising inspectors and may appoint such other officers and employees as may be necessary to carry out the work of the registry. In the event of a vacancy in the office of registrar, his powers and duties shall be exercised and performed by the deputy registrar until a registrar is duly qualified.
The administrator shall be exempt from chapter 31 and the position of administrator shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The administrator shall be appointed with due regard to his fitness, by reason of his experience in matters relating to transportation infrastructure, including roads and bridges, such as the construction, operations or financing thereof or other relevant experience relative to the efficient exercise of his powers and duties. The administrator shall administer this section and the General Laws, rules and regulations that grant powers to or impose duties upon the division, subject to the supervision of the secretary.

Section 57. The administrator may from time to time, subject to the approval of the secretary, establish within the registry such administrative units as may be necessary for the efficient and economical administration of the registry, and when necessary for such purpose, may abolish any such administrative unit, or may merge any 2 or more units, as the administrator deems advisable. The administrator shall assign to all officials, agents and employees of the units their respective duties. The administrator shall prepare and keep current a statement of the organization of the registry, of the assignment of its functions to its various administrative units, offices and employees, and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the registry's description of organization. A current copy of the description of organization shall be kept on file in the office of the state secretary and in the office of the secretary of administration and finance.

Section 58. As used in sections 59 to 61, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-
"Division", the aeronautics division.
"Administrator", the administrator of transportation for aeronautics.

Section 59. There shall be within the department an aeronautics division, which shall perform such functions as the secretary may determine in relation to the administration, implementation and enforcement of the department's authority over aeronautics. The division shall be under the supervision and control of the administrator. The administrator shall be the executive and administrative head of the division and shall be responsible for administering and enforcing the provisions of law relative to the division and to each administrative unit thereof. The duties given to the administrator in this chapter and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the secretary.
The administrator shall be exempt from chapter 31 and the position of administrator shall be classified

in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The administrator shall be appointed with due regard to his fitness, by reason of his experience in matters relating to transportation infrastructure, including roads and bridges, such as the construction, operations or financing thereof or other relevant experience relative to the efficient exercise of his powers and duties. The administrator shall administer this section and the General Laws, rules and regulations that grant powers to or impose duties upon the division, subject to the supervision of the secretary.

Section 60. The division shall be responsible for the administration and enforcement of sections 35 through 52, inclusive, of chapter 90 and other laws relating to aeronautics.

Section 61. The administrator may from time to time, subject to the approval of the secretary, establish within the division such administrative units as may be necessary for the efficient and economical administration of the division and, when necessary for such purpose, may abolish any such administrative unit, or may merge any 2 or more units, as the administrator deems advisable. The administrator shall assign to all officials, agents and employees of the units their respective duties. The administrator shall prepare and keep current a statement of the organization of the division, of the assignment of its functions to its various administrative units, offices and employees and of the places at which and the methods whereby the public may receive information or make requests. Such statement shall be known as the division's description of organization. A current copy of the description of organization shall be kept on file in the office of the state secretary and in the office of the secretary of administration and finance.

Section 62. As used in sections 62 to 73, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise:-
"Affected jurisdiction", any city or town, or other unit of government within the commonwealth in which all or part of a transportation facility is located or any other public entity directly affected by the transportation facility.
"Architectural and engineering services",: (1) professional services of an architectural or engineering nature, as defined by applicable state law, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described in this definition; (2) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration or repair of real property; and (3) such other professional services of an architectural or engineering nature or incidental services, which members of the architectural and engineering professions and employees thereof may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services.
"Department", the Massachusetts Department of Transportation.
"Construction", the process of building, altering, repairing, improving or demolishing any transportation

facility, including any structure, building or other improvements of any kind to real property.
“Construction” shall not include the routine operation, routine repair or routine maintenance of any existing transportation facility, including structures, buildings or real property.
“Force majeure”, an uncontrollable force or natural disaster not within the power of the operator or the commonwealth.
“Contract”, any agreement, including a public-private agreement for the procurement, operation or disposal under sections 61 to 73, inclusive, of a transportation facility by the department.
“Contract modification”, any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.
“Contractor”, any person having a contract with the department under sections 61 to 73, inclusive.
“Cooperative purchasing”, procurement conducted by, or on behalf of, an affected jurisdiction.
“Design-build-finance-operate-maintain”, a project delivery method in which the department enters into a single contract for design, construction, finance, maintenance and operation of a transportation facility over a contractually defined period. No public funds shall be appropriated to pay for any part of the services provided by the contractor during the contract period.
“Design-build-operate-maintain”, a project delivery method in which the department enters into a single contract for design, construction, maintenance and operation of a transportation facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period shall either be appropriated by the commonwealth or by the department prior to award of the contract or secured by the commonwealth or by the department through fare, toll or user charges.
“Design requirements”, the written description of the transportation facility or service to be procured under sections 61 to 73, inclusive, including:
(1) required features, functions, characteristics, qualities and properties required by the department;
(2) the anticipated schedule, including start, duration and completion; and
(3) estimated budgets as applicable to the specific procurement for design, construction, operation and maintenance; provided, however, that design requirements may include drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project.
“Independent peer reviewer services”, additional architectural and engineering services provided to the department in design-build-operate-maintain or design-build-finance-operate-maintain procurements to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care.
“Maintenance”, includes routine operation, routine maintenance, routine repair, rehabilitation, capital maintenance, maintenance replacement and any other categories of maintenance that may be designated by the department.
“Material default”, failure of a contractor to perform any duties under a public-private agreement which jeopardizes delivery of adequate service to the public and remains unsatisfied after a reasonable period of time and after the operator has received written notice from the department of the failure.
“Operate”, any action to operate, maintain, repair, rehabilitate, improve, equip or modify a

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transportation facility, including the design and construction of repairs, improvements or modifications to a transportation facility.
“Operator”, a private entity that has entered into a public-private agreement to provide design-build-finance-operate-maintain or design-build-operate-maintain services under sections 61 to 73, inclusive.
“Private entity”, a natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.
“Proposal development documents”, drawings and other design-related documents that are sufficient to fix and describe the size and character of a transportation facility as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate to the applicable project delivery method.
“Public-private agreement”, the contract between a private entity and the department that relates to the development, financing, maintenance or operation of a transportation facility subject to sections 61 to 73, inclusive.
“Request for proposals”, all documents, whether attached to or incorporated by reference, utilized for soliciting proposals for a transportation facility under sections 61 to 73, inclusive.
“Responsible bidder or offeror”, a person who has the capability in all respects to fully perform the contract requirements, and the integrity and reliability to assure good faith performance.
“Responsive bidder”, a person who has submitted a bid which conforms in all material respects to the invitation for bids.
“Transportation facility”, new or existing highway, road, bridge, tunnel, overpass, ferry, airport, public transportation facility, terminal facility, vehicle parking facility, seaport facility, rail facility, intermodal facility or similar facility open to the public and used for the transportation of persons or goods, and any building, structure or networks of buildings, structures, pipes, controls and equipment that provide transportation services, including rolling stock and equipment, and any building, structure, parking area, appurtenances or other property needed to operate such facility that is subject to a public-private agreement.
“User fees”, the rate, toll, fee or other charges imposed by an operator or by the department for use of all or part of a transportation facility.
“Utility”, a privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public.

Section 63. (a) Notwithstanding any general or special law to the contrary, the board of directors of the department, in conjunction with the special public-private partnership infrastructure oversight commission established in section 70, may solicit proposals and enter into contracts for design-build-finance-operate-maintain or design-build-operate-maintain services with that responsible and responsive offeror submitting the proposal that is most advantageous to the department through the sale, lease, operation and maintenance of a transportation facility within the commonwealth; provided,

however, that such proposal shall be in full compliance with all applicable requirements of federal, state and local law, including section 26 to 27H, inclusive, of chapter 149; provided further, that any such contract shall not be subject to the competitive bid requirements set forth in sections 38A½ to 38O, inclusive, section 39M of chapter 30, or sections 44A to 44M, inclusive, of chapter 149; and provided further, that each such contract shall be awarded pursuant to chapter 30B except for clause (3) of paragraph (b) and paragraphs (e) and (g) of section 6, clause (4) of section 13 and section 16 of said chapter 30B.

(b) (1) In soliciting and selecting a private entity with which to enter into a public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services, the department shall utilize the following competitive sealed proposals procurement approach:

(2) each request for proposals for design-build-operate-maintain and design-build-finance-operate-maintain services:

(A) shall include design requirements;

(B) shall solicit proposal development documents; and

(C) may, if the department determines that the cost of preparing proposals is high, considering the size, estimated price and complexity of the procurement:

(i) prequalify offerors by issuing a request for qualifications in advance of the request for proposals; and

(ii) select a short list of responsible offerors prior to discussions and evaluations, if the number of proposals that will be short-listed is stated in the request for proposals and prompt public notice is provided to all offerors as to which proposals have been short-listed; or

(iii) pay stipends to unsuccessful offerors; provided, however, that the amount of such stipends and the terms under which such stipends shall be paid shall be included in the request for proposals;

(3) adequate public notice of the request for proposals shall be provided;

(4) proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation and a register of proposals shall be prepared by the department and shall be open for public inspection after contract award; and

(5) (A) The request for proposals shall state the relative importance of price and other factors and subfactors, if any.

(B) Each request for proposals for design-build-operate-maintain and design-build-finance-operate-maintain:

(i) shall state the relative importance of: (1) demonstrated compliance with the design requirements; (2) offeror qualifications; (3) financial capacity; (4) project schedule; (5) elimination of existing public debt with respect to the transportation facility; (6) lowest user charges or price over the term of the design-build-operate-maintain and design-build-finance-operate-maintain contract; and (7) other factors, if any;

(ii) shall, if the contract price is estimated to exceed $10,000,000, if the contract period of operations and maintenance is 5 years or longer or if circumstances established by the department require each offeror to identify an independent peer reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract; and

(iii) shall not include, as an evaluation factor in the award of the contract, the amount, if any, paid by a

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contractor to the department for procurement using design-build-operate-maintain and design-build-finance-operate-maintain .
(6) As provided in the request for proposals and under regulations issued by the department, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
(7) Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the acquiring agency, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly provided to all offerors.
(8) The department may provide debriefings that furnish the basis for the source selection decision and contract award.
(c) (1) A private entity may request a review, prior to submission of a solicited proposal, by the department of information that the private entity has identified as confidential or proprietary to determine whether such information is subject to disclosure under section 10 of chapter 66 or clause Twenty-sixth of section 7 of chapter 4.
(2) The department shall take appropriate action to protect confidential or proprietary information that a private entity provides as part of a solicited proposal and that is exempt from disclosure under said section 10 of chapter 66and said clause Twenty-sixth of said section 7 of said chapter 4.

Section 64. (a) The request for proposals shall contain the proposed form of contract or public-private agreement to be executed between the successful offeror and the department upon award, and shall have been approved as to content and form by the special public-private infrastructure oversight commission and by the department before the request for proposals is issued, pursuant to section 63. The inspector general and the attorney general shall have 30 days from the receipt of a draft of the proposed form of contract to notify the special public-private infrastructure oversight commission in writing of any material objections to the draft form of contract. Before issuing any request for proposal, the department shall prepare a written response to reports submitted to it by the special public-private infrastructure oversight commission which response shall state the basis for any substantial divergence between the actions of the department and the recommendations contained in such reports of said commission. The department and the successful offeror shall only make non-material changes in the content and form of the public-private agreement contained in the request for proposals.
(b) (1) After selecting a solicited or unsolicited proposal for a public-private initiative, the department shall enter into the public-private agreement for the subject transportation facility with the selected

private entity.
(2) An affected jurisdiction may be a party to a public-private agreement entered into by the department and a selected private entity or combination of private entities.
(c) A public-private agreement under sections 62 to 73, inclusive, shall provide for the following:
(1) the planning, acquisition, engineering, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing or operation of a transportation facility including provisions for the replacement and relocation of utility facilities;
(2) the term of the public-private agreement, which shall not exceed 50 years without written approval of the governor;
(3) the type of property interest, if any, the private entity shall have in the transportation facility;
(4) a description of the actions the department may take to ensure proper maintenance of the transportation facility;
(5) whether user fees will be collected on the transportation facility and the basis by which such user fees shall be determined and modified;
(6) compliance with applicable Federal, state and local laws;
(7) grounds for termination of the public-private agreement by the department or operator;
(8) procedures for amendment of the agreement by mutual agreement and for changes in the agreement by written order from the department;
(9) review and approval by the department of the operator's plans for the development and operation of the transportation facility;
(10) inspection by the department and the independent peer reviewer of the design and construction of, or improvements to, the transportation facility;
(11) maintenance by the operator of a policy of liability insurance or self-insurance reasonably acceptable to the department;
(12) filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the department;
(13) filing by the operator, on a periodic basis, of traffic reports, service quality standards as defined in chapter 161A, ridership reports, on time performance reports, or other reports identified by the department, in a form acceptable to the department;
(14) financing obligations of the operator and the department;
(15) apportionment of expenses between the operator and the department;
(16) the rights and duties of the operator, the department, and other state and local governmental entities with respect to use of the transportation facility;
(17) the rights and remedies available in the event of default or delay;
(18) the terms and conditions of indemnification of the operator by the department, as required by applicable law;
(19) assignment, subcontracting or other delegation of responsibilities of the operator or the department under the agreement to third parties, including other private entities and other state agencies;
(20) sale or lease to the operator of private property related to the transportation facility;

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(21) if, and how, the parties shall share costs of development of the project;
(22) if, and how, the parties shall allocate financial responsibility for cost overruns;
(23) liability for nonperformance;
(24) any incentives for performance;
(25) any accounting and auditing standards to be used to evaluate progress on the project;
(26) the operator's plans to obtain a labor and material payment bond, in accordance with section 29 of chapter 149, covering all construction, reconstruction or maintenance, including capital maintenance, work of the project and require the payment of prevailing wages for labor performed on the project in accordance with sections 26 to 27H, inclusive, of said chapter 149;
(27) the operator's plans for labor harmony for the entire term of the agreement, including construction, reconstruction and capital and routine maintenance and adequate remedies to address the operator's failure to maintain labor harmony which shall include, but not be limited to, assessment of liquidated damages and contract termination;
(28) traffic enforcement and other policing issues, subject to section 71, including any reimbursement by the private entity for such services; and
(29) other terms and conditions.

Section 65. Upon the end of the term of the public-private agreement or in the event of termination of the public-private agreement, the department and duties of the operator shall cease, except for any duties and obligations that extend beyond the termination as provided in the public-private agreement, and all the rights, title and interest in such transportation facility shall revert to the department and shall be dedicated to the department for public use.

Section 66. (a) Upon the occurrence and during the continuation of a material default by an operator, not caused by an event of force majeure, and upon the failure by the contractor or its financing institution on the contractor's behalf, to cure such material default within 30 days of written notice of such default by the department, the department may:
(1) elect to take over the transportation facility, including the succession of all right, title and interest in the transportation facility; and
(2) terminate the public-private agreement and exercise any other rights and remedies available.
(b) In the event that the department elects to take over a transportation facility under subsection (a), the department:
(1) shall make interim payments, on behalf of the contractor and for the contractor's account, of any amounts subject to a mechanics lien law of the commonwealth;
(2) may develop and operate the transportation facility, impose user fees for the use of the transportation facility and comply with any service contracts; and
(3) may solicit proposals for the maintenance and operation of the transportation facility under section 63.

Section 67. (a) (1) The department may issue and sell bonds or notes of the department for the purpose of providing funds to carry out sections 62 to 73, inclusive, with respect to the development,

financing or operation of a transportation facility or the refunding of any bonds or notes, together with any costs associated with the transaction.
(2) Any bond or note issued under this section:
(A) constitutes the corporate obligation of the department;
(B) shall not constitute a debt of the commonwealth within the meaning or application of the constitution of the commonwealth; and
(C) shall be payable solely as to both principal and interest from:
(i) the revenues from a lease to the department, if any;
(ii) proceeds of bonds or notes, if any;
(iii) investment earnings on the proceeds of bonds or notes; or
(iv) other funds available to the department for such purpose.
(b) (1) For the purpose of financing a transportation facility, the department and operator may apply for, obtain, issue and use private activity bonds available under any Federal law or program.
(2) Any bonds, debt, other securities or other financing issued for the purposes of sections 62 to 73, inclusive, shall not be considered a debt of the commonwealth or any political subdivision thereof state or a pledge of the faith and credit of the state or any political subdivision of the commonwealth.
(c) Nothing in this section shall limit a local government or any authority of the commonwealth to issue bonds for transportation projects.

Section 68. (a) (1) The department may accept from the United States or any of its agencies funds that are available to the commonwealth for carrying out sections 62 to 73, inclusive, whether the funds are made available by grant, loan or other financial assistance.
(2) The department may enter into agreements or other arrangements with the United States or any of its agencies as may be necessary for carrying out the purposes of sections 62 to 73, inclusive.
(b) The department may accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other item of value made to the commonwealth or the department for carrying out the purpose of sections 62 to 73, inclusive.
(c) Any transportation facility may be financed in whole or in part by contribution of any funds or property made by any private entity or affected jurisdiction that is party to a public-private agreement under sections 62 to 73, inclusive.
(d) The department may combine Federal, state, local and private funds to finance a transportation facility under sections 57 to 70, inclusive.

Section 69. (a) Section 26 shall apply to:
(1) a transportation facility; and
(2) tangible personal property used exclusively with a transportation facility that is:
(A) owned by the department and leased, licensed, financed or otherwise conveyed to an operator; or
(B) acquired, constructed or otherwise provided by an operator on behalf of the department.

Section 70. The department may exercise the power of eminent domain to acquire property, rights of way or other rights in property for transportation projects that are part of a public-private agreement for

design-build-finance-operate-maintain or design-build-operate-maintain services.

Section 71. (a) Law enforcement officers of the commonwealth and of an affected local jurisdiction shall have the same powers and jurisdiction within the limits of a transportation facility as they have in their respective areas of jurisdiction and access to the transportation facility at any time for the purpose of exercising such powers and jurisdiction.
(b) The traffic and motor vehicle laws of the commonwealth and, if applicable, any local by-laws or ordinances shall apply to a transportation facility.

Section 72. Nothing in sections 62 to 73, inclusive, shall limit any waiver of the sovereign immunity of the commonwealth or any officer or employee of the commonwealth with respect to the participation in or approval of all or any part of the transportation facility or its operation.

Section 73. There shall be established a special public-private partnership infrastructure oversight commission to comment on and approve all requests for proposals for design-build-finance-operate-maintain or design-build-operate-maintain services, pursuant to section 59.
The commission shall have 7 members, none of whom shall be employees of the executive branch or members or employees of the legislature for a period of at least 2 years prior to his appointment. The commission shall include: 4 members to be appointed by the governor, 1 of whom shall be a representative from the Massachusetts Organization of State Engineers and Scientists and 3 of whom shall reside in different geographic regions of the commonwealth for terms of 2 years; 1 member to be appointed by the president of the senate for a term of 2 years; 1 member to be appointed by the speaker of the house of representatives for a term of 2 years; 1 member to be appointed by the state treasurer, but who shall not be an employee thereof, for a term of 2 years. Each member of the commission shall be an expert with experience in the fields of transportation law, public policy, public finance, management consulting, transportation or organizational change; provided, however, that 1 of the members appointed by the governor shall be an expert in the field of public finance, 1 member appointed by the governor shall be an expert in the field of transportation. One of the members shall be appointed by the governor to serve as chairperson of the commission. The members appointed by the governor may be eligible for reappointment; provided, however, that no such member shall serve for more than 3 terms. No member shall have served as a legislative agent for the period of 5 years prior to his appointment.
No member shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no member shall have been a member or employee of the general court or an employee of the executive branch for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the department, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment.
Whenever the department notifies the commission of its intent to issue a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services, the department shall submit a draft of the request for proposal to the commission for its review and approval. As provided in

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section 63, no request for proposal shall be issued by the department for a public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services without the commission's written approval. The commission shall provide an initial written response to the request for proposal within 15 days.
For each request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services, the commission shall report on issues surrounding the request for proposal including, but not limited to: (1) the status of current employees; (2) the policy and regulatory structure for overseeing a privately operated transportation facility and on-going legislative oversight; (3) issues of taxation, profit-sharing and resolution of new revenue producing ideas; (4) advertising and marketing; (5) use of new technologies; (6) lease terms and termination clauses; (7) additional responsibilities by both the private infrastructure operator and the commonwealth during the lease period; (8) the financial valuation of the commonwealth transportation facility; and (9) the anticipated advantages of entering into the anticipated public-private agreement for design-build-finance-operate-maintain or design-build-operate-maintain services.
The report shall be delivered within 30 days of the commission's approval of a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services to the secretary for administration and finance, the house committee on ways and means, the senate committee on ways and means, the chairmen of the joint committee on transportation and the state auditor.
In order to submit the commission's written approval of a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services to the state auditor, the commission's process shall be sufficient to satisfy the requirements of sections 57 to 60, inclusive.
Whenever the comments and recommendations of the state auditor are required for any action by the department under sections 57 to 60, inclusive, that approval shall be deemed to have been granted within 30 days of submission thereof, unless the state auditor has communicated his disapproval to the department, in writing. The state auditor's report shall include reasons why such proposed request for proposal is financially detrimental to the commonwealth and how the commission erred in its findings.
Any research, analysis or other staff support that the commission reasonably requires shall be provided by the department.

SECTION 9. Section 22 of said chapter 6C, as so appearing, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-
(c) The Massachusetts Department of Transportation shall have power, in the process of constructing, reconstructing, repairing, rehabilitating, improving, policing, using or administering all or any part of the state highway system, the turnpike or metropolitan highway system to take by eminent domain pursuant to chapter 79, such land abutting the state highway system, the turnpike or metropolitan highway system as it deems necessary or desirable for the purposes of removing or relocating all or any part of the facilities of any public utility, including rail lines, and may thereafter lease the same or convey an easement or any other interest therein to such utility company upon such terms as it, in its sole discretion, may determine. Notwithstanding any general or special law to the contrary, the relocation of the facilities of any public utility, including rail lines, in accordance with this section shall

be valid upon the filing of the plans thereof with the department of telecommunications and energy, if applicable.

SECTION 10. Section 22B1/2 of chapter 7 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 31, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 11. Section 22G of said chapter 7, as so appearing, is hereby amended by striking out, in line 62, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 12. Section 53 of said chapter 7, as so appearing, is hereby amended by inserting after the word “Authority”, in line 6, the first time it appears, the following words:- , the Massachusetts Department of Transportation.

SECTION 13. Section 9A of chapter 10 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 14. Section 63 of said chapter 10 is hereby repealed.

SECTION 15. Section 63A of chapter 10 of the General Laws, inserted by section 5 of chapter 228 of the acts of 2007, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:
(a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Central Artery/Tunnel Project Repair and Maintenance Trust Fund, in this section called the fund. The secretary of the Massachusetts Department of Transportation shall administer the fund and shall be its trustee. The Massachusetts Department of Transportation shall disburse monies from the fund solely for the purpose of paying the costs of, or reimbursing the commonwealth or the Massachusetts Turnpike Authority for costs incurred in connection with, repairs and maintenance of the central artery and the Ted Williams tunnel, as those terms are defined in section 1 of chapter 6C, if such repairs and maintenance relate to conditions not caused by ordinary or routine wear and tear. For purposes of this section, the term "repairs and maintenance" shall include, without limitation, repairs, maintenance, inspection, monitoring and testing of the central artery, the Ted Williams tunnel and the systems and components thereof. Disbursements from the fund shall not be permitted for, and monies in the fund shall not be used for, the cost of repairs and maintenance relating to conditions caused by ordinary or routine wear and tear.

SECTION 16. Subsection (c) of said section 63A of said chapter 10, inserted by section 5 of chapter 228 of the acts of 2007, is hereby amended by striking out, in each instance, the words “executive office of transportation and public works” and inserting in place thereof the following words:-

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Massachusetts Department of Transportation.

SECTION 17. Section 69A of said chapter 10 is hereby repealed.

SECTION 18. Sections 1 to 3, inclusive, 4 to 4B, inclusive, 9, 13 and 14 of chapter 16 of the General Laws are hereby repealed.

SECTION 19. Section 11A of chapter 21A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 1, the words 'executive office of transportation' and inserting in place thereof the following words:- office of planning and programming.

SECTION 20. Section 11A of chapter 21A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 6, the word ”commissioner” and inserting in place thereof the following word:- administrator.

SECTION 21. Section 13A of chapter 22 of the General Laws, as so appearing, is hereby amended by striking out, in line 198, the words ‘Turnpike Authority’ and inserting in place thereof the following words:- Department of Transportation.

SECTION 22. Section 29 of chapter 22C of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 23. Said section 29 of said chapter 22C, as so appearing, is hereby further amended by inserting after the word “authority”, in line 3, the following words:- on the turnpike and the metropolitan highway system.

SECTION 24. Said section 29 of said chapter 22C, as so appearing, is hereby further amended by striking out, in lines 27 to 29, inclusive, the words “shall be subject to the operational control of the authority, and the chairman of the authority, but”

SECTION 25. Said section 29 of said chapter 22C, as so appearing, is hereby further amended by inserting after the word “the”, in line 29, the following word:- operational,.

SECTION 26. Section 61 of said chapter 22C is hereby repealed.

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SECTION 28. Section 3I of said chapter 23A, as so appearing, is hereby amended by striking out, in line 5, the words 'executive office of transportation' and inserting in place thereof the following words:- office of planning and programming.

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SECTION 29. Section 13C of chapter 23A of the General Laws, as so appearing, is hereby amended by striking out, in line 44, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 30. Section 59 of said chapter 23A, is hereby further amended by striking out, in line 25, the words ‘Turnpike Authority’ and inserting in place thereof the following words:- Department of Transportation.

SECTION 31. Section 1 of chapter 29 of the General Laws, as so appearing, is hereby amended by striking out, in line 99, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 32. Section 2E of said chapter 29 is hereby repealed.

SECTION 33. Said chapter 29 is hereby amended by striking out section 2O, as amended by section 3 of chapter 233 of the acts of 2008, and inserting in place thereof the following section:-

Section 2O. When authorized by a vote taken by the yeas and nays of two-thirds of each house of the general court present and voting thereon, including any authorization in effect as of July 1, 2009, the state treasurer, upon the request of the governor, may issue bonds of the commonwealth as hereinafter provided. Any such bonds shall be special obligations of the commonwealth payable solely from monies credited to the Commonwealth Transportation Fund established pursuant to section 2ZZZ; provided, however, that notwithstanding any general or special law to the contrary, including without limitation section 60A, such bonds shall not be general obligations of the commonwealth. Bonds may be issued in such manner and on such terms and conditions as the state treasurer may determine in accordance with this paragraph and, to the extent not inconsistent with this paragraph, provisions of the General Laws for the issuance of bonds of the commonwealth. Bonds may be secured by a trust agreement entered into by the state treasurer, with the concurrence of the secretary of administration and finance and the secretary of transportation, on behalf of the commonwealth, which trust agreement may pledge or assign all or any part of monies credited to the Commonwealth Transportation Fund and rights to receive the same, whether existing or coming into existence and whether held or thereafter acquired, and the proceeds thereof. The state treasurer may, with the concurrence of the secretary of administration and finance and the secretary of transportation, enter into additional security, insurance or other forms of credit enhancement which may be secured on a parity or subordinate basis with the bonds. A pledge in any such trust agreement or credit enhancement agreement shall be valid and binding from the time such pledge shall be made without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice thereof. Any such pledge shall be perfected by filing of the trust agreement or credit enhancement agreement in the records of the state treasurer, and no filing need be made under chapter 106. Any such trust agreement or credit enhancement agreement may establish provisions

defining defaults and establishing remedies and other matters relating to the rights and security of the holders of the bonds or other secured parties as determined by the state treasurer, including provisions relating to the establishment of reserves, the issuance of additional or refunding bonds, whether or not secured on a parity basis, the application of receipts, monies or funds pledged pursuant to such agreement, and other matters deemed necessary or desirable by the state treasurer for the security of such bonds, and may also regulate the custody, investment and application of monies. Any such bonds shall be deemed to be investment securities under chapter 106, shall be securities in which any public officer, fiduciary, insurance company, financial institution or investment company may properly invest funds and shall be securities which may be deposited with any public custodian for any purpose for which the deposit of bonds is authorized by law. Any such bonds, the transfer thereof and the income therefrom, including profit on the sale thereof, shall at all times be exempt from taxation by and within the commonwealth.

The provisions hereof relating to bonds shall also be applicable to the issuance of notes insofar as such provisions may be appropriate therefor.

In order to increase the marketability of any such bonds or notes issued by the commonwealth and in consideration of the acceptance of payment for any such bonds or notes, the commonwealth covenants with the purchasers and all subsequent holders and transferees of any such bonds or notes that while any such bond or note shall remain outstanding, and so long as the principal of or interest on any such bond or note shall remain unpaid: (i) no pledged funds shall be diverted from the Commonwealth Transportation Fund; (ii) in any fiscal year of the commonwealth and until an appropriation has been made which is sufficient to pay the principal, including sinking fund payments, of and interest on all such bonds and notes of the commonwealth and to provide for or maintain any reserves, additional security, insurance or other forms of credit enhancement required or provided for in any trust agreement securing any such bonds or notes, no pledged funds shall be applied to any other use; and (iii) so long as such revenues are necessary, as determined by the state treasurer in accordance with any applicable trust agreement or credit enhancement agreement, for the purposes for which they have been pledged, and notwithstanding the provisions of any general or special law to the contrary, the rates of the fees collected pursuant to sections 33 and 34 of chapter 90 and of the excises imposed in chapters 64A, 64E and 64F shall not be reduced below the amount in effect at the time of issuance of any such bond or note.

SECTION 34. Section 2DD of said chapter 29 is hereby repealed.

SECTION 35. Said chapter 29 is hereby further amended by inserting after section 2YYY the following section:-

SECTION 2ZZZ. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Transportation Fund which shall be used exclusively for financing transportation-related purposes. There shall be credited to the fund all fees received by the registrar of motor vehicles pursuant to section 34 of chapter 90, all receipts paid into the treasury of the commonwealth and directed to be credited to the Commonwealth Transportation Fund pursuant to

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chapters 64A, 64E, 64F and any other applicable general or special law and all amounts appropriated into the fund by the general court. The fund shall be subject to appropriation and shall be used for transportation related expenses of the Massachusetts Department of Transportation, including to pay or reimburse the General Fund for payment of debt service on bonds issued by, or otherwise payable pursuant to a lease or other contract assistance agreement by, the commonwealth previously issued for transportation purposes.
Notwithstanding the foregoing, the crediting of receipts from the tax imposed pursuant to chapter 64A to the fund shall not affect the obligations of the commonwealth relating to notes issued pursuant to sections 9 to 10D, inclusive, of chapter 11 of the acts of 1997 and the pledge of receipts from the portion of the tax per gallon imposed pursuant to said chapter 64A equal to 10 cents per gallon, to secure the payment of such bonds under the circumstances described in the trust agreements relating to such notes is hereby ratified and confirmed in all respects and shall remain in full force and effect as long as any such notes issued as of July 1, 2009 remain outstanding in accordance with their terms and secured by funds in the fund.

SECTION 36. Section 23 of said chapter 29, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 11 and 12, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 37. Section 64 of said chapter 29, as so appearing, is hereby amended by striking out, in line 27, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 38. Section 64A of said chapter 29, as so appearing, is hereby further amended by striking out, in line 47, the word 'Turnpike Authority' and inserting in place thereof the following words:- Department of Transportation.

SECTION 39. Subsection (a) of section 39M1/2 of chapter 30 of the General Laws, inserted by section 12 of chapter 303 of the acts of 2008, is hereby amended by striking out the definition of “Major contract” and inserting in place thereof the following definition:-
“Major contract”, a contract by which the commonwealth or any of its public agencies or authorities is to procure the construction, repair or rehabilitation of a publicly-owned highway, railway, bridge, tunnel, building platform or any component thereof and for which the certified estimate of cost exceeds $50,000,000 , or a contract or lease by which the commonwealth or any of its public agencies or authorities is to procure, directly or indirectly, the construction, repair or rehabilitation of a privately-owned, publicly-used highway, railway, bridge, tunnel, building platform or any component thereof.

SECTION 40. Section 1 of chapter 30B of the General Laws is hereby amended by striking out, in line 45, as appearing in the 2006 Official Edition, the word ", designers".

SECTION 41. Subsection (b) of said section 1 of said chapter 30B is hereby amended by inserting

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after clause (32), as so appearing, the following clause:-

(32A) contracts with architects, engineers and related professionals;.

SECTION 42. Section 2 of said chapter 30B, as so appearing, is hereby amended by inserting before the definition of “Bid” the following definition:-

"Architect and engineer”, (i) a person performing professional services of an architectural or engineering nature, as defined by law, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein; (ii) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration, or repair of real property; and (iii) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and individuals in their employ may logically or justifiably perform, including studies, investigations, surveying and mapping, soil tests, construction phase services, drawing reviews, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, soils engineering, cost estimates or programs; preparation of drawings, plans, or specifications, supervision or administration of a construction contract, construction management or scheduling, preparation of operation and maintenance manuals and other related services.

SECTION 43. Said section 2 of said chapter 30B, as so appearing, is hereby further amended by striking out the definition of “Designer”.

SECTION 44. Said section 2 of said chapter 30B, as so appearing, is hereby further amended by inserting after the definition of “Purchase description” the following definition:-

"Related professionals", professionals engaged in professional services, including land surveying, landscape architecture, environmental science, planning and licensed site professionals, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein, including professional services performed by contract that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, value engineering, construction, alteration or repair of real property and such other professional services or incidental services which members of the related professions and individuals in their employ may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or program, preparation of drawings, plans or specifications, supervision or administration of a construction contract, construction management or scheduling, conceptual designs, plans and specifications, construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals and other related services; provided, however, that nothing herein shall be construed to constitute regulation or oversight of any designated firms or identified professional services.

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SECTION 45. Said chapter 30B is hereby further amended by adding the following section:-

Section 21. (a) For the purposes of this section the following words shall have the following meanings:
“Agency”, a department, commission, council, board, bureau, committee, institution, agency, state college or university, government corporation, authority or other establishment or procurement office of the commonwealth.
“Architectural and engineering services”, (i) professional services of an architectural or engineering nature, as defined by state law, which are required to be performed or approved by a person licensed, registered or certified to provide those services as described herein; (ii) professional services of an architectural or engineering nature performed by contract that are associated with research planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration or repair of real property; and (iii) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and individuals in their employ may logically or justifiably perform, including studies, investigations, surveying and mapping, soil tests, construction phase services, drawing reviews, evaluations, consultations, comprehensive planning, program management, conceptual designs, plan and specifications, soils engineering, cost estimates or programs, preparation of drawings, plans, or specifications, supervision or administration of a construction contract, construction management or scheduling, preparation of operation and maintenance manuals and other related services.
“Firm”, an individual, firm, partnership, corporation, association or other legal entity authorized by law to practice the professions of architecture, engineering, land surveying, landscape architecture, environmental science, planning or program management.
“Project”, a capital improvement project or a design, study, plan, survey or new or existing program activity of a state agency, including the development of new or existing programs that require architectural, engineering or related professional services, but shall not include a public building construction project undertaken under chapters 7, 149 and 149A.
“Related professional services”, (i) professional services, including land surveying, landscape architecture, environmental science and planning, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein; (ii) professional services performed by contract that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning program management, value engineering, construction, alteration or repair of real property; and (iii) such other professional services, or incidental services, which members of the related professions as described herein and individuals in their employ may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or programs, preparation of drawings, plans or specifications, supervision or administration of a construction contract, construction management or scheduling, conceptual designs, plans and specifications, construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals and other related services; provided, however, that nothing herein shall be construed to constitute a regulation or oversight of any designated firms or identified professionals’

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services.
(b) For those agencies that prequalify architectural, engineering, and related services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.
(c) Whenever a project requiring architectural, engineering or related professional services is proposed for a state agency, the agency shall provide no less than 14 days advance notice published in a professional services bulletin or advertised on the official state agency website setting forth the projects and services to be procured. The professional services bulletin shall be made available to each firm that requests the information. The professional services bulletin shall include a description of each project and shall state the time and place for an interested firm to submit a letter of interest and, if required by the public notice, a statement of qualifications. If the agency determines that a sole source selection of a qualified firm is in the best interest of the agency, then the public notice provisions of this subsection shall not apply.
(d) An agency shall evaluate the firms submitting letters of interest and other prequalified firms, taking into account qualifications, and the agency may consider, but shall not be limited to considering, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm and any other qualifications based on factors that the agency may determine in writing are applicable. The agency may conduct discussions with and require presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services. An agency shall not, prior to selecting a firm for negotiation, seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost or any other measure of compensation.
(e) (1) An agency shall select architects, engineers and related professional firms on the basis of qualifications for the type of professional services required. An agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a firm and initiated negotiations with the selected firm.
(2) The procedures that an agency creates for the screening and selection of firms shall be within the sole discretion of the agency and may be adjusted to accommodate the agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate an agency's objectives may include provision for the direct appointment of a firm if the value of the project does not exceed $25,000 or if the agency determines that a sole source selection of a qualified firm is in the best interest of the agency and the project is not publicly advertised.
(3) The decision of an agency that has complied with this chapter shall be final and binding.
(f) (1) The agency and the selected firm shall discuss and refine the scope of services for the project and shall negotiate conditions including, but not limited to, compensation level and performance schedule based on scope of services. The compensation level paid shall be reasonable and fair to the agency as determined solely by the agency. In making such determination, the agency shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature thereof.
(2) If the agency and the selected firm are unable for any reason to negotiate a contract at a

compensation level that is reasonable and fair to the agency, the agency shall, in writing, formally terminate negotiations with the selected firm. The agency shall then negotiate with the second ranked most qualified firm. The negotiation process shall continue in this manner through successive ranked firms until an agreement is reached or the agency terminates the consultant contracting process.
(g) This chapter shall not apply to architectural, engineering and related professional services contracts of less than $25,000 or sole source contracts that are awarded to a qualified firm as determined to be in the best interest of the agency where only 1 firm has been solicited regarding the project and the project is not publicly advertised.
(h) This chapter shall not apply to the procurement of architectural, engineering, and related professional services by agencies: (i) when an agency determines in writing that it is in the best interest of the commonwealth to proceed with the immediate selection of a firm: or (ii) in emergencies when immediate services are necessary to protect the public health and safety including, but not limited to, earthquake, tornado, storm, or natural or manmade disaster.
(i) Each agency shall evaluate the performance of each firm upon completion of a contract. That evaluation shall be made available to the firm which may submit a written response, with the evaluation and response retained solely by the agency. The evaluation and response shall not be made available to any other person or firm and shall be exempt from disclosure under section 10 of chapter 66.
(j) Each contract for architectural, engineering and related professional services by an agency shall contain a certificate signed by a representative of the agency and the firm that each has complied with this chapter.

SECTION 46. Section 1 of chapter 32 of the General Laws is hereby amended by striking out, in line 203, as appearing in the 2006 Official Edition, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 47. Said section 1 of said chapter 32 is hereby further amended by inserting after the word “connector”, in line 211, as so appearing, the following words:- , the Massachusetts Department of Transportation.

SECTION 48. Section 2 of said chapter 32, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 29 and 30, the words ”Turnpike Authority” and inserting in place thereof, in each instance, the following words:- Department of Transportation.

SECTION 49. Section 5 of said chapter 32, as so appearing, is hereby amended by striking out, in line 40, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 50. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out, in line 208, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

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SECTION 51. Section 11 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 177 and 184, the words “Turnpike Authority” and inserting in place thereof, in each instance, the following words:- Department of Transportation.

SECTION 52. Section 14 of said chapter 32, as so appearing, is hereby amended by striking out, in line 9, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 53. Section 15 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 21 and 22, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 54. Section 20 of said chapter 32, as so appearing, is hereby amended by striking out subdivision (4 1/2).

SECTION 55. Said section 20 of said chapter 32, as so appearing, is hereby further amended by striking out, in line 815, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 56. Subdivision (7) of section 22 of said chapter 32, as so appearing, is hereby amended by striking out paragraph (e).

SECTION 57. Section 23 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 10 and 11, and in line 19, the words “Turnpike Authority” and inserting in place thereof, in each instance, the following words:- Department of Transportation.

SECTION 58. Section 24 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 9 and 10, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 59. Section 25 of said chapter 32, as so appearing, is hereby amended by striking out, in line 96, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 60. Section 28 of chapter 32, as so appearing, is hereby amended by striking out, in line 233,the words “Turnpike Authority” and inserting in place thereof the following words: - Department of Transportation.

SECTION 61. Section 28 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 234, 244, 247 and 248, 250, 254 and 255, and in line 258, the words ”Turnpike Authority” and inserting in place thereof, in each instance, the following words:- Department of Transportation.

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SECTION 62. Section 102 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 76 and 77, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

NO SECTION 63.

SECTION 64. Section 2 of chapter 32A of the General Laws is hereby amended by inserting after the words “the Massachusetts Life Sciences Center”, inserted by section 16 of chapter 130 of the acts of 2008, the following words:- , the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority.

SECTION 65. Section 24 of chapter 40B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 14, the words ”Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 66. Section 5 of chapter 59 of the General Laws is hereby amended by striking out clause Thirty-eighth, as so appearing, and inserting in place thereof the following clause:-
Thirty-eighth, In determining the valuation, for city and town tax purposes, of any privately-owned airport, the value of any improvements on or to the landing area shall not be included so long as the owner grants free use of the landing area to the general public for the landing, taking off and taxiing of aircraft; provided, however, that the airport shall meet the minimum requirements set forth by the aeronautics division in rules and regulations issued pursuant to section 39 of chapter 90 and is certified by the aeronautics division to be included within the needs of civil aeronautics as established by the state airport plan prepared pursuant to section 39A of said chapter 90 and is approved for commercial operation by the aeronautics division.

SECTION 67. Section 7 of chapter 64A of the General Laws, as so appearing, is hereby amended by striking out, in line 12, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 68. Chapter 64A of the General Laws is hereby amended by striking out section 13, as appearing in section 4 of chapter 233 of the acts of 2008, and inserting in place thereof the following section:-

Section 13. All sums received from the excise imposed on aviation fuel, and related penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited to the Commonwealth Transportation Fund and may be used for airport development projects approved and carried out at airports and landing facilities under 49 U.S.C. App. s 2210; and all other sums received from the excise imposed in section 4, and related penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under said sections 7 and 7A, shall be credited as follows: (i) 99.85 per cent shall be credited to the Commonwealth

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Transportation Fund to be used for transportation-related purposes; and (ii) 0.15 per cent shall be credited to the Inland Fisheries and Game Fund established in section 2C of chapter 131.

SECTION 69. Section 5 of chapter 64E of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 8, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 70. Said chapter 64E is hereby further amended by striking out section 13, as so appearing, and inserting in place thereof the following section:-

Section 13. All sums received under this chapter as excises, penalties, forfeitures, interest, costs of suits and fines shall be credited to the Commonwealth Transportation Fund to be used for transportation-related purposes.

SECTION 71. Section 3 of chapter 64F of the General Laws, as so appearing, is hereby amended by striking out, in line 10, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 72 . Said chapter 64F is hereby further amended by striking out section 14, as so appearing, and inserting in place thereof the following section:-

Section 14. All sums received under this chapter as excises, penalties, forfeitures, interest, costs of suits and fines shall be credited to the Commonwealth Transportation Fund to be used for transportation-related purposes.

SECTION 73. Section 25A of chapter 64H of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word “commission” and inserting in place thereof the following word:- division.

SECTION 74. Section 26A of chapter 64I of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word “commission” and inserting in place thereof the following word:- division.

SECTION 74A. Section 1 of chapter 81 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the word 'department' and inserting in place thereof the following word:- division.

SECTION 75. Chapter 81A of the General Laws is hereby repealed.

SECTION 76. Section 7A of chapter 85 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 34, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

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SECTION 77. Section 1 of chapter 90 of the General Laws, as so appearing, is hereby amended by striking out, in line 57, the word “department” and inserting in place thereof the following word:- division.

SECTION 78. Section 1A of said chapter 90 is hereby amended by striking out the words ‘or by the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority or the Massachusetts Port Authority’, inserted by section 16 of chapter 303 of the acts of 2008, and inserting in place thereof the following words:- or the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority or the Massachusetts Port Authority.

SECTION 79. Section 7A of said chapter 90 is hereby amended by striking out, in line 94, as appearing in the 2006 Official Edition, the words “Highway Fund” and inserting in place thereof the following words:- Commonwealth Transportation Fund established in section 2ZZZ of chapter 29.

SECTION 80. Section 20G of said chapter 90, as so appearing, is hereby amended by striking out, in line 2, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 81. Said chapter 90 is hereby amended by striking out section 34, as amended by section 19 of chapter 303 of the acts of 2008, and inserting in place thereof the following section:-

Section 34. The fees received under the preceding sections, together with all other fees received by the registrar or any other person under the laws of the commonwealth relating to the use and operation of motor vehicles and trailers, shall be disposed of as follows: (i) $2 from every motorcycle registration issued pursuant to section 2 shall be deposited into the General Fund and used solely for the purpose of promoting and advancing motorcycle safety; (ii) all fees from the issuance of veterans plates pursuant to section 2, in excess of the fees set for the registration of the motor vehicle, shall be deposited into the General Fund; and (iii) any amount remaining after compliance with clauses (i) and (ii) shall be deposited into the Commonwealth Transportation Fund established in section 2ZZZ of chapter 29.

SECTION 82 . Section 34 1/2 of said chapter 90 is hereby repealed.

SECTION 83. Section 35 of said chapter 90, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 74, the word ”commission” and inserting in place thereof the following word:- division.

SECTION 84. Said section 35 of said chapter 90, as so appearing, is hereby further amended by striking out, in lines 75 and 76, the words “director of aeronautics employed by the commission” and inserting in place thereof the following words:- administrator for aeronautics.

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SECTION 85. Section 50 of said chapter 90, as so appearing, is hereby amended by striking out, in line 5, the words “chairman of the commission” and inserting in place thereof the following words:- administrator for aeronautics.

SECTION 86. Section 1 of chapter 90C of the General Laws is hereby amended by striking out, in line 59, the words “Turnpike Authority”, as appearing in the 2006 Official Edition, and inserting in place thereof the following words:- Department of Transportation.

SECTION 87. Section 1 of chapter 90E of the General Laws, as so appearing, is hereby amended by striking out, in line 16, the word “department” and inserting in place thereof the following word:- division.

SECTION 88. Said section 1 of said chapter 90E, as so appearing, is hereby further amended by striking out, in line 17, the words “commissioner of” and inserting in place thereof the following words:- administrator for.

SECTION 89. Section 1 of chapter 90H of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the word “department” and inserting in place thereof the following word:- division.

SECTION 90. Said section 1 of said chapter 90H, as so appearing, is hereby further amended by striking out, in line 5, the words “commissioner of the department of” and inserting in place thereof the following words:- administrator for.

SECTION 91. The first paragraph of section 35 of chapter 92 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The commission shall submit its plans for any such connection to the secretary of the department of transportation and the administrator for highways so that it may be included in their capital plans.

SECTION 92. Section 1A of chapter 119A of the General Laws, as so appearing, is hereby amended by striking out, in line 82, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 93. Section 40A of chapter 131 of the General Laws, as so appearing, is hereby amended by striking out, in line 95, the word “commission” and inserting in place thereof the following words:- division.

SECTION 94. Section 45 of said chapter 131, as so appearing, is hereby amended by striking out, in line 36, the word “commission” and inserting in place thereof the following words:- division.

SECTION 95. Section 21 of chapter 142 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “Turnpike Authority” and inserting in place thereof the following words:-

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Department of Transportation.

SECTION 96. Section 3A of chapter 143 of the General Laws, as so appearing, is hereby amended by striking out in line 27, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 97. Section 94 of said chapter 143 is hereby amended by striking out, in line 10, as so appearing, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 98. Section 20 of chapter 149A of the General Laws, as so appearing, is hereby amended by adding the following subsection:-
(d) Except for section 39M of chapter 30, all other provisions of the public bidding laws, including sections 39F, 39G, 39J, 39N, 39O 39P and 39R of said chapter 30 and sections 26, 27, 27A, 27B, 27C, 27D, 29, 29C and 34A of chapter 149, shall apply to all design build projects procured pursuant to this chapter in the same manner as they apply to public works projects generally procured pursuant to said section 39M said of said chapter 30.

SECTION 99. The definition of “Employer in section 1 of chapter 150E of the General Laws, as amended by section 7 of chapter 42 of the acts of 2007, is hereby further amended by adding the following sentence:- In the case of employees of the Massachusetts Department of Transportation, “employer” shall mean the Massachusetts Department of Transportation or any individual designated by the board of that department to represent it or act in its interest in dealing with employees.

SECTION 100. Section 7 of said chapter 150E is hereby amended by inserting after the word “commission,” , in line 23, as appearing in the 2006 Official Edition, the following words:- Massachusetts Department of Transportation.

SECTION 101. Section 73 of chapter 152 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation

SECTION 102. Said section 73 of said chapter 152, as so appearing, is hereby further amended by striking out, in line 9, the words “any police officer of”.

SECTION 103. The first paragraph of said section 73 of said chapter 152, as so appearing, is hereby further amended by inserting after the first sentence the following sentence:- Notwithstanding the any general or special law to the contrary, any present or former Massachusetts Bay Transportation Authority employee or retiree entitled to compensation under section 31, 34, 34A, 35, 35A or 36 who is also entitled to a pension by reason of the same injury shall elect whether he will receive such compensation or such pension and shall not receive both, except in the manner and to the extent

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provided by section 14 of chapter 32; provided, however, that the requirement to make such election shall apply to all former Massachusetts Bay Transportation Authority employees or retirees presently receiving or entitled to receive benefits under said section 31, 34, 34A, 35, 35A or 36 who are also receiving or entitled to a pension by reason of the same injury.

SECTION 104. Section 1 of chapter 159A of the General Laws, as so appearing, is hereby amended by striking out, in line 12, the words “Turnpike Authority” and inserting in place thereof the following words:- Department of Transportation.

SECTION 105. Section 1 of chapter 161A of the General Laws, as so appearing, is hereby amended by striking out the definition of 'Department' and inserting in place thereof the following definition:- 'Department', the mass transit division within the department of transportation.

SECTION 106. Said section 1 of said chapter 161A, as so appearing, is hereby further amended by striking out the definition of 'Secretary' and inserting in place thereof the following definition:- 'Secretary', the secretary of transportation for the department of transportation.

SECTION 107. Paragraph (g) of section 5 of chapter 161A of the General Laws, as so appearing, is hereby amended by striking out the first subparagraph and inserting in place thereof the following subparagraph:-
The authority shall establish a program for mass transportation consistent with this chapter. The program for mass transportation and any revisions thereto shall be submitted for comment and recommendation to the advisory board not less than 60 days prior to the adoption thereof. The authority shall prepare a written response to reports submitted to it by the advisory board which response shall state the basis for any substantial divergence between the actions of the authority and the recommendations contained in such reports of the advisory board. The program shall be reviewed not less than every 5 years to evaluate the achievement of its aims and to re-evaluate its conformity with this chapter.

SECTION 108. Said chapter 161A is hereby further amended by striking out section 7, as so appearing, and inserting in place thereof the following section:-

Section 7. The authority shall be governed and its corporate powers exercised by a board of directors. The board shall consist of the 5 members appointed by the governor for terms of 4 years, 2 of whom shall be experts in the field of public or private transportation finance, 2 of whom shall have practical experience in transportation planning and policy and 1 of whom shall be a registered civil engineer with at least 10 years experience. One of the members shall be appointed by the governor to serve as chairperson of the board; provided, however, that said designee shall not be an employee of the authority, department or any division thereof. Not more than 3 of the directors shall be members of the same political party. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such member. A member

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shall be eligible for reappointment. A member may be removed from his appointment by the governor for cause. The governor may appoint a designee pursuant to section 6A of chapter 30. A majority of the directors shall constitute a quorum, which shall be required to take any particular action. The directors shall meet monthly; provided, however, that such meeting shall occur no later than the fifteenth day of the month. Each meeting shall provide a sufficient opportunity for public comment.

SECTION 109. Section 7A of said chapter 161A, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-
Whenever the approval of the advisory board or of the 14 cities and towns or of the 51 cities and towns or of the other served communities is required for any appointment or action by the governor or the authority, such approval shall be deemed to have been granted unless, within 30 days of the submission thereof, the advisory board of the 14 cities and towns or the 51 cities and towns or the other served communities has its disapproval to the governor or to the authority in writing.

SECTION 110. Subsection (a) of section 13 of said chapter 161A, as so appearing, is hereby amended by striking out the last paragraph.

SECTION 111. Said chapter 161A is hereby further amended by striking out the section 20, as so appearing, and inserting place thereof the following section:-

Section 20. The board shall approve a preliminary itemized budget for the subsequent fiscal year not later than March 15 prior to the beginning of that fiscal year. The authority shall submit to the advisory board a final itemized budget not later than April 15 prior to the beginning of the fiscal year.
The itemized budget shall establish a projection of operating costs and revenues for each commuter rail, rapid transit, bus and water line or route, each maintenance facility and for each department and unit of the authority. The itemized budget shall identify expenditures in such a manner that establishes the cost of operating the service provided on each such line or route. In conjunction with the itemized budget, the authority shall also calculate any additional costs that would be incurred in the event that service on each such line or route is mandated to expand or change beyond the level of service established or proposed by the itemized expenditure budget.
The board shall forward not later than November 15 of each year to the governor, the secretary of administration and finance, the joint committee on transportation and the house and senate committees on ways and means the estimated capital or operating cost the authority projects to incur in the following fiscal year for expansions or changes in service imposed by the general court on the authority after July 1, 2000.
No expenses shall be incurred in excess of those shown in the budget; provided, however, that revenues shall exceed expenses at the close of each fiscal year in the operating funds of the authority by an amount equal to 1/2 of 1 per cent of the dedicated revenue source. The itemized budget may from time to time be amended by the board. The final budget and any supplementary budget shall provide for payment of all debt service payments or other payments due under financing obligations including, without limitation, leases, reimbursement obligations or interest exchange agreements for

which the commonwealth has pledged its credit or contract assistance or is otherwise liable. If, during the fiscal year, the authority projects that total revenues for the fiscal year will be insufficient to meet total expenses, the authority shall take immediate steps to increase revenues or decrease expenses, other than debt service payments or other payments due under such financing obligations, such that a deficit will not occur in the following fiscal year and shall file with the secretary of administration and finance a deficit reduction plan delineating such steps. Upon the filing of such plan, the authority may, if it will otherwise have insufficient funds to pay expenses, draw on the Stabilization Fund in section 19 or issue temporary notes pursuant to section 12 for the subsequent fiscal year.

SECTION 112. Section 38 of said chapter 161A, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words ”to the same extent as though the authority were a street railway company”.

SECTION 113. Said section 38 of said chapter 161A, as so appearing, is hereby further amended by striking out the second paragraph.

SECTION 114. Section 43 of said chapter 161A, as so appearing, is hereby amended by striking out, in line 7, the words “not less than”.

SECTION 115. Said section 43 of said chapter 161A, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-
For the purposes of this section, the term 'railroad' shall include any person, railroad corporation or other legal entity in the business of providing rail transportation which contracts or enters into a legal agreement with the Massachusetts Bay Transportation Authority for the provision or accommodation of commuter rail services. For the purposes of this section, the term 'commuter rail services' shall include all services performed by a railroad pursuant to a contract or any other agreement with the Massachusetts Bay Transportation Authority in connection with the transportation of rail passengers including, but not limited to, the operation of trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad equipment, tracks and any appurtenant facilities or the provision of trackage rights over lines owned by any such railroad.

SECTION 116. Section 1 of chapter 161B of the General Laws, as so appearing, is hereby amended by striking out the definition of 'Department' and inserting in place thereof the following definition:-
'Department', the mass transit transit division within the department of transportation.

SECTION 117. Said section 1 of said chapter 161B, as so appearing, is hereby further amended by striking out the definition of 'Secretary' and inserting in place thereof the following definition:-
'Secretary', the adminstrator of transportation for mass transit within the department of transportation.

SECTION 118. Section 2 of chapter 161C of the General Laws, as so appearing, is hereby amended by striking out the definition of 'Executive office' and inserting in place thereof the following definition:-
'Executive office', the office of planning and programming established under chapter six C.

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SECTION 119. Said section 1 of said chapter 161C, as so appearing, is hereby further amended by striking out the definition of 'Secretary' and inserting in place thereof the following definition:-
'Secretary', the administrator of transportation for mass transit within the department of transportation.

SECTION 120. Section 2 of chapter 161D of the General Laws, as so appearing, is hereby amended by striking out the definition of 'Executive office' and inserting in place thereof the following definition:-
'Executive office', the office of planning and programming established under chapter six C.

SECTION 121. Said section 2 of said chapter 161D, as so appearing, is hereby further amended by striking out the definition of 'Secretary' and inserting in place thereof the following definition:-
'Secretary', the administrator of transportation for mass transit within the department of transportation.

SECTION 122. Section 1 of chapter 218 of the General Laws, as so appearing, is hereby amended by striking out, in lines 243 to 244, the words “Turnpike Authority as provided in chapter 598 of the acts of 2958” and inserting in place thereof the following words:- Department of Transportation.

SECTION 123. Section 1 of chapter 258 of the General Laws, as so appearing, is hereby amended by inserting after the word “including”, in line 40, the following words:- the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority, any duly constituted regional transit authority and the Massachusetts Turnpike Authority and.

SECTION 124. Said section 1 of said chapter 258, as so appearing, is hereby amended by striking out, in lines 50 to 52, inclusive, the words “the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority” and inserting in place thereof the following words:- the Massachusetts Port Authority, the Massachusetts Department of Transportation.

SECTION 125. Said section 1 of said chapter 258, as so appearing, is hereby further amended by adding the following definition:-
“Serious bodily injury”, bodily injury which results in a permanent disfigurement, or loss or impairment of a bodily function, limb or organ.

SECTION 126. The first paragraph of section 10 of said chapter 258, as so appearing, is hereby amended by adding the following subsection:-
(k) any claim against the Massachusetts Bay Transportation Authority for serious bodily injury.

SECTION 127. Section 1 of chapter 465 of the acts of 1956 is hereby amended by inserting after subsection (a) the following new subsection:-
(a½) The words advisory board shall mean the advisory board established pursuant to section 36 of this act.

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SECTION 128. Said chapter 465 is hereby further amended by adding the following section:-

Section 36. (a) There shall be an advisory board to the authority consisting of 1 voting representative of each of the following cities and towns: Braintree, Bedford, Brookline, Cambridge, Chelsea, Cohasset, Concord, Everett, Hingham, Hull, Lexington, Lincoln, Malden, Melrose, Medford, Milton, Nahant, Quincy, Revere, Somerville, Weymouth, and Winthrop and Worcester; provided, further, that the city of Boston shall have 7 voting representatives, 1 of whom shall be a resident of the Beacon Hill or South End sections of the city of Boston, 1 of whom shall be a resident of the East Boston section of the city of Boston, 1 of whom shall be a resident of the Dorchester or Roxbury sections of the city of Boston, 1 of whom shall be a resident of the Charlestown section of Boston, 1 of whom shall be a resident of the South Boston section of the city of Boston, 1 of whom shall be a resident of the Roslindale or Hyde Park sections of the city of Boston, and 1 of whom shall be a resident of the 3 West Roxbury or Jamaica Plain sections of the city of Boston. The members of the advisory board shall be appointed by the chief executive officer of each city or town.

(b) Said advisory board may act at a regular periodic meeting called in accordance with its by-laws; or at a special meeting called by the authority; or if a majority of board members choose to do so. A quorum of the advisory board shall consist of a simple majority of voting members present, and the advisory board may act, except as otherwise provided in paragraph (f), by affirmative casting of a majority of the votes represented in the quorum. The advisory board shall be deemed to be a governing body for the purposes of, and shall be subject to, section 11A½ of chapter 30A of the General Laws.

(c) Said advisory board shall annually elect a chairperson, a vice-chairperson, a secretary and such officers as said advisory board might determine. Each officer may be removed by a two-thirds vote of the advisory board without cause. In the event of a vacancy, said board shall fill the vacancy for the unexpired term. Each member of said advisory board shall serve without compensation.

(d) The advisory board shall without limitation:

(i) make recommendations to the authority on annual current expense expenditure budgets submitted to the advisory board under paragraph (g);

(ii) hold hearings, which may be held jointly with the authority at the discretion of the advisory board and said authority, on matters relating to said authority;

(iii) review the annual report of the authority and to prepare comments thereon to the authority and the governor, and to make such examinations of the reports on the authority's records and affairs as the advisory board deems appropriate; and

(iv) make recommendations to the governor and the general court respecting the authority and its programs.

(e) Within 30 days of receiving any proposed current expense budget of the authority or within 30 days of receiving any proposed amended expense budget of the authority, the advisory board shall hold a public hearing on matters relating to said budget for the purpose of ascertaining, for subsequent report to the authority if necessary, the views of the public thereon.

(f) The advisory board may incur annual expenses, not to exceed $25,000 for office and related expenses. Said annual expenses shall be paid by the authority.

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(g) The authority shall provide any information including, but not limited to, annual current expense expenditure budgets and capital expenditure reports, requested by the advisory board which are necessary for the discharge of its duties; provided, however, that the advisory board shall not be granted access to any information if it be determined by the executive director of the authority and the director of security for the authority that the release of such information would be detrimental to public safety, or if providing such information would be in violation of any federal statute or regulation of the Federal Aviation Administration or other federal agency; provided, further, that said determination shall be made in writing which shall be delivered to the advisory board within 2 business days.

SECTION 129. Section 2 of chapter 634 of the acts of 1971, as most recently amended by section 1 of chapter 364 of the acts of 1990, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-
Following acquisition of the bridges by the department, the department shall, in its sole discretion, furnish or otherwise provide for the necessary flag protection on the railroad rights-of-way of the Massachusetts Bay Transportation Authority, which may be required when the department is performing inspection, maintenance and repair, reconstruction or replacement of any such bridges.

SECTION 130. Subsection (c) of section 83 of chapter 4 of the acts of 2003, as amended by section 8 of chapter 228 of the acts of 2007, is hereby amended by striking out the words “Central Artery and Statewide Road and Bridge Infrastructure Fund established under section 63 of chapter 10 of the General Laws” and inserting in place thereof the following words:- Commonwealth Transportation Fund established in section 2zzz of chapter 29 of the General Laws

SECTION 131. The first sentence of subsection (b) of section 11 of chapter 233 of the acts of 2008 is hereby amended by inserting after the word “engineering” the following words:- “and construction”.

SECTION 132. Notwithstanding section 31 of chapter 15 of the acts of 1988 or any other general or special law to the contrary, the Massachusetts Bay Transportation Authority may sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of the public parking garage constructed and operated by the authority and the land acquired by the authority pursuant to such law, subject to such terms, restrictions, covenants and conditions, for facilitating economic development, employment opportunities and increase of the tax base, as determined by the authority.

SECTION 133. (a) Notwithstanding any general or special law to the contrary, the Massachusetts Department of Transportation and the Massachusetts Turnpike Authority shall develop and implement a transfer agreement providing for the orderly transfer and provisional appointment of personnel from the authority to the Massachusetts Department of Transportation consistent with the provisions contained herein as well as the transfer of all assets, liabilities, obligations and debt of the authority to Massachusetts Department of Transportation; Upon the assumption of the outstanding liabilities, obligations and debt of the authority by the Massachusetts Department of Transportation, the authority shall be dissolved and, without further conveyance or other act, all the assets, liabilities, obligations

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and debt as well as all rights, powers and duties of the authority shall be transferred to, and assumed by, the Massachusetts Department of Transportation. Unless specifically provided to the contrary, the terms “turnpike”, “Ted Williams tunnel”, “Sumner tunnel”, and “metropolitan highway system” as used in this section, and elsewhere in this act, shall have the meanings described in chapter 81A of the General Laws.
(b) On the date the authority is dissolved: (i) ownership, possession and control of all personal property, including, but without limitation, all equipment, books, maps, papers, plans, records and documents of whatever description pertaining to the design, construction, use, operation and general affairs of the turnpike and metropolitan highway system which are in the possession of the Massachusetts Turnpike Authority or any division, unit, officer or employee thereof shall pass to, and be vested in ,the Massachusetts Department of Transportation without consideration or further evidence of transfer and shall thereafter be in the possession and control of the highway division; (ii) ownership, possession and control of all real property, including, without limitation, all land, buildings, highways, bridges, tunnels and other highway elements of whatever description that are owned by the Massachusetts Turnpike Authority or any division or unit thereof shall pass to and be vested in the Massachusetts Department of Transportation without consideration or further evidence of transfer and shall thereafter be a part of the state highway system under the possession and control of the highway division; provided, however, that before such dissolution, the Massachusetts Turnpike Authority shall be authorized to transfer, for nominal consideration, to the Massachusetts Bay Transportation Authority, all of its right title and interest in the land, track and other property comprising the rail line and right of way extending from the South Bay section of the city of Boston to the city of Newton; provided, further, that the authority shall retain any portion of, or interest in, such rail line and right-of-way deemed by the authority or the highway division, with the approval of the Massachusetts Department of Transportation, to be necessary for the operation of the turnpike or the metropolitan highway system; and (iii) all duly existing contracts, leases, or obligations of the Massachusetts Turnpike Authority with respect to the turnpike or metropolitan highway system which remain in force immediately before the effective date of the dissolution of the authority, shall be deemed to be the obligations of the Massachusetts Department of Transportation. No existing right or remedy under this section shall be lost, impaired or affected by this act. The Massachusetts Department of Transportation shall have authority to exercise all rights and enjoy all interests conferred upon the Massachusetts Turnpike Authority by the contracts, leases or obligations. In the case of collective bargaining agreements, any obligations under the agreements shall expire on the stated date of expiration of such agreements.
(c) The transfer of the assets, liabilities, obligations and debt of the Massachusetts Turnpike Authority to the Massachusetts Department of Transportation under this act shall be effective upon dissolution of the authority and shall bind all persons with or without notice and without any further action or documentation. Without derogating from the foregoing, the department may, from time to time, execute and record and file for registration with any registry of deeds or the land court or with the secretary of the commonwealth, as appropriate, a certificate confirming the commonwealth's ownership of any interest in real or personal property formerly held by the Massachusetts Turnpike Authority and transferred pursuant to the provisions of this act and establishing and confirming the

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limits of state highways so transferred.
(d) This act shall not limit or impair the rights, remedies, or defenses of the commonwealth, the Massachusetts Department of Transportation, or the Massachusetts Turnpike Authority in or to any such action including, without limitation, section 18 of chapter 81 of the General Laws and chapter 258 of the General Laws. All actions or proceedings shall be subject to the provisions of said section 18 of said chapter 81 and said chapter 258. Except as expressly excepted by the previous sentence, actions and proceedings against or on behalf of the Massachusetts Turnpike Authority shall continue unabated and, from and after the date of dissolution of the authority, may be completed against or by the department.
(e) Notwithstanding the foregoing, no existing rights of the holders of the bonds issued by the Massachusetts Turnpike Authority under chapter 81A of the General Laws shall be impaired, and the department, as successor in interest to the Massachusetts Turnpike Authority, shall maintain the covenants of the trust indentures pertaining to such bonds so long as such bonds shall remain outstanding.
(f) Notwithstanding any powers granted to the Massachusetts Department of Transportation under section 3 of chapter 6C, the Massachusetts Department of Transportation shall not exercise the powers to increase tolls on the turnpike or the metropolitan highway system, each as defined in section 1 of chapter 6C, until the transfer authorized in this section becomes effective. The Massachusetts department of transportation shall not exercise the power granted by section 20 of chapter 6C until the transfer authorized in this section becomes effective.

SECTION 134. Notwithstanding any general or special law to the contrary, any order, rule, or regulation duly promulgated, or any license, permit, certificate or approval duly granted, by or on behalf of the Massachusetts Turnpike Authority shall continue in effect from and after the date of dissolution of the authority and shall be enforced by the Massachusetts Department of Transportation until superseded, revised, rescinded or cancelled by the Massachusetts Department of Transportation.

SECTION 135. Notwithstanding any other general or special law to the contrary, the Massachusetts Department of Transportation may enter into contracts to create and permit employee contributions to individual retirement accounts for employees of the department pursuant to sections 64A to 64C, inclusive, of chapter 29 of the General Laws.

SECTION 136. Notwithstanding any general or special law to the contrary, the Massachusetts Department of Transportation shall, in consultation with the Federal Highway Administration, inventory the requirements for, and assume the responsibilities of, rehabilitating and reconstructing the turnpike and metropolitan highway system in compliance with Title 23 of the United States Code. The inventory shall include operational and safety considerations associated with direct access to the mainline roadway from (i) maintenance, administration and state police facilities, (ii) emergency median crossovers, and (iii) adjacent local roadways and service plazas.

SECTION 137. (a) each employee of the Massachusetts Turnpike Authority whose salary is paid out

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of revenue generated by the authority as defined in section 3 of chapter 81A of the General Laws, and whose salary is accounted for on the books of the Massachusetts Turnpike Authority as arising from revenue generated by that authority shall become an employee of the Massachusetts Department of Transportation.
(b) All officers and employees of the Massachusetts Turnpike Authority transferred to the service of the Massachusetts Department of Transportation shall be transferred without impairment of seniority, retirement or other statutory rights of employees, without loss of accrued rights to holidays, sick leave, vacation and other benefits, except as otherwise provided in this act. Terms of service of employees of the Massachusetts Turnpike Authority shall not be deemed to be interrupted by virtue of transfer to the Massachusetts Department of Transportation.

SECTION 138. (a) Notwithstanding any general or special law to the contrary, employees of the Massachusetts Turnpike Authority who become state employees under this act and who are eligible for group insurance coverage pursuant to chapter 32A of the General Laws shall receive the full extent of benefits provided to existing state employees. The employees shall cease to be eligible or insured by the authority. The group insurance commission, hereinafter referred to as the commission, shall provide uninterrupted coverage for group life and accidental death and dismemberment insurance and group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance benefits pursuant to said chapter 32A.
(b) Notwithstanding any general or special law to the contrary, retired employees of the Massachusetts Turnpike Authority and the surviving spouses of active or retired authority employees who are eligible for group insurance coverage pursuant to this section and said chapter 32A shall have said eligibility and coverage transferred to the commission and shall receive the full extent of benefits provided to existing state employees. The persons shall cease to be eligible or insured by the authority. The commission shall provide uninterrupted coverage for group life and accidental death and dismemberment insurance and group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance benefits to the extent authorized under said chapter 32A. All questions relating to group insurance rights, obligations, costs and payments shall be determined solely by the group insurance commission, and shall include the manner and method for the payment of all required premiums applicable to all such coverage.
(c) The human resources division of the executive office for administration and finance shall assume the obligations of the Massachusetts Turnpike Authority to employees who become state employees and who are covered under a health and welfare trust fund agreement. Any monies in the authority's employees' group insurance trust fund shall be transferred to the group insurance commission trust fund established in section 9 of said chapter 32A.
(d) Any monies in the Massachusetts Turnpike Authority's Claims Trust Fund shall be transferred to the commission. The Massachusetts Turnpike Authority's treasurer shall provide the commission with an accounting of the claims trust fund which shall be for the 1 year period immediately preceding the effective date of the transfer and shall include a calculation of the employee, retiree and surviving spouse contributions that are in excess of the claims costs and expenses of the plans for which the contributions were made. The treasurer shall routinely forward to the commission any claims for health

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insurance claims made on behalf of the active employees and retirees of the authority.
(e) Nothing in this section shall be construed to affect the eligibility and coverage of retired Massachusetts Turnpike Authority employees and the surviving spouses of active or retired Massachusetts Turnpike Authority employees who are eligible for group insurance coverage under a plan offered by the Massachusetts Turnpike Authority or who are insured under a plan offered by the Massachusetts Turnpike Authority.

SECTION 139. Notwithstanding the provisions of any general or special law to the contrary, employees of the Massachusetts Turnpike Authority who are hired after the effective date of this act shall become members of the state retirement system, and notwithstanding the provisions of any general or special law to the contrary including, but not limited to, paragraph (c) of subdivision (8) of section 3 of chapter 32 of the General Laws, said system shall be responsible for all liability attributable to the service of such employees. The liabilities attributable to the service of such employees shall be recoverable by the commonwealth pursuant to the terms of section 8. Employees hired by said authorities after the effective date of this act shall not be members of either authority's retirement system.

SECTION 140. Notwithstanding any general or special law to the contrary, an employee, retiree, surviving spouse or dependent of the Massachusetts Bay Transportation and who becomes or who is eligible for group insurance coverage under insurance plans offered by the authority or who is insured under such a plan, shall have his eligibility and coverage transferred to the jurisdiction of the group insurance commission and such person shall cease to be eligible or insured under the plans previously offered by the Massachusetts Bay Transportation Authority; provided, however, that employees whose benefits are provided under the terms of an existing collective bargaining agreement shall be transferred on the expiration date of that agreement; provided, further, that for all other employees this transfer shall be effective January 1, 2010..
Upon transfer to the group insurance commission all employees, retirees, surviving spouses or dependents of the Massachusetts Bay Transportation Authority shall be deemed “employees” in accordance with the provisions of section 2 of chapter 32A of the General Laws and shall be subject to all of the provisions of said chapter or any superseding language. If the Massachusetts Bay Transportation Authority has monies in an employee’s group insurance trust fund related to the employees transferred to the group insurance commission, these funds shall be transferred to the group insurance commission trust fund established in section 9 of chapter 32A.
Upon transfer: (i) all benefits of all employees, retirees, surviving spouses or dependents of the Massachusetts Bay Transportation Authority shall be provided through the group insurance commission for all purposes; and (ii) employees, retirees, surviving spouses or dependents of the Massachusetts Bay Transportation Authority transferred to the group insurance commission’s benefits coverage shall receive group insurance benefits determined exclusively by the commission, the coverage shall not be subject to collective bargaining, and no other reimbursements or other contractual obligations shall be paid by the Massachusetts Bay Transportation Authority for health care benefits not provided through the group insurance commission.

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SECTION 141. Notwithstanding any general or special law to the contrary, on and after the effective date of this act, the Massachusetts Turnpike Authority shall not enter into any contract to employ a person as an employee or officer beyond July 1, 2010.

SECTION 142. The terms and conditions of any collective bargaining agreement that is in effect upon dissolution of the Massachusetts Turnpike Authority with respect to employees of said authority shall continue in effect until the stated expiration date of such agreement, at which point the agreement shall expire. Notwithstanding the provisions of any general or special law to the contrary, upon the effective date of this act, the authority shall not engage in negotiations for future collective bargaining agreements.

The personnel administrator of the commonwealth, in consultation with the Massachusetts Department of Transportation, shall complete a study of job titles in the former Massachusetts Turnpike Authority. The personnel administrator, in consultation with said department, shall determine the appropriate commonwealth job titles for former employees of the authority transferred to the department. Employees transferred to the department shall be placed in job titles as determined by the personnel administrator, and shall be paid wages and receive benefits consistent with the commonwealth bargaining unit contract governing such job title(s). Employees not transferred to the department shall be released pursuant to the provisions of any applicable collective bargaining agreement or authority policy in place upon the effective date of this act.

SECTION 143. Notwithstanding any general or special law to the contrary, on and after the effective date of this act the Massachusetts Turnpike Authority shall not enter into any new or amended employment agreements, which fix the compensation and conditions of employment or otherwise bind the authorities to designated contract periods.

SECTION 144. (a) As used in this section and section 145 the following words shall, unless the context clearly requires, have the following meanings:

“Authority”, the Massachusetts Port Authority established pursuant to chapter 465 of the acts of 1956.

“Bridge”, the Tobin Memorial Bridge, formerly known as the Mystic River Bridge, constructed and owned by the authority pursuant to chapter 465 of the acts of 1956.

“Department”, the Massachusetts Department of Transportation established pursuant in chapter 6C of the General Laws.

(b) Notwithstanding any general or special law to the contrary, not later than September 1, 2009 the authority shall transfer the bridge, owned and operated by the authority, to the department to be under the control of the department. Ownership, possession, and control of the bridge, including, but not limited to, all equipment, books, maps, papers, plans, records and documents of whatever description pertaining to the design, construction, use, operation, and general affairs of the bridge which are in the possession of the authority or any division, unit, officer or employee thereof shall pass to and be vested in the department to be under the control of the department without consideration or further evidence of transfer and shall thereafter be in the ownership, possession and control of said department.

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(c) Notwithstanding any general or special law to the contrary, authority bridge personnel deemed necessary by the department for the operation, management, design, construction, reconstruction, repair, maintenance, or improvement of the bridge, transferred under subsection (b), shall be transferred to the department. The terms and conditions of any collective bargaining agreement covering bridge personnel that is in effect upon the transfer of such personnel to the department shall remain in effect until the stated date of expiration of such agreement, at which point the agreement shall expire; provided, however, that upon the effective date of this act, the authority shall not engage in negotiations for future collective bargaining agreements covering such employees. Notwithstanding any general or special law to the contrary, the personnel administrator of the commonwealth, in consultation with the department, shall complete a study of job titles held by employees of the department who are former authority personnel assigned to the bridge. The personnel administrator shall determine the appropriate job titles for former employees of the authority transferred to the department. Following the stated date of expiration of any existing collective bargaining agreements, employees transferred to the department shall be placed in job titles as determined by the personnel administrator, and shall be paid wages and receive benefits consistent with the bargaining unit contract governing such job titles.
(d) Notwithstanding any general or special law to the contrary, all duly existing contracts, leases, and obligations of the authority regarding the bridge shall continue in effect and shall remain the liability of the authority; provided, however, that all contracts and obligations related to any collective bargaining agreement shall be assumed by the department, except to the extent expressly inconsistent with this act; and provided further, that in the case of collective bargaining agreements, any obligations assumed by the department under said agreements shall expire on the stated date of expiration of such agreements. No existing right or remedy of any character shall be lost, impaired, or affected by this act.
(e) On and after the effective date of this act, the authority shall not increase its net workforce of employees working primarily on the bridge.

SECTION 145. (a) All bridge employees transferred to the service of the department shall be transferred without impairment of seniority, civil service status, retirement or other statutory rights of employees, without reduction in compensation or salary grade, notwithstanding any change in job titles or duties, without loss of accrued rights to holidays, sick leave, vacation and other benefits, except as otherwise provided in this act. Terms of service of bridge employees shall not be deemed to be interrupted by virtue of transfer to the department.
(b) Except to the extent expressly inconsistent with this act, any collective bargaining agreement and related contracts and obligations in effect for such transferred employees immediately before the transfer date shall continue as if the employees had not been so transferred, until the expiration date of such collective bargaining agreement.
(c) Nothing in this section shall be construed to confer upon any employee any right not held immediately prior to the date of the transfer or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before such date.
(d) Notwithstanding any general or special law to the contrary, a bridge employee who is employed by

the authority on the effective date of this act and who becomes an employee of the department and who is eligible for group insurance coverage under insurance plans offered by the authority or who is insured under such a plan, shall have his eligibility and coverage transferred to the jurisdiction of the group insurance commission effective on the date of such transfer and such a person shall cease to be eligible or insured under the plans previously offered by the authority.
(e) The group insurance commission shall provide uninterrupted coverage for group life and accidental death and dismemberment insurance and group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance benefits to the extent authorized under chapter 32A of the General Laws; provided, however, that a bridge employee who was covered by a collective bargaining agreement on the date of the transfer to the department shall continue to receive the group insurance benefits required by his respective collective bargaining agreement until the expiration date of such agreement. All questions relating to group insurance rights, obligations, costs and payments shall be determined by the group insurance commission and shall include the manner and method for the payment of all required premiums applicable to all such coverage.
(f) If the authority has monies in an employees' group insurance trust fund related to the bridge employees transferred to the department, these funds shall be transferred to the group insurance Commission Trust Fund established in section 9 of said chapter 32A.
(g) Nothing in this section shall be construed to affect the eligibility and coverage of retired bridge employees and the surviving spouses of active or retired bridge employees who are eligible for group insurance coverage under a plan offered by the authority or who are insured under a plan offered by the authority.

SECTION 146. Notwithstanding any general or special law to the contrary, the Massachusetts Bay Transportation Authority or any successor, shall enter into an agreement to establish or amend existing retirement or pension benefits only if any employee hired after the effective date of the agreement or amendment may not receive a retirement or pension benefit prior to the completion of 25 years of credited pension service and attained 55 years of age. The Massachusetts Bay Transportation Authority is not prohibited by this section from permitting retirement prior to attaining age 55; provided, however, that either: (i) the employee is entitled to a disability pension under the Massachusetts Bay Transportation Authority retirement system; or (ii) the employee has earned the maximum percentage allowed under the retirement formula of the Massachusetts Bay Transportation Authority retirement system and that the employee waives the ability to collect a pension and retirement benefit due until attaining age 55.

SECTION 147. (a) The secretary of the department of transportation shall make such plans and arrangements as may be necessary to ensure the efficient transfer of: (i) the Massachusetts turnpike authority's functions, assets, liabilities, and obligations; (ii) the Maurice J. Tobin Memorial Bridge owned and operated by the Massachusetts Port Authority; and (iii) the vehicular bridges, appurtenances, and designated parkways under the control of the department of conservation and recreation, to the department pursuant to this act.
The secretary shall have the authority to promulgate new rules and regulations as deemed necessary

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to effectuate the purposes of the transfers.
Any order, rule or regulation duly promulgated by or on behalf of the department of highways, the Massachusetts aeronautics commission, the registry of motor vehicles, and the Massachusetts Turnpike Authority, shall continue in full force and effect to the extent consistent with this act and the laws of the commonwealth, and shall continue to be enforced, until superseded, revised, rescinded or cancelled by the secretary of the department of transportation.

SECTION 148. (a) Notwithstanding any general or special law to the contrary, Worcester regional airport, as currently owned by the city of Worcester and operated by the Massachusetts Port Authority, is hereby transferred from the city of Worcester to the Massachusetts Port Authority on the July first following one year after the effective date of this act, subject to the following terms and conditions: (i) the Worcester regional airport shall be transferred to the Massachusetts Port Authority for fair compensation which may be paid in installments and which may consider the actual amount of any expenditures, subsidies and operational costs assumed or provided to date to or for the Worcester regional airport by said Massachusetts Port Authority, in addition to any other federal and state funding and grant assistance, and (ii) the right, title and interest of the city in the Worcester regional airport shall be conveyed within 1 year upon the transfer date set by this act
(b) Upon the transfer of the airport by the city of Worcester to the Massachusetts Port Authority pursuant to this section, the Massachusetts Port Authority shall be responsible for the ownership, operation and maintenance of the Worcester regional airport and, except as otherwise agreed to by the parties, the city shall cease to be responsible for such ownership, operation and maintenance. All warranties and all contract and indemnification rights and obligations arising out of the design, construction, operation and maintenance of the airport shall remain in full force and effect following such transfer. The provisions of this section shall not limit or in any way impair the rights, remedies or defenses of the city of Worcester or the Massachusetts Port Authority in or to any such action.

SECTION 149. Notwithstanding any general or special law to the contrary, the secretary of administration and finance shall establish an office of transition management for transportation within the executive office for administration and finance to accomplish the purposes of this act for a period not to exceed 2 years from the effective date of this act; provided, however, the secretary may maintain the office for more than 2 years if necessary to ensure the orderly transfer of transportation assets and functions pursuant to this act. Agencies from within that executive office including, but not limited to, the human resources division and the division of capital asset management and maintenance, as well as the executive office of transportation and public works and the department of labor shall staff the office.
The office shall temporarily monitor compliance with this act and shall: (i) recommend to the secretary of transportation and public works rules and regulations not inconsistent with this act to facilitate the orderly, expeditious transfer of assets and functions from the executive office of transportation and public works, the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the department of conservation and recreation and the department of highways to the Massachusetts Department of Transportation; (ii) develop administrative processes to assure continuity of employment and

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operations during the transitions; (iii) identify opportunities for potential efficiencies and cost savings; (iv) recommend legislation to realize such savings and efficiencies; and (v) resolve issues or assist government agencies with the transition of transportation agencies.
Ninety days after the effective date of this act and quarterly thereafter until such transition period is complete, the office shall submit a report to the governor, the secretary of administration and finance, the joint committee on transportation, the senate and house committees on ways and means and the clerks of the senate and the house of representatives, relative to the progression of the incorporation of the agencies and authorities into the Massachusetts Department of Transportation.
The report shall include, but shall not be limited to, plans for the assignment and reassignment of resources including personnel, equipment and supplies into the Massachusetts Department of Transportation. The reports shall also include the status of the transition of roads, bridges, designated parkways and any other transportation assets of the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the department of conservation and recreation and the department of highways and shall further include approximate schedules for the completion of the transition.

SECTION 150. (a) Notwithstanding the provisions of any general or special law to the contrary, the executive office for administration and finance and the Massachusetts Department of Transportation shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property, and legal obligations of the following functions of state government from the transferor agency to the transferee agency, defined as follows: (1) the functions of the executive office of transportation and public works, as the transferor agency, to the Massachusetts Department of transportation as the transferee agency; (2) the functions of the department of highways, as the transferor agency, to the Massachusetts department of transportation, highway division, as the transferee agency; (3) the functions of the registry of motor vehicles, as the transferor agency, to the Massachusetts department of transportation, motor vehicles division, as the transferee agency; (4) the functions of the aeronautics commission, as the transferor agency, to the Massachusetts department of transportation, aeronautics division, as the transferee agency.
(b) The employees of each transferor agency, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the respective transferee agency, without interruption of service, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits,. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.
Notwithstanding the provisions of any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E.

Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before such date.
(c) All petitions, requests, investigations and other proceedings appropriately and duly brought before each transferor agency or duly begun by each transferor agency and pending before it before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the Massachusetts Department of Transportation.
(d) All orders, rules and regulations duly made and all approvals duly granted by each transferor agency, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the Massachusetts Department of Transportation.
(e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of each transferor agency shall be transferred to the Massachusetts Department of Transportation.
(f) All duly existing contracts, leases and obligations of each transferor agency shall continue in effect but shall be assumed by the respective transferee agency. No existing right or remedy of any character shall be lost, impaired or affected by this act.

SECTION 151. The secretary of the Massachusetts Department of Transportation, in consultation with the secretary of the executive office of labor and workforce development and director of workforce development shall institute a workforce retraining initiative to mitigate potential impacts to employees displaced by the organizational efficiencies and agency restructuring directed by this act. The secretary of the Massachusetts Department of Transportation and the secretary of labor and workforce development, or their designees, shall establish a committee to coordinate the workforce retraining initiative and adopt policies that identify and categorize displaced employees, while advancing workforce development opportunities for the employees whose lack of skills may prevent or limit their successful employment. The committee shall include representatives from labor unions likely to be affected by this act, representatives from the business industry and representatives from the human resources division of the executive office for administration and finance. The procedures shall outline and recommend various retraining programs available to employees identified as being displaced by this act, establish eligibility criteria and base skills requirements for the administration of these programs, promote program accountability and job placement through the division of career services and one-stop career centers, identify available professional development and technical assistance needs and resources and encourage economic diversification and industry growth through technology-focused training.
The director of workforce development together with agencies and other entities that provide employment or training services in the commonwealth, shall utilize existing state and federal grant funding, including funding for workforce retraining programs at existing institutions, community colleges, labor organizations and administrative entities to implement the workforce retraining initiative. Where applicable, the director may utilize any funds received pursuant to the federal

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Workforce Investment Act of 1998, 112 Stat. 936, 29 U.S.C. § 2801, as amended, to provide additional funding for the workforce retraining initiative.
In the event an employee displaced by the operation of this act does not have severance or other termination benefits, the department of transportation shall pay, for a period not to exceed 2 months following the date of termination of employment, the then current salary for such employee.

SECTION 152. Notwithstanding sections 9 to 10, inclusive, of chapter 161B of the General Laws or any other general or special law to the contrary, all regional transit authorities established in said chapter 161B shall move to a forward funded budgeting system not later than July 1, 2011. The secretary of the executive office for administration and finance shall develop a plan for accomplishing this conversion to forward funding and to seek the necessary appropriations to implement the plan. The secretary may promulgate rules and regulations to effectuate the purposes of this section.

SECTION 153. Notwithstanding any general or special law to the contrary, the highway division of the Massachusetts Department of Transportation shall enter into an agreement with the Massachusetts Bay Transportation Authority to assume all bridge inspection responsibilities for any bridges owned and operated by the authority.

SECTION 154. Notwithstanding any general or special law to the contrary, the bureau of environmental health within the department of public health shall conduct a comprehensive baseline study of the health effects of particulate air pollution from surface and air transportation. The study shall focus on understanding the health impacts from fine and ultrafine particulate matter upon populations that are located within 500 feet of any roadway with 50,000 or more motor vehicle trips per day, or any rail line regularly used by diesel locomotives or within 1 mile of any airport with more than 500 enplanements per week as reported between January 1, 2007 and January 1, 2008 or within 1 mile of the port of the city of Boston; provided, however, that the study may include, but shall not be limited to, examining respiratory and cardiovascular disease and cancer incidence that may be affected by exposure to traffic-related particles. The following departments and agencies shall provide information to the bureau relevant to this study: the department of environmental protection; the office of planning and programming within the Massachusetts Department of Transportation, the division of aeronautics; and the central transportation planning staff of the Boston metropolitan planning organization. The bureau shall report its findings together with suggested legislation, if any, to the house and senate committees on ways and means not later than June 30, 2010.

SECTION 155. The office of the state auditor shall perform a close-out audit of each agency or authority admitted to the Massachusetts Department of Transportation. The audit shall include a catalogue of any issues relating to the agency or authority’s current and future finances and operations, current and future revenues or debt structure, and internal policies and procedures, that the state auditor believes are not within financial accounting board standards of practice or may violate the General Laws.

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SECTION 156. (a) Notwithstanding any other provision of this act or any other general or special law to the contrary, commencing on July 1, 2009, all amounts of any kind received by the commonwealth which are derived from, or related to, the operation of the state highway system, as defined in chapter 6C of the General Laws, shall be deemed to be held in trust for, and shall be transferred and paid over to, the Massachusetts Transportation Trust Fund when received without further appropriation to be applied to the purposes of the authority. All amounts of any kind received by the Massachusetts Turnpike Authority which are derived from the operation of the turnpike, as defined in said chapter 6C, shall be deemed to be held in trust for, and shall be transferred and paid over to, the Massachusetts Transportation Trust Fund when received without further appropriation to be applied to the purposes of the department.

(b) Notwithstanding any other provision of this act or any other general or special law to the contrary, commencing on July 1, 2010, all amounts of any kind received by the Massachusetts Port Authority which are derived from, or related to, the operation of the Tobin memorial bridge, as defined in section 1 of chapter 6C of the General Laws, shall be deemed to be held in trust for, and shall be transferred and paid over to, the Massachusetts Department of Transportation when received without further appropriation to be applied to the purposes of the said Massachusetts Department of Transportation . All amounts of any kind received by the Massachusetts Turnpike Authority which are derived from the operation of the metropolitan highway system, as defined in said section 1 of said chapter 6C, shall be deemed to be held in trust for, and shall be transferred and paid over to, the Massachusetts Department of Transportation when received without further appropriation to be applied to the purposes of the Massachusetts Department of Transportation.

SECTION 157. The secretary of transportation shall submit a report on the progress and all expenditures related to state transportation infrastructure projects undertaken through use of federal funds received under the American Recovery and Reinvestment Act of 2009 to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means, the senate and house chairs of the joint committee on transportation and the chairs of the senate and house committees on bonding, capital expenditures and state assets. The report shall include, but not be limited to: the total estimated cost of each project; the amount expended for the planning and design of each project up to the time the report is filed; the amount expended on construction of each project up to the time the report is filed; the timeline from advertisement through contract award and from the start of actual design and construction by the design build team to project completion; the time saved, if any, by employing the design build procurement method; and the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project and the current anticipated completion date of each project. The report shall also include the total number of employees and outside contractors and amount expended on the salaries and benefits for such employees and outside contractors that are specifically working on projects to be carried out as part of projects funded through said American Recovery and Reinvestment Act of 2009. The report shall be submitted annually on December 31 until the culmination of any project funded with funds authorized by said American Recovery and Reinvestment Act of 2009.

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SECTION 158. All uncommitted and unexpended funds and authorizations, which have been appropriated from time to time to the executive office of transportation and public works, including any agency and authority within the executive office, including but not limited to, funds authorized in chapter 15 of the acts of 1988, chapter 33 of the acts of 1991, chapter 102 of the acts of 1994, chapter 273 of the acts of 1994, chapter 28 of the acts of 1996, chapter 113 of the acts of 1996, chapter 205 of the acts of 1996, chapter 11 of the acts of 1997, chapter 55 of the acts of 1999, chapter 87 of the acts of 2000, chapter 235 of the acts of 2000, chapter 246 of the acts of 2002, chapter 40 of the acts of 2003, chapter 291 of the acts of 2004, chapter 27 of the acts of 2007, chapter 86 of the acts of 2008, chapter 233 of the acts of 2008, and chapter 303 of the acts of 2008, shall be transferred to the Massachusetts Department of Transportation for use by the department or any of its divisions for purposes consistent with such authorizations.

SECTION 159. (a) Effective upon the date of dissolution of the Massachusetts Turnpike Authority: (1) the Massachusetts Turnpike Authority employees' retirement system shall continue under the provisions of sections 1 to 28, inclusive of said chapter 32; (2) the management of the Massachusetts Turnpike Authority employees' retirement system shall be transferred to the state board of retirement in section 18 of chapter 10 of the General Laws which board shall have with respect thereto the general powers and duties set forth in subdivision (5) of section 20 of said chapter 32; (3) all data, files, papers and records and other materials of the retirement board provided for in paragraph (b) of subdivision (41/2) of said section 20 of said chapter 32 shall be transferred to and held by the state board of retirement; (4) the funds of the Massachusetts Turnpike Authority employees' retirement system in the custody of the secretary-treasurer of the authority shall be transferred to the state treasurer who shall thereafter be and perform the duties of the treasurer-custodian of such funds which shall then be held by the state treasurer for the exclusive benefit and use of the members of the Massachusetts Turnpike Authority employees' retirement system and their beneficiaries; and (5) the retirement board in said paragraph (b) of subdivision (4 1/2) of said section 20 of said chapter 43 shall be abolished; provided, however, that the members and officers thereof shall continue to be authorized to do all such things and take all such action as may be necessary or desirable to be done or taken by them to effectuate the transfers to be made pursuant to this section.
(b) Effective upon the date of dissolution of the Massachusetts Turnpike Authority or a default in its obligations under chapter 32 of the General Laws, the payment of all annuities, pensions, retirement allowances and refunds of accumulated total deductions and of any other benefits granted under the sections 1 to 28, inclusive, of said chapter 32 are hereby made obligations of the commonwealth in the case of any such payments from funds of the Massachusetts turnpike authority employees' retirement system.

SECTION 160. Notwithstanding any general or special law to the contrary, in making initial appointments to the board of directors of the Massachusetts Department of Transportation established pursuant to Chapter 6C of the General Laws, the governor shall appoint 4 additional members, 1 of whom shall be appointed for a term of 1 year, 1 of whom shall be appointed for a term of 2 years, 1 of whom shall be appointed for a term of 3 years, 1 of whom shall be appointed for a term of 4 years and

1 of whom shall be appointed for a term of 5 years.

SECTION 161. Notwithstanding any general or special law to the contrary, the secretary of administration and finance may enter into such contracts or agreements with the Massachusetts Department of Transportation and may transfer proceeds of the bonds and notes of the commonwealth issued for transportation purposes to the Massachusetts Department of Transportation as it deems necessary to carry out the purposes of the statutory provisions authorizing such bonds or notes.

SECTION 162. Notwithstanding any general or special law to the contrary, any existing or future balance in the Infrastructure Fund, established in section 2O of said chapter 29 of the General Laws, shall be credited to the Commonwealth Transportation Fund established in section 2ZZZ of said chapter 29, provided that such crediting shall not affect in any way the obligations of the commonwealth relating to special obligation bonds issued pursuant to said section 2O of said chapter 29, and the pledge of pledged funds, as defined in said section 2O of said chapter 29, to secure the payment of such bonds is hereby ratified and confirmed in all respects and shall remain in full force and effect as long as any such special obligation bonds issued as of July 1, 2009 remain outstanding in accordance with their terms and secured by funds in the fund.

SECTION 163. Notwithstanding any general or special law to the contrary, the comptroller shall transfer the balance of the Highway Fund established in section 34 of chapter 90 of the General Laws to the Commonwealth Transportation Fund established in section 2ZZZ of chapter 29 of the General Laws.

SECTION 164. Notwithstanding any general or special law to the contrary, the comptroller shall transfer the balance of the Deferred Maintenance Trust Fund established in section 69A of Chapter 10 of the General Laws, to the Commonwealth Transportation Fund established in section 2ZZZ of chapter 29 of the General Laws.

SECTION 165. Notwithstanding any general or special law to the contrary, any project or phase thereof that has received an opinion of the secretary of the executive office of energy and environmental affairs that it is not subject to the jurisdiction of the secretary pursuant chapter 30 of the General Laws shall be governed by the regulations and procedures in effect prior to the effective date of this act, and any project or phase thereof that has received, prior to the effective date of this regulation, any 1 or more of a variance, special permit, comprehensive permit, certificate of occupancy, or building permit followed within 5 years thereafter by a certificate of occupancy, or the developer of which has entered into an agreement of the department of conservation and recreation or the applicable executive office secretary to fund traffic improvements or traffic mitigation, shall in any such case be governed by the regulations and procedures in effect prior to the effective date of these regulations so long as the applicable variance, permit or certificate continues in force and effect or, if applicable, so long as such agreement has not been duly terminated on account of the failure of the

project developer to meet its obligations under such agreement and in any case unless the applicant elects, in writing, to be governed by this regulation and the procedures hereunder.

SECTION 166. This act shall provide additional, alternative and complete methods for accomplishing the purpose of this act and shall be construed to be supplemental and additional to, and not in derogation of any powers conferred upon the Massachusetts Department of Transportation and others by law; provided, however, that insofar as the provisions of this act are inconsistent with any general or special law, administrative order or regulation, the provisions of this act shall be controlling.

SECTION 167. (a) There shall be in the division of highways within the Massachusetts Department of Transportation a tollpayer advocate. The tollpayer advocate shall serve without compensation and may attend all meetings of the board of directors of the department and all meetings of any subsidiary board. The tollpayer advocate shall advocate on behalf of the tollpayers to ensure that their interests are fully understood and considered by the board in its deliberations and decisions.
(b) There shall be in the division of highways within the Massachusetts Department of Transportation a ridership advocate. The ridership advocate shall serve without compensation and may attend all meetings of the board of directors of the department and all meetings of any subsidiary board. The ridership advocate shall advocate on behalf of the riders of the public transit system to ensure that the public transit system maintains high standards of quality and punctuality.

SECTION 168. Notwithstanding any general or special law to the contrary, the comptroller shall transfer the balance of the Central Artery and Statewide Road and Bridge Infrastructure Fund established in section 63 of chapter 10 of the General Laws, to the Commonwealth Transportation Fund established in section 2ZZZ of chapter 29 of the General Laws.

SECTION 169. Notwithstanding any general or special law to the contrary, the Massachusetts Turnpike Authority, or any successor authority or agency shall extend the time permissible for an account holder to dispute an overcharge of the electronic toll collection system to a period of 3 years from the time of the overcharge unless the Turnpike authority, or any successor authority or agency, chooses to extend the disputing time frame.

SECTION 170. The members of the special public-private infrastructure oversight commission established in section 70 of chapter 7 of the General Laws, shall be appointed not later than August 30, 2009.

SECTION 171. Notwithstanding and general or special law to the contrary, the Massachusetts Department of Transportation, established in section 1 of chapter 6C of the General Laws, shall develop an inventory of all real property owned by the department. The inventory shall be filed with the clerks of the house and senate not later than 180 days after the effective date of this act.

SECTION 172. Notwithstanding any general or special law to the contrary, the Massachusetts

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Department of Transportation shall complete an inventory of all information technology systems currently used by the agencies or assets that are being transferred to the department pursuant to this act. The inventory shall include a description of each system in use that is adequate to permit the identification of redundancies among such systems. The director of systems integration shall consult with the chief information officer of the commonwealth in completing the inventory. A report of the results of the inventory shall be delivered to the chief information officer of the commonwealth, the chairs of the house and senate committees on ways and means, the chairs of the house and senate committees on bonding, capital expenditures and state assets and the house and senate chairs of the joint committee on transportation not later than April 1, 2010.

SECTION 173. Notwithstanding any general or special law to the contrary, the Massachusetts Department of Transportation shall be operated and maintained free of tolls when: (i) all notes and bonds issued by the department relating to the turnpike and payable from turnpike revenues have been paid or a sufficient amount for the payment of all such notes or bonds and the interest thereon, to the maturity thereof, shall have been set aside in trust for the benefit of the holders of such notes or bonds; and (ii) the turnpike is deemed to be in good condition and repair to the satisfaction of the department.

SECTION 174. The initial progress report required under subsection (b) of section 5 of chapter 6C of the General Laws shall be filed by the Massachusetts Department of Transportation on December 15, 2009.

SECTION 175. The Massachusetts Bay Transportation Authority may enter into an agreement with the attorney general whereby the attorney general may assume the representation of the authority or any of its officers and employees sued in their official or individual capacities for acts or omissions within the scope of their office or employment, in such judicial proceedings, whether pending on the effective date of this act or commenced thereafter, as the attorney general deems appropriate, in the same manner as the attorney general provides to other state agencies and their officers and employees; provided, however, that any such agreement shall provide for payment to the attorney general of all direct and indirect costs of such representation, and the attorney general may retain and expend such funds without further appropriation for the purpose of defraying such costs; and provided further, that when providing such representation, employees of the attorney general shall remain public employees acting within the scope of their employment for purposes of chapter 258 of the General Laws.

SECTION 176. Notwithstanding the provisions of section 35 of chapter 92 of the General Laws, or any other general or special law to the contrary, the department of conservation and recreation shall transfer the care, custody and control of all vehicular bridges and underpasses, to the Massachusetts Department of Transportation to be held for the same purposes; provided, however, that the following bridges or underpasses shall not be transferred to the authority until the department of conservation and recreation completes an appropriate phase of design, /or construction and renovation work an

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upon the execution of a memorandum of understanding by the commissioner of the department of conservation and recreation and the secretary of transportation: Boston University Bridge, River Street at Mother Brook, Woods Memorial Bridge, Craddock Bridge, Craige Dam Bridge, Lech Walesa/Mount Vernon Street Bridge, Patten's Cove Bridge, Cheney Bridge, Mystic Valley Parkway over Alewife Brook, Neponset River Bridge, General Edwards Drawbridge, Trestle/Charles River Bridge and the Hugh Farren Bridge; provided, however, that said bridges shall be transferred not later than December 31, 2014.

SECTION 177. Notwithstanding the provisions of section 35 of chapter 92 of the General Laws, or any other general or special law to the contrary, the department of conservation and recreation shall transfer the care, custody and control of the following parkways to the Massachusetts Department of Transportation to be held for the same purposes: McGrath and O'Brien Highways in the cities of Cambridge and Somerville, the Carrol parkway, Middlesex avenue in the city of Medford, William Casey highway overpass in the Jamaica Plain section of the city of Boston, Columbia road in the South Boston section of the city of Boston, Morton street in Boston and Gallivan boulevard in the Dorchester section of the city of Boston.
Not later than 1 year from the effective date of this act, the Massachusetts Department of Transportation and department of conservation and recreation shall file with the house and senate committees on ways and means and the joint committee on transportation a report concerning an evaluation and study of all other parkways and boulevards under the care, custody and control of the department of conservation and recreation and proposed for transfer to the Authority. The report shall include standards to protect the scenic and historic integrity of the parkways and related infrastructure, including, without limitation, snow removal on pedestrian pathways, traffic and safety protocols associated with Fourth of July events and other public events and programs devoted to recreation and public enjoyment. The report shall also include recommendations to facilitate the orderly expeditious transfer of identified parkways and boulevards to the Authority and proposed legislation to effectuate the recommendations contained in said report.

SECTION 178. (a) The transfer of said bridges, underpasses and parkways indentified in sections 176 and 177 of this act shall include all approaches, appurtenant structures, works and systems, and all books, records, documents, agreements, contracts, licenses, permits and other legal obligations associated with the bridges or necessary for the Massachusetts Department of Transportation to operate, manage, maintain, reconstruct and repair the bridges.
(b) Any alteration, reconstruction, redesign, maintenance, improvement or repair of the bridges, underpasses and parkways transferred by this act shall be carried out according to standards developed by the department of conservation and recreation to protect the scenic and historic integrity of the bridges and related infrastructure. Such standards shall include, but not be limited to, snow removal on pedestrian pathways, traffic and safety protocols associated with Fourth of July events and other public events and programs devoted to recreation and public enjoyment, and shall be developed by the department of conservation and recreation and agreed to by the Massachusetts Department of Transportation not later than 1 year from the effective date of this act.

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(c) Not later than 1 year from the effective date of this act, the Massachusetts Department of Transportation and the department of conservation and recreation shall file with the division of capital asset management and maintenance and the secretary of administration and finance a report documenting the extent of the bridges, underpasses and parkways transferred to the department pursuant to this act and documenting the standards required by the section. Upon receipt of said report, the division of capital asset management and maintenance shall take any required actions under section 40K of chapter 7 of the General Laws relative to specifically defining and documenting the boundaries of the transfers affected by sections 176 and 177.
(d) All unexpended funds and authorizations, which have been appropriated, from time to time, for the engineering, design, permitting, construction, reconstruction, maintenance and other services essential to the operation of the bridges transferred by this section but not yet expended, including, but not limited to, funds authorized by section 2A of chapter 233 of the acts of 2008, line item 2890-0800, shall be transferred from the department of conservation and recreation to the Authority as of the date of the transfer provided for in this section, and may thereafter be expended by the Massachusetts Department of Transportation; provided, however, that the department of conservation and recreation shall retain any unexpended funds and authorizations for the engineering, design, permitting, construction, reconstruction, maintenance, preservation, operation and other services essential to the operation of the bridges not transferred by this section.
(e) Department of conservation and recreation personnel deemed necessary by the department and the Massachusetts Department of Transportation for the design, construction, reconstruction, repair, maintenance, or improvement of bridges, underpasses, parkways and appurtenances transferred under this act shall be transferred to the Massachusetts Department of Transportation, together with the funds associated with their salary and benefits, without interruption of service within the meaning of section 9A of chapter 30, without impairment of civil service status, seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such transfer, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state division of labor relations in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The transfer shall not impair the civil service status of any such transferred employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.
(f) All duly existing contracts, leases and obligations of the department of conservation and recreation shall continue in effect but shall be assumed by the Massachusetts Department of Transportation. No existing right or remedy of any character shall be lost, impaired or affected by this act.
(g) Notwithstanding section 35 of chapter 92 of the General Laws, chapter 233 of the acts of 2008, or any other general or special law to the contrary, section 13 of chapter 233 of the acts of 2008 shall not apply to any bridge, underpass or parkway transferred from the department of conservation and recreation to the Authority under sections 176 and 177 of this act.

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(h) Notwithstanding other general or special law to the contrary, the transfer of the bridges, underpasses, parkways and appurtenances set forth in sections 176 to 178, inclusive, should be effectuated upon a vote by the Authority to assume the responsibility for the liabilities, obligations and debts associated with said bridges, underpasses, parkways, and appurtenances.

SECTION 179. Except as provided in sections 176 to 178, inclusive, nothing in this act shall be construed to transfer any lands, roadways, parkways, boulevards, bridge underpasses, approaches or other facilities under the care, custody or control of the department of conservation and recreation.

SECTION 180. Notwithstanding any general law or special law to the contrary, the colonel of state police, in consultation with the secretary of the department of transportation, shall implement cost-saving measures, including, but not limited to, those related to the payment of overtime expenses for members of the state police fulfilling an assignment pursuant to section 29 of chapter 22C of the General Laws.

SECTION 181. Notwithstanding any general or special law to the contrary, any employee who retires from the executive office of transportation, the department of highways, the registry of motor vehicles, the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Bay Transportation Authority, the Massachusetts aeronautics commission, or the Massachusetts Department of Transportation shall not be employed by the agency or authority from which the employee retired or any successor agency or authority to the agency or authority from which the employee retired, within 1 year after such retirement.

SECTION 182. The board of the Massachusetts Department of Transportation shall have the power to exercise its powers under chapter 6C and other provisions of this act on November 1, 2009.

SECTION 183. Sections 108, 144 and 145 shall take effect on November 1, 2009. SECTION 184. Sections 133, 134 to 139, inclusive, and 141 to 143, inclusive, shall take effect on January 1, 2010.

SECTION 185. Except as otherwise provided in this act, this act shall take effect on July 1, 2009.

Approved June 25, 2009

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Print

Acts 2009 **CHAPTER 28** AN ACT TO IMPROVE THE LAWS RELATING TO CAMPAIGN FINANCE, ETHICS AND LOBBYING.

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

SECTION 1. Section 39 of chapter 3 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the definition of “Client” and inserting in place thereof the following definition:-

“Client”, any person, corporation, partnership, association, or other entity that contracts with another person, corporation, partnership, association, or other entity to receive lobbying services.

SECTION 2. Said section 39 of said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out the definition of “Executive agent” and inserting in place thereof the following two definitions:-

“Executive agent”, a person who for compensation or reward engages in executive lobbying, which includes at least1 lobbying communication with a government employee made by said person. The term “executive agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to be engaged in executive lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in executive lobbying for not more than 25 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period for executive lobbying.

?Executive lobbying,? any act to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any general or special law, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement; provided further, that executive lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and provided further, that executive lobbying shall include strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee; and provided, further, that ?executive lobbying? shall not include providing information in writing in response to a

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written request from an officer or employee of the executive branch or an authority for technical advice or factual information regarding a standard, rate, rule or regulation, policy or procurement for the purposes of this chapter.

SECTION 3. Said section 39 of said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out the definition of “Legislative agent” and inserting in place thereof the following two definitions:-

“Legislative agent”, a person who for compensation or reward engages in legislative lobbying, which includes at least1 lobbying communication with a government employee made by said person. The term “legislative agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to be engaged legislative lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in legislative lobbying for not more than 25 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period for legislative lobbying.

“Legislative lobbying,” any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation; provided further, that legislative lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with legislative lobbying at the state level; and provided further, that legislative lobbying shall include strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee; provided, however, that “legislative lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter.

SECTION 4. Section 41 of said chapter 3, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-
The state secretary shall offer educational seminars on the requirements of sections 39 to 50, inclusive, for all legislative agents and executive agents. The seminars shall be conducted in person or offered online through the state secretary’s website. All legislative and executive agents shall: (i) before registering with the state secretary and annually thereafter, complete an in person or online seminar offered by the state secretary; and (ii) complete an in person or online seminar offered by the state secretary upon any material change to sections 39 to 50, inclusive, or any regulations promulgated pursuant thereto. The superintendent of the bureau of state office buildings shall, upon request of the state secretary, provide at no cost to the state secretary suitable facilities for such seminars. The state secretary shall adopt regulations for the administration and enforcement of this

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section.

SECTION 5. Said section 41 of said chapter 3, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following 2 paragraphs:-

Upon registration, the state secretary shall issue to each legislative agent and executive agent a license which shall entitle the holder to act as a legislative agent and executive agent for a client that has filed a registration statement pursuant to this section. A nontransferable identification card shall evidence this license and shall include the agent's name and photograph. Each license shall expire on December 31 of each year. Out-of-state legislative agents and executive agents shall submit 3 passport-sized photographs to the state secretary upon registration.

The state secretary shall, upon written request from a person who is or may be subject to sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion rendered by the state secretary, unless amended or revoked, shall be a defense in a criminal action brought pursuant to sections 39 to 50, inclusive, and shall be binding on the state secretary, the attorney general or the district attorney in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the state secretary may publish such opinions if the name of the requesting person and any other identifying information is not included in such publication unless the requesting person consents to such inclusion.

SECTION 6. Said chapter 3 is hereby amended by striking out section 42, as so appearing, and inserting in place thereof the following section:-

Section 42. No person shall make any agreement whereby any compensation or thing of value is to be paid to any person contingent upon a decision as described in the definition of "executive lobbying", or the passage or defeat of any legislation or the approval or veto of any legislation by the governor. No person shall agree to engage in legislative lobbying for consideration to be paid upon the contingency of the outcome of the actions described in the definition of "legislative lobbying" or that any legislation is passed or defeated.

Nothing in this section shall prohibit a person whose primary occupation is in marketing or selling a product or service for the person's company of employment from engaging in the sale of that product or service to the commonwealth for a commission or other compensation as long as the person is a full time employee for said company.

SECTION 7. Section 43 of said chapter 3, as so appearing, is hereby amended by striking out, in line 4, the words "appearing on the docket".

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SECTION 8. Said section 43 of said chapter 3, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Every legislative agent and executive agent shall include in the statement required by this section for the relevant reporting period: (1) the identification of each client for whom the legislative or executive agent provided lobbying services; (2) a list of all bill numbers and names of legislation and other governmental action that the executive or legislative agent acted to promote, oppose or influence; (3) a statement of the executive or legislative agent's position, if any, on each such bill or other governmental action; (4) the identification of the client or clients on whose behalf the executive or legislative agent was acting with respect to each such bill or governmental action; (5) the amount of compensation received for executive or legislative lobbying from each client with respect to such lobbying services; and (6) all direct business associations with public officials. The disclosure shall be required regardless of whether the legislative agent or executive agent specifically referenced the bill number or name, or other governmental action while acting to promote, oppose or influence legislation, and shall be as complete as practicable.

SECTION 9. Said section 43 of said chapter 3, as so appearing is hereby further amended by inserting after , the word "consumed",in line 78, the following words:-; provided, however, that regulations promulgated by the state ethics commission under section 6 of chapter 268B, shall apply to this provision.

SECTION 10. The fourth paragraph of said section 43 of said chapter 3, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Said penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause.

SECTION 11. The second paragraph of section 44 of said chapter 3, as so appearing, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- Said penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause.

SECTION 12 Said chapter 3 is hereby further amended by striking out section 45, as so appearing, and inserting in place thereof the following section:-

Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the state secretary, the state secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50, inclusive. At the commencement of a preliminary inquiry into any such alleged violation, the state secretary shall notify the attorney general. All proceedings and records relating to a preliminary inquiry or initial staff review used to determine

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whether to initiate an inquiry shall be confidential, except that the state secretary may provide to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding.Any information provided by the state secretary pursuant to this section shall be confidential pursuant to this section and section 4 of chapter 268B, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings. The state secretary shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

(b) If a preliminary inquiry fails to indicate reasonable cause for belief that there has been a violation of sections 39 to 50, inclusive, the state secretary shall immediately terminate the inquiry and shall within 10 days so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry.

(c) If a preliminary inquiry indicates reasonable cause for belief that there has been a violation of sections 39 to 50, inclusive, the state secretary may initiate an adjudicatory proceeding to determine whether there has been such a violation.

(d) The state secretary may require by summons the attendance and testimony of witnesses and the production of books, papers or other financial documents directly relating to any matter being investigated pursuant to sections 39 to 50, inclusive, provided that the state secretary's subpoena power shall be limited to obtaining employment contracts and other contracts or agreements related to services rendered, work performed or compensation received in connection with executive lobbying or legislative lobbying. Any justice of the supreme judicial court or the superior court may, upon application by the state secretary, issue a summons to be served in the same manner as summonses for witnesses in criminal cases, issued on behalf of the commonwealth and all the provisions of law relative to summonses shall apply to summonses issued under this section so far as applicable. Any justice of the supreme judicial court or the superior court may upon application by the state secretary compel the attendance of witnesses summoned as aforesaid and the giving of testimony under oath before the state secretary in furtherance of any investigation in the same manner and to the same extent as before said courts.

(e) The state secretary, or his designee, may administer oaths and may hear testimony or receive other evidence in any proceeding.

(f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing adjudicatory proceedings.

(g) Any person whose name is mentioned during an adjudicatory proceeding of the state secretary and who may be adversely affected thereby may appear personally before the state secretary on his own behalf, with or without counsel, to give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding.

(h) All adjudicatory proceedings of the state secretary pursuant to this section shall be public and shall be subject to chapter 30A.

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(i) Within 30 days after completion of deliberations, the state secretary shall publish a written report of his findings and conclusions.
(j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation, the state secretary may issue an order: (1) requiring the violator to cease and desist such violation; (2) requiring the violator to file any report, statement or other information as required by sections 39 to 50, inclusive; (3) suspending for a specified period or revoking the license and registration of the violator; or (4) requiring the violator to pay a civil penalty of not more than $10,000 for each violation. The state secretary may file a civil action in superior court to enforce this order.
(k) Final action by the state secretary under this section shall be subject to review in superior court upon petition of any party in interest filed within 30 days after the action for which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside the order of the state secretary, or it may remand the proceedings to the state secretary for such further action as the court may direct. If the court modifies or sets aside the state secretary's order or remands the proceedings to the state secretary, the court shall determine whether such modification, set aside, or remand is substantial. If the court does find such modification, set aside, or remand to be substantial, the petitioner shall be entitled to be reimbursed from the treasury of the commonwealth for reasonable attorneys' fees and all court costs incurred by him in the defense of the charges contained in the proceedings. The amount of such reimbursement shall be awarded by the court but shall not exceed $20,000 per person, per case.
(l) Any person who violates the confidentiality of an inquiry under this section shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.
(m) The state secretary shall automatically disqualify any person convicted of a felony in violation of chapter 3, chapter 55, or chapter 268A from acting or registering as an executive or legislative agent for a period of 10 years from the date of conviction.

SECTION 13. Section 47 of said chapter 3, as so appearing, is hereby further amended by striking out, in lines 4 and 5, the words “whose name appears upon the docket”.

SECTION 14. The second paragraph of said section 47 of said chapter 3, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Said penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause.

SECTION 15. Section 48 of said chapter 3, as so appearing, is hereby amended by striking out, in line 3, the words “five thousand dollars” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

SECTION 16. Section 49 of said chapter 3, as so appearing, is hereby amended by inserting after the first sentence the following 2 sentences:- The supreme judicial court or superior court may, upon application of the attorney general, grant equitable or mandamus relief to enforce sections 41 to 43,

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inclusive, prohibiting the offering or giving of or paying for gifts, meals, beverages, or other items. Relief under this section may include (a) an order to pay to the commonwealth an amount equal to the value of any compensation or thing paid or received in violation of section 42, or the value of any gift, meal, beverage, or other item given or received in violation of section 43; and (b) a civil penalty of up to $10,000 for each violation of sections 41 to 47, inclusive.

SECTION 17. Sections 11A and 11A½ of chapter 30A of the General Laws are hereby repealed.

SECTION 18. Said chapter 30A is hereby further amended by adding the following 8 sections:-

Section 18: As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Deliberation”, an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“Intentional violation”, an act or omission by a public body or a member thereof, in knowing by violating the open meeting law.

“Meeting”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include:
(a) an on-site inspection of a project or program, so long as the members do not deliberate;
(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or
(e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

“Minutes”, the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.
“Open meeting law”, sections 18 to 25, inclusive.
“Post notice”, to display conspicuously the written announcement of a meeting either in hard copy or electronic format.
“Preliminary screening”, the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.
“Public body”, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.
“Quorum”, a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. (a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.
(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:
(1) the general background of the legal requirements for the open meeting law;
(2) applicability of sections 18 to 25, inclusive, to governmental bodies;
(3) the role of the attorney general in enforcing the open meeting law; and
(4) penalties and other consequences for failure to comply with this chapter.
(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and

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regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.
The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.
(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:
(1) the number of open meeting law complaints received by the attorney general;
(2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
(3) a summary of the determinations of violations made by the attorney general;
(4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
(5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
(6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
(7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. (a) Except as provided in section 21, all meetings of a public body shall be open to the public.
(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.
(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.
For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

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For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose.
The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.
(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.
(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.
(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.
(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. (a) A public body may meet in executive session only for the following purposes:
(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
i. to be present at such executive session during deliberations which involve that individual;
ii. to have counsel or a representative of his own choosing present and attending for the purpose of

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advising the individual and not for the purpose of active participation in the executive session;
iii. to speak on his own behalf; and
iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.
The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.
(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:
1. the body has first convened in an open session pursuant to section 21;

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2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. (a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.
(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.
(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.
(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.
(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.
(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.
When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.
For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until

such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.
(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.
(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. (a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.
(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.
(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:
(1) compel immediate and future compliance with the open meeting law;
(2) compel attendance at a training session authorized by the attorney general;
(3) nullify in whole or in part any action taken at the meeting;
(4) impose a civil penalty upon the public body of not more than $1,000 for each intentional violation;
(5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
(6) compel that minutes, records or other materials be made public; or
(7) prescribe other appropriate action.

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(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.
(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.
(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.
Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.
In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b).
In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.
(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.
(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. (a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an

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investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. (a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.
(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

SECTION 19. Sections 9F and 9G of chapter 34 of the General Laws are hereby repealed.

SECTION 20. Sections 23A to 23C, inclusive, of chapter 39 of the General Laws are hereby repealed.

SECTION 21. Section 9 of chapter 53 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 21 and 22, the words “, as defined in section one of chapter fifty-five A,”.

SECTION 22. Said section 9 of said chapter 53, as so appearing, is hereby further amended by striking out, in line 25, the word “fifty-five A” and inserting in place thereof the following figure:- 55C.

SECTION 23. Section 1 of chapter 55 of the General Laws, as so appearing, is hereby amended by inserting after the definition of “Candidate’s committee” the following definition:-
“Clearly identified candidate”, a candidate whose name, photo or image appears in a communication or a candidate whose identity is apparent by unambiguous reference in a communication.

SECTION 24. Said section 1 of said chapter 55, as so appearing, is hereby further amended by inserting after the definition of “Election” the following definition:-
“Electioneering communication”, any broadcast, cable, mail, satellite or print communication that: (1) refers to a clearly identified candidate; and (2) is publicly distributed within 90 days before an election in which the candidate is seeking election or reelection; provided, however, that “electioneering communication” shall not include the following communications: (1) a communication that is disseminated through a means other than a broadcast station, radio station, cable television system or satellite system, newspaper, magazine, periodical, billboard advertisement, or mail; (2) a communication to less than 100 recipients; (3) a news story, commentary, letter to the editor, news release, column, op-ed or editorial broadcast by a television station, radio station, cable television system or satellite system, or printed in a newspaper, magazine, or other periodical in general

circulation; (4) expenditures or independent expenditures or contributions that must otherwise be reported under this chapter; (5) a communication from a membership organization exclusively to its members and their families, otherwise known as a membership communication; (6) bonafide candidate debates or forums and advertising or promotion of the same; and (7) internet or email communications.

SECTION 25. Said section 1 of said chapter 55, as so appearing, is hereby further amended by inserting after the definition of “Expenditure” the following definition:-
“Independent expenditure”, an expenditure made, or liability incurred, by an individual, group, or association for goods or services expressly advocating the election or defeat of a clearly identified candidate which is made or incurred without cooperation or consultation with any candidate, or a nonelected political committee organized on behalf of a candidate, or any agent of a candidate and which is not made or incurred in concert with, or at the request or suggestion of, any candidate, or any nonelected political committee organized on behalf of a candidate or agent of such candidate.

SECTION 26 The eighth paragraph of section 3 of said chapter 55, as so appearing, is hereby amended by adding the following four sentences:- The name of a candidate who fails to file any statement or report after the institution of civil proceedings under this section to compel such filing shall not be printed on a state primary or state election ballot unless the statement or report is filed prior to the deadline for filing nomination papers with the state secretary for such candidate pursuant to chapter 53. The director shall notify the state secretary of the names of those candidates against whom civil proceedings have been instituted and shall do so within 72 hours of the filing deadline for nomination papers with the state secretary. Any candidate who is disqualified from appearing on a state primary or state election ballot as set forth above shall be ineligible to be nominated at a state primary as a write-in or sticker candidate unless the candidate shall have filed the statements or reports which are the subject of the civil litigation by the date of the primary. The director shall notify the state secretary of any candidates who have filed their statements or reports which were the subject of civil litigation no later than 24 hours after the date of the state primary.

SECTION 27. Said section 3 of said chapter 55, as so appearing, is hereby further amended by inserting after the word “requested”, in line 111, the following words:- , by personal delivery, by leaving a copy of the notice at the person’s last and usual place of residence or by delivering a copy of the notice to an attorney who has appeared on behalf of the alleged violator.

SECTION 28. The eleventh paragraph of said section 3 of said chapter 55, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Evidence of any such violation of this chapter which has come to the director’s attention shall be presented by the director to the attorney general not later than 120 days before or 3 years after the relevant election or, if the evidence does not relate to an identifiable election, not later than 3 years after the violation.

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SECTION 29. The twelfth paragraph of said section 3 of said chapter 55, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Said civil penalty shall be in the amount of $25 per day; provided, however, that the maximum penalty the director may assess shall be no greater than $5,000 for any one report, statement or affidavit which is filed later than the prescribed date.

SECTION 30. Said section 3 of said chapter 55, as so appearing, is hereby amended by adding the following paragraph:-
The director shall not disclose publicly any correspondence or communication to a candidate, political committee, or ballot question committee which contains a deadline for response until the deadline has passed or until the director has received a response, whichever is earlier. Notwithstanding the forgoing notices of future filing requirements and notices of failure to file, a required report shall be a public record when issued.

SECTION 31. The ninth paragraph of section 5 of said chapter 55, as so appearing, is hereby amended by adding the following sentence:- No person who is authorized to make such expenditures shall sign a committee check payable to himself or herself.

SECTION 32. Section 6 of said chapter 55, as so appearing, is further hereby amended by adding after the fifth paragraph the following paragraph:-
For purposes of this section the term “personal use” shall include the payment of fines, penalties, restitution or damages incurred for a violation of chapters 268A and 268B, but shall not include payments made in relation to allegations of violations of such chapters.

SECTION 33. Section 8 of said chapter 55, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words “corporation incorporated” and inserting in place thereof the following words:- or professional corporation, partnership, limited liability company partnership.

SECTION 34. Subsection (d) of section 10A of said chapter 55, as so appearing, is hereby amended by striking out clause (1) and inserting in place thereof the following clause:-
(1) a bona fide joint fund-raising effort conducted solely for the purpose of sponsorship of a fund-raising reception, dinner, or other event, in accordance with the rules prescribed by the director by 2 or more state or local committees of a political party acting on their own behalf; or

SECTION 35. Section 18 of said chapter 55, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-
Each candidate and each treasurer of a political committee shall, except as provided in this section and section 24, file with the director reports of contributions received and expenditures made. A candidate and a committee organized on behalf of candidates seeking public office at a municipal election shall file such reports with the director, if the candidate is seeking the office of mayor in a municipality with a total population, as determined by the most recent federal decennial census, of

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between 40,000 and 100,000 persons, if the candidate or the candidate's committee, during the election cycle, can reasonably expect to raise or spend more than $5,000, or if the committee is required to file such reports with the director pursuant to section 19. All other candidates seeking public office at a city or town election shall file reports with the city or town clerk. A committee organized under section 5 to favor or oppose a question submitted to the voters shall file its reports with the director if the question appears on ballots at a state election, or with the city or town clerk if the question appears on ballots at a city or town election or for use in a city or town at a state election. Reports of contributions received and expenditures made shall be filed using forms prescribed by the director.

SECTION 36. Said section 18 of said chapter 55, as so appearing, is hereby amended by inserting after the word "January", in line 102, the following words:- ; provided, however, that candidates for the state senate or house of representatives, the nonelected political committees organized on behalf of such candidates, and political action committees, that file with the director, shall also file mid-year reports on or before the twentieth day of July in each year in each odd-numbered year.

SECTION 37 The third paragraph of said section 18 of said chapter 55, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following two sentences:- For all candidates and all political committees, if said report is not an initial report, the reporting period of such reports required to be filed on or before the twentieth day of July in each odd-numbered year shall commence on the first day of January of that year, or on the day following the end of the reporting period of the last report filed, if any, whichever period is shorter, and shall end as of the thirtieth day of June of said year. The reporting period for the report required to be filed on or before January 20 in each odd-numbered year shall commence on the day following the end of the reporting period of the last report filed and shall end as of December 31 of the prior year.

SECTION 38. Said section 18 of said chapter 55, as so appearing, is hereby further amended by inserting after the thirteenth paragraph the following 2 paragraphs:-
Each year-end campaign finance report filed by a candidate or non-elected political committee required to designate a depository by section 19 and who also maintains or who has maintained a savings account or money market account, shall disclose, for each reporting period, all activity in any such account. Nothing in this section shall authorize a transfer made from any such savings or money market accounts to an account other than the depository account established by a candidate or committee in accordance with said section 19.
Every political committee organized on behalf of a candidate that files with the director, and every ballot question committee that files with the director, which receives and deposits a contribution in the amount of $500 or more after the eighteenth day, but more than 72 hours, before the date of a special, preliminary, primary or general election, shall file a report to disclose the information required by this section, within 72 hours of depositing such contribution.

SECTION 39. Said section 18 of said chapter 55, as so appearing, is hereby further amended by

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striking out, in line 253, the words “Local Aid” and inserting in place thereof the word:- General.

SECTION 40. Said section 18 of said chapter 55, as so appearing, is hereby further amended by inserting after the seventeenth paragraph the following paragraph:-

Any person nominated by the governor for a position that requires confirmation by the executive council shall, within 6 months of the date of confirmation, dissolve any political committee organized on behalf of such person and disperse all funds remaining in such committee’s account in accordance with this section.

SECTION 41. Said chapter 55 is hereby further amended by striking out section 18A, as so appearing, and inserting in place thereof the following section:-

Section 18A. (a) Every individual, group or association not defined as a political committee who makes independent expenditures in an aggregate amount exceeding $250 during any calendar year for the express purpose of promoting the election or defeat of a candidate shall file with the director, except as provided in subsection (c), within 7 business days after the goods or services for which the independent expenditure was made are utilized to advocate for the election or defeat of a clearly identified candidate, on a form prescribed by the director, a report stating: (1) the name and address of the individual, group or association making any such independent expenditures; (2) the name of the candidate whose election or defeat the expenditure promoted; (3) the name and address of any person to whom the expenditures were made; (4) the total amount or value; and (5) the purpose and the date of each independent expenditure.

(b) In addition to any reports required by subsection (a), any individual, group, association or political committee that makes an independent expenditure in an aggregate amount exceeding $250 after the tenth day, but more than 24 hours, before the date of any election, shall file a preliminary report within 24 hours of making the independent expenditure, disclosing: (1) the name and address of the individual, group, association or political committee making the expenditure; (2) the name of the candidate whose election or defeat the expenditure promoted; (3) the name and address of any person to whom the independent expenditures were made; and (4) the purpose and the date of each expenditure.

(c) The individual, group, association or political committee shall file an additional preliminary report within 24 hours after each time it makes additional independent expenditures equal, in the aggregate, to $250 with respect to the same election as that to which the initial report relates, and shall also file any report required by subsection (a).

(d) The reports required by this section shall be filed with the director as provided in section 18C if expenditures are made to promote the election or defeat of any candidate who files with the director. Reports required by this section shall be filed with the city or town clerk if the expenditures are made to promote the election or defeat of any candidate seeking public office at a city or town election who does not file with the director.

(e) A violation of any provision of this section shall be punished by a fine of not more than $5,000 or by imprisonment in a house of correction for not more than 1 year.

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SECTION 42. Subsection (b) of section 18C of said chapter 55, as so appearing, is hereby amended by adding the following 6 clauses:-

(4) every political committee organized on behalf of a candidate that files with the director, including committees required to designate a depository on behalf of a candidate and every ballot question committee that files with the director, which receives and deposits a contribution of $500 or more after the eighteenth day, but more than 72 hours, before the date of a special, preliminary, primary or general election within 72 hours of depositing such contribution;

(5) every state committee referred to in section 1 of chapter 52 required to designate a depository by section 19 of this chapter, which receives a contribution of $500 or more after the eighteenth day, but more than 24 hours before, the date of a special, preliminary, primary or general election, within 72 hours of depositing such contribution;

(6) for every political committee required to file campaign finance reports electronically with the director, any reports filed pursuant to section 18D made to disclose expenditures by vendors of the committee to subvendors;

(7) an individual, group, association or political committee that is required to file a report of independent expenditures with the director in accordance with subsection (a) or (b) of section 18A;

(8) each candidate's committee organized on behalf of a candidate for mayor in a municipality with a total population, as determined by the most recent federal decennial census, of 40,000 to 100,000 persons, if the committee, during the election cycle, can reasonably expect to raise or spend more than $5,000; and

(9) every individual, group or association who makes an independent expenditure or electioneering communication expenditure in an aggregate amount exceeding $250 during any calendar year.

SECTION 43. Said chapter 55 is hereby further amended by inserting after section 18C the following 3 sections:-

Section 18D. (a) For the purpose of this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Expenditure", any payment made or liability incurred by a vendor on behalf of a political committee.

"Person", a natural person, corporation, association, partnership or other legal entity.

"Subvendor", a person providing goods or services to a vendor or who contracts with a vendor to provide goods or services to a committee.

"Vendor", any person including, but not limited to, a consultant, who provides goods or services to a political committee that files with the director and either receives or is promised $5,000 or more in the aggregate during a calendar year by the committee for such goods or services, or contracts with another on behalf of the committee for such goods or services valued at $5,000 or more in the aggregate to be provided to the committee.

(b) A vendor that makes an expenditure on behalf of a political committee shall within 5 days of making such expenditure provide the political committee with a detailed account of the expenditure including, but not limited to, the date of the expenditure, the person who received payment, the full name and address of the subvendor, the purpose of the expenditure, and the amount of the

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expenditure.
(c) A political committee that makes a payment to a vendor or incurs a liability to a vendor shall file reports with the director disclosing the full name and address, listed alphabetically, of each subvendor receiving payments of more than $500 in the aggregate during a calendar year from the vendor, and of each subvendor to whom a liability of more than $500 was incurred. The contents of such report shall include the information required by section 18 and shall be disclosed on a form prescribed by the director. For committees required to designate a depository account under section 19, the reports shall be filed on or before the fifth day of each month covering the preceding month; provided, however, that for other committees, the report must be filed in accordance with the schedule established by section 18.
(d) Vendors shall keep detailed accounts of all expenditures made on behalf of political committees.

Section 18E. (a) Legal defense funds may be created by a candidate or the candidate's political committee to defend against a criminal matter or to pay costs associated with a civil matter that is not primarily personal in nature. Inauguration funds may be created by a candidate or the candidate's political committee to pay for the costs associated with an inaugural event. Recount funds may be created by a candidate or candidate's political committee to pay for the legal and other costs associated with a recount. Legal defense, inauguration, or recount funds shall be created separately from the candidate's campaign account or committee, and shall be subject to the following conditions: (1) assets of a political committee may not be used by the fund; (2) any donations received by the fund shall not be deposited into the candidate's campaign account or a committee account; and (3) donations to such fund shall not be used to benefit a political committee.
(b) Donations to a legal defense, recount, or inauguration fund, if not contributions, shall be disclosed to the director or, if made by a candidate or committee that does not file with the director, the city or town clerk, on or before the fifth day of the month following the month in which the donations are received, complete as of the last day of the preceding month, on forms to be prescribed by the director. The report shall disclose the name and address and employer of all persons donating more than $50 during the reporting period, listed alphabetically, the amount of each such donation, and the total amount of donations received in the reporting period not otherwise reported.
(c) For purposes of this section, the term "donations" shall include donations in money or in-kind, and loans provided to legal defense, recount, or inauguration fund.

Section 18F. Every individual, group or association not defined as a political committee who makes an electioneering communication expenditure, in an aggregate amount exceeding $250 during a calendar year, shall electronically file with the director, within 7 days after making such an expenditure, a report stating the name and address of the individual, group or association making the electioneering communication, the name of any candidate clearly identified in the communication, the total amount or value of the communication, the name and address of the vendor to whom the payments were made and the purpose and date of any such expenditure. In addition, any individual, group or association not defined as a political committee who makes an electioneering communication expenditure, in an aggregate amount exceeding $250 during a calendar year, who receives funds for the purpose of

making such electioneering communications shall include in the electronic filing the date the funds were received and the name and address of the provider of any such funds in excess of $250, if any. Reports required by this section shall be filed with the director as provided in section 18C if communications were made to promote the election or defeat of any candidate who files with the director. Reports required by this section shall be filed with the city or town clerk if the communications were made to promote the election or defeat of any candidate seeking public office at a city or town election who does not otherwise file with the director.
Any person, group or association that makes or contracts to make electioneering communications aggregating $1,000 or more within 7 days before the date of an election shall file a report containing the information required by this section within 48 hours after making such expenditure.
A violation of this section shall be punished by a fine of not more than $5,000 or by imprisonment in the house of correction for not more than 1 year.

SECTION 44. Section 19 of said chapter 55, as so appearing, is hereby amended bystriking out, lines 5 and 6, the words “other citywide office, except for the office of school committee,” and inserting in place thereof the following words:- ,city council or alderman.

SECTION 45. Said section 19 of said chapter 55, as so appearing, is hereby further amended by striking out, in lines 101 and 102, the words “mayor or other citywide office except for school committee” and inserting in place thereof the following words:- city council, aldermen or mayor.

SECTION 46. Said section 19 of said chapter 55, as so appearing, is hereby further amended by adding the following subsection:-
(g) Each committee required to designate a depository on behalf of a candidate that files with the director in accordance with this section and which receives and deposits a contribution of $500 or more after the eighteenth day but more than 72 hours before the date of a special, preliminary, primary or general election shall file a report to disclose the information required by this section within 72 hours of depositing such contribution. In addition, each state committee referred to in section 1 of chapter 52 required to designate a depository pursuant to this section and which receives a contribution of $500 or more after the eighteenth day, but more than 24 hours, before the date of a special, preliminary, primary or general election, shall file a report to disclose the information required by this section, within 72 hours of depositing such contribution.

SECTION 47. Section 22 of said chapter 55, as so appearing, is hereby amended by striking out, in line 1, the word “The” and inserting in place thereof the following words:- Any person or the.

SECTION 48. Said section 22 of said chapter 55, as so appearing, is hereby further amended by inserting after the first paragraph the following paragraph:-
Any person who makes an expenditure of $250 or more other than a contribution to a ballot question committee or incurs a liability of $250 or more to influence or affect the vote on any question submitted to the voters shall file reports setting forth the amount or value of the expenditure or liability, together

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with the date, purpose and full name of the person to whom the expenditure was made or the liability incurred.

SECTION 49. Said section 22 of said chapter 55, as so appearing, is hereby further amended by inserting after the word “such”, in lines 17, 31 and 41, the following words:- person or.

SECTION 50. Said section 22 of said chapter 55, as so appearing, is hereby further amended by inserting after the word “Any”, in line 38, the following words:- person or.

SECTION 51. Section 24 of said chapter 55, as so appearing, is hereby further amended by inserting after the word “statement”, in lines 1, 4, 5, 8, 9, and 12, the following words:- or report.

SECTION 52. Section 24 of said chapter 55, as so appearing, is hereby amended by inserting after the word “office”, in line 3, the following words:- , other than a municipal office for which a candidate is required to file with the director in accordance with section 18C or section 19.

SECTION 53. Said section 24 of said chapter 55, as so appearing, is hereby further amended by inserting after the word “statements”, in lines 13 and 14, the following words:- or reports.

SECTION 54. Section 26 of said chapter 55, as so appearing, is hereby amended by striking the first and second sentences and inserting in place thereof the following sentence:- The city or town clerk shall retain all statements and reports required to be filed with such clerk until December 31st of the sixth year following the relevant election. In the case of committees other than those authorized by a candidate, the city or town clerk shall retain all required statements and reports filed with such clerk until December 31st of the sixth year following the date that the statement or report was filed.

SECTION 55. Said section 26 of said chapter 55, as so appearing, is hereby further amended by adding the following sentence:- Within 30 days after the filing deadline, all campaign finance reports required to be filed with the city or town clerk under section 18 shall be made available for viewing on the internet website of the municipality if such municipality has such a website, if the report discloses that a candidate or committee filing a report has received contributions or made expenditures in excess of $1,000 during a reporting period or incurred liabilities or acquired or disposed of assets in excess of $1,000 during a reporting period.

SECTION 56. Said chapter 55 is hereby further amended by striking out section 29, as so appearing, and inserting in place thereof the following section:-

Section 29. Upon failure to file a statement, report or affidavit within 10 days after receiving notice under section 28, the city or town clerk, as the case may be, shall notify the director thereof and shall furnish him with copies of all papers related thereto and the director, if satisfied there is cause, shall assess a penalty and may refer the person or committee to the attorney general pursuant to section 3.

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If any statement filed with the city or town clerk, as the case may be, discloses any violation of this chapter, such city or town clerk shall notify the director thereof and shall furnish him with copies of all papers relating thereto. The director shall examine every such case referred to him by such clerk and may refer such cases to the attorney general in accordance with section 3. If satisfied that there is cause, the attorney general shall, in the name of the commonwealth, institute appropriate criminal or civil proceedings or refer the case to the proper district attorney for such actions as may be appropriate. Any city or town clerk shall at any time upon the request of the attorney general or the director forward any evidence or information received by such clerk to the attorney general or director for whatever action the attorney general or director deems appropriate pursuant to law.

SECTION 57. The last paragraph of section 4 of chapter 55C of the General Laws, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following 2 sentences:- Determination and certification of the eligibility of candidates shall be made by the director on the eighth Tuesday before the primary and shall be based solely upon information contained in such statements as have been filed by candidates. Candidates for governor seeking public financing shall file the statement on or before the Friday that is 11 days preceding said eighth Tuesday and other candidates seeking public financing shall file said statements on or before the Friday next preceding said eighth Tuesday.

SECTION 58. The second paragraph of section 6 of said chapter 55C, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following 2 sentences:- Determination and certification of the eligibility of candidates shall be made by the director on the fourth Tuesday before the state election and shall be based solely upon information contained in such statements as have been filed by candidates. Candidates for governor and lieutenant governor seeking public financing shall file the statement on or before the Friday that is 11 days preceding said fourth Tuesday and other candidates seeking public financing shall file said statements on or before the Friday next preceding said fourth Tuesday.

SECTION 59. Section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by inserting after the word “income” in line 229, the following words:- ; provided, however, that Part B gross income shall include bribes, corrupt gifts and any income gained through illegal activities.

SECTION 60. Chapter 268 of the General Laws is hereby amended by inserting after section 13D the following section:-

Section 13E. (a) As used in this section the following word shall, unless the context clearly requires otherwise, have the following meaning:-
“Official proceeding”, a proceeding before a court or grand jury, or a proceeding before a state agency or commission, which proceeding is authorized by law and relates to an alleged violation of a criminal statute or the laws and regulations enforced by the state ethics commission, the state secretary, the office of the inspector general, or the office of campaign and political finance, or an alleged violation

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for which the attorney general may issue a civil investigative demand.
(b) Whoever alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding is pending at that time, shall be punished, by (i) a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both, or (ii) if the official proceeding involves a violation of a criminal statute, by a fine of not more than $25,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 1/2 years, or both.
(c) The record, document, or other object need not be admissible in evidence or free of a claim of privilege.
(d) A prosecution under this section may be brought in the county where the official proceeding was or would have been convened or where the alleged conduct constituting an offense occurred.

SECTION 61. Section 2 of chapter 268A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 46 to 49, inclusive, the words "five thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one half years, or by both such fine and imprisonment in a jail or house of correction" and inserting in place thereof the following words:- $100,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

SECTION 62. Said chapter 268Ais hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section:-

Section 3. (a) Whoever knowingly, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary: (i) for or because of any official act performed or to be performed by such an employee or member of the judiciary or person selected to be such an employee or member of the judiciary; or (ii) to influence, or attempt to influence, an official action of the state, county or municipal employee or to any member of the judiciary; or
(b) Whoever knowingly, being a present or former state, county or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value: (i) for himself for or because of any official act or act within his official responsibility performed or to be performed by him; or (ii) to influence, or attempt to influence, him in an official act taken; or
(c) Whoever knowingly, directly or indirectly, gives, offers or promises anything of substantial value to any person, for or because of testimony under oath or affirmation given or to be given by such person or any other person as a witness upon a trial, hearing or other proceeding, before any court, any

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committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony or for or because of his absence therefrom; or
(d) Whoever knowingly, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value for himself for or because of the testimony under oath or affirmation given or to be given by him or any other person as a witness upon any such trial, hearing or other proceeding, or for or because of his absence therefrom; shall be punished by a fine of not more than $50,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.
(e) Clauses (c) and (d) shall not prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.
(f) The state ethics commission shall adopt regulations: (i) defining “substantial value,” ; provided, however, that “substantial value” shall not be less than $50; (ii) establishing exclusions for ceremonial gifts; (iii) establishing exclusions for gifts given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

SECTION 63. Section 4 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 17 and 18, inclusive, the words “three thousand dollars or by imprisonment for not more than two years, or both” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

SECTION 64. Section 5 of said chapter 268A, as so appearing, is hereby amended by striking out, in line 26, the word “agent” and inserting in place thereof the following words:- or executive agent.

SECTION 65. Said section 5 of said chapter 268A, as so appearing, is hereby further amended by inserting after the word “body”, in line 28, the following words:- , as determined by the state ethics commission.

SECTION 66. Said section 5 of said chapter 268A, as so appearing, is hereby further amended by striking out, in lines 41 and 42, inclusive, the words “three thousand dollars or by imprisonment for not more than two ” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 67. Section 6 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, inclusive, the words “three thousand dollars or by imprisonment for not more than two”

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and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 68. Section 7 of said chapter 268A, as so appearing, is hereby amended by striking out, in line 5, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 69. Section 8 of said chapter 268A, as so appearing, is hereby amended by striking out, in line 17, the words “five thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 70. Said chapter 268A is hereby further amended by striking out section 9, as so appearing, and inserting in place thereof the following section:-

Section 9. (a) In addition to any other remedies provided by law, any violation of sections 2 to 8, inclusive, or section 23 which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action on such terms as the interests of the commonwealth and innocent third persons shall require.
(b) In addition to the remedies set forth in subsection (a), the state ethics commission upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2 to 8, inclusive, or section 23, may issue an order: (1) requiring the violator to pay the commission on behalf of the commonwealth damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.
The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.
(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the state ethics commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 71. Section 11 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 72. Section 12 of said chapter 268A, as so appearing, is hereby amended by striking out, in

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lines 24 and 25, inclusive, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 73. Section 13 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 74. Section 14 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, inclusive, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 75. Said chapter 268A is hereby further amended by striking out section 15, as so appearing, and inserting in place thereof the following section:-

Section 15. (a) In addition to any other remedies provided by law, a violation of section 2, 3, 8, or sections 11 to 14, inclusive, or section 23 which has substantially influenced the action taken by any county agency in any particular matter, shall be grounds for avoiding, rescinding, or canceling the action on such terms as the interests of the county and innocent third persons shall require.
(b) In addition to the remedies set forth in subsection (a), the commission may, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of section 2, 3, 8, sections 11 to 14, inclusive, or section 23, issue an order (1) requiring the violator to pay the commission on behalf of the county damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general and the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.
The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.
(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 76. Section 17 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

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SECTION 77. Section 18 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 22 and 23, inclusive, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 78. Section 19 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 79. Section 20 of said chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, inclusive, the words “three thousand dollars or by imprisonment for not more than two” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 80. Said chapter 268A is hereby further amended by striking out section 21, as so appearing, and inserting in place thereof the following section:-

Section 21. (a) In addition to any other remedies provided by law, a finding by the commission pursuant to an adjudicatory proceeding that there has been any violation of sections 2, 3, 8, 17 to 20, inclusive, or section 23, which has substantially influenced the action taken by any municipal agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action of said municipal agency upon request by said municipal agency on such terms as the interests of the municipality and innocent third persons require.
(b) In addition to the remedies set forth in subsection (a) , the commission may, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 17 to 20, inclusive, or section 23, may issue an order (1) requiring the violator to pay the commission on behalf of the municipality damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation. The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.
(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 81. Subsection (b) of section 23 of said chapter 268A, as so appearing, is hereby amended by striking out clause (2) and inserting in place thereof the following clause:-

(2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

SECTION 82. Said section 23 of said chapter 268A, as so appearing, is hereby further amended by striking out, in line 21, the word "conclusion." and inserting in place thereof the following words:- conclusion; or
(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

SECTION 83. Said section 23 of said chapter 268A, as so appearing, is hereby further amended by striking out subsection(f) and inserting in place thereof the following subsection:-
(f) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than $50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

SECTION 84. Said chapter 268A is hereby further amended by adding the following 4 sections:-

Section 26. (a) Any person who, directly or through another, with fraudulent intent, violates clause (2) or (4) of subsection (b) of section 23, or any person who, with fraudulent intent, causes any other person to violate said clauses (2) or (4) of said subsection (b) of said section 23 or with fraudulent intent offers or gives any privileges or exemptions of substantial value in violation of said clause (2) or (4) of said subsection (b) of said section 23 , shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both, if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than $1,000 in any 12 month period.

Section 27. The commission shall prepare, and update as necessary, summaries of this chapter for state, county, and municipal employees, respectively, which the commission shall publish on its official website. Every state, county and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgment that he has been provided with such a summary. Municipal employees shall be furnished with the summary by, and file an acknowledgment with, the city or town clerk. Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment with, the employee's appointing authority or his designee. Elected state and county employees shall be furnished with the summary by, and file an acknowledgment with, the commission. The commission shall establish procedures for implementing this section and ensuring compliance.

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Section 28. The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website: (1) a program which shall provide a general introduction to the requirements of this chapter; and (2) a program which shall provide information on the requirements of this chapter applicable to former state, county, and municipal employees. Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer.
The commission shall establish procedures for implementing this section and ensuring compliance.

Section 29. Each municipality, acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities.

SECTION 85. Chapter 268B of the General Laws, is hereby amended by striking out section 1 , as appearing in the 2006 Official Edition and inserting in place thereof, the following section:-

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise have the following meanings:
“Amount”, a category of value, rather than an exact dollar figure, as follows: greater than $1,000 but not more than $5,000; greater than $5,000 but not more than $10,000; greater than $10,000 but not more than $20,000; greater than $20,000 but not more than $40,000; greater than $40,000 but not more than $60,000; greater than $60,000 but not more than $100,000; greater than $100,000.
“Business”, any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust or any other legal entity organized for profit or charitable purposes.
“Business with which he is associated”, any business in which the reporting person or a member of his immediate family is a general partner, proprietor, officer or other employee, including one who is self-employed or serves as a director, trustee or in any similar managerial capacity and any business more than 1 per cent of any class of the outstanding equity of which is beneficially owned in the aggregate by the reporting person and members of his immediate family.
“Candidate for public office”, any individual who seeks nomination or election to public office; provided, however, that , an individual shall be deemed to be seeking nomination or election to public office if he has: (1) received a political contribution or made an expenditure, or has given his consent for any other person or committee to receive a political contribution or make an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the political contribution is received or the expenditure is made; or (2) taken the action necessary under the laws of the commonwealth to

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qualify himself for nomination or election to such office.
“Commission”, the state ethics commission established by section 2;
“Equity”, any stock or similar ownership interest in a business.
“Executive agent”, an executive agent as defined in section 39 of chapter 3.
Governmental body”, a state or county agency, authority, board, bureau, commission, council, department, division or other entity, including the general court and the courts of the commonwealth.
“Immediate family”, a spouse and any dependent children residing in the reporting person’s household.
“Income”, income from whatever source derived, whether in the form of a fee, salary, allowance, forebearance, forgiveness, interest, dividend, royalty, rent, capital gain or any other form of recompense or any combination thereof; provided, however, that interest from savings accounts or from government obligations other than those of the commonwealth or any political subdivision thereof or any public agency or authority created by the general court, alimony and support payments, proceeds from a life insurance policy, retirement or disability benefits and social security payments shall not be considered income for the purposes of this chapter.
“Legislative agent”, a legislative agent as defined in section 39 of chapter 3.
“Major policymaking position”, the executive or administrative head of a governmental body, all members of the judiciary, any person whose salary equals or exceeds that of a state employee classified in step 1 of job group XXV of the general salary schedule contained in section 46 of chapter 30 and who reports directly to said executive or administrative head, the head of each division, bureau or other major administrative unit within such governmental body and persons exercising similar authority.
“Person”, a business, individual, corporation, union, association, firm, partnership, committee or other organization or group of persons.
“Political contribution”, a contribution of money or anything of value to an individual, candidate, political committee or person acting on behalf of an individual, candidate or political committee, for the purpose of influencing the nomination or election of the individual or candidate or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment or other question submitted to the voters and shall include any: (1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; (2) transfer of money or anything of value between political committees; (3) payment, by any person other than a candidate or political committee, or compensation for the personal services of another person which are rendered to such candidate or committee; (4) purchase from an individual, candidate or political committee, or person acting on behalf of an individual, candidate or political committee, whether through the device of tickets, advertisements, or otherwise, for fund-raising activities, including testimonials, held on behalf of said individual, candidate or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered; (5) discount or rebate not available to other candidates for the same office and to the general public; and (6) forgiveness of indebtedness or payment of indebtedness by another person; provided, however, that political contribution shall not include the rendering of services by speakers, editors, writers, poll

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watchers, poll checkers or others, or the payment by those rendering such services of such personal expenses as may be incidental thereto, or the exercise of ordinary hospitality.
“Public employee”, a person who holds a major policymaking position in a governmental body; provided, however, that a person who receives no compensation other than reimbursements for expenses, or any person serving on a governmental body that has no authority to expend public funds other than to approve reimbursements for expenses shall not be considered a public employee for the purposes of this chapter; provided, further, that the members of the board of bar examiners shall not be considered public employees for the purposes of this chapter.
“Public office”, a position for which one is nominated at a state primary or chosen at a state election, excluding the positions of senator and representative in congress and the office of regional district school committee member elected district-wide.
“Public official”, a person who holds a public office.
“Reporting person”, a person required to file a statement of financial interest pursuant to section 5.

SECTION 86. Section 4 of said chapter 268B, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following:-
(a) Upon receipt of a sworn complaint signed under the penalties of perjury, or upon receipt of evidence which is deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any alleged violation of chapter 268A or 268B. At the commencement of a preliminary inquiry into any such alleged violation, the general counsel shall notify the attorney general in order to avoid overlapping civil and criminal investigations. All commission proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential, except that the general counsel may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding. The general counsel shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

SECTION 87. Subsection (c) of said section 4 of said chapter 268B, as so appearing, is hereby amended by adding the following sentence:- The commission shall initiate such an adjudicatory proceeding within 5 years from the date the commission learns of the alleged violation, but not more than 6 years from the date of the last conduct relating to the alleged violation.

SECTION 88. Subsection (d) of said section 4 of said chapter 268B as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Such summonses shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by order of a justice of the superior court and may be quashed only upon motion of the summonsed party and by order of a justice of the superior court.

SECTION 89. Said section 4 of said chapter 268B, as so appearing, is hereby further amended by striking out, in lines 73 and 74, the words “two thousand dollars for each violation of this chapter or

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said chapter two hundred and sixty-eight A" and inserting in place thereof the following words:- $10,000 for each violation of this chapter or chapter 268A, with the exception of a violation of section 2 of chapter 268A, which shall be subject to a civil penalty of not more than $25,000.

SECTION 90. Said section 4 of said chapter 268B, as so appearing, is hereby further amended by inserting after the word "order", in line 76, the following words:- and any order issued by the commission in accordance with chapter 268A.

SECTION 91. Said section 4 of said chapter 268B, as so appearing, is hereby further amended by inserting after the word "to", in line 77, the following words:- chapter 268A or 268B.

SECTION 92. Said section 4 said chapter 268B, as so appearing, is hereby further amended by striking out, in line 91, the words "twenty thousand dollars" and inserting in place thereof the following figure:- $30,000.

SECTION 93. Said section 4 of said chapter 268B, as so appearing, is hereby further amended by adding the following paragraph:-
(l) The superior court shall have concurrent jurisdiction to issue orders under paragraph (j) in a civil action brought by the attorney general. In any such action, an advisory opinion of the commission under clause (g) of section 3 shall be binding to the same extent as it is against the commission under that clause.

SECTION 94. Section 5 of said chapter 268B, as so appearing, is hereby amended by inserting after the word legislative, in line 68, the following words:- or executive.

SECTION 95. Said chapter 268B is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:-

Section 6. No executive or legislative agent shall knowingly and willfully offer or give to any public official or public employee or a member of such person's immediate family, and no public official or public employee or member of such person's immediate family shall knowingly and willfully solicit or accept from any executive or legislative agent, any gift of any kind or nature; provided, however, that the state ethics commission shall promulgate regulations: (i) establishing exclusions for ceremonial gifts; (ii) establishing exclusions for gifts given solely because of family or friendship; and (iii) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

SECTION 96. Section 7 of said chapter 268B, as so appearing, is hereby amended by striking out, in line 7, the words "files a " and inserting in place thereof the following words:- willfully files a materially.

SECTION 97. Said section 7 of said chapter 268B, as so appearing, is hereby further amended by

striking out, in lines 9 and 10, the words “one thousand dollars or by imprisonment in the state prison for not more than three years, or in a house of correction for not more than two and one-half” and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2.

SECTION 98. The General Laws are hereby further amended by inserting after chapter 277 the following chapter:-

CHAPTER 277A
Statewide Grand Jury

Section 1. Upon written application of the attorney general to the chief justice of the superior court department, with good cause stated therein, the chief justice may authorize the convening of a statewide grand jury with jurisdiction extending throughout the commonwealth.

Section 2. The chief justice of the superior court department shall, upon granting an application, receive recommendations from the attorney general as to the county in which the statewide grand jury shall sit. Upon receiving the attorney general’s recommendations, the chief justice shall choose 1 of those recommended locations as the site where the grand jury shall sit. Once a county has been selected, the chief justice shall direct the regional administrative judge from the county selected to appoint, and reappoint as necessary, a superior court judge to preside over the statewide grand jury.

Section 3. The superior court judge presiding over the grand jury shall consult with the attorney general and district attorney for the relevant district about the nature and scope of the investigation and shall thereafter designate and authorize an existing county grand jury to serve as a statewide grand jury for purposes of the investigation specified in the written application, or, alternatively, convene and preside over a specially empaneled statewide grand jury.

Section 4. A specially empaneled statewide grand jury shall be drawn and selected in the same manner as the county grand jury in the county in which the specially empaneled statewide grand jury sits. A specially empaneled statewide grand jury may, at the discretion of the presiding superior court judge, draw jurors from counties adjoining the one in which the statewide grand jury is to sit.

Section 5. A specially empaneled statewide grand jury convened pursuant to this chapter shall sit for a period not to exceed 18 months. The superior court judge presiding over the grand jury may extend this period if, in accordance with section 1A of chapter 277 and section 41 of chapter 234A, public necessity requires further time by the grand jury to complete an on-going investigation.

Section 6. The attorney general or an assistant attorney general shall attend each session of a statewide grand jury and may prosecute any indictment returned by it. The attorney general or assistant attorney general shall have the same powers and duties in relation to a statewide grand jury

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that she has in relation to a county grand jury, except as otherwise provided by law.

Section 7. Indictments shall be returned in the county where the statewide grand jury sits and shall thereafter be transferred to the county specified by the grand jury on the indictment. Venue for purposes of trial of offenses indicted by a statewide grand jury shall be in any county where venue would otherwise be proper.

Section 8. No provision of this chapter shall be construed as limiting the jurisdiction of county grand juries or district attorneys. Except as otherwise provided by law, an investigation by a statewide grand jury shall not preempt an investigation by any other grand jury or agency having jurisdiction over the same subject matter.

SECTION 99. Chapter 277A of the General Laws is hereby repealed.

SECTION 100. Notwithstanding any general or special law to the contrary, every legislative agent and executive agent, as defined by section 39 of chapter 3 of the General Laws shall, within 90 days after the effective date of this act, and every year thereafter, complete an in-person or online seminar offered by the state secretary in accordance with section 41 of said chapter 3.

SECTION 101. Notwithstanding any general or special law to the contrary, in accordance with section 27 of chapter 268A of the General Laws within 90 days after the effective date of this act every state, county, and municipal employee shall be provided a summary of chapter 268A prepared by the state ethics commission and shall file a written acknowledgment as required by that section.

SECTION 102. Notwithstanding any general or special law to the contrary, within 120 days after the effective date of this act, each municipality shall provide written notification to the state ethics commission of the liaison designated under section 29 of chapter 268A of the General Laws.

SECTION 103. Notwithstanding any general or special law to the contrary, any person who has previously received confirmation by the executive council, and who is, on the effective date of this actstill a member of the judiciary shall, within 6 months of the effective date of this act, dissolve any political committee organized on behalf of such person and disperse any funds remaining in such committee’s account in accordance with section 18 of chapter 55 of the General Laws.

SECTION 104. Notwithstanding any general or special law to the contrary, there shall be established a special commission to study the creation of a new independent office of public accountability which would function as the single state entity for the administration and enforcement of the provisions of law currently administered and enforced by the state ethics commission, the office of campaign and political finance and the lobbyist division of the office of the secretary of state.
The commission shall consider factors, including, but not limited to: (1) creating a new independent office of public accountability which would function as the single state entity for the administration and

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enforcement of the provisions of law currently administered and enforced by the state ethics commission, the office of campaign and political finance and the lobbyist division of the office of the secretary of state; (2) the cost of establishing such an office and the potential cost savings from efficiencies created by consolidating certain functions of the various offices; (3) what personnel would be required in such an office and who would set the salaries for those individuals, and whether civil service laws should apply to such an office; (4) the optimal composition of the new independent office to preserve its impartiality and integrity, including the question of whether no more than a certain number of commission members shall be members of a single political party and whether elected officials should participate in the process including appointing the commission or executive director; (5) who should be responsible for the removal of an executive director or commission member and how to fill such a vacancy; (6) whether any changes are necessary regarding jurisdiction for criminal or civil prosecutions of violations of laws within the purview of the office, and who should be responsible for investigating those matters; (7) whether there is a need for any expanded rulemaking authority within the new office; (8) whether the new office should be authorized to share information with any and all other enforcement agencies or what limitations are required for any particular type of inquiry, and whether information sharing within the office itself should be limited in any way; and (9) whether the confidentiality provisions under chapters 268A and 268B would be jeopardized by consolidation of operations of the state ethics commission with other agencies.

The special commission shall consist of: the secretary of the commonwealth, or his designee; the director of the office of campaign and political finance, or his designee; the executive director of the state ethics commission, or his designee; 3 members of the senate 1 of whom shall be appointed by the minority leader of the senate; 3 members of the house of representatives 1 of whom shall be appointed by the minority leader of the house of representatives; and 2 members to be appointed by the attorney general. The special commission shall report to the general court the results of its investigation and study, together with recommendations and drafts of legislation necessary to carry out any recommendations, if any, by filing a report with the clerks of the senate and the house of representatives by July 31, 2010.

SECTION 105. Sections 23 to 59, inclusive, of this act shall take effect on January 1, 2010.

SECTION 106. Sections 17 to 20, inclusive, of this act shall take effect July 1, 2010.

SECTION 107. Section 99 shall take effect on December 31, 2014.

Approved July 1 , 2009

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Acts 2007

CHAPTER 68 AN ACT TO REDUCE THE STRESS ON LOCAL PROPERTY TAXES THROUGH ENHANCED PENSION FUND INVESTMENT.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate forthwith certain pension systems, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Section 22 of said chapter 32 of the General Laws, as so appearing, is hereby amended by striking out, in line 1043, the words “electing to participate” and inserting in place thereof the following word:- participating.

SECTION 2. Subdivision (8) of said section 22 of said chapter 32, as so appearing, is hereby amended by inserting after paragraph (c) the following paragraph:-

(c½) The commission shall annually review the investment performance and funded ratio of all systems using data compiled as of January 1 of the year in which the review occurs. If on or before July 1 the funded ratio data as of January 1 is not available, the most recent data shall be used. A system found by the commission to have a funded ratio of less than 65 per cent and an average rate of return during the previous 10 years that is at least 2 percentage points less than that of the PRIT Fund rate of return over the same period shall be declared underperforming by the commission. The commission shall notify, in writing, any system deemed to be underperforming pursuant to this paragraph that it shall transfer ownership and control of all of its assets to the PRIM board. The notice shall include, without limitation: (i) a financial report on the specific underperforming system; (ii) a description of the rights and duties of the PRIM board; and (iii) a schedule for the transfer of ownership and control of a system’s assets to the PRIM board pursuant to this paragraph. A transfer of the ownership and control of a system’s assets pursuant to this paragraph shall be in perpetuity.

The PRIM board shall hold assets in trust for the participating systems. The PRIM board shall credit assets and earnings on the assets to the individual systems.

The PRIM board shall calculate regular interest as defined in subdivision (6) to allocate earnings among the various funds of each system. The board of each system shall continue to administer the system in accordance with sections 1 to 28, inclusive, including the maintenance of accounts in accordance with the funds provided for in this section. The PRIM board shall transfer monies to the

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various funds of the participating systems to allow them to carry out their duties pursuant to this chapter. The board of each participating system shall notify the PRIM board of the amounts needed for the various funds for the next fiscal year not later than 90 days before the start of the next fiscal year. The PRIM board shall develop a schedule of transfers to be made to the systems during the next fiscal year and notify the systems of that schedule not later than 30 days before the start of the next fiscal year. The PRIM board shall transfer those amounts in accordance with the schedule during the course of the fiscal year. From time to time, the boards may make supplemental requests of the PRIM board if the initial request is found to be insufficient. Within 30 days after the request, the PRIM board shall approve or deny it, but a denial shall be accompanied by a written statement of the reasons therefor.

A system ordered by the commission to transfer its assets under this paragraph may appeal for an exemption to a 4-member review board which shall consist of the executive director of the PRIM board or his designee, the secretary of administration and finance or his designee, a member selected by the state treasurer from a list of 3 names submitted by the Massachusetts Association of Contributory Retirement Systems and 1 member of a municipal employee union to be appointed by the governor. The system shall file written notice of its appeal with the secretary of administration and finance not later than 30 days after receiving the commission's order to transfer its assets. The review board may establish rules for its own procedure and the rules shall not be subject to chapter 30A. The review board may grant an exemption from the transfer requirement of this paragraph if its rate of return has exceeded the PRIT Fund rate of return for the previous 2 years or if the system's rate of return was affected by other extenuating circumstances. The review board may also consider the system's management costs, its risk return ratio and any other factors it deems appropriate. The grant of an exemption shall require the concurrence of at least 3 of the 4 members or their designees. A system may seek judicial review of the review board's decision to deny an exemption in the manner provided in section 14 of chapter 30A. An exemption granted by the review board pursuant to this paragraph shall take effect only upon the approval of a majority of the local governing body as follows: in a county, by the county commissioners, in a city having a Plan D or Plan E charter, by the city council and the manager, in any other city the city council and the mayor, in a town shall, by the board of selectmen, in a regional retirement system by the regional retirement board advisory council and in all other districts, by the governing board. The local governing body shall vote whether or not to approve the review board's grant of exemption within 30 days after the review boards' decision to provide an exemption.

SECTION 3. Notwithstanding any general or special law to the contrary, and pursuant to paragraph (c½) of subdivision (8) of section 22 of chapter 32 of the General Laws, the public employee retirement administration commission established in section 49 of chapter 7 of the General Laws shall review the investment performance and funded ratio of all systems using data compiled as of January 1, 2007. If an updated actuarial valuation is not completed by October 1, 2007, the most recent valuation completed shall be used. A system found by the public employee retirement administration commission to have a funded ratio of less than 65 per cent and an average rate of return during the

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previous 10 years that is at least 2 percentage points less than that of the rate of return of the PRIT Fund established in said subdivision (8) of said section 22 of said chapter 32 over the same time period shall be declared underperforming by the public employee retirement administration commission and shall transfer ownership and control of all of its assets to the PRIM board in accordance with said paragraph (c½) of said subdivision (8) of said section 22 of said chapter 32.

SECTION 4. Notwithstanding any general or special law to the contrary, a pension system established pursuant to chapter 32 or chapter 34B of the General Laws that would be deemed underperforming under paragraph (c½) of subdivision (8) of section 22 of said chapter 32 may voluntarily transfer ownership and control of all of its assets to the PRIM board. The decision to voluntarily transfer ownership and control of all of its assets to the PRIM board shall be made by the retirement board of each system, subject to the approval of a majority of the local governing body as follows: in a county, by the county commissioners, in a city having a Plan D or Plan E charter, by the city council and the manager, in any other city shall, by the city council and the, mayor, in a town, by, the board of selectmen, in a regional retirement system by the regional retirement board advisory council and in all other districts, by the governing board thereof. After the decision to participate has been approved, the decision to participate shall not be revoked for 5 years. A system that would be deemed underperforming pursuant to said paragraph (c½) of said subdivision (8) of said section 22 of said chapter 32 which chooses to exercise its right to voluntarily transfer its assets pursuant to this section shall transfer its assets before October 1, 2007.

SECTION 5. Notwithstanding any general or special law to the contrary, the public employee retirement administration commission established in section 49 of chapter 7 of the General Laws shall file an annual report with the house and senate committees on ways and means and the joint committee on public service detailing the average rate of return and funding level of each retirement system. The first annual report shall include the average rate of return and funding level of each retirement system since 1985.

SECTION 6. Notwithstanding any general or special law to the contrary, local retirement boards shall consider the annual cost-of-living adjustments to be a priority but the prioritization shall not constitute grounds for an appeal pursuant to paragraph (c½)) of subdivision (8) of section 22 of chapter 32 of the General Laws.

SECTION 7. Sections 1, 2, 3, 5, and 6 of this act shall take effect on October 1, 2007.

Approved July 25, 2007.

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Acts 2008 **CHAPTER 86** AN ACT FINANCING IMPROVEMENTS TO THE COMMONWEALTH'S TRANSPORTATION SYSTEM.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for an accelerated transportation development and improvement program for the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. To provide for a program of transportation development and improvements, the sums set forth in sections 2 to 2D, inclusive, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the provisions of law regulating the disbursement of public funds and approval thereof.

SECTION 2.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Department of Highways

6033-0815.. For projects on the interstate federal aid highway system; provided, that funds may be expended for the costs of those projects including, but not limited to, the nonparticipating portions of such projects and the costs of engineering and other services essential to such projects, rendered by department of highways' employees or by consultants; provided further, that amounts expended for department employees may include the salary and salary-related expenses of such employees to the extent that they work on or in support of such projects; provided further, that notwithstanding this act or any general or special law to the contrary, the department shall not enter into any obligations for projects which are eligible to receive federal funds under this act unless state matching funds exist which have been specifically authorized and are sufficient to fully fund the corresponding state portion of the federal commitment to fund such obligations; and provided further, that the department shall only enter into obligations for projects pursuant to this act based upon a prior or anticipated future commitment of federal funds and the availability of corresponding state funding authorized and appropriated for such use by the general court for the class and category of project for which such obligation applies..... $200,000,000

6033-0816.. For federal aid projects on the non interstate federal highway system; provided, that funds may be expended for the costs of those projects including, but not limited to, the nonparticipating

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portions of such projects and the costs of engineering and other services essential to such projects rendered by department of highways employees or by consultants; provided further, that amounts expended for department employees may include the salary and salary-related expenses of such employees to the extent that they work on or in support of such projects; provided further, that notwithstanding this act or any general or special law to the contrary, the department shall not enter into any obligations for projects which are eligible to receive federal funds under this act unless state matching funds exist which have been specifically authorized and are sufficient to fully fund the corresponding state portion of the federal commitment to fund such obligations; and provided further, that the department shall only enter into obligations for projects under this act based upon a prior or anticipated future commitment of federal funds and the availability of corresponding state funding authorized and appropriated for such use by the general court for the class and category of project for which such obligation applies..... $2,200,000,000

SECTION 2A.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Department of Highways.

6033-0817.. For the design, construction and repair of or improvements to nonfederally-aided roadway and bridge projects and for the nonparticipating portion of federally- aided projects; provided, that the costs of professional personnel directly and exclusively involved in the construction, planning, engineering and design of the projects funded herein may be charged to this item; provided further, that those costs shall not be classified as administrative costs; and provided further, that an amount not to exceed 2 per cent of the amount authorized herein may be expended for the administrative costs directly attributable to the programs funded herein..... $225,000,000

6033-0837.. For the purposes of remediating environmental contamination at facilities and on lands under the care, custody and control of the department, including the costs for auditing and assessing the existence and extent of environmental contamination..... $1,400,000

SECTION 2B.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Department of Highways.

6033-0867.. For the construction and reconstruction of town and county ways as described in paragraph (a) of clause (2) of the first paragraph of section 34 of chapter 90 of the General Laws; provided that a city or town shall comply with the procedures established by the department of highways; provided further, that any such city or town may appropriate for such projects amounts not in excess of the amount provided to the city or town under this item, preliminary notice of which shall be provided by the department to the city or town not later than April 1 of each year; provided further, that the appropriation shall be considered as an available fund upon approval of the commissioner of

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revenue pursuant to section 23 of chapter 59 of the General Laws; and provided further, that the commonwealth shall reimburse a city or town under this item within 30 days after receipt by the department of a request for reimbursement from the city or town, which request shall include certification by the city or town that actual expenses have been incurred on projects eligible for reimbursement under this item, and that the work has been completed to the satisfaction of the city or town according to the specifications of the project and in compliance with applicable laws and procedures established by the department $150,000,000

6033-0887.. For the purpose of implementing section 32 of chapter 637 of the acts of 1983 which authorizes the commissioner of highways to establish a program to assist towns with populations of 7,000 or less undertaking projects to design, construct, reconstruct, widen, resurface, rehabilitate and otherwise improve roads and bridges... $5,000,000

SECTION 2C.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Office of the Secretary

6001-0801.. For the purposes of chapter 161B of the General Laws, including the purchase and rehabilitation of rolling stock, and implementation of networking and intelligent transportation systems to provide for interoperability communications and the construction, reconstruction and rehabilitation of regional transit authority facilities and related appurtenances..... $8,000,000

6001-0802.. For the purpose of implementing the mobility assistance program pursuant to section 13 of chapter 637 of the acts of 1983; provided, that any grant funds awarded under this item shall be for not more than 80 per cent of the total purchase cost of the vehicles or equipment purchased under said program; and provided further, that the secretary of transportation and public works may waive the foregoing limitation on a determination that a recipient is in critical financial need $3,000,000

6001-0804.. For the purpose of implementing rail improvements pursuant to chapter 161C of the General Laws; provided, that funds may be used for transportation planning, design, permitting and engineering for heavy rail, light rail and bus projects, which projects shall include the Urban Ring, Blue Line extension to Lynn, and south coast initiatives; and provided further, that funds may be used for the acquisition of interests in land..... $10,000,000

6001-0805.. For the purpose of improving and expanding marine transportation services, for the purpose of enhanced passenger water transportation capacity and intermodal access to the waterfront or for other public transportation purposes including, but not limited to, service feasibility studies, demonstration projects, the acquisition of boats for passenger marine transportation services, the planning, design, construction or acquisition of docking, dredging and other landside facilities, such as parking or shelter facilities, improved landside access to such facilities, the purchase of other equipment in connection with those operations and the disposal of same when their use has been

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substantially diminished, including all equipment or boats purchased for marine transportation service before the effective date of this act; provided, that in carrying out this item, the secretary of transportation and public works may enter into contracts or agreements that are appropriate with other state and local agencies, authorities or political subdivisions of the commonwealth, including, but not limited to, the Massachusetts Port Authority, the Massachusetts Bay Transportation Authority or the executive office of housing and economic development, the executive office of energy and environmental affairs, or with other quasi-public agencies, which may enter into contracts or agreements with the secretary; and provided further, that grants funded by this item shall be subject to a 25 per cent match from eligible applicants..... $5,000,000

SECTION 2D.

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Office of the Secretary

6001-0812.. For the Fairmount Line project, the commuter transit facility parking project, the Red Line/Blue Line connector design project and the Green Line to Medford Hillside and Union Square spur project, all as further described in 310 CMR 7.36..... $700,000,000
6001-0813.. For design and construction of the Massachusetts Bay Transportation Authority Fitchburg Line Speed Improvement project..... $8,000,000

SECTION 3. The first paragraph of section 32 of chapter 637 of the acts of 1983, as appearing in section 31 of chapter 205 of the acts of 1996, is hereby further amended by striking out, in line 3, the words “three thousand five hundred” and inserting in place thereof the following figure:- 7,000.

SECTION 4. The third paragraph of said section 32 of said chapter 637 , as amended by section 33 of said chapter 205 , is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- Any town with a population of 7,000 or less may by vote of an annual town meeting or at a special town meeting called for that purpose or in a municipality having a town council form of government by the town council, make application to the commissioner for financial assistance in undertaking a project described in this section

SECTION 5. Subsection (e) of section 19 of chapter 6A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the first sentence the following 11 sentences:- Performance measurements shall include, for at least the then current fiscal year and the previous 5 fiscal years, all modes of transportation. Performance measurements shall include the number of projects completed, the percentage of projects completed early or on time, the percentage of projects completed under budget or on-budget, the number of projects in construction phase and the percentage of projects advertised early or on time. Performance measurements shall include usage information for all modes of transportation, including measures of throughput, utilization and ridership. This information shall be presented with measurements of congestion, on-time performance, where

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appropriate, and incidents that have caused delays or closures. Performance measurements shall include assessments of maintenance performance by asset class, mode and region, including a breakdown of highway pavement, bridge and Massachusetts Bay Transportation Authority and track, for subway, commuter and commonwealth-owned freight rail, by condition level, with an explanation of current year and future year planned maintenance expenditures and their expected result. Reporting on planned maintenance programming shall include an assessment of the categories of maintenance-related activity as described in the American Association of Highway and Transportation Officials' Maintenance Manual for Roadways and Bridges. The department of highways shall expand and enhance its project information system and shall develop additional means to establish a centralized system, available on the internet, to document performance measurements and the progress and status of all planning, design, construction and maintenance projects of the executive office of transportation and the department of highways, and all road and bridge projects of any city or town that are funded, in whole or in part, by the commonwealth. A municipality shall have access to the system at no cost, shall enter such information into the system as may be required by the department of highways and shall otherwise fully participate in the system as a condition of receiving financial assistance from the commonwealth. All information in the project information system shall be a public record unless otherwise exempted by law. A report of the project information system and performance measurements shall be published annually and made available to the public not later than December 31. The report shall also be filed annually with the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the senate and house chairs of the joint committee on transportation.

SECTION 6. Said chapter 6A is hereby further amended by inserting after section 19 the following section:-

Section 19½. (a) The executive office of transportation and public works shall utilize life-cycle cost modeling for all projects. Life-cycle costs shall mean all relevant costs of a transportation asset's lifespan including, but not limited to, planning, study, design, purchase or lease, operation, maintenance, repair, replacement and disposal. The executive office shall utilize life-cycle cost modeling during the project planning and selection process for all of its constituent agencies, as defined in subsection (b) of section 19.

(b) Life-cycle cost information shall be presented as part of the public disclosure process in all project planning documents in equal proportion to initial delivery cost estimates. Project planning shall include the identification of funding to minimize life-cycle costs throughout the life of each asset.

SECTION 7. Chapter 10 of the General Laws is hereby amended by inserting after section 69 the following section:-

Section 69A. (a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Transportation Deferred Maintenance Trust Fund, in this section called the

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fund. The fund shall consist of all monies credited or transferred to the fund from any other fund or source pursuant to law.

(b) The secretary of administration and finance shall be the trustee of the fund and shall expend monies in the fund or, as appropriate, allocate monies in the fund to other agencies, without further appropriation, to design or construct maintenance and repairs to the commonwealth's roads and bridges. The secretary shall use the funds to maintain the roads and bridges in good repair, working order and condition, in an efficient manner and at a reasonable cost.

SECTION 8. Chapter 81A of the General Laws is hereby amended by adding the following section:-

Section 32. Notwithstanding any general or special law to the contrary, a retiree under the age of 65 in a plan for group, general or blanket hospital, medical, dental or other health insurance, either by purchase of a policy from an insurance company, or nonprofit hospital, medical, dental or other service corporation, including a health maintenance organization, or by means of a self-insurance plan or preferred provider arrangement plan of the authority, shall contribute to the total monthly premium or rate applicable to the coverage the greater of the retiree share of the monthly premium or rate then being paid by an authority retiree or the share of the monthly premium or rate established as a percentage for commonwealth retirees.

SECTION 9. Section 35 of chapter 161A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, a retiree under the age of 65, in a plan for group, general or blanket hospital, medical, dental or other health insurance, either by purchase of a policy from an insurance company, or nonprofit hospital, medical, dental or other service corporation, including a health maintenance organization, or by means of a self-insurance plan or preferred provider arrangement plan of the authority, shall contribute to the total monthly premium or rate applicable to that coverage an amount which shall be not less than the current retiree share of the monthly premium or rate established as a percentage for retirees from the service of the commonwealth.

SECTION 10. Notwithstanding any general or special law or rule or regulation to the contrary, the secretary of transportation and public works, in consultation with the secretary of public safety may promulgate regulations and recommend guidelines for the use of police details at public works sites. The regulations and guidelines shall consider categorizing public works projects, including roadways, bridges, intersections, railroads and any other similar project components, into tiers and recommend which tiers shall require the utilization of police details during work hours. The regulations shall also take into account traffic patterns, roadway design, criminal and civil offenses committed in the area and proximity to schools, playgrounds and other youth activity locations. The secretaries may also make recommendations on the use of alternative personnel is appropriate for various tiers of public

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works projects. In promulgating the rules and regulations hereunder, the secretary shall examine the actual costs savings from the utilization of alternative personnel.

Notwithstanding any provision of this section to the contrary, the regulations and guidelines promulgated hereunder shall ensure that the awarding authority of the public works contract has the authority to determine the appropriate traffic control measures; provided, however, that when a municipality is the awarding authority, the traffic control measures shall be consistent with the ordinances or by laws of the municipality wherein the public works project is being undertaken and the measures shall not affect any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws.

The regulations and guidelines shall require the inclusion of a “construction zone safety plan” in each public works contract which shall require the use of personnel to ensure the safety of workers on construction sites. The plan shall include the number of construction zone safety personnel required to be on site daily and the procedures to be followed in the case the designated personnel who fail to arrive at the work site as agreed.

These regulations shall be promulgated and forwarded to the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation within 90 days after the effective date of this act .

SECTION 11. Notwithstanding any general or special law or rule or regulation to the contrary, the secretary of transportation and public works shall submit to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation a report detailing the amount paid for traffic details for each public transportation construction project which was started and completed during the past 5 years and which was paid in whole or in part with state funds. The report shall distinguish, for each year, the traffic details performed by municipal police versus traffic details performed by state police. It shall also identify the percentage of the total cost of the project that the traffic detail work represented. The report shall be submitted not later than December 31, 2008.

SECTION 12. The secretary of transportation and public works and the commissioner of highways shall develop a reporting system wherein the executive office and the department shall track periodic and substantial completion estimates submitted pursuant to section 39G of chapter 30 of the General Laws. The reporting system shall include the date the work included on the estimate was performed, the date the resident engineer provided the estimate to the contractor for his signature, the date the contractor submitted the signed estimate, the date the estimate was signed by the department and the date payment was sent to the contractor. The executive office and the department shall submit the reports pursuant to this section to the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the senate and house chairs of the joint committee on transportation on a quarterly basis and shall submit a fiscal year end report not later

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than November 1 of each year.

SECTION 13 . The executive office of transportation and public works and the department of highways shall advertise, award and issue notices to proceed within 120 days from the original date of advertisement for projects to be funded, in whole or in part, in federal fiscal years 2008 and 2009 from funds authorized in this act. The executive office and the department shall submit quarterly reports detailing the date the projects were originally advertised, the date the bid was opened for each project, the date each contract was awarded and the date the notice to proceed was issued for each project. The reports shall be submitted to clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation.

SECTION 14. Notwithstanding any general or special law to the contrary, the executive office of transportation and public works and the department of highways shall conduct an investigation and study to identify the best practices for the procurement, design, construction and oversight of transportation-related construction projects. In identifying the best practices, the department shall review the protocols and standards, with respect to each stage of a project, of states or regulatory agencies or independent authorities which have a demonstrated and documented record of delivering transportation projects on time and on budget, or better, on a regular basis. In addition, the department shall compare practices from those states or regulatory agencies or independent authorities to the formal practices of the department, as documented in the Design Guidebook, as well as any informal practices followed by the department. The department shall evaluate those best practices and make recommendations as to their application to, and potential for use on, transportation-related construction projects. The department shall submit a report, together with any recommendations, with the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the senate and house chairs of the joint committee on transportation not later than December 31, 2008.

SECTION 15. The department of highways shall undertake not less than 5 design build projects, each of which shall be completed not later than June 30, 2011. The projects shall be procured pursuant to sections 14 to 21, inclusive, of chapter 149A of the General Laws. At least 1 of the projects shall be a roadway reconstruction project with a value of not less than $10,000,000 and at least 1 of the projects shall be a bridge reconstruction project with a value of not less than $10,000,000. Of those projects, significant economic development impact shall be a project selection criterion. Not more than 2 projects shall be located in the same department of highways district.

The department shall prepare a report summarizing each project, including the timeline from advertisement through contract award and from the start of actual design and construction by the design build team to project completion; the time saved, if any, by employing the design build procurement method; the cost savings, if any, as a result of employing the design build procurement method; and whether, in the opinion of the department, design build was an effective procurement

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method for each project. The report shall be submitted to the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the senate and house chairs of the joint committee on transportation not later than August 31, 2011.

SECTION 16. The department of highways shall undertake at least 10 projects which shall be procured pursuant to public bidding laws including, but not limited to, section 39M of chapter 30 , sections 44A to 44J, inclusive, of chapter 149 and sections 14 to 21, inclusive, of chapter 149A of the General Laws which shall be advertised for construction, awarded and completed within 1 year after the original bid date of each individual project. During the project selection process, the department of highways shall consider significant economic development impact as a project criterion and shall not select more than 3 projects in the same department of highways district. In completing such projects, the department may utilize performance-based design, extended work hours, bonus payments and penalties for performance and other measures aimed at accelerating project delivery. The projects shall be completed not later than June 30, 2009. The department shall submit a report to the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the senate and house chairs of the joint committee on transportation detailing each project, including the advertisement date, the award date, the date construction began and the date work was completed, as well as the original office estimate for the project, the contract award amount and the final cost for the project. The report shall be submitted not later than July 31, 2009.

SECTION 17. The secretary of administration and finance shall submit a report on the progress and all expenditures related to the projects specified in this act and any other projects funded through the authorizations in this act to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation. The report shall include, but not be limited to: the total amount appropriated for each project, the total estimated cost of each project, the amount expended for the planning and design of each project up to the time the report is filed, the amount expended on construction of each project up to the time the report is filed, the total amount currently expended on each project, the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project, the current anticipated completion date of each project and, if the project has been de-authorized, the reason for and date of de-authorization. The report shall be submitted on June 30 and December 31 of each year for a period of 6 years from the effective date of this act.

SECTION 18. The executive director of the Massachusetts Turnpike Authority shall submit a report to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation not later than January 31, 2009 on the feasibility of automating fare collection on the turnpike and the metropolitan highway system. The report shall include estimates on cost savings for converting 90 per cent of the manually-operated toll lanes to automated fare-collection lanes, the estimated initial cost to implement these conversions, the estimated savings per year once these conversions are

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implemented and other recommendations for modernizing technology at the authority to increase efficiency. The report shall include a complete inventory of all authority assets including, but not limited to: information technology assets, vehicle assets, building and infrastructure assets and land assets, as well as the total current value of those assets; the current physical state of those assets and the maintenance and replacement schedules for those assets.

SECTION 19. There shall be a study commission to study the feasibility of establishing a uniform contractor prequalification process and organization for horizontal, public construction work. The commission shall be chaired by the secretary of transportation and public works or his designee, and shall consist of the following persons or their designees: the commissioner of highways; the commissioner of conservation and recreation; the general manager of the Massachusetts Bay Transportation Authority; the chief executive officer of the Massachusetts Port Authority; the executive director of the Massachusetts Turnpike Authority; 1 member to be appointed by the governor who shall be a representative of the insurance and bonding community; 2 members to be appointed by the president of the senate, 1 of whom shall be a representative of the construction industry; 2 members to be appointed by the speaker of the house, 1 of whom shall be a representative of the construction industry; 1 member to be appointed by the minority leader of the senate; and 1 member to be appointed by the minority leader of the house of representatives. The members of the commission shall be appointed not later than June 30, 2008.
The commission shall examine the current contractor prequalification, suspension and debarment requirements, standards and procedures, if any, of each represented awarding authority, including identifying common information required by each authority; unique information required by each authority; classes of work; formulas for determining single and aggregate bonding limits; and such other information as the members of the commission deem appropriate in complying with this section. The commission shall also examine the feasibility and cost of creating an electronic prequalification filing system.
The commission shall examine the establishment of a centralized office for prequalification, suspension and debarment standards on any horizontal construction work funded in whole or in part with local, state or federal funds and shall recommend uniform regulations for the prequalification of contractors and proposed statutory changes necessary to adopt and implement those regulations. The commission shall identify any additional information to be required by a specific authority necessary to meet unique needs of that authority; provided, however, that every effort shall be made to limit the submission of duplicative information. The commission shall also develop a formula for establishing single project and aggregate limits, which shall include an inflationary factor for adjusting those limits. The commission shall also recommend guidelines for a performance measurement system for executive office to determine the efficiency and effectiveness of the prequalification process.

The commission shall submit its finding and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerk of the house of representatives, the clerk of the senate and house committee on ways and means and the house and

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senate chairs of the joint committee on transportation not later than December 31, 2008.

SECTION 20. The secretary of administration and finance, in consultation with the state treasurer and the secretary of transportation and public works, shall conduct an investigation study and make recommendations for the financing of repairs for structurally deficient bridges owned by the commonwealth or a quasi-public agency of the commonwealth. In conducting its investigation and study, the secretary shall make findings relative to the current number of structurally deficient bridges in the commonwealth and the number of bridges anticipated to become structurally deficient within the next 5, 10 and 20 years, respectively. In making those recommendations, the secretary shall consider the impact of any proposals on the commonwealth's debt obligation, its annual appropriations for debt service and its bond rating. The secretary shall also consider the feasibility of funding mechanisms for the Transportation Deferred Maintenance Trust Fund established in section 69A of chapter 10 of the General Laws. The secretary shall report a final report and recommendations, if any, together with drafts of legislation necessary to carry those recommendations into effect by filing the same with the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means, the house and senate chairs of the joint committee on bonding, capital expenditures and state assets and the house and senate chairs of the joint committee on transportation not later than October 1, 2008.

SECTION 21. Notwithstanding any general or special law to the contrary, the Massachusetts Bay Transit Authority shall conduct a fiscal impact analysis of the authority's contribution to current retirement benefits compared to a retirement plan that would require 25 years of Massachusetts Bay Transportation Authority service and an age of not less than 55 years. The analysis shall also compare the fiscal and financial impact of restructuring the authority's retirement plan to a plan that utilizes the same provisions and requirements as the commonwealth's pension system in chapter 32 of the General Laws. The analysis shall also include a study and recommendations relative to phase-in provisions for these studies. The report shall be submitted to the house and senate committee on ways and means not later than 60 days after the effective date of this act.

SECTION 22. Notwithstanding the last paragraph of section 35 of chapter 161A of the General Laws, inserted by section 9, the terms established by a binding arbitration proceeding between the authority and an employee bargaining unit which is pending on the effective date of said section 9 shall remain in full force and effect for so long as those terms remain binding.

SECTION 23. Not later than 1 year after the effective date of this act, the department of highways shall expand and enhance its project information system as required pursuant to subsection (e) of section 19 of chapter 6A of the General Laws and shall develop additional means to develop a centralized system, available on the internet, to document performance measurements and the progress and status of all planning, design, construction and maintenance projects. Funds authorized in this act may be used to fund the project information system. The first report required to be filed and made available to the public pursuant to said subsection (e) of said section 19 of said chapter 6A shall

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be submitted not later than December 31, 2008.

SECTION 24. To meet a portion of the expenditures necessary in carrying out section 2, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $508,000,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer under this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of said chapter 29. All special obligation revenue bonds issued pursuant to this section shall be designated on their face, Special Obligation Revenue Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All principal on such obligations shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29. Special obligation bonds issued under this section shall be special obligations of the commonwealth payable solely in accordance with said section 2O of said chapter 29.

SECTION 25. To meet the expenditures necessary in carrying out section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $226,400,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this

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section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer under this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations, the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2O of said chapter 29. All special obligation revenue bonds issued pursuant to this section shall be designated on their face, Special Obligation Revenue Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All principal on such obligations shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29. Special obligation bonds issued under this section shall be special obligations of the commonwealth payable solely in accordance with said section 2O of said chapter 29.

SECTION 26. To meet the expenditures necessary in carrying out section 2B the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $155,000,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer under this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations, the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2O of said chapter 29. All special obligation revenue bonds issued under this section shall be designated on their face, Special Obligation Revenue Transportation Improvement Loan Act of 2008, and shall be

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issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All principal on such obligations shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29. Special obligation bonds issued under this section shall be special obligations of the commonwealth payable solely in accordance with said section 2O of said chapter 29.

SECTION 27. To meet the expenditures necessary in carrying out section 2C, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $26,000,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer under this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations, the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2O of said chapter 29. All special obligation revenue bonds issued under this section shall be designated on their face, Special Obligation Revenue Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All principal on such obligations shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29. Special obligation bonds issued under this section shall be special obligations of the commonwealth payable solely in accordance with said section 2O of said chapter 29.

SECTION 28. To meet the expenditures necessary in carrying out section 2D, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, $708,000,000; provided, however, that any federal grants received by the commonwealth or the Massachusetts Bay Transportation Authority for the Green Line to Medford Hillside and Union Square spur project shall be

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applied to reduce the state authorization by that amount. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All interest and payments on account of principal on such obligations shall be payable from the Highway Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth; provided, however, that any bonds issued by the state treasurer pursuant to this section shall, upon the request of the governor, be issued as special obligation bonds pursuant to section 2O of chapter 29 of the General Laws; provided further, that in deciding whether to request the issuance of particular bonds as special obligations, the governor shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2O of said chapter 29. All special obligation revenue bonds issued under this section shall be designated on their face, Special Obligation Revenue Transportation Improvement Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all such bonds shall be payable not later than June 30, 2043. All principal on such obligations shall be payable from the Infrastructure Fund established in said section 2O of said chapter 29. Special obligation bonds issued under this section shall be special obligations of the commonwealth payable solely in accordance with said section 2O of said chapter 29.

SECTION 29. In carrying out sections 2 to 2D, inclusive, all agencies within the executive office of transportation and public works may enter into such contracts or agreements as may be appropriate with other state, local or regional public agencies or authorities. The agreements may relate to such matters as an agency shall determine including, without limitation, the design, layout, construction, reconstruction or management of construction of all or a portion of such projects. In relation to any such agreements between an agency within the executive office and other state agencies or authorities, an agency may advance monies to such agencies or authorities, without prior expenditure by the agencies or authorities, and the agencies and authorities may accept monies necessary to carry out such agreements; provided, however, that said agency shall certify to the comptroller the amounts so advanced; provided further, that such agreements shall contain provisions satisfactory to the agency for the accounting of such monies as expended by any other agency or authority; provided, further, that all monies not expended under any such agreement shall be credited to the account of the agency from which they were advanced. Agencies within the executive office shall report to the house and senate committees on ways and means any transfers completed pursuant to this section.

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SECTION 30. (a) The department of highways shall expend the sums authorized in sections 2 to 2B, inclusive, for the following purposes: projects for the laying out, construction, reconstruction, resurfacing, relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or facilities, on and off-street bicycle projects, sidewalks, telecommunications, parking facilities, auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other crossings, traffic safety devices on state highways and on roads constructed pursuant to section 34 of chapter 90 of the General Laws, highway or mass transportation studies including, but not limited to, traffic, environmental or parking studies, the establishment of school zones in accordance with section 2 of chapter 85 of the General Laws, improvements on routes not designated as state highways without assumption of maintenance responsibilities and, notwithstanding any general or special law to the contrary, projects to alleviate contamination of public and private water supplies caused by the department's storage and use of snow removal chemicals which are necessary for highway safety and for the relocation of persons or businesses or for the replacement of dwellings or structures including, but not limited to, providing last resort housing under federal law and for such functional replacement of structures in public ownership as may be necessary for the foregoing purposes and for relocation benefits to the extent necessary to satisfy the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act, 42 USC 4601 et seq., and to sell any structure the title to which has been acquired for highway purposes. When dwellings or other structures are removed in furtherance of any of the foregoing projects, the excavations or cellar holes remaining shall be filled in and brought to grade within 1 month after such removal. In planning projects funded by sections 2 to 2B, inclusive, consideration shall be made, to the extent feasible, to accommodate and incorporate provisions to facilitate the use of bicycles and walking as a means of transportation; provided, however, that nothing herein shall be construed to give rise to enforceable legal rights in any party or a cause of action or an enforceable entitlement as to the projects provided herein.

(b) Funds authorized in sections 2 to 2B, inclusive, shall, except as otherwise specifically provided in this act, be subject to the first paragraph of section 6 and sections 7 and 9 of chapter 718 of the acts of 1956, where applicable, and, notwithstanding any general or special law to the contrary, may be used for the purposes stated in this act in conjunction with funds of cities, towns and political subdivisions of the commonwealth.

(c) Notwithstanding sections 40A and 40B of chapter 7 of the General Laws, the department shall have jurisdiction over the selection of designers performing design services in connection with the ventilation of buildings, utility facilities and toll booths to be constructed as part of the Central Artery/ Tunnel Project and shall construct, control, supervise or contract such structures; provided, however, that no such construction or contractual agreement for construction shall begin before the review and approval of the inspector general. The inspector general shall file with the house and senate committees on ways and means and the joint committee on transportation all notices of approval for projects undertaken pursuant to this subsection.

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(d) In addition to the foregoing, the department may: expend funds made available by this act to acquire from any person, land or rights in land by lease, purchase or eminent domain under chapter 79 of the General Laws, or otherwise, for parking facilities adjacent to a public way to be operated by the department or under contract with an individual; expend funds made available by this act for the acquisition of van-type vehicles used for multi-passenger, commuter-driven carpools and high occupancy vehicles including, but not limited to, water shuttles and water taxis; and in accordance with all applicable state and federal laws and regulations, exercise all powers and do all things necessary and convenient to carry out the purposes of this act.

(e) In carrying out this section, the department may enter into contracts or agreements with cities to mitigate the effects of projects undertaken pursuant to this act and to undertake additional transportation measures within the city and may enter into such contracts or agreements with other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions as may be necessary to implement such city agreements. Cities and other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions may enter into such contracts or agreements with the department. In relation to such agreements, the department may advance to such agencies, organizations or authorities, without prior expenditure by such agencies, organizations or authorities, monies necessary to carry out such agreements; provided, however, that the department shall certify to the comptroller the amount so advanced; provided, further, that all monies not expended under such agreement shall be credited to the account of the department from which they were advanced. The department shall report to the house and senate committees on ways and means on any transfers completed pursuant to this subsection.

SECTION 31. Notwithstanding any general or special law to the contrary, t he executive office of transportation and public works and the department of highways shall take all necessary actions to secure federal highway or mass transportation assistance including, but not limited to, actions authorized pursuant to 23 U.S.C. and section 145 of the Surface Transportation and Uniform Relocation Assistance Act of 1982, PL 97-424, the Surface Transportation and Uniform Relocation Act of 1987, PL 100-17, the Intermodal Surface Transportation Efficiency Act of 1991, PL 102-240, the Transportation Equity Act for the 21st Century, PL 105-178, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, PL 109-59, and any successor acts or reauthorizations of those acts, and actions such as filing applications for federal assistance, supervising the expenditure of funds under federal grants or other assistance agreements and making any determinations and certifications necessary or appropriate to the foregoing. If any federal law, administrative regulation or practice requires any action relating to such federal assistance to be taken by a department, agency or other instrumentality of the commonwealth, other than the department of highways, such other department, agency or instrumentality shall take such action. In furtherance of the foregoing purposes, the department of highways, as appropriate, shall apply for and may accept any federal funds available for projects authorized in section 2 and the federal funds, when received, shall be credited to the Federal Highway Construction Program Fund.

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SECTION 32. Notwithstanding any general or special law to the contrary, s ection 61 and sections 62A to 62H, inclusive, of chapter 30 of the General Laws, chapter 91 of the General Laws and section 40 of chapter 131 of the General Laws shall not apply to bridge projects of the department of highways and the Massachusetts Bay Transportation Authority for the repair, reconstruction, replacement or demolition of existing state highway bridges and other bridges, including the immediate roadway approaches necessary to connect the bridges to the existing adjacent highway system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced, but said section 61 and said sections 62A to 62H, inclusive of said chapter 30, said chapter 91 and said section 40 of said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing of the Charles river for the Central Artery/Tunnel Project. In the case of a state highway or other bridge crossing over a railroad right-of-way or railroad tracks, the department shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the state highway bridge, but the department, its agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for purposes that the department may consider necessary or convenient to carry out this section. If a flagman is needed to carry out this section, the railroad company or its assigns shall provide the flagman. For the purposes of this section, the word "bridge" shall include any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility or other area.

SECTION 33. Sections 8 and 9 shall apply to persons who retire after December 31, 2008 .

Approved April 17 , 2008

The Patrick-Murray Administration: A Record of Strong Fiscal Management, Cost-Savings and Reforms

In partnership with the legislature, the Patrick-Murray Administration has achieved over $11B in savings to date, and will achieve over $30B in additional savings over the next 30 years for the state, cities, and towns, through responsible fiscal management, cost-savings and reforms

- **Balanced Budgets**: From FY09-FY13, during the worst of the global economic recession, the Administration implemented a balanced set of budget solutions that relied primarily on cuts and savings totaling $11.131B.
- **Highest Credit Ratings in State History**: Thanks to the strong fiscal management of the Patrick-Murray Administration, the Commonwealth now has the highest credit ratings in state history – AA+ from all three agencies, which has already saved taxpayers $100M in interest costs over the next 30 years. Additionally, the Commonwealth has among the largest Rainy Day Fund balance in the country.
- **Long-term Fiscal Policy**: The Administration developed and published a long-term fiscal policy framework to ensure budgetary decisions were informed by long-term financial forecasts and policies that support fiscal stability.
- **Addressing Long-Term Liabilities**: The Administration has tackled the Commonwealth's long-term liabilities and met our generational responsibility to put the state on solid fiscal footing through pension reforms that make the system sustainable and save the state and municipalities $5B over the next 30 years. We have also proposed to increase retiree health benefit contributions in order to save the state and municipalities $20B over the next 30 years.
- **State Workforce Reductions**: The Administration has eliminated over 6000 jobs in state government, saving approximately $1.2B from FY09-FY13. We have also asked employees to take furloughs, contribute more to their health care and negotiated unprecedented concessions from state employee unions, resulting in over $250M in savings through FY13.
- **Controlling Health Care Costs**: Health care cost containment initiatives – including those targeted at state employee health insurance programs - have resulted in over $1.6B in savings, with an additional $200M in savings from Municipal Health Reform.
- **Reforming Transportation**: The Patrick-Murray Administration has made great progress in addressing the deficiencies in the state's transportation system. Through significant steps such as consolidating agencies and modernizing employee benefits, the Commonwealth has saved over $500M to date. Transportation procurement reforms have yielded $50M in savings.
- **Controlling Energy Costs**: The Accelerated Energy Program will save more than $1B over 30 years.

Supportive Statements

Standard & Poor's 'AA+' Ratings
"The upgrade reflects Massachusetts' ongoing progress in improving financial, debt, and budget management practices, while at the same time implementing cost-control and reform measures associated with its long-term liabilities. The upgrade also reflects the commonwealth's commitment to its stabilization fund. Formalized policies relating to debt affordability, capital investment planning, financial planning, and enhanced funding of the stabilization fund are key improvements from a credit standpoint. Other factors supporting the 'AA+' rating, are the commonwealth's relatively strong budget performance through the recent recession, with swift action to restore balance after identifying revenue shortfalls and a focus on structural solutions to budget balance and a commitment to maintaining and more recently growing the budget stabilization fund balances, which provide flexibility to manage any budget volatility."

Moody's Investors Service Rating Aa1
"The rating and reflects the commonwealth's demonstrated willingness to cut spending and raise revenues to close budget gaps…effective management during economic downturns, with a willingness and ability to promptly identify and close gaps through use of both new revenues and spending reductions and strong reserves going into current recession due to rapid reserve replenishment following 2001-02 recession."

Fitch Ratings
"Massachusetts' 'AA+' rating reflects considerable economic resources and a record of prudent financial management. The Commonwealth has benefited from conservative budgeting and sound financial practices over time."

Deirdre Cummings, MASSPIRG
"Massachusetts has moved to the head of the class when it comes to providing the public with easy-to-use, one-stop, comprehensive and timely information about how government spends our tax dollar."

Geoffrey Beckwith, Massachusetts Municipal Association
"This is the most powerful reform law to benefit cities and towns in at least 30 years. The results of the past year demonstrate that municipal health insurance reform is a major success in every corner of Massachusetts, saving taxpayers millions of dollars and preserving essential local services."

James Stock, Harvard University
"The Commonwealth's Long Term Fiscal Policy Framework represents a significant step forward in the process of long term budgeting. The tools and methods developed in this Framework represent a careful and thoughtful implementation of state-of-the-art professional methods for long term budget forecasting that will provide periodic updates and ongoing reviews of the Commonwealth's long-term fiscal health."

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The Way Forward: A 21st - Century Transportation Plan

massDOT
Massachusetts Department of Transportation
Leading the Nation in Transportation Excellence

Governor Patrick, Lt. Governor Murray, and Secretary Davey at the opening of the John C. Olver Transit Center

Letter From the MassDOT Board of Directors

Members of the General Court -

Pursuant to Chapter 132 of the Acts of 2012, we, the members of the Board of Directors of the Massachusetts Department of Transportation (MassDOT), present *The Way Forward: A 21st-Century Transportation Plan*. This document describes the current state of our transportation infrastructure and details the investments necessary to stabilize today's transportation system and to build a system for the twenty-first century. Since the 2009 passage of transportation reform legislation, MassDOT has significantly improved its business practices and has invested taxpayer dollars prudently. We are committed to planning, managing, and maintaining a statewide transportation system that is efficient and safe for our customers and employees and that supports our economy.

MassDOT, under the leadership of its Board, is committed to tangible improvements in the quality of our roads, the safety of our bridges, the reliability of our public transit systems, and the expansion of our bicycling and pedestrian networks. The daily commute, the ride to school, the trip to the supermarket or medical office – these trips are woven into the fabric of our lives, and they can be made tangibly and markedly better than they are today. Every city and town in the Commonwealth deserves better transportation infrastructure to support its economy and quality of life, and *The Way Forward* is a crucial step to get us there.

In 2012, the Massachusetts Legislature provided MassDOT with funding to address an immediate budget gap at the MBTA. At the time, the Legislature also directed MassDOT to prepare *The Way Forward* and to hold six public hearings, all in the service of identifying our long-term transportation needs. In the autumn of 2012, MassDOT launched the *Your Vision, Our Future* process, which featured seventeen public meetings held across the Commonwealth – opportunities for the public to discuss the needs of the transportation system directly with MassDOT leadership. We heard from over 1,000 transportation customers, elected officials, business leaders, and community advocates about their vision for the future of transportation in Massachusetts, and ideas for how to equitably pay for it. *The Way Forward* is the capstone of that effort.

States across the country are facing similar transportation challenges – aging infrastructure, deferred maintenance, and demand for new infrastructure and services. The debate can no longer be about whether our transportation system needs additional resources or whether the returns to our economy and quality of life would be worth the investment. Instead, we must figure out how to make that investment – fairly, efficiently, and with an eye to the future.

This plan lays out ways that we can address the gap between our transportation resources and our needs, prioritize our investments to achieve the maximum benefit for the Commonwealth, and create a world-class transportation system that strengthens our economy and improves our quality of life.

Respectfully submitted,

The MassDOT Board of Directors

Your Vision, Our Future public listening sessions in Pittsfield, Lynn, and Hyannis (from top)

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Water damaged abutments of Davitt Memorial Bridge

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One transportation department moving all customers safely and efficiently

Commerce-inhibiting weight restrictions on the Willimansett Bridge

Our Transportation System Before Reform

On March 28, 2007 – just 90 days into the Patrick-Murray Administration – a non-partisan committee of transportation experts, the Transportation Finance Commission, issued a report revealing a $15-billion to $19-billion funding gap for the maintenance of our statewide roads, bridges, and rail assets over 20 years. At the time, the transportation system was managed by six different public and quasi-public state bureaucracies, all overseen by a variety of boards with different legislative mandates. The agencies often competed against each other for scarce resources and worked at cross purposes without sufficient focus on coordinated transportation services or high-quality customer experiences.

In 2007, with increasing transit disruptions, decaying bridges, poor customer service, and construction project delays, our transportation system was broken.

At the time, the Central Artery project – the 'Big Dig' – was incomplete and faced a significant shortfall in funding. Federal dollars were at risk as state bond authorizations for projects under construction were running out. At the same time, a risky financial transaction entered into by a prior administration, termed a 'swaption,' was coming due with a required payment of $263 million that, without a solution, would have resulted in a toll increase for the Boston Harbor tunnels to a total of $7 and an increase to $2 at the Allston and Weston tolls on the Massachusetts Turnpike. Bonds at the Massachusetts Turnpike Authority faced default and the Commonwealth's credit rating was at risk of being downgraded. The MBTA and the Commonwealth's 15 Regional Transit Authorities faced budget deficits and the need for fare increases and service cuts, while subway, bus, and commuter rail riders were experiencing increasing delays and chronically unreliable and inadequate service.

Spending on the Central Artery project had drained resources from areas of the Commonwealth outside greater Boston. Hundreds of structurally deficient bridges lacked proper maintenance and a long list of critical projects such as resurfacing thousands of miles of roads, fixing potholes, and repairing buses remained unfunded. It took years for a road or bridge project to go from concept to completion, with many projects coming in over budget or late. There was no published capital plan detailing available resources, needs, and proposed investments in our transportation system.

That was the reality of the Commonwealth's transportation system six years ago. It was clear that a continuing inability or unwillingness to acknowledge the true extent of our challenges would bankrupt our system and compromise public safety.

CSX Corporation Intermodal Freight Terminal in Worcester

Changing Transportation through Reform

Recognizing the crossroads at which the state found itself and acknowledging the critical role that transportation plays in supporting an economically competitive Commonwealth, Governor Patrick and the Legislature enacted *An Act Modernizing the Transportation Systems of the Commonwealth* in 2009, fundamentally changing the way the Commonwealth delivers transportation services. Once siloed and largely autonomous, disparate transportation agencies are now a single, coordinated Massachusetts Department of Transportation (MassDOT).

In the three years since transportation reform went into effect, MassDOT has made significant changes in the way it provides transportation services, seeking new efficiencies and finding new avenues for collaboration both inside and outside the agency. Today, the unified MassDOT oversees the Commonwealth's roads, bridges, airports, rails, subways, buses, and Registry of Motor Vehicles, with a commitment to customer service and safety. Transportation reform, coupled with ongoing improvement efforts, has resulted in a more transparent, safe, efficient, and cost-effective transportation system. Furthermore, it has helped to create a transportation agency that it is better positioned to respond to the needs of the entire Commonwealth.

Some of the most notable successes of transportation reform include:

Regional Transit Improvements: MassDOT and the Regional Transit Authorities have improved their collaboration in order to obtain and leverage additional state and federal funding. This partnership has enabled the Regional Transit Authorities to provide better service for their customers. Successful projects include a Commonwealth-wide initiative to upgrade bus fleets, new intermodal facilities like the John W. Olver Transportation Center in Greenfield, and new routes and services for customers in Worcester, Lowell, Cape Cod, and Pittsfield.

Avoided Higher Tolls and Fares: The significant toll increases proposed in 2008 related to 'swaptions' were avoided in part by dedicating an increase in the state sales tax to transportation. This additional funding also provided the MBTA and the Regional Transit Authorities with a short-term reprieve to avoid fare increases and service cuts.

Collaboration on Human Services Transportation: As required by Executive Order 530, MassDOT, the Regional Transit Authorities, and the MBTA are working with their partners in the human services field to better coordinate transportation for the elderly and people with disabilities. This collaboration will lead to more efficient and less expensive services for customers.

Record Investment in Statewide and Local Transportation: Road and bridge investment across the Commonwealth has almost tripled in the past seven years, from $515 million in FY2007 to $1.4 billion in FY2013; state of good repair investment at the MBTA is anticipated to average $594 million per year from 2013 and 2017, a record in absolute dollars; and, despite budget pressure during recent recessions, local road and bridge funding (the Chapter 90 program) is now at its highest level ever of $200 million per year.

Accountability – Taking bold new action to deliver reform

Partnerships – MassDOT's Small Bottleneck Program is helping communities fix traffic choke points **– Fitchburg**

Sustainability – Award-winning project that replaced a bridge and improved the environment at the same time **– Becket**

These investments mean safer roads, less congestion, and more comfortable commutes for residents of every community in the Commonwealth.

Improving the Safety of our Bridges: The Patrick-Murray Administration's Accelerated Bridge Program is the largest statewide transportation investment program in the Commonwealth's history. The program has allowed MassDOT to reduce the number of structurally deficient bridges by almost 20% since the inception of the program in 2008. By its completion in 2016, it is estimated that the program will have created or sustained nearly 160,000 private sector jobs. While the primary benefit of the program has been needed repairs to vital bridges, it has also allowed MassDOT to avoid $72 million in annual bridge maintenance costs. Through the Accelerated Bridge Program, MassDOT has funded the modernization and reconstruction of five mega-bridge projects across the Commonwealth: the Route 9 Bridge over Lake Quinsigamond in Worcester/Shrewsbury, the Whittier Bridge in Amesbury/Newburyport, the Fore River Bridge in Quincy/Weymouth, the Longfellow Bridge in Boston/Cambridge, and the Route 79/I-195 interchange in Fall River. Under the program, MassDOT has pursued creative methods of project delivery, such as the 'heavy lift' bridge projects on Route 2 in Phillipston and Cedar Street in Wellesley, and has reduced project delivery times as seen with the recently completed Neponset River Bridge between Quincy and Boston (which opened five months ahead of schedule). MassDOT is replicating successful methods developed as part of the Accelerated Bridge Program throughout MassDOT, in order to bring those lessons learned to other projects and programs.

Innovation – Award-winning Fast 14 rapid bridge replacement saved millions of dollars and valuable time on I-93 by using innovative techniques **– Medford**

Projects Built Faster: By using innovative materials and techniques, MassDOT is striving not only to deliver projects on time and on budget, but also to deliver them faster and with less disruption to the traveling public. The nationally recognized 'Fast 14' project on I-93 in Medford replaced 14 bridges north of Boston in just 10 weeks – not years. From 2008 to 2010, the average highway project delivery timeline was cut by 35%. Lengthy, inefficient construction projects are no longer acceptable, and MassDOT is committed to continuing to improve its project delivery record.

Modernizing Registry Services: Since 2007, online transactions at the Registry of Motor Vehicles have increased to a record three million annually. Less reliance on bricks and mortar branches and more emphasis on online services means greater convenience for our customers and reduced operating costs for the Registry. At the same time, MassDOT has reduced the number of Registry employees by 6.4% since 2007. The Registry is also replacing its current computer system, developed in 1983, to allow for greater collaboration and information sharing among government agencies responsible for the safety of those using our roadways. When complete, this modernization project will allow customers to track their records and transactions, check branch wait times remotely, and make 'reservations' for places in line.

Customer Improvements at the MBTA: In 2012, with a renewed focus on its customers, the MBTA experienced a surge in ridership to its highest level since its creation in 1964. The MBTA delivered subway countdown clocks on the Red, Blue, and Orange lines; mobile apps for tracking the arrival of buses and

trains, commuter rail ticketing, and parking lot payments; new stations on the Fairmount Line; improved accessibility for our customers with disabilities including new elevators at Red and Green Line stations; and upgraded stations at State Street, Orient Heights, Ashmont, Wonderland, and Science Park. This was all accomplished while the number of employees at the MBTA was reduced by almost 5% between 2008 and 2012.

Healthy, Sustainable Transportation: MassDOT has placed a new emphasis on the environmental sustainability of our transportation system. The GreenDOT initiative seeks ways to reduce our impact on the natural environment, while the mode shift goal prioritizes the need to provide a range of travel options to our customers in order to reduce reliance on private vehicles. MassDOT is also a member of the statewide Healthy Transportation Compact, through which it works with its partners at the Executive Office of Energy & Environmental Affairs and the Executive Office of Health & Human Services to facilitate transportation decisions that expand mobility, improve public health, support a cleaner environment, and create stronger communities.

Significant Benefit Changes: MassDOT has saved hundreds of millions of dollars through institutional reforms, including the elimination of overly generous retirement benefits such as the MBTA's '23-years and out' program and the shift of MBTA employees into the more cost-effective Commonwealth Group Insurance Commission benefit programs. Certain salaries have been reduced, including those of new MassDOT toll collectors.

Improved Credit Ratings: MassDOT and Commonwealth credit ratings are not only secure, but now rated at historically high levels. In 2010, both Moody's and Standard & Poor's assigned the Commonwealth triple-A credit ratings for the Accelerated Bridge Program financing, the highest rating ever received by the Commonwealth. Just recently, in October 2012, Standard & Poor's raised its rating on the MassDOT Metropolitan Highway System senior lien revenue bonds to A+ from A. Higher bond ratings make it cheaper for the Commonwealth to borrow money to support our infrastructure programs, translating directly into more projects across Massachusetts.

Implemented a Flagger Program: The Administration implemented the long sought-after use of civilian flaggers at low-speed construction work sites, in line with nearly every other state in the nation.

Increased Agency Transparency: Weekly maintenance activities related to the Central Artery are published on the MassDOT website for public review; the MBTA offers public tours of its maintenance and operations centers; real-time highway travel information for mobile devices has been introduced; and all MassDOT Divisions now participate in quarterly public accountability meetings and offer other means for the public to learn about our performance metrics, our challenges, and our successes. From MassDOT's participation in the Commonwealth's Open Checkbook initiative, to the MBTA's monthly scorecard, to

Customer Service – RMV is offering services in partnership with AAA of Southern New England to help our customers with their RMV transactions **– Framingham**

Innovation – Real-time multi-modal information to provide motorists the choice of driving downtown on I-93S or taking commuter rail **– Woburn**

monthly reports on Registry of Motor Vehicle branch wait times, we are creating a more transparent and responsive organization.

Aviation Advances: MassDOT is fostering the development of our general aviation airport network, including the groundbreaking for a new Gulfstream Aerospace Corporation hangar at Westfield-Barnes Airport (creating over 100 private sector jobs), the opening of a new airport terminal building in Barnstable, and the implementation of a statewide runway safety marking project.

Successful Strategic Collaboration with the Massachusetts Port Authority: A new partnership between Massport and MassDOT has resulted in customer-focused improvements such as the launch of fare-free MBTA Silver Line service from Logan Airport to downtown Boston and airport departure signs at South Station. Together, Massport, MassDOT, and the MBTA are working to systematically reduce automobile dependence and congestion at the Logan terminals.

Eliminating Administrative Inefficiencies: MassDOT has streamlined internal administrative functions, including the consolidation of the human resources, information technology, legal, and civil rights departments within MassDOT and the MBTA.

The reforms undertaken by MassDOT over the last three years have resulted in cost savings of more than $500 million and a safer, more customer-focused transportation system. Many of the reforms implemented by MassDOT since 2009 were influenced by the recommendations of the Transportation Finance Commission, and MassDOT now tracks our accomplishments as part of a Transportation Finance Commission scorecard. As of 2010, MassDOT has completed 54% of the 22 Finance Commission recommendations, with another 36% of the recommendations underway. However, as important as these accomplishments have been to MassDOT, they have not – and nor were they intended to – entirely eliminate the backlog of unfunded maintenance and the need for greater debt relief and additional financial support.

At the *Your Vision, Our Future* sessions across the Commonwealth – as well as at the MBTA fare increase hearings during the spring of 2012 – MassDOT staff heard from the public and from elected officials what every private business owner would love to hear: that people want more of our product. They want additional MBTA services at night, at rush hour, and on weekends. They want more capacity on their roads and fewer delays and less congestion. They want improved technology to plan their trips.

Customer Service – First in the nation mobile ticketing saves our customers time and money, and helps the T collect fares.

Choice – Complete Street design standards give our customers safe choices to bicycle, drive, take transit, or walk **– Dorchester**

Meeting Our Statewide Transportation Needs – A 21st-Century Transportation Plan

The reality is that our financial challenges are much larger than the savings we can achieve through agency reform. We cannot adequately pay for the transportation system we have today, and the improved statewide system that our customers want is one we definitely cannot afford without additional funding. This plan is the MassDOT Board's articulation of how to meet public demands for more and better transportation and to do so in a way that is fiscally responsible now and for the future. We have laid out a 10-year plan for stabilizing operating costs and making important capital investments in the system. The details are explained below.

An accelerated investment in our transportation system is needed to stabilize maintenance needs, modernize roads and trains, and create jobs.

Operating Needs

The operating budgets of the Regional Transit Authorities, the MBTA, and MassDOT require additional funding in order to maintain current levels of service. This includes the costs of providing 1.4 million daily trips on more than 3,000 buses, commuter rail, subway, ferries, and paratransit vehicles each day; managing thousands of lane-miles of roads; and continuing to responsibly pay for things that we've already bought or built. These operating budgets pay for lawn mowing and tree trimming along our highways, leases for Registry of Motor Vehicle branches, and customer service improvements, among many other necessities.

Few would disagree that we have a moral responsibility and fiduciary obligation to pay for our current expenses and those costs that we have incurred in the past. **But to simply pay those past bills and operate the transportation system we have today, we need significant additional investment.** Without it, the MBTA and the Regional Transit Authorities will need to dramatically increase fares and reduce or eliminate service, and MassDOT will continue to pay for employees with borrowed funds, adding unnecessary interest costs.

In 2011, Governor Patrick, elected officials, and representatives of Gulfstream Aerospace Corp. announced the construction of a new maintenance hangar at Westfield-Barnes Regional Airport. The project is estimated to create 200 construction jobs, 100 new full-time jobs, and to maintain Gulfstream's existing current 130-member workforce at Westfield-Barnes.

We are not alone in our assessment of the financial needs of our transportation system. The imperative to better fund the Massachusetts transportation system has been exhaustively documented by nonpartisan and independent groups over the last several years, from the *Findings of the Transportation Finance Commission: An Unsustainable System* (2007) to the *MBTA Review* (2009) led by David F. D'Allessandro. More recently, MassINC's report *Moving Forward with Funding* (2011) assessed the Regional Transit Authorities' funding needs and corresponding economic development opportunities, while Transportation for Massachusetts' report *Maxed Out: Massachusetts Transportation at a Crossroads* (2011) and other objective assessments describe a situation that continues to worsen.

All of this research points to inconveniences, lost opportunities for economic development and job growth, lost opportunities for improvements to our natural environment, and, at worst, jeopardized public safety.

As part of drafting this plan, MassDOT has prepared a 25-year financial funding model, the first 10 years of which are shown in Appendix One. The model projects operating and capital needs for our statewide transportation system, the funds needed to stabilize the system and bring it back to a manageable state of good repair, and the funds needed to make targeted investments in expansion. Based on the model, MassDOT has estimated its detailed needs for operating funds, as shown below.

Funding Needs for Existing Operations and Expansion Improvements

MassDOT Operating Budget **FY14** $371 million **10-Year** $4.4 billion	Of this new funding, $234 million will eliminate the need to use bonds (borrowed money) to pay for MassDOT's daily operations and payroll; $50 million will ensure that snow and ice operations are annually funded at an appropriate level based on the average five-year cost; and $75 million will be used to manage the $13 billion *21st-Century Transportation Plan*.
RTA Operating Funding **FY14** $100 million **10-Year** $1.1 billion	This new investment will allow MassDOT to end the practice of funding the Regional Transit Authorities' operating budgets in arrears, thereby eliminating the need for the Transit Authorities to take on short-term debt to in order fund annual operating costs (which, in turn, increases costs to the taxpayers and customers and inhibits the Transit Authorities from appropriately managing their budgets). Thereafter, the $100 million in annual additional funding will be used to expand RTA service by adding hours of operation, increasing frequency on existing routes, and adding new service.
MBTA Operating Budget **FY14** $166 million **10-Year** $3.2 billion	This new investment will address the systemic budget deficit at the MBTA, much of which is caused by the existing MBTA debt burden related to the Central Artery public transit commitments. Beginning in FY2014, $25 million in annual funding will also be available for the MBTA to provide modest service improvements, such as expanded evening hours, restored weekend commuter rail service, and the provision of more Customer Service Agents. Funding will also be provided for the operating costs of the South Coast Rail project and the MBTA Green Line Extension to Somerville and Medford.
Debt Service for the *21st-Century Transportation Plan* **FY14** $18 million **10-Year** $2.9 billion	The $13 billion *21st-Century Transportation Plan* will be financed over time through the issuance of new bonds. The cost associated with the borrowing for this 25-year program will be $18 million in FY2014 and will increase to $518 million in FY2023 as more projects enter construction. Over the 25-years of the financial model, the borrowing costs estimated for the *21st-Century Transportation Plan* will be $10.9 billion.

Capital Needs

In the normal course of business, a transportation department must perform regular maintenance, repair, and replacement of its assets. Like a house that ages and requires regular upkeep – fixing leaky faucets, replacing a roof -- so, too, do our roads and rails.

Within its existing capital investment program, MassDOT expects to spend $12 billion to $14 billion in capital funds for highway, bridge, public transit, and aeronautics programs across the Commonwealth over the course of the next ten years, assuming federal funding remains stable. While this amount will allow the department to perform critical maintenance and make some limited new investments, it is not enough to properly maintain our assets or make necessary enhancements to our systems. If we fail to address maintenance issues now, they will become larger, more costly repairs in the future.

This plan, therefore, recommends an intensive decade-long period of statewide capital investment to be followed by a systematic maintenance program that will save taxpayer dollars and improve our transportation system. It is a 10-year, $13-billion additional capital investment plan we call the *21st Century Transportation Plan*. This plan will reduce congestion on our roads and delays and crowding on our public transit system; invest in targeted expansion; improve safety; modernize our transportation system; and create jobs and economic development for the long-term benefit of the Commonwealth. High-quality infrastructure maintenance is a core responsibility of any department of transportation, and the *21st-Cenutry Transportation Plan* will position MassDOT to be able to maintain its assets responsibly and promptly. The Plan will also allow MassDOT to complete targeted expansion projects across the Commonwealth to support our economy, such as passenger rail from Boston to Springfield, from the Berkshires to New York City, and to Cape Cod; the South Coast Rail project; the extension of the Green Line to Somerville and Medford; and the expansion of South Station to allow for more rail transportation across the Commonwealth.

This investment essentially doubles the currently forecasted transportation capital program over the next decade. Furthermore, the plan includes an additional $100 million per year for local roads and bridges (the Chapter 90 program) and an additional $40 million per year in capital funds for the Regional Transit Authorities. The funding needs detailed in the proposed *21st-Century Transportation Plan* were developed by MassDOT staff based on the priorities we have heard repeatedly from our customers: more reliable and efficient transportation services, greater mobility and equity across the Commonwealth.

It is important to note that the *21st-Century Transportation Plan*, fully funded, will not allow us to build many worthy projects that have been conceived for the Commonwealth's transportation system or that our customers may want. The plan requires us to select our investments carefully and strategically, to keep them in line with our resources both now and in the future, to leverage existing planning and design work, and to focus on a small number of projects that are within our means and promise substantial benefits. Following the decade of investment proposed in the *21st-Century Transportation Plan*, we recommend that

MassDOT and New Balance are partnering to create Brighton Landing, a new MBTA commuter rail station which will serve the improved New Balance campus and the Brighton neighborhood. New Balance will fund all permitting, design, and construction costs related to the station, bringing private funds to the MBTA system and generating new public transportation benefits and job creation.

In January 2012, Massport approved Bedford-based Rectrix Aviation to be the primary provider of support services to general aviation aircraft at Worcester Regional Airport and Hanscom Field. Rectrix will offer services such as aircraft parking and fueling, maintenance, and hangar facilities. Over time, Rectrix is expected to add approximately 100 new jobs to the Massachusetts economy.

MassDOT then re-evaluate the transportation priorities of the Commonwealth and, as appropriate, select a new set of targeted priorities to pursue.

The tables below detail the proposed funding levels – all part of the *21st-Century Transportation Plan* – for different MassDOT programs and projects.

Long-term capital investments are generally financed over time, much like purchasing a house with a mortgage or improving a home with a home equity loan. Based on the needs discussed above, the average annual funding required to address our operating needs (both eliminating structural deficits and providing the identified service improvements) and to fund the annual debt service cost of the $13 billion *21st-Century Transportation Plan* is $1.02 billion per year, increasing from $650 million in FY2014 to $1.3 billion in FY2023. These figures represent uninflated (e.g. FY2014) dollars.

Road, Bridge and Multi-Use State of Good Repair Priorities – The Next 10 Years

Bridge Program $1.175 billion	Funds a new targeted program modeled after the successful Accelerated Bridge Program (which ends in 2016). One-third of the proposed new funding will be used to complete several large projects of regional significance; the remainder will be used to accelerate repairs to local bridges, thereby reducing congestion and improving public safety.
Multimodal Highway Program $1.25 billion	Funds a statewide portfolio of hundreds of local and regional projects designed to improve safety, reduce congestion, reduce the number of 'high-crash' locations in the Commonwealth, and reconstruct roads. This includes $250 million for the transportation assets managed by the Department of Conservation & Recreation.
Regional Priority Projects $930 million	Funds three major highway projects of regional significance, including the I-91 viaduct in Springfield, the I-93/I-95 interchange in Woburn (the busiest in Massachusetts), and the I-93/I-95 interchange in Canton. These projects will all address safety and mobility concerns in corridors of the Commonwealth that are struggling with severe congestion.
Bicycle & Pedestrian Facilities $430 million	Dedicated funding to construct and improve bicycle and pedestrian facilities owned/managed by both MassDOT and the Department of Conservation & Recreation.
Highway Preservation Facilities & Systems $400 million	Targeted funding for a municipal small bottlenecks programs; safety and operational improvements at depots; deployment of roadside traffic and travel information; equipment procurements; and completion of an integrated asset management system.
Chapter 90 $1.0 billion	An additional $100 million per year to increase the annual allotment from $200 million to $300 million per year. In FY2014, a portion of the additional $100 million will be used for a statewide municipal road asset management system. In subsequent years, the funding would be added to the allotment.

Regional Transit Authority State of Good Repair Priorities – The Next 10 Years

RTA Vehicles $400 million	Funds a 10-year program to replace buses that have exceeded their useful life, purchase new buses for expanded services, and support replacement of other equipment and facilities upgrades. Across the Commonwealth, there will be newer buses, fewer delays, and improved reliability.

Project and program funding is based on estimated costs in FY12

MBTA State of Good Repair Priorities – The Next 10 Years

Red & Orange Line Cars $1.5 billion	Funds procurement of subway vehicles to replace the 43-year old Red Line vehicles and 31-year old Orange Line vehicles, as well as improvements to tracks, signals, and systems. At the end of this project, the Red and Orange Lines will have twenty-first century vehicles, fewer delays, and improved reliability. This assumes that the program is 100% state funded to allow the fabrication and assembly of the cars in the Commonwealth, creating jobs.
Green Line Cars $732 million	Funds procurement of Green Line cars, as well as limited improvements to tracks, signals, and systems. This will reduce wait times and train breakdowns, and allow for more three-car trains during rush hour, which would enable increased passenger capacity with minimal additional operating costs for the MBTA. The program will be 100% state funded to allow the fabrication and assembly of the cars in the Commonwealth, which would also create jobs.
MBTA Buses $450 million	Accelerates a 10-year program to replace buses that have exceeded their useful life and for which it is no longer economically feasible to continue rehabilitation. Capacity will increase and fewer breakdowns will occur.
Red Line Car #3 Overhaul $200 million	Overhauls the newest Red Line cars that date back to 1994 for a longer useful life and fewer breakdowns.
MBTA Power, Facilities & Operations $300 million	Funds critical upgrades to decades-old electrical service, fuel systems, water pumps, track, tunnel, and other infrastructure that is essential for the timely operation of trains and buses. Failures can and do happen frequently with the current system resulting in service delays, and reliability and safety issues. Improved power systems are also necessary to run more frequent subway service, more frequent use of 3-car trains on the Green Line, and reach full-speeds on the Red Line.
Modernization Pilot Projects $200 million	Funds the development and piloting of innovative programs at the MBTA, including the implementation of a new Bus Rapid Transit system and the use of Diesel Multiple Unit vehicles. These innovations will allow the MBTA to experiment with new vehicle technologies and new methods of service provision in order to provide better, faster, cleaner, and more efficient public transit.

MassDOT/Commonwealth State of Good Repair Priorities – The Next 10 Years

Aeronautics $125 million	In 2010, the *Massachusetts Statewide Airport System Plan* identified a need of approximately $54 million annually to ensure the short- and long-term development of a safe and efficient airport system. This investment of $125 million is critical to address funding needs at our general aviation airports. These investments will help to support jobs in the aviation industry.
Registry of Motor Vehicles $150 million	Investment to consolidate regional 'super centers' and to develop self-service kiosks at retail and municipal centers for customer convenience.

Project and program funding is based on estimated costs in FY12

Unlocking Economic Growth in the Commonwealth – The Next 10 Years

South Coast Rail $1.8 billion	This level of funding ensures that the South Coast Rail line, which will use diesel-powered commuter trains to connect Boston to Fall River and New Bedford – the fourth and fifth largest cities in the Commonwealth – can be completed in the next eight years. This will result in greater overall mobility for South Coast residents, less congestion on Route 24, and more transportation options in a key region of the Commonwealth. Commuter rail service to the South Coast is projected to create 3,800 new jobs and generate nearly $500 million in new economic activity statewide every year.
Green Line Extension $674 million	The Green Line Extension finance plan assumes that the Federal Transit Administration will fund almost half of the total project cost of $1,327,517,000, which would reduce the required state contribution to $674 million. This will allow this long-awaited project to continue to progress, along with the promise of greater mobility, economic opportunity, and environmental benefits for one of the densest corridors in New England.
South Station Expansion $850 million	This level of funding will provide support for the estimated cost to complete design and construction, within the next 10 years, of an expanded South Station that will accommodate future passenger rail growth for the existing commuter rail system, South Coast Rail, and Amtrak services along the Northeast Corridor, the Inland Route through Worcester and Springfield, and future high-speed rail service to Montreal.
Inland Route $362.4 million	This level of funding will support the expansion of passenger rail by directly connecting Boston with Springfield, via what is commonly known as the Inland Route. Funding will cover major rehabilitation along the route, including creating a continuous second track, widening bridges, updating interlockings, upgrading the signal system, purchasing passenger train equipment, and constructing or rehabilitating stations. This will also support a future high-speed rail connection to New York City via Springfield.
Berkshires to NYC $113.8 million	This project will allow for the rehabilitation of track, signals, and structures between Pittsfield and the Massachusetts/ Connecticut state line in order to support future rail service between Pittsfield and New York City. The current line is served by freight carriers and is not up to the standards necessary for a passenger rail connection.
Rail to Cape Cod $20.8 million	This level of funding will support permanent, seasonal service on weekends between Boston and Hyannis by upgrading rail, grade crossings, interlockings, bridges, drainage, and station accessibility. The five-year capital program will allow passenger service to continue uninterrupted during the summer months to connect this key tourist destination with Boston. Future expansion to year-round or weekday service would require additional upgrades (specifically in signal systems) to support additional train movements.

Project and program funding is based on estimated costs in FY12

Deferred maintenance can lead to bridge and road closures

The Consequences of Inaction – Lost Economic Opportunities

A safe, efficient, and convenient transportation system is critical to support and expand our economy. Without additional investment, however, MassDOT analysis shows that the average driver on the Commonwealth's congested roads will experience a 23% increase in daily delay between now and 2023 – in other words, a 30-minute drive today will require 36.9 minutes 20 years from now. Regional bus, rail, and subway services will be cut or eliminated in efforts to reduce costs, resulting in reduced access to employment opportunities for residents and additional cars on our roads. Less than one-third of the estimated demand for public transit in the state will be met. Local roads will also suffer, with deteriorating surfaces and additional delay.

National studies and local reports have consistently shown that a well-funded transportation system produces tangible and meaningful economic benefits. According to the American Public Transportation Association, every dollar invested in transportation produces four dollars in economic return. The *Massachusetts Statewide Airport Economic Impact Study*, a recent analysis by the MassDOT Aeronautics Division, estimates that the 39 airports of the Commonwealth, including Logan International Airport, generate $11.9 billion in total annual economic activity and $4.9 billion in total annual payroll from the 124,369 jobs that can be traced to the aviation industry. Likewise, commuter rail service to the South Coast is projected to create 3,800 new jobs and generate nearly $500 million in new statewide economic activity every year.

By completing dozens of additional local roadway improvement projects, MassDOT will help to facilitate community-level financial investments and economic growth currently constrained by limited transportation infrastructure. The American Road and Transportation Builders Association has estimated that more than 1.5 million full-time jobs in the Commonwealth in key industries like tourism, retail sales, agriculture, and manufacturing are in some way dependent on or benefit from the state's transportation infrastructure network. These jobs and the economic benefits and quality of life that accrue from a strong economy will be jeopardized without responsible, forward-looking investment in our transportation system.

In addition, as the Urban Land Institute recently noted in its 2012 report *Hub and Spoke: Core Transit Congestion and the Future of Transit and Development* in Greater Boston, increasing ridership on the MBTA – without an accompanying increase in investment – leads to productivity-inhibiting delays and congestion. All of this research points to, at best, inconveniences, lost opportunities for economic and job growth, lost opportunities for improvements to our natural environment, and, at worst, jeopardized public safety.

In January of 2012, the Patrick-Murray Administration celebrated the opening of the $35 million Route 24 Interchange 8B. Supported with both Commonwealth and federal ARRA funds, the interchange provides substantially improved access to the Fall River Executive Park. Access of this type contributes to job growth and economic development.

B-458

Energy efficient solar array alongside Route 44

Solutions – Potential New Reforms

Additional funding will allow us to significantly improve the daily commute of millions of people across Massachusetts. MassDOT, however, must and will continue to improve its business practices and take advantage of new technology to deliver more efficient, cost-effective service. Through its public meeting process and stakeholder conversations, MassDOT has identified a number of additional reforms that could be implemented to meet those goals.

All-Electronic Tolling

MassDOT has begun work to implement statewide All-Electronic Tolling (AET), to replace the existing toll plazas on the Massachusetts Turnpike, Tobin Bridge, and Harbor Tunnels with overhead gantries to be installed along the highways, allowing all traffic to travel at normal highway speed through the tolling areas. Cash will be eliminated from the system entirely, as all transactions will be conducted using either the current E-ZPass system or through video tolling (in which invoices are sent to customers whose license plates are recorded by the AET camera system). This concept will lessen congestion, improve air quality, and reduce operating costs by an estimated $50 million annually.

Registry of Motor Vehicles Modernization

The public is increasingly performing Registry transactions – including license, registration renewals, and bill payment – online rather than in person. For those who still wish or need to visit a Registry branch, our modernization program would replace current branch offices with a smaller network of superior regional and commercial centers, including centers at insurance agencies and AAA branches. In some cases, self-service options could even be made available at appropriate commercial/retail establishments. These new facilities would offer a comprehensive menu of essential services, providing customers with shorter wait times and reducing Registry operating expenses.

Utility Reimbursements

Utility relocations are one of the top reasons for project delay. Using lessons learned from our Federal-aid construction program and the Accelerated Bridge Program – which allow MassDOT to more fully reimburse utility companies for relocating conduits, poles, and lines, all of which help to keep transportation projects on schedule – MassDOT will again file legislation to extend utility relocation reimbursements to projects funded by state revenues.

Leveraging Real Estate Assets

MassDOT is one of the largest owners of real estate in the Commonwealth, and we recently completed a statewide inventory of all of our parcels and other assets. MassDOT is now beginning the process of identifying all non-essential, non-transportation parcels that are eligible for disposition, including transfer to municipalities, lease or sale to third parties, and use as part of a public/private partnership. Additionally, MassDOT will seek new tools to expedite the disposition of appropriate assets through such means as reverse auctions, online bidding, and uniform rate sheets.

In June 2012, Lieutenant Governor Murray broke ground on the Kenneth F. Burns Memorial Bridge in Worcester, the first of five mega-projects to be completed by the Accelerated Bridge Program. The $89.9 million project will widen the bridge from two to three travel lanes in each direction and provide accessible sidewalks and dedicated bicycle lanes on both sides of the bridge. The bridge carries 53,000 cars a day and is a crucial link between Worcester and Shrewsbury, providing needed access to vital business districts and a major regional medical and biotech hub.

Innovation will continue to lead MassDOT to do business in a more efficient way, saving money and allowing us to deliver more to our customers.

Performance Management

MassDOT is working to expand its performance management efforts across all divisions. Performance management at MassDOT aims to ensure that we make the best use of the public funds available to accomplish our agency mission, and to track whether our expenditures are matching our core goals. For several years, the MBTA has produced monthly scorecards that evaluate the Authority's performance on customer service and budget metrics. Similarly, the Registry of Motor Vehicles produces monthly scorecards on vital metrics such as branch and call center wait times. MassDOT is now expanding these techniques throughout the rest of the agency. Monthly accountability meetings that focus on Division performance are chaired by the Secretary of Transportation, and these meetings are open to the public on a quarterly basis.

Fully Integrated Asset Management

In order to effectively manage the complex transportation system of the Commonwealth, MassDOT must invest in a modern asset management system. Such a system would track the useful life of all infrastructure and equipment from roads and bridges to buses and railroad track to snowplows and office buildings. The MBTA is already an industry leader in asset management with its State of Good Repair database. The Highway Division employs asset management processes by using the PONTIS system to guide bridge investments. The Highway Division is also in the early stages of building the Maximo system to provide data on assets such as guardrails, lighting, and signs. Full incorporation of all MassDOT assets into an organization-wide management system will allow for cost-savings and better fiscal planning for the replacement and overhaul of assets.

Structural Reform of the Metropolitan Planning Organizations

MassDOT plans to propose reform of the Metropolitan Planning Organizations (MPOs) of the Commonwealth. MPOs are federally designated and are important partners in the transportation planning process, helping their member communities to prioritize transportation needs for project funding. With its legislative partners, MassDOT aims to ensure that the MPO structure in the Commonwealth is effective, equitable, and transparent, and wants to expand public involvement in the annual MPO process of programming federal transportation dollars for expenditure. The MPO process is a key avenue for local officials and residents to become directly involved with transportation planning in their regions, and MassDOT aims to increase that kind of participation to ensure broader and more equal representation in our transportation planning processes. MassDOT is reviewing reform opportunities that could address MPO size, MPO performance, the number of MPOs in the Commonwealth, and the methods by which the MPOs select projects.

State Infrastructure Bank

The Commonwealth could create a State Infrastructure Bank (SIB) to provide public funds to match private capital for the purpose of making loans to support the construction of infrastructure with a public purpose. Projects supported by SIB funds would be required to have an economic benefit for the Commonwealth

and to generate revenue so that interest paid to the SIB could then be invested in other beneficial projects. Legislative approval is necessary to establish a SIB in the Commonwealth.

MBTA Retirement Changes

MassDOT will seek to update eligibility and other policies of the MBTA retirement system to ensure that they remain consistent with Commonwealth policies and practices. This is important both for equity and for long-term cost savings. Further, MassDOT and the MBTA will also review the recommendations of the Retiree Health Care Commission for realigning benefit costs while both protecting public employees and avoiding budget cuts in other areas as health care costs continue to escalate.

Vehicle Miles Traveled – Pilot Program

MassDOT will propose a voluntary pilot program in which residents can pay for driving as a utility – a set price for every vehicle mile driven, in lieu of paying the state gas tax. This pilot program will be coupled with the establishment of a joint administration/legislative committee to study and recommend a framework for a more comprehensive program.

Value Capture

Over the past year, the Urban Land Institute, MassINC, the Dukakis Center for Urban & Regional Policy, and other academic and policy institutions have advanced the concept that transit and transportation-oriented development is critical for local and regional economic development and quality of life. As part of this discussion, these organizations have proposed variations of value capture financing that could fund either the modernization of existing service or new services.

Further Partnerships with Massport

The 2009 transportation reform legislation directed MassDOT to take over the Tobin Bridge (formerly owned by Massport), and gave management responsibility to Massport for Worcester Regional Airport and Hanscom Field. Since then, Massport, MassDOT, and the MBTA have partnered in numerous ways to reduce costs and improve customer service. In 2012, the MBTA and Massport launched a pilot program offering free MBTA Silver Line service between Logan Airport and South Station in order to reduce the number of private vehicles at Logan. MassDOT and Massport are working to make this fare-free service permanent and to identify other areas of collaboration.

Working in partnership with the Legislature, MassDOT will pursue these reforms as part of its ongoing efforts to reduce costs, improve the delivery of service to customers, realize its goals for the management of a safe and efficient transportation system, and lead the nation in innovation and sustainable mobility. In addition, the Commonwealth should commit to the public that transportation revenues will be dedicated to the goals outlined in this plan, without any diversion or use of funds for other purposes or programs. Without that commitment, MassDOT will not be able to fully fund the *21st-Century Transportation Plan.*

Better managment systems will assist MassDOT in anticipating needs before costs escalate.

With federal, state, and local support, the MBTA opened the Wonderland Intermodal Transit Center in Revere's Waterfront Square in June 2012. The Center – which provides parking for bicycles and automobiles – represents the first phase of a long-planned urban redevelopment project, and promises to be an economic turning point for Revere.

B-462

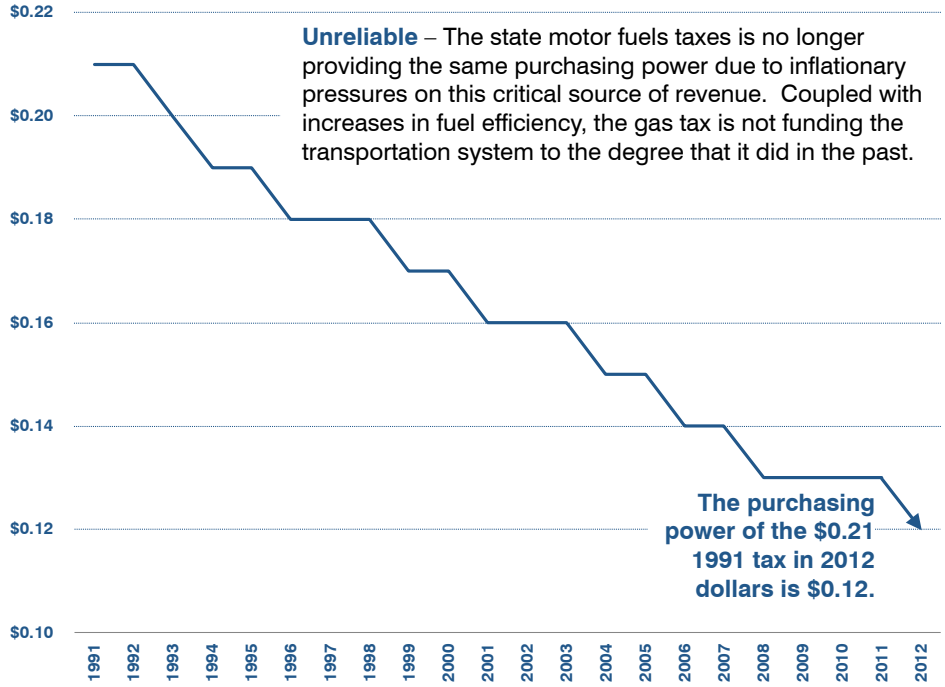
Proposed new interchange for I-93/I-95 in Canton

Solutions – Potential New Sources of Revenue

Transportation revenues available to the Commonwealth today include the gas tax, tolls, Registry of Motor Vehicle fees, and a portion of the state sales tax. These sources are increasingly unreliable, unable to keep pace with the true funding needs of the transportation system, and inequitable in both their collection and their allocation. The state tax on gasoline has not increased since 1991. Because gas taxes are a fixed value – 21 cents per gallon in Massachusetts – rather than a percentage of the overall sale, the Commonwealth receives no additional financial benefit when the price of gas increases. Furthermore, inflation has diminished the value of the state's gas tax. So, while construction and operating costs have consistently increased over the past 22 years, the main funding mechanism for supporting transportation projects has remained static. This dynamic has significantly reduced the buying power of the gas tax. Additionally, after decades of significant increases in fuel consumption, the past decade has seen fuel consumption in the Commonwealth stagnate. While this has environmental benefits, it points to the decreasing value of the gas tax as a long-term means of funding the Massachusetts transportation system.

The funding MassDOT has historically relied on, such as the motor fuels tax, is becoming more unreliable and is limiting the opportunities to invest in our system.

Decline in Purchasing Power from State Motor Fuels Tax



Massachusetts has in the past substantially relied on federal transportation funding, but that source is less reliable now. Where the federal government is helping less, the Commonwealth has to pick up slack.

While tolls and other user fees are an important source of transportation funding in the Commonwealth, they are also problematic in a variety of ways. Their use is limited and encumbered by various discount programs and other restrictions that have been implemented over the years. In addition, a portion of our toll revenues are currently scheduled to be eliminated in 2017, which will cause MassDOT to lose an average $120 million a year in revenue. User fees inconsistently applied also raise equity concerns, particularly the use of roadway toll revenue to fund the construction and debt costs associated with the Central Artery project. Transportation costs should be shared equitably across all users of our system, not borne disproportionally or arbitrarily by one mode, one region of the Commonwealth, or one subset of travelers.

The MBTA relies heavily on a portion of the Commonwealth sales tax to fund its operations and debt-service payments, but sales tax revenue projections made more than a decade ago when the Legislature voted to 'forward fund' the MBTA have never materialized. Due to the growth of online retail, two major recessions, and other factors, sales tax collections in the Commonwealth have grown by only 1% per year since 2000, not the 3% originally anticipated. As of 2009, this has resulted in a $460-million gap between anticipated and actual sales tax revenue for the MBTA.

Furthermore, while the federal government has historically provided substantial funding for the Commonwealth's transportation program, federal funding is becoming less dependable than it once was.

Over the past year, in the 17 *Your Vision, Our Future* forums held by MassDOT, as well as other statewide transportation events hosted by the Metropolitan Area Planning Council, the Conservation Law Foundation, A Better City, the Pioneer Valley Planning Association, the Dukakis Center for Urban & Regional Policy, and MassINC, a number of options and recommendations for raising new revenues have been proposed by the public and municipal leaders.

Based on growth projections developed for the South Coast Rail Economic Development and Land Use Corridor Plan, implementation of the commuter rail line will result in an additional 3,800 jobs.

The recommendations and an initial analysis of each is below. To meet our $1 billion average annual investment need, MassDOT and the Legislature should consider these and other revenue options.

Commonwealth Payroll Tax

According to *Moving Forward with Funding: New Strategies to Support Transportation and Balanced Regional Economic Growth*, published by MassINC in 2011: "A 0.16 percent payroll tax would provide revenue in the range needed to close the MBTA's annual operating deficit ($140 million to $207 million, depending on how the tax is levied in overlapping RTA districts). This 0.16 percent payroll tax would cost the median full-time worker in the MBTA service area just $1.77 per week. In RTA service districts, a payroll tax at this rate would generate nearly $100 million in revenue...at a cost of approximately $1.50 per week to the median full-time worker in RTA districts." A payroll tax would be a new tax in the Commonwealth that employers would pay on the wages of their employees.

Motor Fuels Taxes

The current tax of 21 cents was last increased in 1991. Only 14 states have lower per-mile fuel taxes than does Massachusetts, making our fuel tax one of the cheapest in the U.S. Increasing the gas tax by one cent per gallon would yield $32 million per year. To raise $1 billion, consumers would need to pay an additional thirty cents per gallon, resulting in a total gas tax of 51 cents per gallon, which would be the highest in the nation. The Commonwealth could also index the fuel tax to inflation and/or other adjustments in the price of gas, which would allow the Commonwealth to benefit from increases in the per-gallon cost of gas.

State Sales Tax

To raise an additional $1 billion in sales tax in calendar year 2013, the sales tax rate would need to increase from the current 6.25 percent to 7.75 percent.

Income Tax

To raise $1 billion in the personal income tax paid by residents of the Commonwealth in CY2013, the existing income tax rate would have to be increased from 5.25% to approximately 5.66%. This would be approximately an 8% increase over the existing income tax rate.

Green Fee

Under a 'green fee,' existing vehicle registration and title fees would be assessed additional fees based on a vehicle's level of carbon emissions. Under a green fee scenario, owners of motorcycles and hybrid cars could pay an extra $15 every two years for registrations, car and hybrid SUV owners could pay an additional $30 every two years, SUV and light truck owners could pay an additional $60, and heavy truck owners could pay an additional $85. The fee would be adjusted to reflect the age of the vehicle and the anticipated emissions produced – higher polluting vehicles would pay more, while cleaner vehicles would pay less.

Vehicle Miles Traveled Tax

A 2.4 cents-per-mile fee on vehicle miles traveled would produce $1 billion in annual revenue. The fee could be collected at a vehicle's annual safety inspection or through an onboard device that would record miles travelled but protect user privacy by not collecting location information.

Routine, Regular Increases in Fees, Fares, and Tolls

Some experts recommend shifting the burden of funding transportation services from broad-based taxes to specific user fees in order to more clearly draw a connection between cost and use. To accomplish this over the next decade, MassDOT could enact a series of modest, regular increases to transportation fares, fees, and tolls to keep pace with the cost of inflation. MBTA fares could increase 5% every two years beginning in FY2015, yielding an estimated $145 million in cumulative new revenues by 2023. Tolls could increase 5% every other year beginning in FY2015, resulting in $84 million in new annual revenues by FY2023.

Neighboring State Motor Fuels Taxes

State	Motor Fuels Tax	Year Last Changed
CT	45¢	2012
ME	30¢	2011
MA	**21¢**	**1991**
NH	18¢	1991
NY	50.6¢	2013
RI	32¢	2009
VT	26.7¢	2013

Neighboring State Sales Taxes

State	Sales Tax
CT	6.35%
ME	5%
MA	**6.25%**
NH	0%
NY*	8%
RI	7%
VT	6%

**New York State has a 4.0% statewide tax while counties can also tax; figure is for Albany & Rensselaer Counties*

While the financial picture is grim, it is important to note that the MBTA is too valuable an economic asset to permit its further deterioration or even collapse. A robust public transportation system provides vital economic and quality-of-life benefits to residents from all walks of life and to businesses in the communities it serves.

- MBTA Review 2009

Downtowns in the Gateway Cities were not designed to accommodate cars. These areas have the potential to become thriving urban centers, but like larger downtowns, they need frequent and predictable transit service.

- MassINC. 2011

For services provided by the Registry of Motor Vehicles, a 10% fee increase every five years beginning in FY2018 would result in $54 million in new annual revenues.

New Tolling Mechanisms

MassDOT could introduce new tolling mechanisms to support state road maintenance or expansion, local roadway improvements, or public transit expansion. This could be done through dedicating existing toll revenue differently than it is done today, implementing high-occupancy/express lane tolls (so-called "HOT" lane tolling), developing congestion pricing policies, or introducing tolls on new facilities such as I-93, I-95, or I-84 as a way to fund ongoing maintenance and capacity improvements. In order to implement innovative toll concepts on interstates other than I-90, MassDOT would need approval from the Federal Highway Administration.

Western Turnpike Tolls

Tolls currently collected on the Western Turnpike generate nearly $120 million in annual revenue. Eliminating these tolls when the bonds on the Western Turnpike reach maturity in 2017, as is currently mandated, would greatly constrain MassDOT's ability to continue to maintain the Western Turnpike in its current condition, and would exacerbate inequities on the roadway. The financial analysis discussed throughout this document, therefore, assumes that the revenue generated by the Western Turnpike tolls will continue to be available to MassDOT after 2017. MassDOT proposes maintaining tolls on the Western Turnpike in order to continue to dedicate sufficient resources to this important corridor, and to use a portion of those tolls for transportation projects off the Turnpike in the region in which they were collected (for example, dedicating a portion of tolls collected west of Sturbridge to transportation improvements on the Turnpike as well as locally in the Pioneer Valley and/or the Berkshires). This change will require legislative approval.

Conclusion – Transportation at the Crossroads

The Way Forward lays out the case for significant additional investment in our transportation system. To fully fund our operations and to implement the *21st-Century Transportation Plan* requires an additional average $1.02 billion per year in new revenue over the next 10 years. Without new revenue options for the MassDOT agencies by FY2014, the MassDOT Board of Directors will need to take action to address increasingly un-manageable short-term operating deficits. These deficits could be cured through the following cuts and increases, with the amounts subject to the specific needs of the agencies at the time that the Board would need to take action. These additional revenues and service cuts, however, are unsustainable and will result in a short time a failed system.

We have an opportunity to solve the funding crisis for our transportation system for a generation.

The MassDOT Board would introduce the fees shown in the chart below to address budget deficits in FY2014; these fees would then be needed every year in order to continue to address funding shortfalls at the transportation agencies. It is important to note, however, that the $100 million shown here for the Regional Transit Authorities would be provided in FY2014 only in order to place the Transit Authorities on a proactive, forwarded-funded budget cycle. Without additional revenues, the Regional Transit Authorities could not then continue to receive $100 million per year, as those funds would be needed to address ongoing MBTA operating deficits.

Board Options	MBTA Deficit (FY14 $140m)	MassDOT Deficit (FY14 $284m)	RTA Funding (FY14 $100)
Increase registration fees by $53 Generates approx. $200,000,000	$75,000,000	$100,000,000	$25,000,000
Increase annual vehicle inspection fee by $19 Generates approx. $90,000,000	$0	$75,000,000	$15,000,000
Increase license fee by $86 Generates approx. $160,000,000	$40,000,000	$100,000,000	$60,000,000
Increase I-90 tolls by 5% Generates approx. $16,000,000	$0	$16,000,000	$0
Increase MBTA fares by 5% Generates approx. $26,000,000	$26,000,000	$0	$0
MBTA service cuts Saves approx. $40,000,000	$40,000,000	$0	$0
Estimated Total	**$141,000,000**	**$291,000,000**	**$100,000,000**

The *21st-Century Transportation Plan* will address pavement quality and bridge health

The Way Forward

A modern transportation network, adequately funded and professionally managed, is essential to our economic future. Our roads, bridges, buses, rails, and airports are the backbone of our economic growth and quality of life. Governor Patrick has made the call to accept our 'generational responsibility' to invest in and strategically expand our public infrastructure, and *The Way Forward* is part of that call. Our elected leaders must make the hard decisions necessary to fund and manage the repairs and investments that the people of Massachusetts need today and in the future. We must recognize that the need to share resources equitably is core to the vision of our Commonwealth, and that we have a responsibility to improve the transportation infrastructure, and support our economy and quality of life, in all of our communities. Let that discussion begin now.

We must stop putting off for later the hard decisions necessary to fund and manage the repairs and investments we need today.

Appendix One – Proforma

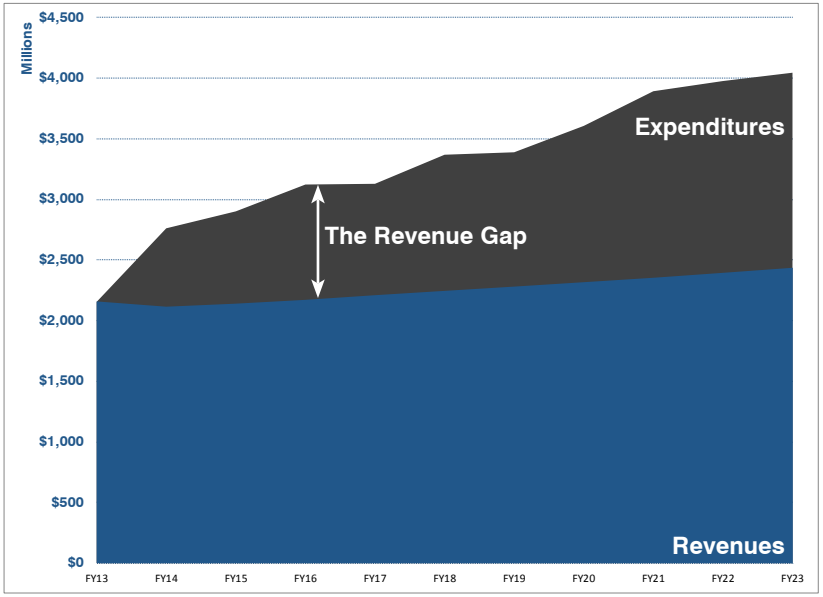
REVENUES	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Tax Revenue						
Motor Fuels Tax	$662,000,000	$663,816,000	$659,705,000	$661,436,000	$669,282,000	$673,889,000
Sales Tax	311,700,000	319,492,500	327,479,813	335,666,808	344,058,478	352,659,940
Total Tax Revenue	**973,700,000**	**983,308,500**	**987,184,813**	**997,102,808**	**1,013,340,478**	**1,026,548,940**
Fees & Tolls						
RMV Fees	523,890,000	535,415,580	547,194,723	559,233,007	571,536,133	584,109,928
MVSI Fees	134,432,594	137,390,111	140,412,694	143,501,773	146,658,812	149,885,306
MHS Toll Revenue	215,963,453	218,095,818	220,276,776	222,479,543	224,704,339	226,951,382
WT Toll Revenue	117,655,172	118,831,724	120,020,041	121,220,241	122,432,444	123,656,768
MHS & WT Non-Toll Revenue	50,441,027	51,702,053	52,994,604	54,319,469	55,677,456	57,069,392
Highway Revenue	23,667,000	24,258,675	24,865,142	25,486,770	26,123,940	26,777,038
MRB Assessments	8,699,046	8,916,522	9,139,435	9,367,921	9,602,119	9,842,172
Total Fees & Tolls	**1,074,721,292**	**1,094,610,482**	**1,114,903,414**	**1,135,608,725**	**1,156,735,242**	**1,178,291,986**
Non-Operating						
Federal Grants	32,722,686	33,540,753	34,379,272	35,238,754	36,119,723	37,022,716
Prior Year Surplus / Reserves	73,750,000	0	0	0	0	0
Total Non-Operating	**106,472,686**	**33,540,753**	**34,379,272**	**35,238,754**	**36,119,723**	**37,022,716**
TOTAL REVENUES	**2,154,893,978**	**2,111,459,736**	**2,136,467,499**	**2,167,950,287**	**2,206,195,443**	**2,241,863,642**

EXPENSES	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Operating Expenses						
Employee, Payroll & Benefits	228,971,856	491,790,477	511,462,096	531,920,580	553,197,403	575,325,299
Materials, Supplies & Services	197,394,390	205,092,352	210,219,661	215,475,153	220,862,032	226,383,582
Office & Administrative	86,683,909	133,968,511	137,317,723	140,750,666	144,269,433	147,876,169
Construction & Maintenance	159,417,889	203,667,682	208,759,374	213,978,358	219,327,817	224,811,012
Transfers, Grants & Subsidies						
2009 MBTA Debt Relief	160,000,000	160,000,000	160,000,000	160,000,000	160,000,000	160,000,000
Add'l MBTA Debt Relief	54,000,000	165,900,000	199,365,625	282,222,266	349,395,322	456,085,205
RTA Contract Assistance	67,635,055	162,000,000	166,050,000	170,201,250	174,456,281	178,817,688
Other Grants & Subsidies	24,294,087	15,294,087	15,676,439	16,068,350	16,470,058	16,881,810
Total Operating Expenses	**978,397,186**	**1,537,713,108**	**1,608,850,918**	**1,730,616,622**	**1,837,978,346**	**1,986,180,766**
Debt Service Expenses						
Commonwealth Past Borrowings Principal & Interest	1,025,991,135	1,011,668,507	965,482,418	934,211,489	689,672,773	646,047,322
MHS Principal & Interest	129,117,881	129,752,281	149,686,481	149,731,981	149,271,531	148,796,731
WT Principal & Interest	21,387,776	20,413,957	19,335,240	18,193,082	16,807,460	0
FY14-FY23 Currently Planned Borrowing	0	43,744,240	117,194,583	192,509,753	263,548,902	317,974,099
21st-CTP $13B Finance Plan Principal & Interest	0	18,174,574	40,711,461	97,273,519	171,194,280	269,310,412
Total Debt Service Expenses	**1,176,496,793**	**1,233,753,560**	**1,292,410,183**	**1,391,919,825**	**1,290,494,947**	**1,382,128,564**
TOTAL EXPENSES	**2,154,893,978**	**2,761,466,667**	**2,901,261,101**	**3,122,536,447**	**3,128,473,293**	**3,368,309,330**
REVENUE GAP	**0**	**–650,006,932**	**–764,793,602**	**–954,586,160**	**–922,277,850**	**–1,126,445,687**
REVENUE GAP (unadjusted for inflation)	**0**	**–650,006,932**	**–746,140,100**	**–908,588,849**	**–856,426,668**	**–1,020,504,197**

FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
$677,333,000	$681,171,000	$684,535,000	$691,380,350	$698,294,154
361,476,438	370,513,349	379,776,183	389,270,588	399,002,352
1,038,809,438	**1,051,684,349**	**1,064,311,183**	**1,080,650,938**	**1,097,296,506**
596,960,346	610,093,474	623,515,530	637,232,872	651,251,995
153,182,782	156,552,804	159,996,965	163,516,899	167,114,270
229,220,896	231,513,105	233,828,236	236,166,518	238,528,184
124,893,336	126,142,269	127,403,692	128,677,729	129,964,506
58,496,127	59,958,530	61,457,493	62,993,931	64,568,779
27,446,464	28,132,626	28,835,941	29,556,840	30,295,761
10,088,226	10,340,432	10,598,943	10,863,916	11,135,514
1,200,288,178	**1,222,733,240**	**1,245,636,801**	**1,269,008,705**	**1,292,859,009**
37,948,284	38,896,991	39,869,416	40,866,151	41,887,805
0	0	0	0	0
37,948,284	**38,896,991**	**39,869,416**	**40,866,151**	**41,887,805**
2,277,045,900	**2,313,314,580**	**2,349,817,400**	**2,390,525,794**	**2,432,043,320**

FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
598,338,311	622,271,843	647,162,717	673,049,226	699,971,195
232,043,172	237,844,251	243,790,358	249,885,117	256,132,244
151,573,073	155,362,400	159,246,460	163,227,622	167,308,312
230,431,288	236,192,070	242,096,871	248,149,293	254,353,026
160,000,000	160,000,000	160,000,000	160,000,000	160,000,000
290,593,684	357,858,526	366,804,989	375,975,114	385,374,492
183,288,130	187,870,334	192,567,092	197,381,269	202,315,801
17,303,855	17,736,451	18,179,863	18,634,359	19,100,218
1,863,571,513	**1,975,135,876**	**2,029,848,350**	**2,086,302,000**	**2,144,555,288**
626,292,837	598,477,901	707,637,477	647,966,747	570,121,496
148,740,081	149,866,394	158,687,394	158,187,544	158,788,544
0	0	0	0	0
376,589,090	439,393,876	506,388,457	577,572,833	652,947,003
373,319,221	443,202,165	489,390,590	505,982,217	518,329,047
1,524,941,229	**1,630,940,335**	**1,862,103,918**	**1,889,709,341**	**1,900,186,090**
3,338,512,742	**3,606,076,211**	**3,891,952,268**	**3,976,011,341**	**4,044,741,378**
–1,111,466,841	**–1,292,761,631**	**–1,542,134,868**	**–1,585,485,547**	**–1,612,698,058**
–982,374,733	**–1,114,744,303**	**–1,297,344,452**	**–1,301,281,826**	**–1,291,333,074**

10-year Projected Revenues vs. Expenditures



Note: The Proforma to the left and graph above do not include MBTA assessment, fare, and sale tax revenues, or current MBTA operating costs.

◀ Average revenue gap w/ inflation = **$1.16 billion** FY14-23

◀ Average revenue gap = **$1.02 billion** FY14-23

Appendix Two – Proforma Explanation

What is a Proforma?

A proforma is an accurate statement of the finances of an organization. The proforma shown here details the sources of transportation funding available to and financial obligations of the Massachusetts Department of Transportation in FY2014-FY2023.

Revenues

The revenue section of the proforma includes all of the existing revenues available to fund transportation. Most of the fees and taxes paid to the Registry of Motor Vehicles (RMV) and all of the gas or motor vehicle fuels tax (currently 21 cents) is dedicated to transportation uses. In 2009, the Legislature pledged a portion of the state sales tax increase to support transportation, including to the MBTA and the Regional Transit Authorities. Tolls charged for travel on the Massachusetts Turnpike (I-90), Tobin Bridge, and the Sumner and Ted Williams Tunnels are also represented as revenues for the transportation system. The annual $29 inspection fee for vehicles, labeled the MSVI, is also accounted for in this discussion.

Types of Revenues

State Motor Fuels Tax: The Commonwealth collects 21-cents per gallon tax on each gallon of gasoline and diesel fuel consumers purchase at the pump, estimated at $662 million in fiscal year 2013.

Sales Tax: Five-thirteenths of one cent (0.385%) of the state sales on all purchases is dedicated to transportation, estimated to be $311.7 million in FY2013.

Registry of Motor Vehicle Fees: These are the fees charged by the Registry for vehicle titles, registrations and drivers license fees, estimated at $523.8 million in fiscal year 2013.

Motor Vehicle Safety Inspection Fee (MSVI): Each motor vehicle registered in the Commonwealth is required to have an annual safety and emissions inspection; the fee for which is $29. These inspection fees are expected to total $134 million in FY2013.

Metropolitan Highway System (MHS) Tolls: These funds are generated by motorists paying to use the Metropolitan Highway System from Route 128 to downtown Boston, the Tobin Bridge and the Sumner Tunnel and the Ted Williams Tunnel.

Western Turnpike (WT) Tolls: This is revenue generated by motorists paying a toll to use the western portion of the Massachusetts Turnpike from Route 128 to the New York border.

Metropolitan Highway System & Western Turnpike Non-Toll Revenue: MassDOT collects revenues from leases of service plazas, cell phone towers, and fiber optic conduits located along the I-90 corridor from Boston to New York.

Highway Revenue: This includes funds from the issuance of permits and fees for the use of the Commonwealth's highways by oversized vehicles and construction equipment, and from the sale and lease of MassDOT land.

Merit Rating Board (MRB) Assessments: MassDOT assesses fees to insurance companies for the costs of maintaining and updating individual driving records and of reporting this information to Massachusetts auto insurers and other government agencies involved in transportation and public safety.

Expenses

The operating expenses of MassDOT include:

Payroll and Benefits: Wages, health care costs, and insurance for the 4,000 employees of the Massachusetts Department of Transportation. The model also includes $75 million to manage the accelerated capital program over the course of the next decade. This number increases in the proforma in FY2014 to reflect our proposal to stop paying for our employees with borrowed funds and to properly pay for them with operating funds.

Materials, Supplies, Services, and Administrative Expenses: These categories include rents, goods, fuel, electricity and water and other services necessary to operate the state highway system, registry branches, aeronautics programs and general operations of the department. This category also includes the funds paid to private service stations for providing annual vehicle inspections out of the $29 fee paid by motorists. Similar to payroll and benefits, the growth in FY2014 is due to the transfer of $48.3 million in rents, goods and other services that had been historically charged to the capital budget.

Construction & Maintenance: These funds support the rehabilitation and modernization of the I-90 Turnpike from Lenox to downtown Boston, including the introduction of All- Electronic Tolling. This construction program is funded from tolls paid for the use of the road. Also included in this category is the additional funding ($50 million) necessary to meet the forecasted cost to remove snow based on the five year historical average.

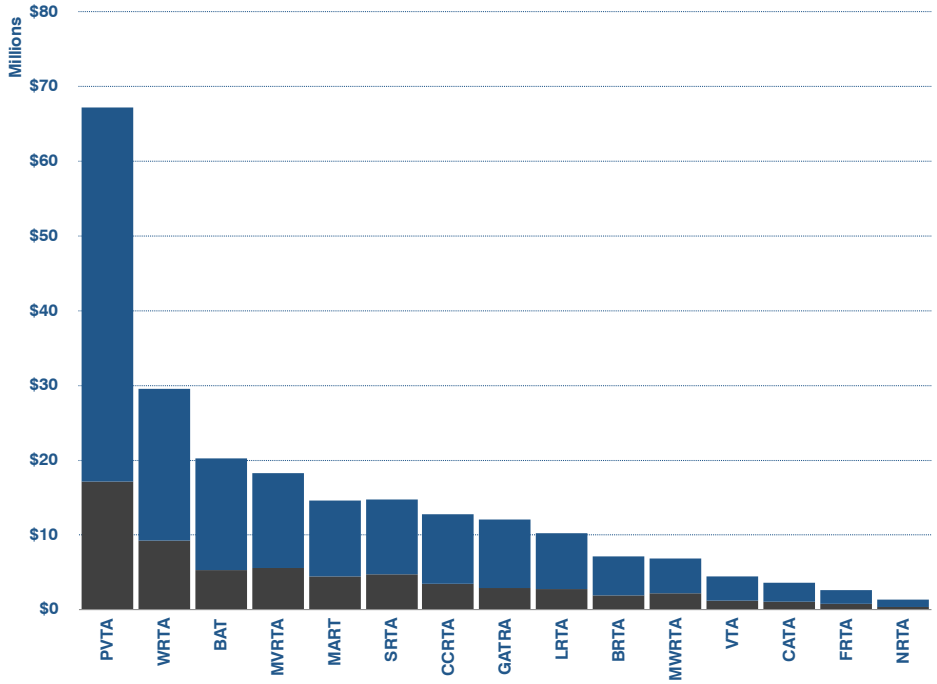
Grants, Subsidies, and Contract Assistance: this category represents funding transferred from MassDOT to other agencies and programs:

2009 MBTA Contract Assistance: In 2009, the MBTA received a $160 million annual infusion from the state as part of a financing package that saw the Commonwealth's sales-tax rate increase to 6.25 percent. That additional revenue, coupled with a bond refinancing, stabilized the MBTA budget for the next several years and helped to prevent fare increases and service cuts.

Additional MBTA Contract Assistance: Amounts represented in this line item are the annual operating deficits for the MBTA, $140 million in FY14 growing to $427 million in FY18. In addition, $25 million, indexed to inflation at 2.5%, is included for possible service enhancements to the system that could include late night service on weekends and nights.

RTA Contract Assistance: This is the annual state assistance for the 15 Regional Transit Authorities to allow for the introduction of forward funding and repayment of debt associated with this practice. In FY2015 the $100M, plus the base of $62 million, is available for expanded services. This level of funding will allow for additional customer and service improvements that may include night and weekend service, shorter waits and more routine, predictable service.

RTA State Contract Assistance Spending with Additional $100 Million Funding



RTA	2013 Millions	2014 Millions	Change Millions
PVTA	$17.2	$49.9	+$32.2
WRTA	$9.2	$20.3	+$11.1
BAT	$5.2	$15.0	+$9.8
MVRTA	$5.5	$12.7	+$7.2
MART	$4.4	$10.2	+$5.8
SRTA	$4.6	$10.0	+$5.4
CCRTA	$3.4	$9.3	+$5.9
GATRA	$2.8	$9.1	+$6.3
LRTA	$2.7	$7.4	+$4.7
BRTA	$1.9	$5.1	+$3.2
MWRTA	$2.1	$4.7	+$2.6
VTA	$1.2	$3.2	+$2.0
CATA	$1.1	$2.5	+$1.4
FRTA	$0.7	$1.7	+$1.0
NRTA	$0.4	$0.8	+$0.4

Equity – MassDOT is proposing to increase the spending for RTA operations by $100 million going forward. This will help the RTAs provide needed service, including later bus runs in the evenings and on weekends.

Other Grants and Subsidies: These amounts are for services provided to MassDOT by other agencies and programs. The Department of Environmental Management receives an annual allocation of funding for the administration of clean air programs designed to reduce or mitigate the negative air quality impacts from motor vehicles.

Debt Service: Principal and interest for borrowings for capital projects, both in the past and the future. This is oftentimes referred to as the 'cost of capital' – the amount owed on an annual basis for borrowed funds. With the assistance of the Executive Office of Administration & Finance and other Commonwealth financial offices, MassDOT has included the assumed schedules for the cost of transportation-related debt over the next 25 years, for borrowings in the past, the base capital program for the next ten years, and the *21st-Century Transportation Plan*.

Commonwealth Past Borrowings: These values represent the remaining amounts owed for projects that have already been constructed. Over the past twenty to forty years, the Commonwealth issued bonds for the construction of roads, bridges, airports, train stations, and other transportation facilities.

MHS Principal & Interest: This represents the remaining amounts owed for the construction of the Metropolitan Highway System, the I-90 Turnpike from I-95 to downtown Boston, and the Central Artery project.

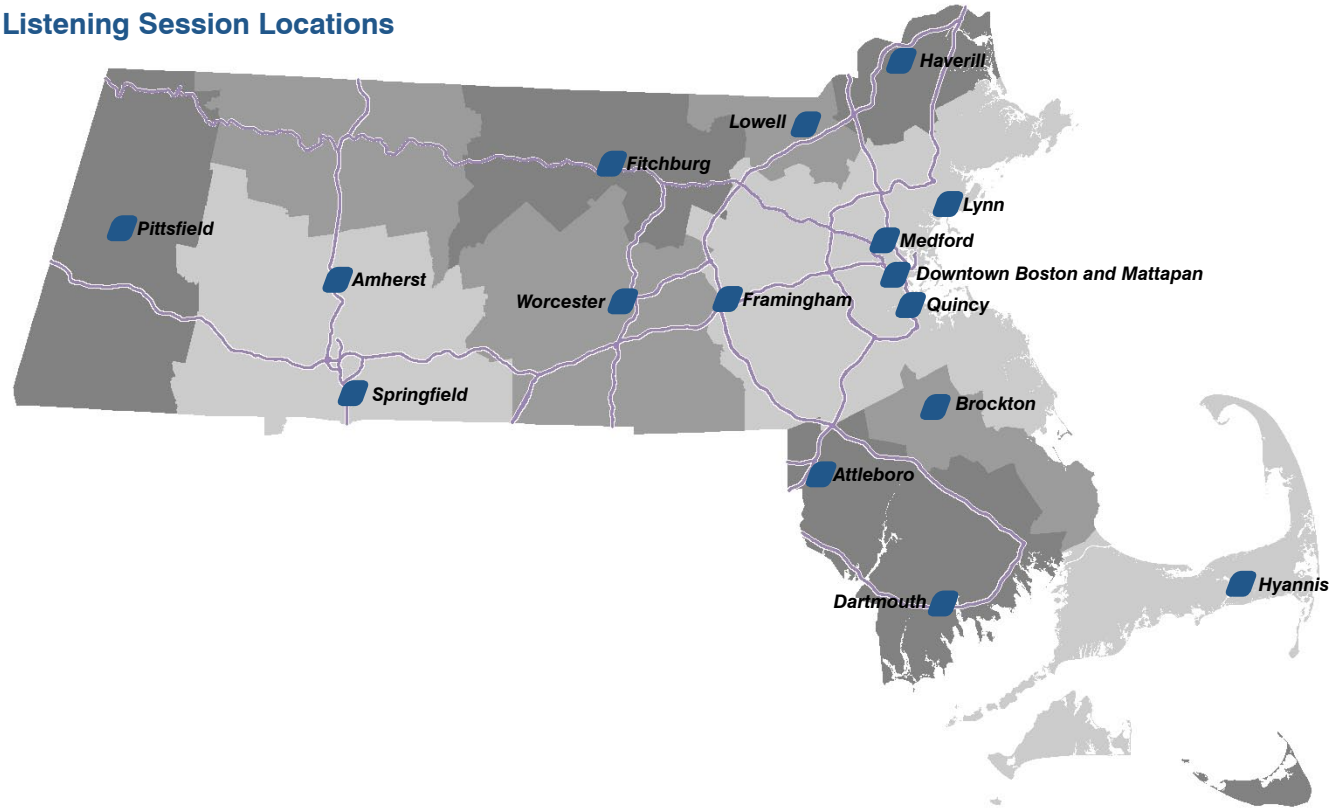
Western Turnpike Principal & Interest: This represents the remaining funds owed for bonds issued to construct and rehabilitate the Western Turnpike from I-95 to the New York border. This debt is scheduled to be fully repaid in FY2017.

Commonwealth Planned Borrowings: If we made no changes in how MassDOT is currently funded, this is the amount that the Commonwealth is anticipated to borrow for transportation infrastructure projects over the next decade. These amounts represent the projected principal and interest payments owed, over the next decade, for these borrowings.

21st-Century Transportation Plan Principal and Interest: This is our plan for increased capital investment in our transportation system and the borrowing costs associated with it.

Appendix Three – *Your Vision, Our Future* Meeting Summaries

Listening Session Locations



Springfield

September 27, 2012, 6 PM – 8 PM
Springfield Technical Community College, Springfield MA

Notes/Summary:
Over 70 people attended the kick off MassDOT Transportation Conversation meeting held in Springfield. Attendees included residents from the city of Springfield and the surrounding communities, elected officials and representative from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit. Secretary Davey made welcoming remarks and then opened the meeting for public comments and discussion.

Public comments received at the meeting included but were not limited to the following:

- Improve safety and security at bus stops and on buses
- Increase lighting and crosswalks at bus stops
- More reliable, on-time bus service
- There is a need for new RTA buses
- Create more point-to-point transit
- Establish a Springfield to Boston Commuter Rail
- Expand commuter rail service commuter rail to Springfield/Holyoke
- Increased bus service trips/service hours between Springfield and Worcester/Boston
- Provide a dedicated bicycle car on commuter rail trains
- Improve access to terminals for senior passengers and riders with disabilities
- Provide additional transit services to low income communities
- Create a unified statewide transit system
- More investment in western MA
- Establish fixed route and Para transit as one system
- Extend the Blue Line to Salem
- Create more affordable van service
- Have a holistic conversation about government investment
- Start a conversation about energy future
- Make roadway improvements to Rt. 57 by extending the divided section to Southwick
- Improve coordination between transportation and community planning
- Create opportunities for students to get exposed to transportation jobs
- Expand funding sources for transit
- Reduce transit fares for passengers with a Medicare card
- Public transit to be treated as public utility
- Prioritize transit projects in gateway cities
- Have forward funding as a dedicated revenue source for RTA's
- Create a UPass program

Worcester

October 2, 2012, 5:30 PM – 7:30 PM
Worcester City Hall -- Levi Lincoln Room

Notes/Summary:
The meeting had approximately 65 people in attendance including residents from the city of Worcester and the surrounding communities, elected officials, transportation stakeholders and members of the disability community. Secretary Richard A. Davey made opening remarks and then the meeting was opened to public comment. MassDOT senior staff addressed questions and took public comments for the duration of the meeting.

Public comments received at the meeting included but were not limited to the following:
- Design a mobile phone app. to pay for bus fares
- Provide more transportation options
- Create more opportunities for public input on transportation spending
- Improve transportation gaps between regions fixed
- Design and build safer pedestrian facilities (sidewalks)
- Include the disabled community in more transportation decisions
- Maintain a state of good repair for the Worcester Regional Transit Authority
- Increase funding for all RTAs across state
- There is a need to increase funding for public transportation to provide access to medical services in Worcester County
- Improve transportation services for the disabled community in rural areas
- Maintain chapter 90 funding
- Expand WRTA bus routes and extend hours including nights and weekends
- Create additional well maintained bus shelters
- Provide additional funds to allow for continued growth of the WRTA
- Maintain current bus fares /or have the fares subsidized
- Retrofit older WRTA buses with new lifts
- Improve bus routes and times before creating new WRTA facilities
- Provide access to information about how transportation funds are used
- Increase the number of WRTA buses currently in service
- Improve ADA access to buses and bus routes
- Invest in public transportation going forward
- Create a more transparent decision making process
- Recognize that public transportation is directly related to access to quality health care, housing, and economic development
- Focus on statewide planning while recognizing regional needs
- Improve the outreach regarding the WRTA day pass
- Enhance the access/outreach for the WRTA meetings

Pittsfield

October 4, 2012, 6 PM – 8 PM
Pittsfield Public Library (Berkshire Athenaeum)

Notes/Summary:
The meeting had a large turnout with approximately 80 people in attendance. Attendees included residents from the city of Pittsfield and the surrounding communities, elected officials and representative from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit. Highway Administrator Frank DePaola made welcoming remarks and then opened the meeting for public comments and discussion.

Public comments received at the meeting included but were not limited to the following:
- Expand BRTA bus routes and extended hours including nights, weekends and holidays
- Forward funding and Regional Equity
- Plan for the needs of transportation dependent and the elderly
- Establish regional funding for regional service
- There is a need for bicycle and pedestrian input on all projects
- Advance rail options
- Improve planning process
- Maintain/establish adequate transit for a sustainable economy
- Establish transit in order to travel tr cultural attractions
- Provide student fares
- Increase funding to bridge infrastructure
- Create safe pedestrian access to bus stops
- Ensure advanced bike path planning
- View bicycles as a part of integrated transportation
- Focus on emissions/HAZMAT and storm planning
- Ensure bicycle and pedestrian safety
- Provide adequate transportation to healthcare providers
- Maintain ADA compliant sidewalks
- Improve bus connections
- Plan for climate change
- Provide a multi-year prediction for Chapter 90 funding
- Implement regional taxes for transportation
- Ensure BRTA vehicles accommodate service animals
- Confirm construction funding is in place before construction season
- Increase cash flow for small projects
- Ensure each regional has accessible taxis
- Provide Safe, affordable, accessible transit vehicles
- Create larger culverts

Amherst

October 10, 2012, 6 PM – 8 PM
UMass Amherst Campus Center

Notes/Summary:
The meeting had a large turnout with approximately 95 people in attendance. Attendees included many residents from Amherst and the surrounding communities, students, elected officials and representative from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit. MassDOT senior staff made welcoming remarks and then opened the meeting for public comments and discussion.

Public comments received at the meeting included but were not limited to the following:
- The Amherst Passenger Rail NECRR should serve UMass and UConn
- Create a Boston -- Springfield rail service
- View public transit as social justice
- Propose a train on I-90 as an alternate to taking a car
- Have accessible Taxi Service
- Make the MBTA fare increase public records accessible
- Poor roadway conditions within the town of Granby
- Chapter 90 efficiency spending
- Focus on Economic Development & Alternative Transportation
- Establish transportation access to colleges, university's & other attractions
- Improve roadway accommodations on roads for bikes (wider roads and lane markings)
- Improve bike safety education
- Increase transit service including evenings and weekends
- Create a dedicated transportation funding source
- Improve rail accommodation for bikes
- Have a "Fund Shift" for mode shift
- Allow for higher rail speeds
- More public outreach to all customers as opposed to only the transit-dependent population
- Create alternative modes available for community to community travel
- Enforce & respect for traffic laws by all modes
- Improve regional cooperation
- Implement innovation in bus routes and van usage
- Create transportation funding equity across the Commonwealth

Fitchburg

October 16, 2012 -- 5:30-7:30 PM
Fitchburg Public Library Auditorium

Notes/Summary:
Over 55 people were in attendance at the meeting held on October 16, 2012 at the Fitchburg Public Library. Attendees included residents from the city of Fitchburg and the neighboring communities, elected officials and municipal leaders. Highway Administrator Frank DePaola made opening remarks and then the meeting was opened to public comment.

Public comments received at the meeting included but were not limited to the following:
- Van service is not reliable
- A strong roadway network for economic development
- Area streets and sidewalks are in poor condition
- There are problems with limited service of Montachusett Area Regional Transit Authority.
- Provide MARTA night and Sunday service
- The Fitchburg Airport has been beneficial to the region but needs more attention –expand the runway to attract commercial airlines
- Route 2 is a central artery in Fitchburg and an evacuation route, it needs improvements.
- Route 2 should be a limited access highway all the way to I-91
- Improve and expand the MBCR Commuter Rail service
- Fitchburg to Boston commuter rail time should be reduced to under 1 hour
- There needs to be dependable reverse commute for area residents
- There is a need for freight rail improvements
- There is a need for strong leadership at state level to make gains in transportation
- The formation of MassDOT is a good start but there is a need for additional reform in order to address the necessary system expansion and maintenance repairs
- Connect trail networks – a huge trail network will help support economic development
- Public transportation has a tremendous impact on healthcare, education, workforce, and all aspects of life
- Chapter 90 funding improvements- more funds, communities need earlier access to funds)
- Regional work on transportation is critical, Rural areas need to be part of the plan.

Lowell

October 17, 2012, 6 PM – 8 PM
Middlesex Community College, Lowell

Notes/Summary:
There were over 50 people in attendance at the meeting held in the Federal Building of Middlesex Community College in Lowell. Attendees included residents from the city of Lowell and the surrounding communities, municipal officials and transportation stakeholders. Representatives from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit were in attendance and the Registrar of Motor Vehicles, Rachel Kaprielian, made the opening remarks and then opened the meeting for public comments and discussion

Public comments received at the meeting included but were not limited to the following:
- Increase infrastructure funding going forward
- Infrastructure improvements create jobs and stimulate the economy
- The gas tax has not been increased for quite some time
- Lowell Regional Transit Authority (LRTA) should increase the frequency of bus service
- Improve connectivity among LRTA bus routes
- The lack of a direct route via public transportation to the VA Bedford hospital
- There is a need to increase bus service hours
- Transportation to jobs is essential in Lowell area
- LRTA process of dealing with complaints (they are all taken seriously and logged)
- The process of ADA training on LRTA is essential
- MassDOT should look at other successful transportation systems as a model
- Establish a rail trail between Lowell and Framingham
- The effect that transportation has on the public health crisis
- The need to increase Chapter 90 funding in order to properly support and maintain municipal infrastructure
- An improved transportation network benefits area businesses
- Expand the LRTA service to include Sunday
- Having more LRAT service to the Pheasant Lane mall
- There is traffic and congestion on area state roads
- Bus safety
- Plan for a commuter train to NH
- Expand the MBTA Redline to Bedford, MA
- Some residents find it difficult to afford MBTA prices after the fare increases
- The real estate development opportunities can be attributed to a good transportation system
- Mode shift is an important goal
- There is a need to explore new revenue sources in order to fund projects going forward
- Regional MBCR kiosks or ticket windows are needed. There is a need to purchase train tickets in advance at North Station

Haverill

October 23, 2012, 6:45 PM – 8:45 PM
Haverhill Public Library Auditorium

Notes/Summary:
There were approximately 65 people in attendance. Attendees included many residents from the city of Haverhill and the surrounding communities as well as several elected officials and representatives from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit. Highway Administrator Frank DePaola made welcoming remarks and then opened the meeting for public comments and discussion.

Public comments received at the meeting included but were not limited to the following:

- Increase Chapter 90 funding
- Improve transit in downtown Haverhill
- Create/Improve industrial park access from route 97
- Better timeliness of project $ (time/money/process)
- Stream line permitting
- Run a bus on the shoulder of Rte. 93
- Focus on travel options from a "growing rail service"
- Have sidewalk snow removal
- Improve multi modal connectivity
- Align transit with the reverse commute pattern
- Provide curb to curb access to RTA vans
- Establish an additional revenue to support infrastructure
- Continue the Accelerated Bridge Program –it has been key to communities
- More design build/construction jobs will support economic development
- Expand connections between existing services
- Create a transportation system that supports the quality of life
- Increase investment in maintenance
- Innovations need to be sustainable in terms of funding
- Establish mini service buses for low ridership routes
- Plan for mode shift to non-motorized travel
- Increase bus service on weekends
- Look at New Mexico DOT's example of building a commuter rail station with limited resources
- Establish drive through tolling
- Improve travel options because people will use them
- Connect land use and transportation investments
- Invest in transportation to improve healthy living

Hyannis

October 25, 2012, 6:00 PM – 8:00 PM
Cape Cod Regional Transit Authority -- Hyannis

Notes/Summary:
Over 75 people were in attendance at the meeting held at the Cape Cod Regional Transit Authority. Attendees included many residents from Hyannis and the Cape Cod community as well as elected officials and members of MassDOT senior staff. Jonathan Davis, Acting General Manager of the MBTA, provided welcoming remarks and then the meeting was opened to public comment and discussion.

Public comments received at the meeting included but were not limited to the following:
- MassDOT budgeting as we are coming out of a recession
- Maintain highway funding at least at the current level
- Create jobs through road and bridge construction
- Focus on driver safety education programs
- Invest in transportation infrastructure going forward
- Storm water management
- Economic impact of bridge traffic
- Having cost effective transportation
- Public and private funding sources
- Reliable transportation creates a better economy
- Evacuation planning in case of a nuclear event or other emergency situation
- Improve the exit 6 park and ride -- provide a visitors center, canal access, and water taxis
- Address bike needs
- Maintain the Shining Sea bike path
- Bike safety for commuters and recreational riders
- Bike paths at rail road crossings
- Bicycle safety in work zones
- Integrate more bike lanes on roads
- Expand the rail trail
- Establish a New York city to Cape Cod train and/or air shuttle
- More technical assistance should be made available to smaller cities and towns that do not have an engineering staff
- Focus on moving people not just cars

Quincy

November 8, 2012, 6 PM – 8 PM
Quincy High School Auditorium

Notes/Summary:
There were approximately 45 people in attendance. Attendees included many residents from the city Quincy and the surrounding communities as well as several elected officials and representatives from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit. After the opening remarks the meeting was opened to a public comments and discussion session.

Public comments received at the meeting included but were not limited to the following:
- The Middleboro Rotary and funding for regional projects
- Having more revenue to invest in transportation
- Route 3 – public transportation funding from Hingham to Boston
- New Quincy center development
- The Quincy parking garage crumbling
- Massachusetts Highway Association and chapter 90 funding
- Focus on infrastructure to move people not cars
- Promote regional bicycle routes and matching grants
- Consider the impact of roadway projects on transit
- Think as one transportation system
- Address airport management and the aging airport infrastructure
- Streamline the permitting process
- Budget for airport marketing
- Funding is necessary for infrastructure improvements
- There has been no increase since 1991 in the Gas Tax – and we are below average
- There is a relationship between economic development and infrastructure improvements
- Improve bicycle and pedestrian facilities
- Include bike lanes on Route 138
- Clean/maintain the overgrowth on facilities
- Increase revenue and the need to support investments
- Neponset River Bridge address Old colony ramp
- Fore River Bridge
- Improve East Squantum St. intersection in Quincy
- Enhance pedestrian safety
- There is an inadequacy of Chapter 90 funding
- ADA access at Wollaston station
- Include zoning improvements at North Quincy and Wollaston Stations
- There is a relationship between quality of life and transportation• More ferry service
- Provide construction jobs for smaller contractors

Framingham

November 14, 2012, 6 PM – 8 PM
Memorial Building - Nevins Hall - Framingham

Notes/Summary:
Over 55 people were in attendance. Attendees included residents from the city of Framingham and the neighboring communities, elected officials, and transportation stakeholders. MassDOT senior staff made opening remarks and then the meeting was opened to public comment.

Public comments received at the meeting included but were not limited to the following:

- The need for high speed rail to have RTA hub
- Restore the RMV to the Framingham area
- Remove tolls in MetroWest or returning tolls to Western Mass
- At-grade crossings
- The stressing of roadways between 495 & 128 due to the CSX Beacon yard closure
- Expand the MetroWest RTA
- Continue road & bridge program support and increased investment
- Climate change must be accounted for in new projects
- Look to the Merrit Parkway in CT as model for new roadways
- Explore the option of leasing vacant space at interchanges as a revenue source
- RTA improvements
- Increase funding for recreation trails
- Modify existing roads in order to accommodate bikes on major roads
- Central planning for bike needs
- Create additional parking for MBTA facilities
- Improve of bike facilities
- Remove snow from the sidewalks in the winter. They need to be plowed.
- EZ-pass should be accepted in all lanes at tolls
- Increase the capacity on the Framingham line at peak hours
- Raise the penalties for MBTA fare evasion
- Establish spending transparency
- Adopt a “smooth-as-glass” standard for pavement
- Propose the possibility of increasing state gas tax
- Install bicycle detection at signals
- Install bike cages at all MBTA stops
- Improve the reliability in the commuter rail system
- There is a need to expand the reverse commute
- Improve MBCR and RTA collaboration

Boston – Mattapan

November 15, 2012, 5:30 PM – 7:30 PM
Mattapan Branch Library - Community Room

Notes/Summary:
Over 65 attendees included residents from the city of Boston, elected officials, transportation stakeholders and representatives from the engineering community were in attendance at the meeting held at the Mattapan Public Library. Representatives from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit were also in attendance. Highway Administrator Frank DePaola made the opening remarks and then opened the meeting for public comments and discussion.

Public comments received at the meeting included but were not limited to the following:

- More resources for improving infrastructure
- MBTA and turnpike bridge maintenance
- Create new revenue sources including raising gas tax
- Install security cameras at Morton St. Station
- Dedicate a Mattapan Police station
- Move the Charlie Card vending machine closer to the Mattapan Station Building
- Improve bus stop amenities
- Have pay toilets at stations
- Transparency
- Create an open dialogue between the DOT and community
- GreenDOT goals to be included as part of new project goals
- Chapter 90 funds need to meet GreenDOT goals
- More interagency teamwork
- Safe routes to school program to be improved
- Create a “gateway” to Boston in Mattapan Square and Blue Hill Ave.
- “Fair Fares” on Fairmount
- Establish weekend/early/late service on Fairmount
- Better highways, greenway, and transit
- Establish more opportunities for public involvement
- Improve agency communication/outreach tools with the community
- Maintain current infrastructure
- Revisit forward funding for the MBTA
- Lower the fares for Hyde Park stations
- Allow the MBTA to be relieved of Big Dig debt
- Establish youth passes
- Forward fund for RTA’s
- Remove the McGrath Overpass
- More point to point bus service

Brockton

November 19, 2012, 6 PM – 8 PM
The Conference Center at Massasoit - Brockton

Notes/Summary:
There were approximately 60 people in attendance. Attendees included many residents from the city of Brockton and the surrounding communities as well as representatives from MassDOT senior staff. Administrator DePaola provided the welcoming remarks and then the meeting was opened for the duration of the meeting.

Public comments received at the meeting included but were not limited to the following:
- Maintain/Increase Chapter 90 funding
- Maintain the Brockton Area Transit Authority (BAT) system and service in the Brockton community
- Restore BAT South Shore weekend service
- Utilize Route 24 as a main street for the Brockton business community
- Upgrade the rail yard in Brockton
- Looking into the infrastructure bank establishment
- Insufficient seating on the commuter rail during peak periods
- Retraining veterans for maintenance jobs
- Expanding the BAT hours
- Fair Fares
- Improve ADA access
- Service hours
- Expanding funding for transportation projects
- Extend rail service
- BAT Sunday service
- Mitigate noise issues near highways
- Improve signal synchronization on route 27
- Ensure the availability of public transportation for 2nd and 3rd shift workers
- Create opportunities for veterans
- Have additional accelerated bridge programs
- Implement a North/South rail link
- Explore the economic opportunity of re-establishing the Old Colony Rail
- Compatibility among all MBTA cars

Medford

November 27, 2012, 6 PM – 8 PM
McGlynn Middle School - Medford

Notes/Summary:
The meeting had over 60 people in attendance including residents from the city of Medford and the surrounding communities, elected officials, and members of MassDOT senior staff. Jonathan Davis, Acting General Manager of the MBTA, provided welcoming remarks and then the meeting was opened to public comment and discussion.

Public comments received at the meeting included but were not limited to the following:
- Look at the amount of time it takes to get to places using The Ride
- Make Wonderland MBTA Station inmprovments
- Provide public restrooms at Government Center and State Street stops
- Funding for transportation- infrastructure, highways, bridges
- Address gridlock on Mass Ave. and Alewife Brook Pkwy.
- New development areas have heavy traffic congestion
- There is a need for increased Chapter 90 funding
- Educate the public on the transportation funding process
- The direction of funding
- Extend the MBTA Green Line to Route 16
- The fare raise for the riders users
- Address the chronic underfunding of transportation infrastructure
- Utilize the community path in Somerville as a transportation solution
- Maintenance and up keep is essential for a robust transportation system
- Establish healthy forms of transportation/healthy alternatives policy
- Use gas tax for transportation funding
- Install “No Smoking” signage in all MBTA stations
- Unfairness in MBTA service
- Increase revenue sources for funding
- Reduce pollution
- Reduce diesel use
- Improve accommodations for the disability community

Boston – Downtown

November 29, 2012, 6 PM – 8 PM
Massachusetts Transportation Building - Boston

Notes/Summary:
There were over 140 people in attendance at the meeting held at the State Transportation (MassDOT) Attendees included residents from the city of Boston and the surrounding communities, elected officials, and transportation stakeholders. Highway Administrator Frank DePaola and Secretary Richard A. Davey made opening remarks and then the meeting was opened to public comment. Representatives from each division of MassDOT—RMV, Highway, Aeronautics and MBTA/Rail and Transit. MassDOT senior staff addressed questions and took public comments for the duration of the meeting.

Public comments received at the meeting included but were not limited to the following:
- Find new sources of revenue
- Increase chapter 90 funding
- The lack of weekend service
- Link the North Station and South Station rails
- Increase funding for rail trails
- Increase funding for the commuter rail
- Increase funding for RTAs
- Improve bus routes
- Fix current system first
- Increase transit capacity
- Establish connectivity between networks
- Open road tolling
- Goals for the mode shift
- Expand transit in the urban core
- There has been a positive outcome of the Accelerated Bridge Program
- Create a fair fare system
- There is opposition to the use of Ethanol fuel
- Move the Big Dig debt payments elsewhere
- Run the Silver line from Dudley Station to Logan Airport
- Expand/improve the Newton/Needham Green Line connections
- Improve Red Line service from Cambridge to South Station
- Improve Green Line service by implementing a Blue Line to Riverside solution
- The Fairmont/Indigo line
- Establish a connection between the MBTA Blue Line and Red Line
- The Green Line extension and community path
- Have ticket machines at all commuter rail stations
- Work towards Mode Share goals
- Construct more multi-level parking near transit hubs

Dartmouth

December 3, 2012, 6 PM – 8 PM
University of Massachusetts - Dartmouth

Notes/Summary:
There were over 70 people in attendance at the meeting held at the UMass Dartmouth. Attendees included residents from t the surrounding communities, elected officials, and transportation stakeholders. Highway Administrator Frank DePaola and Secretary Richard A. Davey made opening remarks and then the meeting was opened to public comment.

Public comments received at the meeting included but were not limited to the following:
- Include more multi-modal development
- Improve transportation equity across the state
- Provide Southeastern Regional Transit Authority (SRTA) Sunday bus service
- Transportation should be linked to environmental concerns and quality of life issues
- Support South Coast Rail
- Have a connection to the waterfront in the Southeast regional of the state
- Make transit affordable for everyone
- Expand of SRTA bus service hours into the evening
- Bike racks should be installed on SRTA busses
- There is a need to raise revenue for MassDOT services
- Include shared use paths as part of Route 79 improvement projects
- The need to connect New Bedford and Fairhaven for tourism
- Connectivity should drive future bike path expansion efforts
- Provide pedestrian and bike access from lower highlands to Fall River waterfront
- Transportation improvements are key to economic growth and development
- Support the South Coast Rail Project and at grade improvements to Route 79
- Use of the existing rail line between Fall River and New Bedford to construct a bike path
- Expand local transportation services using MBTA service hours
- There need to fund roads and bridges before they fail
- The concern about air quality
- Continue funding support for transportation infrastructure
- Accelerated Bridge Program (ABP) has been very successful
- Improve Visitor signage directing tourism to Fall River waterfront
- Improve bicycle access on Route 6
- Consider implementing green emission fees at RMV and vehicle safety inspections
- Follow the European model for mode shift/car free living
- There is benefit of connecting with other providers
- There are many benefits of the mode shift
- The use of low cost measures for improvements• There are freight benefits with South Coast Rail Project
- The need to improve roadways. Specifically Routes 6, 18, & 24

Lynn

December 5, 2012, 6 PM – 8 PM
Lynn City Hall

Notes/Summary:
There were over100 people in attendance including residents from the city of Lynn and the surrounding communities as well as several elected officials and members of MassDOT senior staff. MassDOT Planning Director, David Mohler, provided welcoming comments and then the meeting was opened to public comments and discussion session.

Public comments received at the meeting included but were not limited to the following:
- The deterioration of infrastructure
- Find/establish a new revenue stream
- Integral nature of ferry service
- The revitalization of gateway cities
- Investing in roadways and water transit
- Extend the MBTA Blue Line to Lynn
- The quality/ quantity of bathrooms in stations
- Connectivity between modes
- The “Ride” fare increases
- Recognize the transportation challenges that come with a fixed income
- The lack of direct service and increase in commute times
- Transportation is essential in order to access to medical care
- Responsive/ lack of responsiveness of MassDOT and legislature
- There is lack Sunday and evening service
- The need for a North/South rail link
- Focus on area roadway improvements
- The lack of understanding by the public concerning the funding ‘crisis’
- The importance of MassPORT as part of MassDOT
- Revisit projects in design phase with GreenDOT vision
- Recognize the public health value of mass transit
- There is an importance of investing in a system for the future
- Separate the Big Dig debt from operating costs during transportation revenue discussions
- Provide ticket machines at all commuter rail stations
- Increase the gas tax

Attleboro

December 6, 2012, 6 PM – 8 PM
Attleboro City Hall

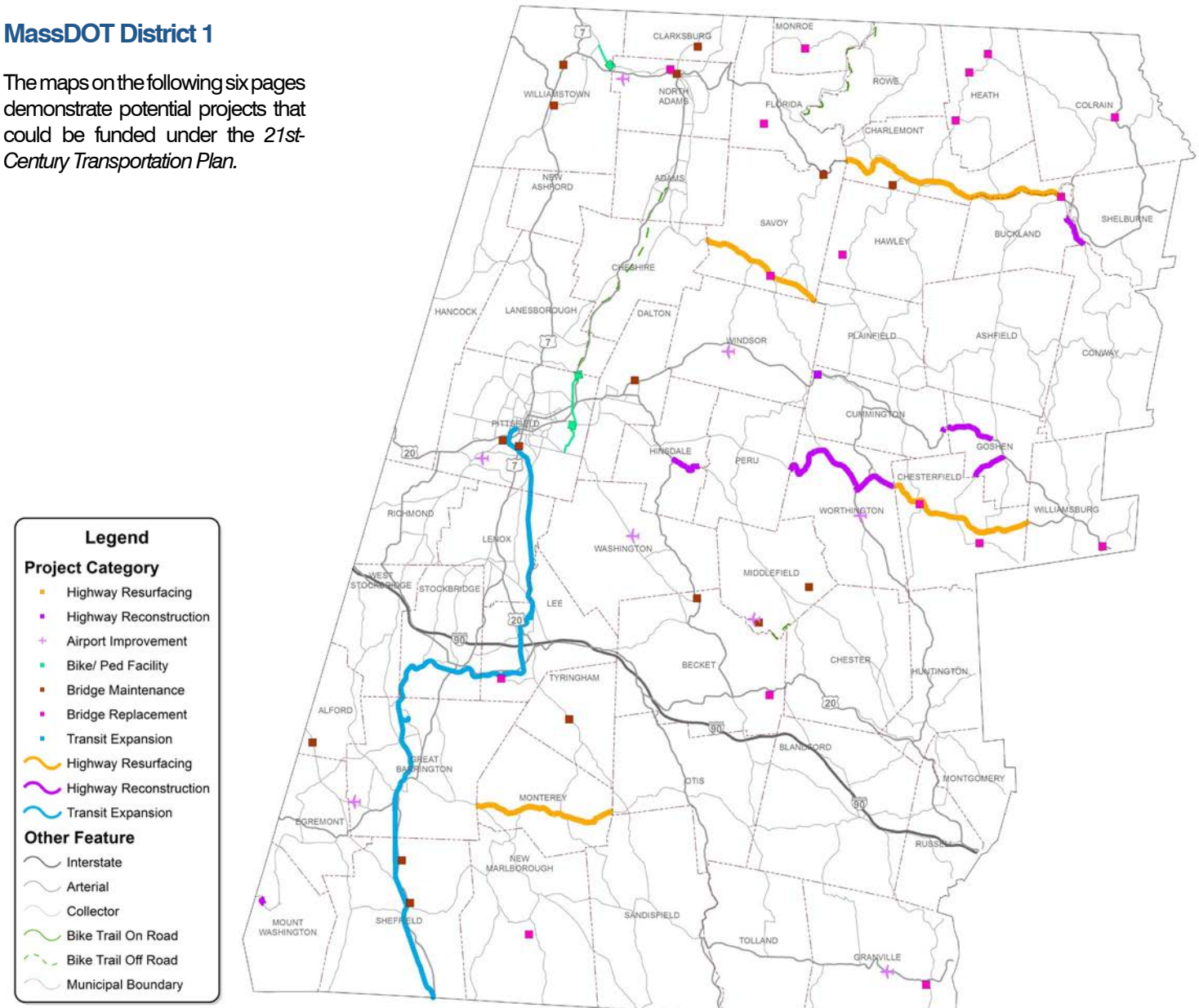
Notes/Summary:
The meeting had a good turnout with approximately 45 people in attendance. Attendees included many residents from Attleboro and the surrounding communities as well as several elected officials and members of MassDOT senior staff. Highway Administrator Frank DePaola provided the welcome and then the meeting was opened to public comments and discussion.

Public comments received at the meeting included but were not limited to the following:
- Establish northbound access at I-95 exit 1 to Rte. 1 and Beacon Street
- Block off the existing ramp at NB I-295 to NB I-95 and build new ramp that turns left
- Construct high speed rail along the median of I-195, route 24 & I-495
- Install wrong way signage on highway ramps with thermo plastic arrows to prevent crashes
- Post signs for the Emerald Square Mall at the exit of I-95 in order to avoid people exiting at I-95 exit 2
- Start a new fund for transportation based on the surcharge insurance companies levy on drivers who have been in an accident
- Decrease MassDOT' s oversight of transit decisions in home rule communities
- MassDOT and the RTA's to ensure that high demand for service to people with disabilities does not affect the quality of service
- Improvements to the Middleboro rotary, Rte. 24 Interchanges, I-95 corridor (295 interchange
- Consider having bicycle and pedestrian trails along active rail corridors
- Provide more funding to local communities to improve deteriorating pavement conditions
- Reward communities with pavement management plans
- Gas tax revenues should go towards maintaining the roadways not transit
- MassDOT needs to focus on repairing and maintaining our existing infrastructure
- Reevaluate the Chapter 90 formula as it discriminates against Rehoboth and other agricultural communities
- Dedicate more funding for safety improvements
- Public transit is an absolute necessity
- Need solid infrastructure for future and economy
- Harder look at gas tax and user fees with transparency
- $20 round trip to Boston/Mansfield –may price people out of getting jobs in Boston – need cost/benefit analysis before any action
- Continue transparency from MassDOT as it has improved public opinion
- Encourage MassDOT to delegate to local authorities on small projects
- Raising the gas tax while encouraging other transportation modes could decrease revenue

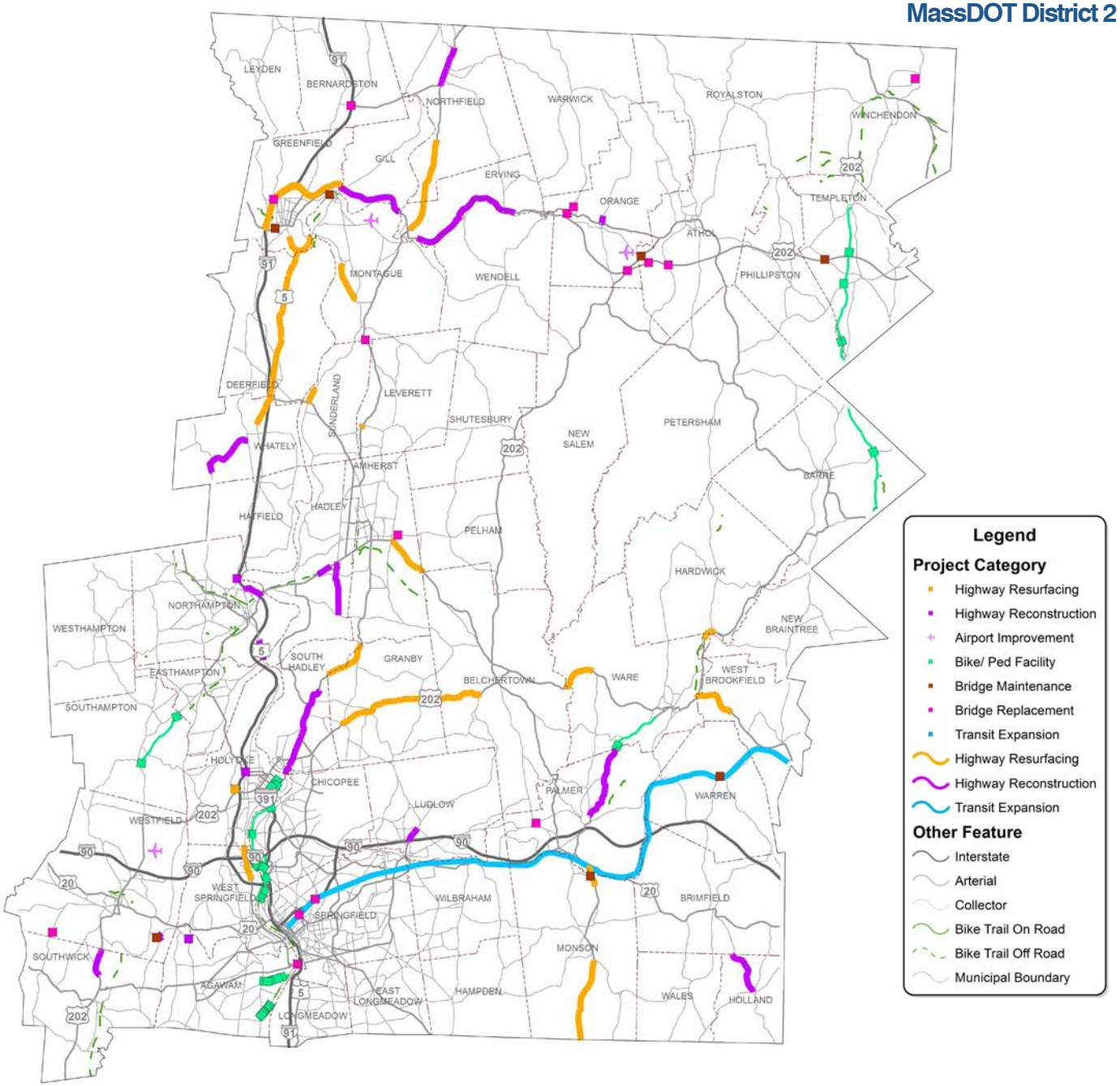
Appendix Four – Maps of Currently Unfunded Projects

MassDOT District 1

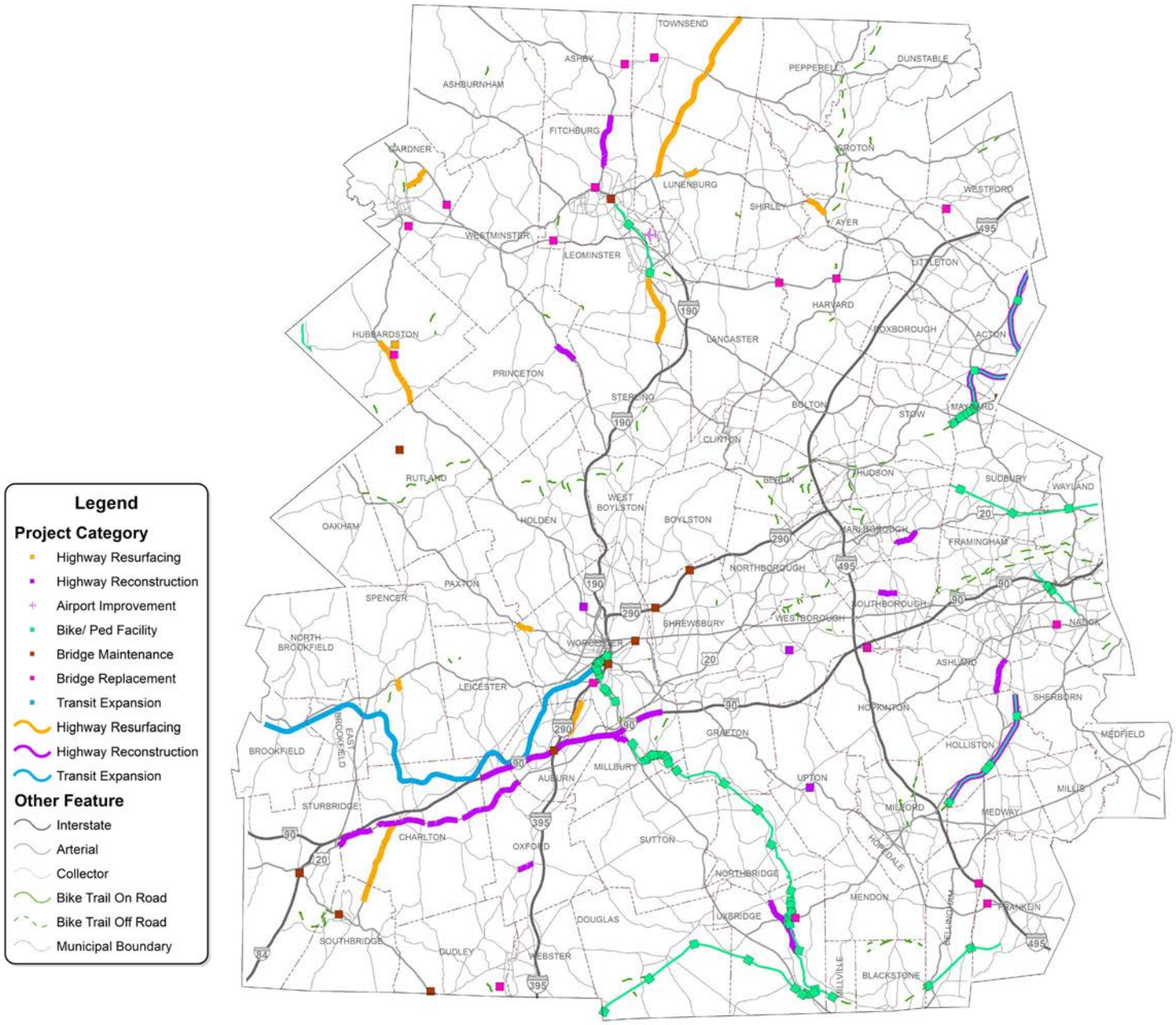
The maps on the following six pages demonstrate potential projects that could be funded under the *21st-Century Transportation Plan.*



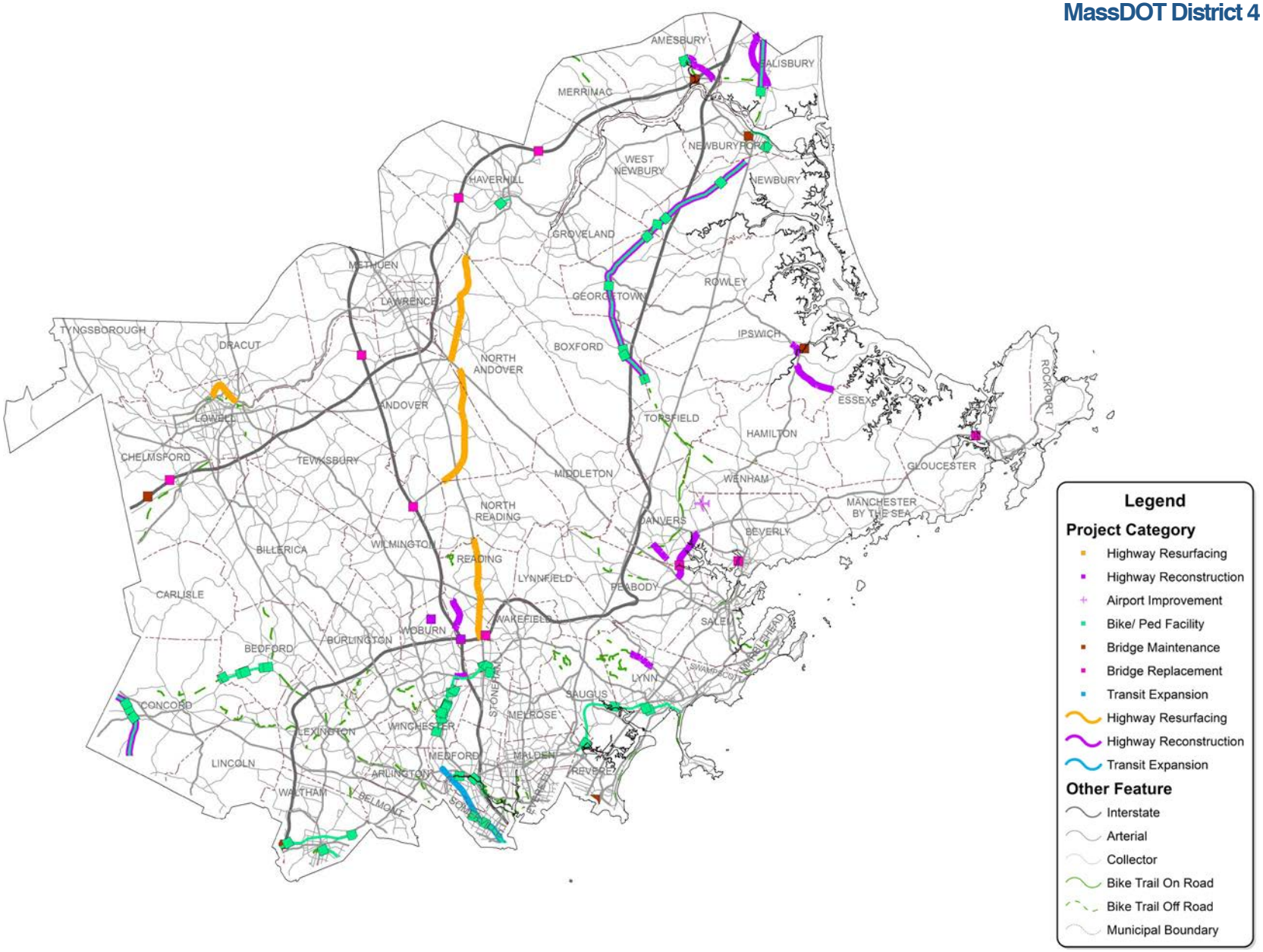
MassDOT District 2



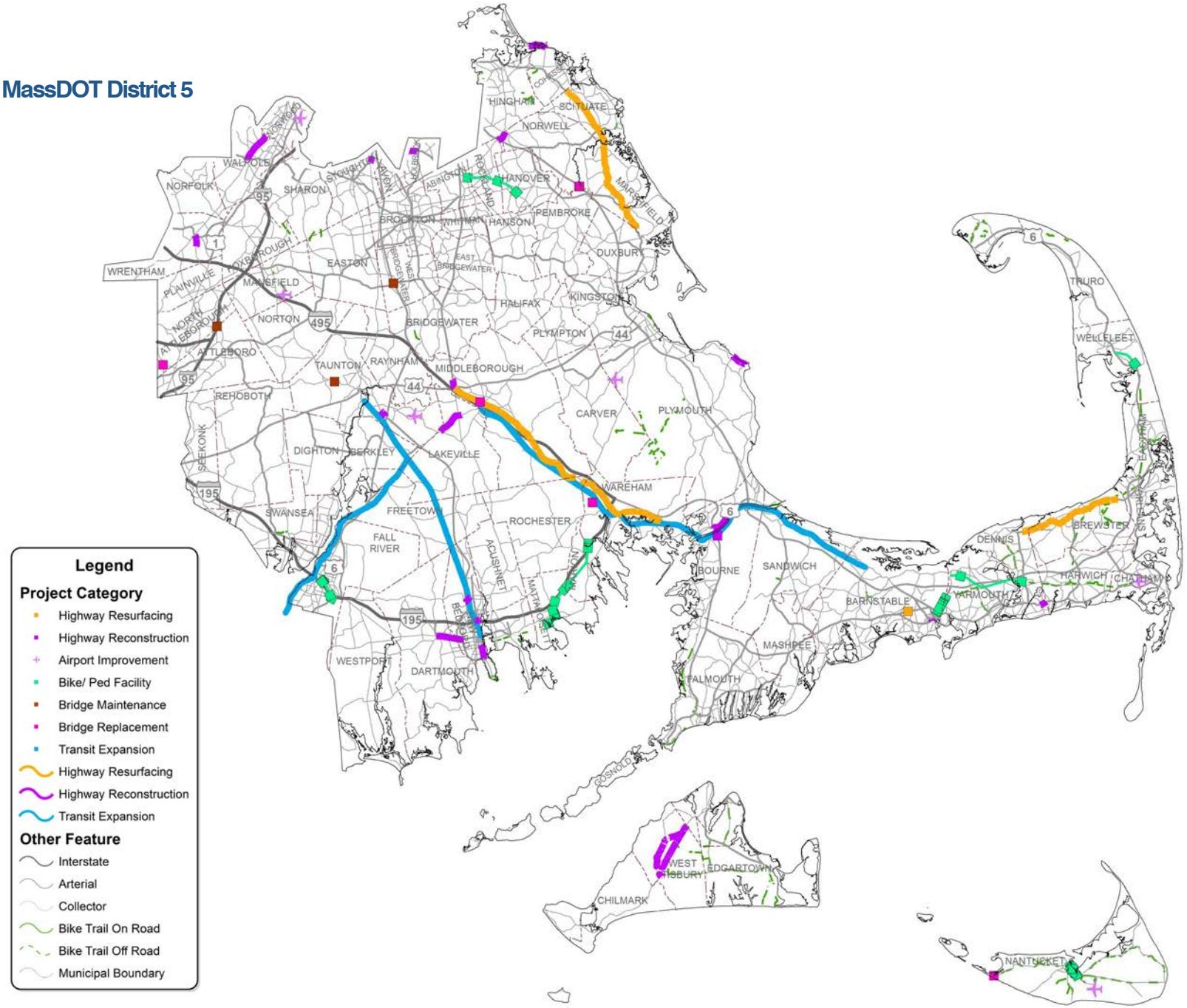
MassDOT District 3



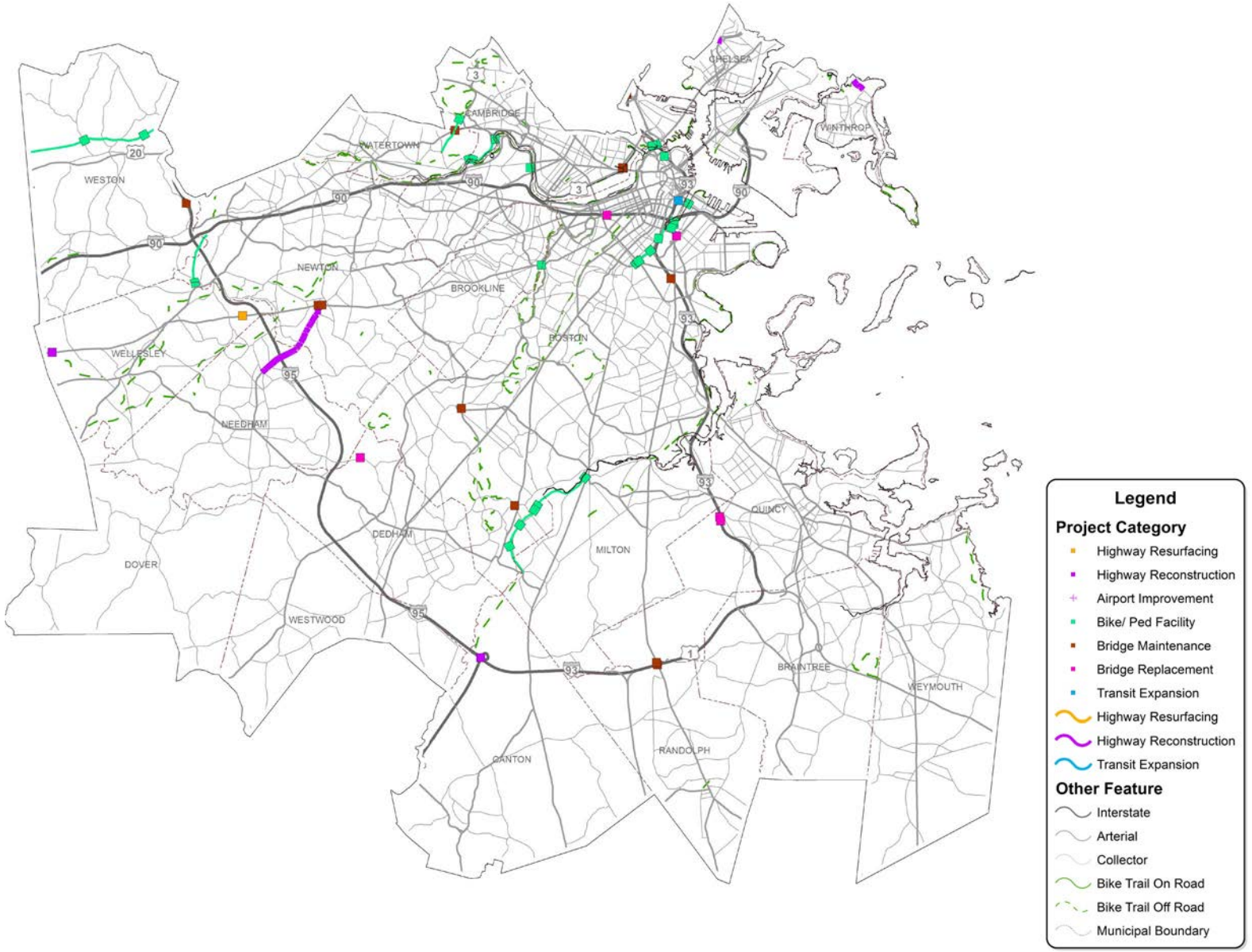
MassDOT District 4



MassDOT District 5



MassDOT District 6



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