

**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 Sections 57, 58 and 59 of said chapter 6 are hereby repealed.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 Sections 19, 19 1/2 and 19A of said chapter 6A are hereby repealed.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 Section 103 of said chapter 6A is hereby repealed.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 Section 104 of said chapter 6A is hereby repealed.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:-

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

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

Carroll 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

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;

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

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

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

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

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

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

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

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

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

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

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

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 section 4. 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;

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

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

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

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

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)

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

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

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

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

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

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

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

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

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

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

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 66 and 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;

- (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

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:-

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.

NO SECTION 27

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.

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

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

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.

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’

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.

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.

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

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.

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.

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:-

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

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

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 in 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 administrator 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.

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:-
(a $\frac{1}{2}$) The words advisory board shall mean the advisory board established pursuant to section 36 of this act.

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.

(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

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

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

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

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.

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.

(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

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

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

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.

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.

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 (4 1/2) 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 20 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 20 of said chapter 29, and the pledge of pledged funds, as defined in said section 20 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 any 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

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

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.

(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.

(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
