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Outside Sections

Section 4 - Police Training Surcharge

SECTION 4. Chapter 6 of the General Laws is hereby amended by inserting after section 116 the following section:-

Section 116 1/2. (a) Sums for the estimated expenses of providing annual in-service specialized and statutorily-mandated training programs conducted by the municipal police training committee for veteran and reserve municipal police officers and for those officers employed by agencies of the commonwealth who exercise police powers and receive this training from the municipal police training committee, including but not limited to environmental police officers and campus police officers of the University of Massachusetts and state colleges and universities who exercise police powers, shall be paid to the commissioner of insurance by property and casualty insurance companies writing motor vehicle insurance policies in the commonwealth by means of a policy surcharge imposed upon the policyholder of any private passenger automobile policy issued by any property and casualty insurance company writing motor vehicle insurance policies in the commonwealth. These programs shall include new recruit training provided by the municipal police training committee; development and delivery of distance learning programs by the municipal police training committee; a standards and evaluations program for training courses and instructors of or certified by the municipal police training committee; the development and updating of training programs including curricula by the municipal police training committee, hiring, equipping, and training new state police recruits; and the development and operation of a state police cadet program including the hiring, equipping, and training of state police cadets, subject to appropriation, and the estimated cost of fringe benefits associated with this training hiring and employment. The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. The rate of the policy surcharge shall be determined and adjusted annually by the commissioner of insurance to a rate sufficient to generate a surcharge to fund the expenses estimated by the secretary of public safety and security for the purposes described above.

(b) The policy surcharge shall be collected and remitted to the commissioner of insurance by the property and casualty insurance companies writing motor vehicle insurance policies in the commonwealth on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which it is collected. Any company failing or refusing to collect and remit to the commissioner of insurance any policy surcharge or whose surcharge payments are not postmarked by the due dates for quarterly filing shall be liable for a penalty of up to \$100 for each day of delinquency, to be assessed by the commissioner of insurance. The estimated costs shall include an amount equal to the cost of fringe benefits as established by the secretary of administration and finance under section 5D of chapter 29. Any surcharge collected in a fiscal year but not expended by the municipal police training committee or department of state police for the purposes set forth in this section shall be retained by the commonwealth for use by the municipal police training committee or department of state police. The retained surcharge shall be credited against the amounts required to be collected under this section in the following year, and those required payments shall be reduced by the amount of this credit.

Summary:

This section provides a surcharge on motor vehicle insurance policies to support training of municipal police officers by the Municipal Police Training Committee.

Section 5 - Changing Administration of Supplemental Security Income Program

SECTION 5. (A) Chapter 6 of the General Laws is hereby amended by striking out section 131B and inserting in place thereof the following section:-

Section 131B. At the discretion of the Social Security Administration, the commissioner shall enter into an agreement with the Social Security Administration, under which the commonwealth may administer the program

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of state supplementary payments authorized by section 1 of chapter 118A, or the Administration may on behalf of the commonwealth administer the program of state supplementary payments for the blind authorized by section 131. This agreement shall be in the form of and satisfy the requirements for the agreement which, under section 3 of said chapter 118A, the Social Security Administration shall execute for the administration of state supplementary payments for the aged and disabled.

(B) Chapter 118A of the General Laws is hereby amended by striking out sections 3, 4 and 5 and inserting in place thereof the following 3 sections:-

Section 3. The commissioner of transitional assistance shall enter into an agreement with the Social Security Administration regarding the administration of the program of state supplementary payments authorized by section 1. This agreement shall contain all requirements for, and limitations and qualifications on, state supplementary payments which title XVI or regulations adopted thereunder make necessary. At the option of the commissioner, this agreement may provide for either state or federal administration of the program. Administration of the program by the commonwealth may be delegated to another governmental or private entity.

Section 4. An application to the Social Security Administration for supplemental security income benefits under title XVI shall be also be considered an application for state supplementary payment for the category of assistance for which the application is filed. Eligibility for any category of assistance of an individual or couple shall be determined in accordance with federal law. Unless the commissioner of transitional assistance elects federal administration of the state supplementary payment program, procedures related to notices, appeals and hearings regarding this program shall be determined in accordance with state law.

Section 5. If the commissioner of transitional assistance elects federal administration of state supplementary payments, there shall be advanced from the state treasury to the Social Security Administration each month an amount equal to the estimated payments authorized for that month.

Summary:

This section allows the Department of Transitional Assistance and the Commission for the Blind to transfer administration of the Supplemental Security Income program from the federal Social Security Administration to the state or a third party.

Section 6 - Self-Authenticating Sex Offender Registry Documents

SECTION 6. Subsection (b) of section 178H of chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- Copies of records created by the board that are certified and attested to by the chairperson of the board or the chairperson's designee shall be admissible in the prosecution of these offenses as self-authenticating evidence in any court of the commonwealth to prove the facts contained in the records.

Summary:

This section makes records of the Sex Offender Registry Board independently admissible in court as self-authenticating records where they are introduced to prove sex offender registration facts.

Section 7 - Shared Administrative Services, including Registration and Licensing

SECTION 7. Chapter 6A of the General Laws is hereby amended by striking out section 7A, inserted by section 6 of chapter 131 of the acts of 2010, and inserting in place thereof the following 2 sections:-

Section 7A. Notwithstanding any general or special law to the contrary, each secretary may, identify administrative activities and related supporting financial functions common to the state agencies within the executive office and may designate such functions as core administrative functions. To improve administrative efficiency and preserve fiscal resources, the secretary may direct that core administrative functions be performed by the executive office or by state agencies designated by the secretary to perform those functions. Common

activities and functions that may be designated as core administrative functions include without limitation human resource functions including payroll processing; information technology services; legal services; leasing and facility management services; financial management services, such as budgeting, contract management, and accounts payable/receivable functions; and other administrative functions. The secretary may delegate the secretary's signature authority for such functions to an officer or employee of an agency within the executive office. Nothing in this section shall waive the responsibility of each agency head to certify obligations and expenditures for appropriations and other legally available funds of the agency pursuant to section 3 of chapter 7A, the responsibilities of an agency head pursuant to state finance law, including but not limited to, sections 19, 20, 24, 26 and 27 of chapter 29, and the responsibility of an agency head to certify work by employees of the agency pursuant to section 31 of said chapter 29. The executive office or any state agencies designated to perform core administrative functions may charge the state agencies that receive such services for the reasonable costs of providing the services. Any employee transfers that occur in connection with the consolidation of core administrative functions within the executive office or state agencies shall not: (a) impair the civil service status of any such transferred employee who immediately before the effective date of that transfer either holds a permanent appointment in a position classified under chapter 31 or has tenure in a position by reason of section 9A of chapter 30; or (b) impair or change an employee's status, rights or benefits under chapter 150E.

Section 7B. Notwithstanding any general or special law to the contrary, each state agency performing licensing and registration services shall identify opportunities for administrative efficiencies, cost savings, and the elimination of unnecessary duplication of effort. If another state agency performs a similar licensing or registration function and possesses core competency in this function, state agencies may enter into interagency service agreements and other contractual or administrative steps with other state agencies for common licensing and registration activities and functions. These agreements shall identify the specific core competency that can be better performed through this agreement and the anticipated cost savings or efficiencies that will be achieved. These agreements shall be solely for the purposes of reducing administrative costs, eliminating duplicative systems and efforts, and achieving efficiencies. The relevant executive office or any state agencies designated to perform licensing or registration functions may charge the state agencies that receive such services for the reasonable costs of providing the services. Any employee transfers that occur in connection with the consolidation or contracting of licensing or registration functions within the executive office or state agencies shall not: (a) impair the civil service status of any such transferred employee who immediately before the effective date of that transfer either holds a permanent appointment in a position classified under chapter 31 or has tenure in a position by reason of section 9A of chapter 30; or (b) impair or change an employee's status, rights or benefits under chapter 150E.

Summary:

This section expands the FY11 budget authorization for cabinet secretaries to centralize information technology services, to include other administrative services as well, including registration and licensing functions.

Section 8 - Confirm that Merit Rating Board is in MassDOT

SECTION 8. (A) Clause (20) of subsection (a) of section 172 of chapter 6 of the General Laws, as appearing in section 21 of chapter 256 of the acts 2010, is hereby amended by striking out the figure "183" and inserting in place thereof the following words:- 57A of chapter 6C.

(B) Section 183 of said chapter 6 is hereby repealed

(C) Section 18½ of chapter 6A of the General Laws is hereby amended by striking out, in lines 12 and 13, as appearing in the 2008 Official Edition, the words "the registry of motor vehicles, the merit rating board".

(D) Chapter 6C of the General Laws is hereby amended by inserting after section 57A the following section:-
 Section 57A. (a) There shall be within the registry of motor vehicles a motor vehicle insurance merit rating board, in this section called the merit rating board. The merit rating board shall consist of the registrar of motor vehicles, who shall serve as chair, the commissioner of insurance, and the attorney general or her designee. The merit rating board shall appoint a director, who shall not be subject to chapter 31. The merit rating board shall formulate and administer a plan for the compiling, gathering and disseminating of information, operator records and histories, and such other data as it deems necessary or appropriate pertaining to motor vehicle accidents, claims

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under motor vehicle policies and motor vehicle violations in order to facilitate the implementation and operation of the safe driver insurance plan provided in section 113B of chapter 175.

(b) The plan shall include a system for the gathering and maintaining of the information mentioned in subsection (a), operator records and histories, and other data and for its prompt and efficient dissemination to insurance companies making inquiry with respect to the motor vehicle accident, motor vehicle insurance claim and motor vehicle violation record of any owner or operator insured by or applying for insurance from any such insurer.

These records and data disseminated by the plan shall be used exclusively for motor vehicle insurance purposes and criminal law enforcement purposes. Whoever disseminates or uses records or data disseminated under such plan contrary to this section shall be punished by a fine of not more than \$1,000 for each offense or by imprisonment for not more than 1 year, or both.

(c) The merit rating board shall have access to criminal offender record information for the purpose of developing the plan. The department of criminal justice information services shall certify the merit rating board and each insurance company doing motor vehicle insurance business within the commonwealth for access to criminal offender record information pertaining to violations of chapter 90 by its insureds. The merit rating board and each such company shall comply with the regulations of the department of criminal justice information services and be subject to sections 172 to 178, inclusive.

(d) The merit rating board may expend for expenses and for legal, investigative, clerical and other assistance amounts appropriated for those purposes. All costs of administration and operation of the merit rating board shall be borne by insurance companies doing motor vehicle insurance business within the commonwealth. The commissioner of insurance shall apportion estimated costs among all such companies and shall assess them for those costs on a fair and reasonable basis. These estimated costs shall be paid to the commissioner within 30 days after the date of the notice from the commissioner of these estimated costs. The commissioner shall subsequently apportion actual costs among all such companies and shall make assessment adjustments for any variation between estimated and actual costs on a fair and reasonable basis. These estimated and actual costs shall include an amount equal to indirect costs as determined by the secretary of administration and finance and shall also include the cost of fringe benefits as established by the secretary of administration and finance.

(E) Section 34O of chapter 90, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 120, the words "one hundred and eighty-three of chapter six" and inserting in place thereof the following words:- 57A of chapter 6C.

(F) Section 113B of chapter 175 is hereby amended by striking out, in line 160, as so appearing, the words "183 of chapter 6" and inserting in place thereof the following words:- 57A of chapter 6C.

(G) Subsection (A) shall take effect on May 4, 2012.

Summary:

This section confirms that the Merit Rating Board, which is located within the Registry of Motor Vehicles, is in MassDOT and not EOPSS.

Section 9 - A&F Oversight of Commonwealth Performance and of Access & Opportunity

SECTION 9. (A) The introductory paragraph of section 4A of chapter 7 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence:- The executive office shall also include an office of access and opportunity and an office of commonwealth performance, accountability, and transparency.

(B) Said section 4A of said chapter 7, as amended by section 8 of chapter 56 of the acts of 2010, is hereby amended by inserting after paragraph (d) the following 2 paragraphs:-

(e) The office of access and opportunity shall be headed by an assistant secretary for access and opportunity, to be appointed by the secretary with the approval of the governor. With the approval of the secretary, the assistant secretary shall take administrative actions, including but not limited to administrative bulletins and other policies, to promote and ensure nondiscrimination and equal opportunity in the policies, services, programs, and activities of executive agencies.

(f) The office of commonwealth performance, accountability, and transparency shall be headed by an assistant secretary for commonwealth performance, accountability, and transparency, to be appointed by the secretary. The office shall:

- (1) execute a performance management program throughout the executive department, including within statutory limits for each agency defining missions, creating measurable goals, establishing strategies for achieving them, and relating them to budget development;
- (2) monitor and review federal grant applications made on behalf of the commonwealth and coordinate efforts to maximize federal revenue opportunities and oversight of compliance with federal reporting requirements;
- (3) ensure transparency of the commonwealth's administration and finance activities, including the operation of the searchable website required by section 14C;
- (4) establish and maintain a central intake unit for reports of fraud, waste and abuse;
- (5) establish and maintain an economic forecasting and analysis unit to coordinate all spending and revenue forecasting by state agencies;
- (6) perform the executive office's duties for privatization contracts under section 54;
- (7) have whatever other duties with respect to state agencies that the governor or secretary may assign; and
- (8) collaborate with other state agencies, authorities and other entities to carry out these purposes.

(C) The third sentence of the first paragraph of section 4D of said chapter 7 is hereby amended by striking out the figure "4", inserted by section 9 of said chapter 56, and inserting in place thereof the following figure:- 2.

(D) Said chapter 7 is hereby further amended by inserting after section 4F the following section:-
Section 4F 1/2. There shall be established and set up a separate account, to be known as the Commonwealth Performance, Accountability, and Transparency Trust, in this section called the trust. The secretary of administration and finance shall expend funds in the trust without further appropriation to support the purposes of the office of commonwealth performance, accountability, and transparency, established by paragraph (f) of section 4A. The comptroller shall annually transfer to the trust, from the indirect costs charged under section 5D of chapter 29, an amount determined by the secretary for these purposes, not exceeding \$500,000 plus the one-time costs of any technology determined by the secretary.

Summary:

This section establishes within A&F, and defines the missions of, the Offices of Access and Opportunity and of Government Performance, Accountability, and Transparency.

Section 10 - Powers of Information Technology Division

SECTION 10. (A) Section 4A of chapter 7 of the General Laws is hereby amended by striking out, in line 74, as appearing in the 2008 Official Edition, the word "secretary" and inserting in place thereof the following word:- governor.

(B) The first paragraph of paragraph (d) of said section 4A of said chapter 7, as so appearing, is hereby further amended by adding the following sentence:- The division may also offer information technology services to the executive department, municipalities, authorities, constitutional offices, the judiciary, the general court, municipalities and other political subdivisions of the commonwealth.

(C) Section 53 of said chapter 7 is hereby amended by inserting after the word "provide", in line 27, as so appearing, the following words:- information technology, .

Summary:

This section provides that the Governor will appoint the Commonwealth's Chief Information Officer, and allows the state Information Technology Division to offer information technology services to other state government entities and authorities, and to competitively procure information technology services by exempting them from the Pacheco Law.

Section 11 - Disadvantaged Business Program Trust Account

SECTION 11. (A) Section 58 of chapter 7 of the General Laws, inserted by section 2 of chapter 56 of the acts of 2010, is hereby amended by inserting after the definition of "Certified business enterprise" and "certified business" the following definition:-

"Disadvantaged Business Enterprise" or "DBE" , a disadvantaged business enterprise as defined in the regulations of the federal Department of Transportation.

(B) Said section 58 of said chapter 7, as so inserted, is hereby further amended by inserting after the definition of "State purchasing agent" the following definition:-

"Unified Certification Program" or "UCP", the program, created as required by regulations of the federal Department of Transportation, which requires recipients of that Department 's financial assistance that are operating DBE programs to participate in a UCP. The UCP is designated by the commonwealth under those regulations to provide one-stop shopping for all applicants for DBE certification, so that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the commonwealth.

(C) Said chapter 7 is hereby further amended by inserting after section 59 the following section:-

Section 60. (a) There shall be established and set up a separate account to be known as the Unified Certification Program Trust , in this section called the trust. The state purchasing agent shall expend funds in the trust, without further appropriation, exclusively for the operation of the UCP.

(b) Funds received from the federal government by the following state and regional authorities and municipal and regional airports, in this section collectively called the participants, and any others that take part in the UCP, for the purpose of operating the UCP, shall be deposited in the trust: the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Berkshire Regional Transit Authority , the Brockton Area Transit Authority, the Cape Cod Regional Transit Authority , the Greater Attleboro-Taunton Regional Transit Authority the Lowell Regional Transit Authority, the Merrimack Valley Regional Transit Authority, the Montachusett Regional Transit Authority , the Pioneer Valley Regional Transit Authority, the Southeastern Regional Transit Authority, the Worcester Regional Transit Authority, Barnstable Municipal Airport, Martha's Vineyard Airport, Nantucket Memorial Airport, and New Bedford Regional Airport. The methodology used in determining the allocation of payments due from each participant shall be determined pursuant to a formula, subject to modification from time to time, that is established by and between the Massachusetts Department of Transportation, the participants and the federal Department of Transportation, consistent with applicable federal laws and regulations.

Summary:

This section a establishes a trust account to receive from state transportation entities deposits of a portion of federal grants, to allow the Supplier Diversity Office to operate its Uniform Certification Program for disadvantaged business enterprises.

Section 12 - Superintendent Responsible for State House Only

SECTION 12. (A) Chapter 8 of the General Laws is hereby amended by striking out the title and inserting in place thereof the following title:- STATE HOUSE AND SUPERINTENDENT.

(B) Section 1 of said chapter 8, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- There shall be within the executive office for administration and finance a bureau of the state house, headed by a state superintendent of the state house, in this chapter called the superintendent.

(C) Section 4 of said chapter 8, as so appearing, is hereby amended by striking out, in line 1, the words "of state office buildings".

(D) Said chapter 8 is hereby further amended by striking out section 6 and inserting in place thereof the following section:-

Section 6. The superintendent shall direct the making of all repairs and improvements in the state house and on its grounds, and all executive and administrative departments and officers shall make requisition upon the superintendent for any such repairs or improvements.

(E) Section 9 of said chapter 8, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 3 to 8, the words "the John W. McCormack state office building, the Leverett Saltonstall state office building, the Springfield office building, the Pittsfield office building, the Erich Lindemann building, the Charles F. Hurley building and all state parking areas related thereto, and any other state properties designated by law, to be the responsibility of the superintendent of state office buildings" and inserting in place thereof the following words:- and all state parking areas related thereto.

(F) Section 9A of said chapter 8, as so appearing, is hereby amended by striking out, in line 1, the words "state superintendent of state office buildings" and inserting in place thereof the following word:- superintendent.

Summary:

The section limits to the State House only the responsibilities of the Bureau of State Office Buildings, which is renamed the Bureau of the State House, leaving DCAM with responsibility for other state buildings.

Section 13 - Health Information Technology and Build America Bonds Trust Funds

SECTION 13. Chapter 10 of the General Laws is hereby amended by inserting after section 35OO the following 2 sections:-

Section 35PP. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Health Information Technology Trust Fund, in this section called the fund. There shall be credited to the fund revenues from federal reimbursements under the Health Information Technology for Economic and Clinical Health Act and any other federal reimbursements, grants, premiums, gifts or other contributions from any source received for or in the support of the health care provider incentive payment program and for the promotion of electronic health record adoption and health information exchange in the commonwealth. The secretary of health and human services shall be the fund's trustee, and shall expend the fund without further appropriation for incentive payments to eligible Massachusetts Medicaid health care providers for the adoption, implementation, upgrade or meaningful use of certified electronic health record technology, and to support the planning, implementation and operating costs of administering these payments. The secretary may certify for payment amounts in anticipation of federal revenues collected for the corresponding quarter during the previous fiscal year. For the purpose of accommodating timing discrepancies between the receipt of revenues and related expenditures, the secretary may incur expenses, after written approval from the secretary of administration and finance, and the comptroller shall certify for payment, amounts not to exceed the recent revenue estimate as certified by the MassHealth director, as reported in the state accounting system.

Section 35QQ. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Build America Bonds Subsidy Trust Fund, in this section called the fund. There shall be credited to the fund payments received from the United States Treasury for subsidies related to tax credit bonds issued by the commonwealth under the Build America Bonds program. The state treasurer shall be the fund's trustee, and shall expend from the fund without further appropriation for the purpose of paying debt service related to the Build America Bonds. The comptroller may, without further appropriation, transfer from any available appropriation any amount determined by the comptroller to have been withheld by the federal government from a Build America Bond subsidy payment.

Summary:

This section sets up a trust fund to allow the Secretary of Health and Human Services to expend federal health technology reimbursements.

Section 14 - Single State Parks Agency

SECTION 14. (A) Section 1 of chapter 21 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:- The department of conservation and recreation shall consist of a division of state parks and recreation and a division of water supply protection. Each division shall be under the administrative supervision of a director and shall be under the supervision and control of the commissioner of the department of conservation and recreation. The division of water supply protection shall have control over the watershed and water supply systems in accordance with chapter 92A½. The division of state parks and recreation shall have control over the state parks, forests, parkways, waterways, rinks, pools, beaches and other recreational lands and facilities outside of the watershed systems as defined in sections 1 and 2 of chapter 92A½.

(B) Section 8 of chapter 21A of the General Laws, as so appearing, is hereby amended by striking out, in lines 43 and 44, the words "a division of urban parks and recreation,".

(C) Whenever the term "division of urban parks and recreation" appears in any statute, regulation, contract, or other document, it shall be taken to mean the division of state parks and recreation.

Summary:

This section merges DCR's Division of Urban Parks and Recreation (formerly the Metropolitan District Commission) into the Division of State Parks and Recreation, thus establishing a single state parks and recreation agency.

Section 15 - Improve Department of Environmental Protection Efficiencies

SECTION 15. (A) Subsection (o) of section 3A of chapter 21E of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- In each year the department shall, at a minimum, audit a statistically significant number, as determined by the department, of all sites for which annual compliance assurance fees are required to be paid pursuant to section three B. In determining this statistically significant number, the department shall take into account the need for audits to ensure a high level of compliance with this chapter and the Massachusetts Contingency Plan, and the need to target audit resources in the most efficient and effective manner.

(B) Chapter 91 of the General Laws is hereby amended by inserting after section 18B the following section:- Section 18C. Notwithstanding any general or special law to the contrary, the department may issue a general license authorizing small-scale docks, piers, and similar structures, but not commercial marinas or large-scale docks, piers, or similar structures, in tidelands, great ponds, rivers and streams, otherwise subject to individual licensing under sections 12, 12A, 13, 14, 18 and 19. The licensee shall comply with all general license performance standards to be issued as regulations by the department. Proponents of projects eligible for such a general license must certify their compliance with its terms and conditions to the department, and shall pay all applicable fees required by this chapter, before beginning construction. In addition, the following provisions of this chapter shall not apply to a general license issued under this section:-

(a) The first two paragraphs of section 18 shall not apply to projects subject to a general license, except that the project proponent shall submit to the planning board of the city or town where the work is to be performed the proposed use, the location, dimensions and limits and mode of work to be performed, before its certification to the department.

(b) The first sentence of the third paragraph of section 18 shall not apply to projects subject to a general license, except that the project proponent shall specify by metes, bounds and otherwise the location, dimensions, and limits and mode of performing the work in its certification to the department.

(c) The second sentence of the third paragraph of section 18 shall not apply to projects subject to a general license, except that any changes in use or structural alteration of a licensed structure or fill, whether the structure or fill first was licensed before, on or after the effective date of this section, shall require a new certification for projects eligible for certification or a license for structures which are ineligible for the general license, in accordance with the provisions and procedures established in this chapter and the general license.

(d) The sixth paragraph of section 18 shall not apply to projects subject to a general license, except that before certification, the project proponent shall give notice to the selectmen of the town or the mayor of the city and the

conservation commission of the town or city where the work is to be performed and published at the same time in a newspaper or newspapers having a circulation in the area affected by the project , at the expense of the proponent.

(e) The seventh and eighth paragraphs of section 18, regarding public and adjudicatory hearings, shall not apply to projects subject to a general license.

(f) The ninth paragraph of section 18 regarding recordation shall not apply to projects subject to a general license, except that the project proponent shall submit a plan of the work or structure to the department in its certification. The general license for these projects shall be void unless, within 60 days after certification, the certification and the accompanying plan are recorded in the registry of deeds for the county or district where the work is to be performed. Work or change in use shall not commence until the certification is recorded and the department has received notification of the recordation.

(g) The tenth paragraph of section 18, regarding zoning approval, shall not apply to projects subject to a general license, except that the project proponent shall submit a certification by the clerk of the affected cities or towns that the work to be performed or changed in use is not in violation of local zoning ordinances and by-laws, in its certification to the department.

(h) The eleventh paragraph of section 18, regarding assessments for tidewater displacement and occupation of commonwealth tidelands, shall not apply to projects subject to a general license, except that these assessments shall be paid by the project proponent, in its certification to the department.

(i) Section 20 shall not apply to projects subject to a general license, except that the project proponent shall submit to the department plans of any proposed work to be performed and a copy of any legislative grant in its certification to the department.

The department shall adopt regulations to implement this section. The regulations shall protect the public rights in tidelands in accordance with this chapter.

(C) Section 43 of chapter 206 of the acts of 1998 is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- The department of environmental protection shall perform a targeted audit of a statistically significant number, as determined by the department, of sites at which an activity and use limitation has been implemented in order to ensure that response actions not overseen or conducted by the department are performed in compliance with chapter 21E and regulations adopted under that chapter. In determining this statistically significant number, the department shall take into account the need for audits to ensure a high level of compliance with this said chapter 21E and the Massachusetts Contingency Plan, and the need to target audit resources in the most efficient and effective manner.

Summary:

This section increases efficiencies at the Department of Environmental Protection by allowing DEP to:

- * audit a statistically significant percentage of hazardous waste cleanup sites, rather than an arbitrary 20 percent; and
- * issue a "general license" for smaller, non-commercial projects under the waterways and tidelands law.

Section 16 - Civil Fines by Department of Public Safety

SECTION 16. Chapter 22 of the General Laws is hereby amended by adding the following section:-

Section 21. (a) The commissioner or his designee may, as an alternative to initiating criminal proceedings, issue a written notice of violation, which shall be a written warning or citation to assess civil monetary fines of not more than \$5,000, for violations of the following statutes or of regulations adopted under these statutes. In addition to the commissioner or his designee, the following individuals may also issue such warnings or citations:

- (1) section 13A of this chapter: an inspector assigned to the building division or a designee of the Massachusetts architectural access board;
- (2) section 1, 2 or 64 of chapter 105;
- (3) section 205A of chapter 140: an inspector assigned to the building division or the engineering division of the department;
- (4) section 3V, 9, 50 or 87A of chapter 143: an inspector assigned to the building division of the department;
- (5) section 71 or 71D of chapter 143: an inspector assigned to the elevator division of the department;
- (6) section 71K or 71N of chapter 143: a designee of the recreational tramway board;

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(7) any of sections 5 to 41, inclusive, of sections 53 to 54A, of sections 70 to 80, or of section 89, of chapter 146: an inspector assigned to the engineering division of the department;
(8) section 57 or 60 of chapter 147;
(9) the regulations of the state building code governing licensing of construction supervisors under clause (i) of section 94 of chapter 143: an inspector assigned to the building division of the department.

(b) The commissioner may adopt regulations for the administration and enforcement of this section.

(c) The individual issuing the notice of violation shall indicate on the notice that it is for: (1) a written warning; (2) a violation of the specified statute in subsection (a); or (3) a violation of a specified regulation.

(d) A person who receives a notice of violation may appeal to a hearing officer designated by the secretary of public safety and security within 30 days after receipt of the notice. All appeal hearings shall be held in accordance with the standard rules governing informal adjudicatory proceedings adopted under section 9 of chapter 30A.

(e) A person who receives notice of a violation and fails to: (1) pay the fines assessed within 30 days after receipt of the notice; or (2) appeal within the 30 days; or (3) appear at a scheduled appeal hearing, shall be deemed responsible for the violation as stated in the notice. The finding of responsibility shall be admissible as evidence and considered prima facie evidence of responsibility for the violation in any civil proceeding regarding the violation, in any proceeding to suspend or revoke a license, permit or certificate, and in any criminal proceeding.

Summary:

This section allows the Department of Public Safety to issue civil fines of not more than \$5,000, as an alternative to existing criminal penalties for violations of statutes and regulations that it enforces.

Section 17 - Reduce Number of Judges at Department of Industrial Accidents

SECTION 17. (A) Section 4 of chapter 23E of the General laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 3, the word "twenty-one", and inserting in place thereof the following words:- not more than 21.

(B) The first paragraph of said section 4 of said chapter 23E, as so appearing, is hereby further amended by adding the following sentence:- Notwithstanding any general or special law to the contrary, upon the expiration of an initial or subsequent term, a member shall not continue to serve unless reappointed, but, in the discretion of the commissioner, that member may serve not more than 90 additional days to complete work on pending cases.

(C) Section 5 of said chapter 23E, as so appearing is hereby amended by is hereby amended by striking out, in line 4, the word "six" and inserting in place thereof the following words:- not more than 6.

(D) The first paragraph of said section 5 of said chapter 23E, as so appearing, is hereby further amended by adding the following sentence:- Notwithstanding any general or special law to the contrary, upon the expiration of an initial or subsequent term, a member shall not continue to serve unless reappointed, but, in the discretion of the commissioner, that member may serve not more than 90 additional days to complete work on pending cases.

(E) This section does not allow the governor to remove any sitting member of the industrial accident board or the industrial accident reviewing board, whose term has not expired, to reduce the number of members of either board.

Summary:

This section allows the Governor to reduce the number of judges on the Industrial Accident Board and the Industrial Accident Reviewing Board, but only by not making appointments as terms expire.

Section 18 - One-time Settlements to Stabilization Fund

SECTION 18. Section 2H of chapter 29 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:-
The proceeds of a one-time settlement or judgment for the commonwealth, the net value of which is \$10,000,000 or more, shall also be deposited in the fund.

Summary:

This section requires any one-time settlement or judgment, the net value of which is \$10 million or more, to be deposited in the Commonwealth Stabilization Fund.

Section 19 - Workforce Training Trust Fund

SECTION 19. (A) Section 2RR of chapter 29 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "Training", in line 3, the following word:- Trust.

(B) Said section 2RR of chapter 29, as so appearing, is hereby further amended by striking out, in lines 6 and 7, the words "Subject to appropriation, the commissioner, which in this section shall have the meaning assigned by section 1 of chapter 151A" and inserting in place thereof the following words:- The commissioner, which in this section shall have the meaning assigned by section 1 of chapter 151A, shall be the trustee of the Fund and, without further appropriation.

(C) Sections 3A, 20A and 25 of chapter 175 of the acts of 1998 are hereby repealed.

Summary:

This section removes the requirement that funds be appropriated annually for the Workforce Training Fund, making it a permanent off-budget trust fund.

Section 20 - Accountability and Transparency for State Authorities

SECTION 20. Chapter 29 of the General Laws is hereby amended by inserting after section 29J, inserted by section 21 of chapter 131 of the acts of 2010, the following section:-

Section 29K. (a) Each state authority shall:

(1) if it receives more than \$500,000 in any year from the commonwealth, arrange for an independent financial audit of those funds, according to regulations adopted by the secretary of administration and finance. Each such audit shall be filed with the state auditor for her examination, review and comment;

(2) establish an audit committee that shall meet independently of management, retain an independent auditor, and hear the results of the annual audit;

(3) establish a compensation committee that shall meet independently of management and shall evaluate and establish executive compensation, including benefits. In establishing executive compensation, the committee shall conduct an analysis of comparable compensation for similar officers of state government, other authorities, and private-sector employers with similar functions and responsibilities. No executive of a state authority shall be compensated for sick, vacation, or other leave time to an extent greater than state employees, nor be granted severance pay after removal for cause, nor be granted severance pay in excess of 3 months' salary if removed other than for cause; and

(4) prepare an annual financial report which shall disclose the salaries of its executive director, officers, senior management, and other highly compensated employees,

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(b) The commonwealth shall not subsidize the pension and other post-employment benefits of non-commonwealth retirees. The secretary of administration and finance shall adopt regulations to ensure that state authorities and other independent entities that participate in the state retirement system or the group insurance commission, as determined by the comptroller, are not subsidized by state appropriation, and that the public employee retiree administration commission and the group insurance commission shall charge them the full actuarial value of their liabilities.

(c) The secretary of administration and finance may adopt regulations to carry out this section.

Summary:

This section requires every state authority to:

- * conduct independent financial audits, to be filed with the State Auditor;
- * set executive compensation based on an analysis of comparable public- and private-sector compensation; and
- * disclose salaries of highly compensated employees in an annual report.

It also prohibits the Commonwealth from subsidizing the pension and other post-employment benefits of non-commonwealth retirees.

Section 21 - Emergency Spending Authority

SECTION 21. Chapter 29 of the General Laws is hereby amended by adding the following section:-

Section 72. (a) In addition to other emergency powers allowed by law, the governor may declare a state of emergency whenever a catastrophic event, natural disaster, pandemic outbreak, terrorist threat or other occurrence or imminent danger threatens the health, safety or welfare of the people, or the fiscal or economic stability of the commonwealth. In such an emergency, the governor may direct any agency, authority, or political subdivision of the commonwealth to take appropriate action to eliminate the immediate threat or danger and to aid its citizens, including but not limited to temporary re-deployment of personnel, contractors or other resources. Upon notice in writing of the declaration of emergency to the comptroller and the clerks of the senate and the house of representative, there shall be appropriated an amount requested by the governor not to exceed \$25,000,000 from the Commonwealth Stabilization Fund, and the comptroller shall transfer that amount into a separate emergency account for the costs incurred under this section.

(b) Agencies, authorities and political subdivisions directed by the governor to act under this section need not comply with procurement and personnel restrictions for obligations incurred in performance of directives under this section for the period of the emergency, but shall consult with the operational services division to use, to the greatest extent possible, existing state contractors and certified small, minority or women-owned businesses, to provide necessary goods or services under this section to obtain the most cost effective prices and quality services available. The comptroller may take whatever actions are necessary to enable obligations and payments under this section, shall advise agencies about the most efficient payment processes, including electronic payment options, and shall direct agencies in the proper accounting for all encumbrances and payments under this section in the state accounting system. Expenditures may be charged to other items of appropriation and to other subsidiaries as directed by the secretary of administration and finance in consultation with the comptroller. Every 60 days after an emergency is declared under this section, and until the governor declares that the emergency has terminated, the governor shall report in writing the specific amounts and purposes of expenditures under this section to the house and senate committees on ways and means.

(c) Any funds remaining in the emergency account at the conclusion of the fiscal year in which the emergency arises shall not revert at the end of the fiscal year, unless the emergency has terminated, but shall remain available for expenditure without further appropriation until the emergency ceases and all payments for all costs incurred under this section, at which time any remaining funds shall be transferred to the Commonwealth Stabilization Fund.

Summary:

This section authorizes the Governor to expend funds up to \$25 million, without further appropriation, in the event of a declared emergency.

Section 22 - Pension Funding Schedule

SECTION 22. (A) Section 22C of chapter 32 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 29, the words "on June 30, 2025" and inserting in place thereof the following words:- by June 30, 2040.

(B) Said section 22C of chapter 32 of the General Laws is hereby further amended by striking out the last paragraph of subdivision (1), inserted by section 23 of chapter 27 of the acts of 2009, and inserting in place thereof the following paragraph:-

Notwithstanding any general or special law to the contrary, appropriations or transfers made to the Commonwealth's Pension Liability Fund in fiscal years 2012 to 2017, inclusive, shall be made in accordance with the following funding schedule: \$1,478,000,000 in fiscal year 2012, \$1,552,000,000 in fiscal year 2013, \$1,630,000,000 in fiscal year 2014, \$1,727,000,000 in fiscal year 2015, \$1,831,000,000 in fiscal year 2016, and \$1,941,000,000 in fiscal year 2017. Notwithstanding subdivision (1), any adjustments to these amounts based on the next triennial funding schedule shall be limited to increases in the schedule amounts for each of the specified years.

Summary:

This section extends the Commonwealth's pension funding schedule from 2025 to 2040, and sets the pension payments for fiscal years 2012 to 2017, consistent with the Governor's 2011 pension reform bill.

Section 23 - Enhance Group Insurance Commission's Alternative Coverage Program

SECTION 23. (A) Section 19 of chapter 32A of the General Laws, as appearing the 2008 Official Edition, is hereby amended by inserting after the word "Effective", in line 1, the following words:- January 1 and.

(B) Said section 19 of said chapter 32A, as so appearing, is hereby further amended by inserting after the word "rate", in line 10, the following words:- in effect.

Summary:

This section amends the existing buyout program to encourage current GIC enrollees who have other health coverage available to them on January 1 each year, in addition to the current program's July 1 effective date, so that they may drop their GIC coverage sooner and take the alternative coverage instead.

Section 24 - Improve Present Tax Laws

SECTION 24. (A) Section 38 of chapter 63 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (f) and inserting in place thereof the following subsection:-

(f) The sales factor is a fraction, the numerator of which is the total sales of the corporation in this commonwealth during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year. As used in this subsection, unless specifically stated otherwise, "sales" means all gross receipts of the corporation, including deemed receipts from transactions treated as sales or exchanges under the Code, except interest, dividends, and gross receipts from the maturity, redemption, sale, exchange or other disposition of securities, provided, however, that "sales" shall not include gross receipts from transactions or activities to the extent that a non-domiciliary state would be prohibited from taxing the income from such transactions or activities under the Constitution of the United States. Sales of tangible personal property are in this commonwealth if:-

1. the property is delivered or shipped to a purchaser within this commonwealth regardless of the f. o. b. point or other conditions of the sale; or
2. the corporation is not taxable in the state of the purchaser and the property was not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the corporation outside this commonwealth. "Purchaser", as used in clauses 1 and 2 of this paragraph, shall include the United States government.

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Sales, other than sales of tangible personal property, are in this commonwealth if the corporation's market for the sale is in this commonwealth. The corporation's market for a sale is in this state:-

1. in the case of sale, rental, lease or license of real property, if and to the extent the property is located in this commonwealth;
2. in the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this commonwealth;
3. in the case of sale of a service, if and to the extent the service is delivered to a location in this commonwealth;
4. in the case of lease or license of intangible property, including a sale or exchange of such property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property, if and to the extent the intangible property is used in this commonwealth;
5. in the case of the sale of intangible property other than as referenced in clause 4. where the property sold is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, if and to the extent that the intangible property is used in or otherwise associated with this commonwealth; but any sale of intangible property, not otherwise described in this clause or clause 4 is excluded from the numerator and the denominator of the sales factor.

For the purposes of this subsection: (1) in the case of sales other than sales of tangible personal property if the state of assignment cannot be determined, it shall be reasonably approximated; (2) in the case of sales other than sales of tangible personal property if the taxpayer is not taxable in a state to which a sale is assigned, or if the state or states of assignment cannot be determined or reasonably approximated, such sale shall be excluded from the numerator and denominator of the sales factor; (3) the corporation shall be considered to be taxable in the state of the purchaser if the tangible personal property is delivered or shipped to a purchaser in a foreign country; (4) sales of tangible personal property to the United States government or any agency or instrumentality thereof for purposes of resale to a foreign government or any agency or instrumentality thereof are not sales made in the commonwealth; (5) in the case of the sale, exchange or other disposition of a capital asset, as defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business, including a deemed sale or exchange of such asset, "sales" are measured by the gain from the transaction; (6) "security" means any interest or instrument commonly treated as a security as well as other instruments which are customarily sold in the open market or on a recognized exchange, including, but not limited to, transferable shares of a beneficial interest in any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and futures contracts; and (7) in the case of a sale or deemed sale of a business, the term "sales" does not include receipts from the sale of the business "goodwill" or similar intangible value, including, without limitation, "going concern value" and "workforce in place."

Notwithstanding the foregoing, mutual fund sales as defined in subsection (m), other than the sale of tangible personal property, shall be assigned to this commonwealth to the extent that shareholders of the regulated investment company are domiciled in this commonwealth as follows:

(a) by multiplying the taxpayer's total dollar amount of sales of such services on behalf of each regulated investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the regulated investment company's shareholders domiciled in this commonwealth at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the taxpayer's taxable year, and the denominator of which shall be the average of the number of shares owned by the regulated investment company shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the taxpayer's taxable year.

(b) A separate computation shall be made to determine the sale for each regulated investment company, the sum of which shall equal the total sales assigned to the commonwealth.

The commissioner shall adopt regulations to implement this subsection. This subsection shall not affect the commissioner's authority under subsection (j).

(B) Section 1 of chapter 64G of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after paragraph (b) thereof the following paragraph:-

(b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that may be the subject of a cooperative arrangement between an operator and a reseller, or other exploitation of the market for accommodations or resale of accommodations located in the commonwealth by any means whatsoever, including, but not limited to, salesmen, solicitors or representatives in the commonwealth, whether those salesmen, solicitors or representatives are employed by the operator or reseller, by a person affiliated with the operator or the reseller by common ownership, or by any other party. This definition is intended to extend the jurisdiction of the commonwealth over operators and resellers to the full extent authorized by the Constitution and the laws of the United States.

(C) Said section 1 of said chapter 64G, as so appearing, is hereby further amended by inserting after the word "operator", in line 49, the following words:- or the room reseller.

(D) Said section 1 of said chapter 64G, as so appearing, is hereby further amended by adding the following paragraphs:-

(k) "Room reseller" or "Reseller", any person having any right, permission, license, or other authority from or through an operator to reserve or arrange transfer of occupancy of accommodations the transfer of which is subject to this chapter, such that the occupant pays all or a portion of the rent to the reseller. The term "Room Reseller" or "Reseller" includes, but is not limited to, sellers of travel packages as defined in this chapter.

(l) "Travel package," a room or rooms bundled with 1 or more separate components such as air transportation, car rental or similar items and charged to the customer or occupant for a single retail price.

(E) Said chapter 64G is hereby further amended by striking out section 3 and inserting in place thereof the following section:

Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of the total amount of rent for each occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent. The operator or room reseller shall pay the excise to the commissioner at the time provided for filing the return required by section 16 of chapter 62C.

The value of the transfer of any room or rooms bundled as part of a travel package may be determined from the room reseller's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

(F) The first paragraph of section 3A of said chapter 64G, as amended by sections 51 and 52 of chapter 27 of the acts of 2009, is hereby amended by striking out the first, second and third sentences and inserting in place thereof the following 3 sentences:

Any city or town that accepts this section may impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within the city or town by any operator or room reseller at a rate up to, but not exceeding, 6 per cent of the total amount of rent paid by the occupant for the occupancy, but the city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within the city by any operator or room reseller at the rate of up to but not exceeding 6.5 per cent of the total amount of rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is exempt under section 2. The operator or room reseller shall pay the local excise tax imposed under this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

(G) Said chapter 64G is hereby further amended by striking out sections 4 to 6, as appearing in the 2008 Official Edition, and inserting in place thereof the following 4 sections:

Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is transferred through the use of a room reseller, the application of the excise shall be as follows: If the room reseller is required to register under section 6 to collect the excise, the room reseller shall collect and pay to the commissioner the

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excise upon the amount of rent paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the operator. Whether or not the room reseller is so registered, the operator shall collect and pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or the occupant.

No assessment shall be made against an operator on the basis of an incorrect remittance of the excise under this chapter by an unaffiliated room reseller and no assessment shall be made against a room reseller on the basis of an incorrect remittance of the excise under this chapter by an unaffiliated operator.

Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

Section 5. The amount of the excise collected by the operator or the room reseller under this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer issued or used by the operator or the room reseller. A room reseller shall not be required to disclose to the occupant the amount of tax charged by the operator. The reseller shall represent to the occupant that the separately stated taxes charged by the reseller include taxes charged by the operator.

Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of registration has been issued to that person in accordance with section 67 of chapter 62C.

(H) Section 7A of said chapter 64G, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "operator", in line 1 and in line 7, the following words: or room reseller .

(I) Said chapter 64G is hereby further amended by striking out section 7B and inserting in place thereof the following section:

Section 7B. Every operator or room reseller who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable for those amounts to the commonwealth. The terms "operator" and "room reseller", as used in this section, include an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

(J) Section 12 of said chapter 64G, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "operator", in line 5, the following words: and each room reseller.

(K) For purposes of the convention center surcharge imposed by section 9 of chapter 152 of the acts of 1997, as amended, the term "operator" shall mean "operator or room reseller."

(L) Subsection (2) of section 95 of chapter 173 of the acts of 2008 is hereby amended by striking out the date "2012" and inserting in place thereof the following date:- 2013.

(M) Subsection (A) shall be effective for tax years beginning on or after January 1, 2012. Subsection (A) shall not affect the continuing validity or application of regulations that were previously adopted under subsection (f) of section 38 of chapter 63 of the General Laws.

(N) Subsections (B) to (K), inclusive, shall take effect on August 1, 2011.

Summary:

This section improves present tax laws by:

- * modernizing the sales factor for apportioning the corporate excise among states, by sourcing to where services are received;
- * clarifying that the present room occupancy excise applies to Internet room resellers; and
- * delaying for one year the "FAS 109" deduction from the corporate excise.

Section 25 - Expand Bottle Bill

SECTION 25. Section 321 of chapter 94 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definitions of "Beverage" and "Beverage container" and inserting in place thereof the following 2 definitions:-

"Beverage", soda water or similar carbonated soft drinks; beer and other malt beverages; non-carbonated soft drinks including but not limited to mineral water, flavored and unflavored water, spring water, fruit drinks, juice, sports drinks and other water beverages, coffee and coffee-based drinks; and all other non-alcoholic carbonated and noncarbonated drinks in liquid form intended for human consumption except milk and beverages that are primarily derived from dairy products, infant formula, and FDA-approved medicines; but shall not include alcoholic beverages other than beer and malt beverages as defined in chapter 138 or wine.

"Beverage container", any sealable bottle, can, jar or carton which is primarily composed of glass, metal, plastic or any combination of those materials and is produced for the purpose of containing a beverage, including containers of 2 gallons capacity or less for carbonated and malt beverages and less than 1 gallon for noncarbonated beverages. This definition shall not include containers made of biodegradable material

Summary:

This section expands the state's bottle deposit law to include containers for non-carbonated drinks like water, juices, coffee-based drinks and sport drinks.

Section 26 - Nursing and Resident Care Facility Base Year

SECTION 26. Notwithstanding any general or special law to the contrary, nursing facility and resident care facility rates effective July 1, 2011 under section 7 of chapter 118G of the General Laws may be developed using the costs of calendar year 2005.

Summary:

This section changes to 2005 the base year for setting fiscal year 2012 nursing and resident care facility rates.

Section 27 - Reform Representation of Indigent Defendants

SECTION 27. (A) The title of chapter 211D of the General Laws is hereby amended by striking out the word "Committee" and inserting in place thereof the word "Department".

(B) Said chapter 211D is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. There shall be an independent agency in the executive department to be known as the department of public counsel services, in this chapter called the department or the committee. The department shall coordinate the delivery of criminal and certain noncriminal legal services by all salaried public counsel and other assigned counsel programs. The governor shall appoint, for a term coterminous with the governor's, a chief counsel to be the head of the department.

(C) Section 2 of said chapter 211D, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 7 and 8, the words "supreme judicial court" and inserting in place thereof the following words:- secretary of administration and finance.

(D) Section 2 1/2 of said chapter 211D, as so appearing, is hereby amended by adding the following subsection:-

(j) In lieu of verification of indigency by the probation department for some or all persons under this section, the chief counsel may designate other agents for this purpose, and may agree with the department of transitional assistance that its employees or agents will verify indigency according to this section and additional procedures that the chief counsel may establish.

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(E) Paragraph (b) of section 6 of said chapter 211D, as so appearing, is hereby amended by striking out clauses (i), (ii) and (iii) and inserting in place thereof the following paragraph:-
Counsel from the private counsel division shall be assigned only if the public counsel division is unable to provide representation because of a conflict of interest or other extraordinary reason, as determined by the chief counsel.

(F) Said chapter 211D is hereby amended by striking out section 13 and inserting in place thereof the following section:-

Section 13. The chief counsel shall have overall supervision of the workings of the department. The chief counsel shall appoint or prescribe the procedures for the appointment of all legal and nonlegal staff of the department and for the procurement of office space as may be required. The chief counsel shall authorize the certification of all payments under section 27G of chapter 261 and section 20 of chapter 29. All legal and nonlegal staff of the public counsel division shall be full time and shall devote their entire time during ordinary business hours to their duties and shall neither directly or indirectly engage in the private practice of law. The chief counsel and any deputy chief counsels shall likewise devote full time to their duties. The chief counsel, deputy chief counsels and all legal and non-legal staff of the department, including staff attorneys hired under paragraphs (a) and (b) of section 6 but not including persons described in the fourth sentence of said subparagraph (b) of said section 6, shall be considered public employees for purposes of chapter 258. The chief counsel shall be paid a salary comparable to the salary paid to a district attorney. All other legal staff of the public defender division shall be paid at salaries comparable to the salary paid to an attorney employed in a district attorney's office. The counsel and other employees appointed by the committee shall not be subject to chapter 31.

Summary:

This section reforms representation of indigent defendants in court by establishing in the executive branch an independent Department of Public Counsel Services, headed by a Chief Counsel to be appointed by the Governor coterminously. The section allows private counsel to be assigned only if the public counsel division is unable to provide representation because of a conflict of interest or other extraordinary reason, as determined by the Chief Counsel.

Section 28 - Improving Operations at the Massachusetts Treatment Center

SECTION 28. Section 104 of chapter 150 of the acts of 1990 is hereby amended by adding the following paragraph:

For purposes of this section, the phrase "separate and apart" shall mean that persons committed or awaiting commitment as sexually dangerous persons, as defined by section 1 of chapter 123A of the General Laws, shall be housed separately from inmates who are not civilly committed as sexually dangerous persons; but all such persons may commingle in common areas of the treatment center, including but not limited to the dining room, the general and law libraries, the gymnasium and the recreation yard, and may participate together in sex offender treatment and other therapeutic, rehabilitational, academic education, vocational education, vocational training, and other related prevocational and employment programs at the discretion of the department of correction. The commissioner of correction shall adopt policies and procedures for the management of the treatment center population consistent with public safety and the security and operational needs of the department of correction.

Summary:

This section allows civilly committed persons to mingle with sentenced prisoners at the Treatment Center for purposes of programs and recreation, but requires separate housing of these populations.

Section 29 - Additional Historic Curatorship Properties

SECTION 29. Section 44 of chapter 85 of the acts of 1994, as most recently amended by sections 1 and 2 of chapter 164 of the acts of 2009, is hereby further amended by inserting after the words "Horseneck Beach State Reservation" the following words:- , Officer's Quarters at Fort Revere in the town of Hull, Gatekeeper's House at Maudslay State Park, Gates House at Wachusett Mountain State Reservation, Blue Farmhouse and garage and associated barns 3, 4 and 5 at 215 Cold Spring Road and Red Farmhouse and shed at 220 Cold Spring Road at

Spectacle Pond in the town of Sandisfield, the McKay House at Willowdale State Forest, 57 Dedham Street, Hyde Park district of the city of Boston, Speedway Administration Building, Brighton district of the city of Boston, the Police Substation on Furnace Brook Parkway in the city of Quincy, the Compressor Building at Quincy Quarries in the Blue Hills Reservation, any of the Peddocks Cottages on Peddocks Island in the Boston Harbor Islands National Park Area, 3 Wompatuck Cottages in Wompatuck State Park, Stress House 1 at Neponset River Reservation, and notwithstanding any general or special law to the contrary, the Schooner Ernestina and a portion of the New Bedford State Pier to provide sufficient berthing space.

Summary:

This section adds several properties to the historic curatorship program of the Department of Conservation and Recreation, by which DCR enters into long term leases through competitive procurements with a curator who pays rent in the form of services, specifically the rehabilitation and maintenance of the property.

Section 30 - Postpone Regional Transit Authority Forward Funding

SECTION 30. The first sentence of section 152 of chapter 25 of the acts of 2009 is hereby amended by striking out the figure "2011" and inserting in place thereof the following figure:- 2013.

Summary:

This section postpones until July 1, 2013 the requirement for forward-funding the regional transit authorities.

Section 31 - Extend Authority to Terminate and Renegotiate Leases

SECTION 31. (A) Section 23 of chapter 5 of the acts of 2009 is hereby amended by striking out the figure "2011", inserted by section 115 of chapter 131 of the acts of 2010, and inserting in place thereof the following figure:- 2012.

(B) Section 195 of said chapter 131 is hereby amended by striking out the figure "2011" and inserting in place thereof the following figure:- 2012.

Summary:

This section extends through fiscal year 2012 the present legislative authorization for DCAM to terminate state agency and court facility leases for insufficient funding, and to realize operating budget cost savings by renegotiating lease terms in return for extending lease terms to as much as a total of 15 years.

Section 32 - Inspector General's Health Safety Net Audit Unit

SECTION 32. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2012, the office of the inspector general may continue to expend funds from the Health Safety Net Trust Fund, established by section 36 of chapter 118G of the General Laws, for costs associated with maintaining a pool audit unit within the office. The unit shall continue to oversee and examine the practices in all hospitals including, but not limited to, the care of the uninsured and the resulting free charges. The inspector general shall submit a report to the house and senate committees on ways and means on the results of the audits and any other completed analyses not later than March 1, 2012. For the purposes of these audits, allowable free care services shall be defined pursuant to said chapter 118G and any regulations adopted thereunder.

FAD: Notwithstanding any general or special law to the contrary, in hospital fiscal year 2012, the office of the inspector general may continue to expend funds from the Health Safety Net Trust Fund, established by section 36 of chapter 118G of the General Laws, for costs associated with maintaining a pool audit unit within the office. The unit shall continue to oversee and examine the practices in all hospitals including, but not limited to, the care of the uninsured and the resulting free charges. The inspector general shall submit a report to the house and senate committees on ways and means on the results of the audits and any other completed analyses not later than

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March 1, 2012. For the purposes of these audits, allowable free care services shall be defined pursuant to said chapter 118G and any regulations adopted thereunder.

Summary:

This section allows the Inspector General's Office to continue to audit the Health Safety Net Trust Fund.

Section 33 - Commonwealth Care Bridge Program Reauthorization

SECTION 33. (a) Notwithstanding any general or special law to the contrary and except as provided in subsection (b), an eligible individual pursuant to section 3 of chapter 118H of the General Laws shall not include a person who is not eligible to receive federally-funded benefits under sections 401, 402 or 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as amended, for fiscal year 2012.

(b) Notwithstanding any general or special law to the contrary, the secretary of administration and finance, the secretary of health and human services and the executive director of the commonwealth health insurance connector authority may, in their discretion and subject only to the terms and conditions in this subsection, establish or designate a health insurance plan in which a person who is not eligible to receive federally-funded benefits under said sections 401, 402 or 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, as amended, but who is an eligible individual pursuant to said section 3 of said chapter 118H may enroll for the period including July 1, 2011 to June 30, 2012, inclusive. The plan may be contracted for selectively from the health plans that contracted in fiscal year 2011 to provide insurance coverage to commonwealth care or MassHealth enrollees. Total state costs of providing coverage to all such persons, net of enrollee contributions and any federal financial participation, shall not exceed \$50,000,000 for fiscal year 2012. To the extent that additional federal financial participation becomes available for paying the costs of such coverage, the secretary of administration and finance may direct the comptroller to make such amounts available from the General Fund for the purpose of paying for the costs of such coverage. If the secretary of administration and finance, the secretary of health and human services and the executive director of the commonwealth health insurance connector authority determine that the projected costs of enrolling eligible individuals in such coverage in fiscal year 2012 will exceed net state costs of \$50,000,000, they may limit enrollment in such coverage. If the secretary of administration and finance, the secretary of health and human services and the executive director of the commonwealth health insurance connector authority are unable to establish or designate a health insurance plan under this section, the secretary of administration and finance may direct the comptroller to transfer up to \$50,000,000 from the Commonwealth Care Trust Fund to the Health Safety Net Trust Fund for the cost of health safety net claims for these individuals.

Summary:

This section reauthorizes the Commonwealth Care Bridge Program to provide health care for certain legal immigrants during fiscal year 2012, at a maximum cost of \$50 million.

Section 34 - Allow Medical Security Trust Fund Deficit for Fiscal Year 2012

SECTION 34. Section 124 of chapter 359 of the acts of 2010 is hereby amended by striking out the words "and June 30, 2011" and inserting in place thereof the following words:- , June 30, 2011 and June 30, 2012.

Summary:

This section extends the law allowing the Medical Security Trust Fund to be in deficit at the close of fiscal years 2010 and 2011, to apply also to fiscal year 2012.

Section 35 - Extend Authorizations to Transfer Trust Balances and Tobacco Payments

SECTION 35. (a) Sections 138 and 141 of chapter 131 of the acts of 2010 shall apply to fiscal year 2012.

(b) Notwithstanding section 1 of chapter 29D of the General Laws or any other general or special law to the contrary, 10 per cent of all payments received by the commonwealth in fiscal year 2013 under the master settlement agreement in Commonwealth of Massachusetts v. Philip Morris, Inc. et. al., Middlesex Superior Court, No. 95-7378, shall be deposited in the Health Care Security Trust, and the balance of funds received in fiscal year 2013 shall be deposited in the General Fund. The amount of these payments to be deposited in the Health Care Security Trust shall be increased by 10 percentage points in fiscal year 2014 and in each subsequent fiscal year until the amount to be deposited reaches 100 per cent of the payments.

Summary:

This extends to fiscal year 2012 authorizations in the fiscal year 2011 budget to transfer to the General Fund certain trust and account balances, and also tobacco settlement payments and interest. Beginning in fiscal year 2013, an increasing share of tobacco settlement payments will be deposited in the Health Care Security Trust.

Section 36 - Nursing Home Assessment

SECTION 36. Notwithstanding any general or special law to the contrary, the nursing home assessment established by subsection (b) of section 25 of chapter 118G of the General Laws shall be sufficient in the aggregate to generate \$220,000,000 in fiscal year 2012.

Summary:

This section establishes the amount of revenue to be obtained from the nursing home assessment in fiscal year 2012.

Section 37 - Pension Cost of Living Adjustment

SECTION 37. Notwithstanding any general or special law to the contrary, the amounts transferred pursuant to subdivision (1) of section 22C of chapter 32 of the General Laws shall be made available for the commonwealth's Pension Liability Fund established by section 22 of said chapter 32. The amounts transferred pursuant to said subdivision (1) of said section 22C of said chapter 32 shall meet the commonwealth's obligations pursuant to said section 22C of said chapter 32, including retirement benefits payable by the state employees' and the state teachers' retirement systems, for the costs associated with a 3 per cent cost-of-living adjustment pursuant to section 102 of said chapter 32, for the reimbursement of local retirement systems for previously authorized cost-of-living adjustments pursuant to said section 102 of said chapter 32 and for the costs of increased survivor benefits pursuant to chapter 389 of the acts of 1984. The state board of retirement and each city, town, county and district shall verify these costs, subject to the rules adopted by the state treasurer. The state treasurer may make payments upon a transfer of funds to reimburse certain cities and towns for pensions to retired teachers, including any other obligations which the commonwealth has assumed on behalf of any retirement system other than the state employees' or state teachers' retirement systems and also including the commonwealth's share of the amounts to be transferred pursuant to section 22B of said chapter 32 and the amounts to be transferred pursuant to clause (a) of the last paragraph of section 21 of chapter 138 of the General Laws. All payments for the purposes described in this section shall be made only pursuant to distribution of monies from the fund, and any distribution and the payments for which distributions are required shall be detailed in a written report filed quarterly by the secretary of the executive office for administration and finance with the house and senate committees on ways and means and the joint committee on public service in advance of this distribution. Distributions shall not be made in advance of the date on which a payment is actually to be made. The state board of retirement may expend an amount for the purposes of the board of higher education's optional retirement program pursuant to section 40 of chapter 15A of the General Laws. To the extent that the amount transferred pursuant to said subdivision (1) of said section 22C of said chapter 32 exceeds the amount necessary to adequately fund the annual pension obligations, the excess amount shall be credited to the Pension Reserves

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Investment Trust Fund, established by subdivision (8) of section 22 of said chapter 32, for the purpose of reducing the unfunded pension liability of the commonwealth.

Summary:

This section provides for a 3% increase on the first \$12,000 in pension benefits for retired state employees. The section is included each year in the budget.

Section 38 - Procurement Reform Savings

SECTION 38. Whenever the secretary of administration and finance determines that procurement reforms or initiatives have resulted in cost savings for an agency of the executive department during fiscal year 2012, the secretary may reduce allotments under section 9B of chapter 29 of the General Laws to reflect some or all of the amounts saved, and within 15 days shall notify in writing the house and senate committees on ways and means. The total amount of such allotment reductions shall not exceed \$30,000,000 in fiscal year 2012.

Summary:

This section sets up a mechanism to accomplish up to \$30 million in savings from procurement reforms and initiatives in fiscal year 2012.

Section 39 - Social Law Library Chargeback

SECTION 39. Notwithstanding chapter 79 of the acts of 1814 or any other general or special law to the contrary, for fiscal year 2012, the social law library may collect monies from all executive, legislative and judicial branch offices, including constitutional officers, for access to the library and its services for the Suffolk social law library chargeback, item 0321-2215 of section 2B.

Summary:

This section allows the Social Law Library to charge state offices for access to its library and services.

Section 40 - Stabilization Fund Transfers

SECTION 40. (a) Notwithstanding any general or special law to the contrary, the comptroller shall, on or before June 30, 2012, transfer \$200,000,000 to the General Fund from the Commonwealth Stabilization Fund, but the comptroller shall instead transfer a lesser amount if the secretary of administration and finance so requests in writing. The comptroller, in consultation with the secretary of administration and finance, may take the overall cash flow needs of the commonwealth into consideration in determining the timing of any transfer of funds. The comptroller shall provide a schedule of transfers to the secretary of administration and finance and to the house and senate committees on ways and means.

(b) Notwithstanding any general or special law to the contrary, during fiscal year 2012 the comptroller shall not transfer 0.5 per cent of the total revenue from taxes in the preceding fiscal year to the Commonwealth Stabilization Fund, as otherwise required pursuant to clause (a) of section 5C of chapter 29 of the General Laws. But upon written certification by the secretary of administration and finance that there are sufficient funds to make some or all of the transfer required under said clause (a), the comptroller shall so transfer the amount certified. The comptroller in consultation with the secretary may take the overall cash flow needs of the commonwealth into consideration in determining the timing of any transfer of funds under this subsection. The comptroller shall provide a schedule of transfers to the secretary of administration and finance and to the house and senate committees on ways and means.

(c) Notwithstanding any general or special law to the contrary, the comptroller shall, not later than June 30, 2012, transfer the interest earned from the Commonwealth Stabilization Fund during fiscal year 2012 to the General

Fund. The state treasurer shall retain all such funds transferred to the General Fund solely for the purposes of item 0699-0018 of section 2.

Summary:

This section:

- * transfers \$200 million to the General Fund from the Commonwealth Stabilization Fund, but allows the Secretary of Administration and Finance to reduce the amount transferred;
- * cancels for fiscal year 2012 the automatic deposit into the Stabilization Fund of 0.5 percent of total tax revenue, but allows some or all of the transfer to be made if the Secretary certifies that funds are available; and
- * transfers interest on the Stabilization Fund during fiscal year 2012 to the state Treasurer to pay certain debt service.

Section 41 - Suspension of Tourism Formula

SECTION 41. Notwithstanding any general or special law to the contrary, the formula for application of funds provided in section 35J of chapter 10 of the General Laws shall not apply in fiscal year 2012.

Summary:

This section suspends the statutory tourism fund formula for fiscal year 2012. This section has been routine in recent budgets.

Section 42 - Transfer Certain Proceeds to General Fund

SECTION 42. (a) Notwithstanding any general or special law to the contrary, the department of environmental protection shall transfer \$3,000,000 of funds previously appropriated or loans repaid as a result of item 1231-1020 of section 2 of chapter 151 of the acts of 1996 to the General Fund on account of fiscal year 2012.

(b) Notwithstanding any general or special law to the contrary, the Massachusetts Housing Finance Agency shall, on or before June 30, 2012, transfer not more than \$5.4 million of loan repayment proceeds received under section 27 of chapter 23B of the General Laws to the comptroller to be credited to the General Fund on account of fiscal year 2012.

Summary:

This section transfers to the General Fund certain proceeds, including loan repayments, from the Department of Environmental Protection and the Massachusetts Housing Finance Agency.

Section 43 - Long-Term Leases for Rinks and Pools

SECTION 43. (a) Notwithstanding section 54 of chapter 7 of the General Laws, the division of capital asset management and maintenance, in this section called the division, on behalf of and in consultation with the department of conservation and recreation, in this section called the department, may, notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws and using a competitive proposal process that the commissioner of the division considers necessary or appropriate, lease and enter into other agreements, for terms not to exceed 20 years, to or with 1 or more offerors who participate in that process, for 1 or more skating rinks, so as to provide for the continued use, operation, maintenance, repair and improvement of the following state-owned buildings and facilities together with the land and appurtenances associated with those buildings and facilities, comprising the following ice skating rinks and facilities of the department: Bajko Memorial Rink, Hyde Park District, Boston; Connell Memorial Rink, Weymouth; Devine Memorial Rink, Dorchester District, Boston; Emmons Horrigan O'Neill Memorial Rink, Charlestown District, Boston; Flynn Memorial Rink, Medford; LoConte Memorial Rink, Medford; Murphy Memorial Rink, South Boston District, Boston; Reilly Memorial Rink, Brighton

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District, Boston; Shea Memorial Rink, Quincy; Steriti Memorial Rink, Boston; Veterans Memorial Rink, Somerville; and, Ulin Memorial Rink, Milton.

There shall be an option for a 1-time renewal of the lease or extension for operations and maintenance services not exceeding an additional 5 years. This renewal or extension shall be at the discretion of the division in accordance with the original contract terms and conditions or contract terms and conditions more favorable to the commonwealth. All leases must contain a provision that requires the lessee to carry comprehensive general liability insurance with the commonwealth named as a co-insured, protecting the commonwealth against all personal injury or property damage within the rink and on the associated land during the term of the lease.

These leases and other agreements shall be on terms acceptable to the commissioner of the division after consultation with the commissioner of the department, and, notwithstanding any general or special law to the contrary, shall provide for the lessees to manage, operate, improve, repair and maintain the properties. Any such leases or other arrangements requiring capital improvements to be made to any buildings or surface areas shall include a description of the required capital improvements and, at minimum, performance specifications. The division, in consultation with the department, shall structure each lease or other agreement to minimize disturbance of the current rights of any tenants who may currently use any part of the rink or adjoining facilities, whether under a written lease or other arrangement. All consideration received from the leases or other agreements shall be payable to the department for deposit in the General Fund. The lessees of these properties shall bear all costs deemed necessary or appropriate by the commissioner of the division for the transaction, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

(b) The division, in consultation with and on behalf of the department, shall solicit proposals through a request for proposals, which shall, at a minimum, require each responsive bidder or offeror to provide the following: (1) a comprehensive list of all rinks, operated by that bidder in the last 4 years, (2) other facilities management or experience, (3) other skating or hockey management experience, and (4) required financial audits.

(c) The request for proposals shall include contractual provisions that provide that any benefits to the commonwealth and the costs of improvements and repairs made to the properties provided by the tenants or the recipients of the properties shall be taken into account as part of the consideration for such leases or other agreements; and shall also include, at a minimum, the following contractual terms and conditions to be incorporated into the contract: (1) a residential discount program, (2) reservation policies, (3) proposed reasonable rates that will ensure continued public access, (4) policies to encourage use of the rink by persons of all races and nationalities, (5) safety and security plans, (6) seasonal opening and closing dates, (7) hours of operation, and (8) in order to maintain stable and productive labor relations and to avoid interruption of the operation of the rinks and to preserve the safety and environmental conditions of those rinks, that all employees currently working on the operation and maintenance of the rinks, pools or wading/spray pools be offered employment by any party entering into a contract pursuant to this section. The request for proposals shall also include a contractual provision governing ice time allocation guidelines to the effect that ice time at rinks under the jurisdiction of the division of urban parks and recreation shall be allocated to user groups in the following order of priority: general public skating; non-profit youth groups; school hockey; youth groups other than non-profit youth groups; and adult organizations or informal groups. Ice time may be allocated at the discretion of the operator, provided that general public skating shall be booked at a minimum of 12 hours per week, with a range of times and days which reasonably allow for public skaters of all ages to participate in some public skating sessions. Every effort shall be made to balance the ice allocation needs of long-established youth organizations and newly formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender.

Upon the execution of any agreements authorized by this section, the department shall reassign or relocate those employees who do not accept employment with the lessee, to comparable positions within the department subject to applicable collective bargaining agreements.

The inspector general shall review and approve any request for proposals issued by the division before issuance.

(d) Before the division, in consultation with the department, sends out any request for proposals under this section, the division shall hold open a prequalification period of at least 1 month for cities and towns, or a partnership of municipalities which share geographic boundaries as long the subject rink or rinks is or are located within the geographic area of the municipalities comprising the partnership, that desire to bid on rinks that are listed in this section and are located within the city or town. Any city or town or partnership of municipalities that

desires to lease a rink under this section may submit materials for prequalification. This prequalification may include, but need not be limited to, the city's, town's, or partnership's ability to finance the capital improvements determined by the division to be necessary at each rink listed in this section and to manage, operate and maintain the properties. The division, in consultation with the department, shall determine whether a city, town, or partnership is prequalified within 15 days after the end of the prequalification period. If a city, town, or partnership is determined to be prequalified, that city or town or partnership shall be awarded the lease for that rink under the terms and conditions set forth in subsection (a) and the first paragraph of subsection (b). If a city, town, or partnership is determined to be prequalified, the city, town, or partnership shall pay nominal consideration for a lease subject to the required capital improvements, performance specifications, and other prequalification requirements and terms of the division and submitted proposal. The length of the lease shall be determined between the division and the city or town; but any existing municipal operator of a rink selected by a prior open and competitive procurement shall be deemed to be prequalified under this section.

The failure of any city or town to apply for prequalification under this subsection shall not prohibit that city or town from bidding under this section.

(e) The provisions of any general or special law or rule or regulation relating to the advertising, bidding or award of contracts, to the procurement of services, or to the construction and design of improvements shall not apply to any selected offeror that is awarded a contract under this section, except as provided in this section.

(f) Notwithstanding sections 40E to 40I, inclusive, and section 54 of chapter 7 of the General Laws, the division, on behalf of and in consultation with the department, and using a competitive proposal process that the commissioner of the division considers necessary or appropriate, may lease and enter into other agreements, for terms not to exceed 20 years, to or with 1 or more offerors who participate in that process, for 1 or more swimming pools or wading or spray pools, so as to provide for the continued use, operation, maintenance, repair and improvement of the following state-owned buildings and facilities together with the land and appurtenances associated with those buildings and facilities, comprising the following swimming or wading or spray pools of the department: Artesani Playground Wading Pool, Brighton; Reilly Memorial Swimming Pool, Brighton; Vietnam Veterans Memorial Swimming Pool, Chelsea; Neponset Landing II Spray Deck, Dorchester; Neponset Landing II Spray Deck, Hyde Park; Olsen Swimming and Wading Pool, Hyde Park; Johnson Playground Spray Deck, Jamaica Plain; Stony Brook Spray Deck, Jamaica Plain; Ryan Wading Pool, Mattapan; Cass Memorial Swimming Pool, Roxbury; Mission Hill Spray Deck, Roxbury; Lee Memorial Wading Pool, West End; McCrehan Memorial Swimming and Wading Pool, Cambridge; Veterans Memorial Swimming and Wading Pool (Magazine Beach), Cambridge; Gerald J. Mason Memorial Swimming Pool, Agawam; Sara Jane Sherman Memorial Swimming Pool, Chicopee; Philip Weihn Memorial Swimming Pool, Clinton; Allied Veterans Memorial Swimming and Wading Pool, Everett; Veteran's Memorial Swimming Pool, Fall River; Gustave Johnson Memorial Swimming Pool, Fitchburg; Freetown State Forest Wading Pool, Freetown/Assonet; Geisler Memorial Swimming Pool, Lawrence; Lt. Colonel Edward J. Higgins Swimming Pool, Lawrence; Leominster State Swimming Pool, Leominster; Raymond Lord Memorial Swimming Pool, Lowell; Thompson Memorial Pool, Ludlow; Holland Memorial Swimming and Wading Pool, Malden; Lloyd Memorial Swimming Pool, Melrose; Senator P. Eugene Casey Memorial Swimming Pool, Milford; Dilboy Memorial Swimming and Wading Pool, Somerville; Latta Brothers Memorial Swimming and Wading Pool, Somerville; Andrew J. Petro Swimming Pool, Southbridge; John H. Thomas Memorial Swimming Pool, Springfield; Hall Memorial Swimming and Wading Pool, Stoneham; Bradley Palmer Wading Pool, Topsfield; Dealtry Memorial Swimming and Wading Pool, Watertown; Bennett Field Swimming Pool, Worcester; Dennis F. Shine Memorial Swimming Pool, Worcester; Connell Memorial Swimming Pool, Weymouth; Connors Memorial Pool, Waltham.

There shall be an option for a 1-time renewal of the lease or extension for operations and maintenance services not exceeding an additional 5 years. This renewal or extension shall be at the discretion of the division in accordance with the original contract terms and conditions or contract terms and conditions more favorable to the commonwealth. All leases must contain a provision that requires the lessee to carry comprehensive general liability insurance with the commonwealth named as a co-insured, protecting the commonwealth against all personal injury or property damage within swimming pools or wading or spray pools and on the associated land during the term of the lease.

These leases and other agreements shall be on terms acceptable to the commissioner of the division after consultation with the commissioner of the department, and, notwithstanding any general or special law to the contrary, shall provide for the lessees to manage, operate, improve, repair and maintain the properties. Any such leases or other arrangements requiring capital improvements to be made to any buildings or surface areas shall

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include a description of the required capital improvements and, at minimum, performance specifications. The division, in consultation with the department, shall structure each lease or other agreement to minimize disturbance of the current rights of any tenants who may currently use any part of the swimming pools or wading or spray pools or adjoining facilities, whether under a written lease or other arrangement. All consideration received from the leases or other agreements shall be payable to the department for deposit in the General Fund. The lessees of these properties shall bear all costs considered necessary or appropriate by the commissioner of the division for the transaction, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

(g) The division, in consultation with and on behalf of the department of conservation and recreation, shall solicit proposals through a request for proposals, which shall at a minimum require each responsive bidder or offeror to provide the following: (1) a comprehensive list of all swimming pools or wading or spray pools operated by that bidder in the last 4 years, (2) other facilities management or experience, (3) other swimming, facility maintenance and water recreation management experience, and (4) required financial audits.

(h) The request for proposals shall include contractual provisions that provide that any benefits to the commonwealth and the costs of improvements and repairs made to the properties provided by the tenants or the recipients of the properties shall be taken into account as part of the consideration for such leases or other agreements; and shall also include, at a minimum, the following contractual terms and conditions to be incorporated into the contract: (1) a residential discount program, (2) reservation policies, (3) proposed reasonable rates that will ensure continued public access, (4) policies to encourage use of the swimming pools and/or wading/spray pools by persons of all races and nationalities, (5) safety and security plans, (6) seasonal opening and closing dates, (7) hours of operation, and (8) in order to maintain stable and productive labor relations and to avoid interruption of the operation of the rinks and to preserve the safety and environmental conditions of those rinks, that all employees currently working on the operation and maintenance of the swimming pools or wading or spray pools be offered employment by any party entering into a contract under this section. The request for proposals shall also include a contractual provision as pertains to the balance the pool allocation needs of long-established youth organizations and newly formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender.

(i) With respect to the Cass Memorial Swimming Pool, Roxbury and the Connell Memorial Swimming Pool, Weymouth, both of which are maintained and operated in the same buildings as the associated public skating rink, preference shall be given to any proponent that agrees and offers to operate both public programs, and any lease for that facility shall provide that the lessee may sub-lease the operation of the public swimming program, but the sub-lessee shall maintain the operation of the swimming pool as a public swimming pool consistent with the request for proposals.

(j) Upon the execution of any agreements authorized by this section, the department shall reassign or relocate those employees who do not accept employment with the lessee, to comparable positions within the department subject to applicable collective bargaining agreements.

The inspector general shall review and approve any request for proposal issued by the division before issuance.

(k) Before the division, in consultation with the department, sends out any request for proposals under this section, the division shall hold open a prequalification period of at least 1 month for cities and towns, or a partnership of municipalities that share geographic boundaries as long the subject swimming pools or wading or spray pools are located within the geographic area of the municipalities comprising the partnership, that desire to bid on swimming pools or wading or spray pools that are listed in this section and are located within the city or town. Any city, town, or partnership of municipalities that desires to lease a swimming pools or wading or spray pools under this section may submit materials for prequalification. This prequalification may include, but need not be limited to, the city's, town's, or partnership's ability to finance the capital improvements determined by the division to be necessary at each swimming pool or wading or spray pool listed in this section and to manage, operate and maintain the properties. The division, in consultation with the department, shall determine whether a city, town, or partnership is prequalified within 15 days of the end of the prequalification period. If a city, town, or partnership is determined to be prequalified, that city, town, or partnership shall be awarded the lease for that swimming pool or wading or spray pool under the terms and conditions set forth in subsection (f) and the first paragraph of subsection (g). If a city, town, or partnership is determined to be prequalified, the city, town, or partnership shall pay nominal consideration for a lease subject to the required capital improvements, performance specifications, and other prequalification requirements and terms of the division and submitted proposal. The

length of the lease shall be determined between the division and the city or town; but any existing municipal operator of a swimming pool or wading or spray pool selected by a prior open and competitive procurement shall be considered to be prequalified under this subsection.

The failure of any city or town to apply for pre-qualification under this subsection shall not prohibit that city or town from bidding under this section.

(I) The provisions of any general or special law or rule or regulation relating to the advertising, bidding or award of contracts, to the procurement of services, or to the construction and design of improvements shall not apply to any selected offeror that is awarded a contract under this section, except as provided in this section

Summary:

This section grants the Department of Conservation and Recreation the authority to enter into long-term leases for listed rinks and pools.

Section 44 - MassHealth Program Changes

SECTION 44. (A) Section 25 of chapter 118E of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 73, 75 and 79, the figure "\$3 "and inserting in place thereof in each instance the following figure:- \$5.

(B) Section 6 of chapter 118H of the General Laws, as so appearing, is hereby amended by striking out, in lines 11 to 16, the words "a copayment toward the purchase of each pharmaceutical product and for use of emergency room services in acute care hospitals for nonemergency conditions equal to that required of enrollees in the MassHealth program, as described in clause (5) of section 25 of chapter 118E" and inserting in place thereof the following words:- copayments equal to those required of enrollees in the MassHealth program.

(C) Notwithstanding section 53 of chapter 118E of the General Laws or any general or special law to the contrary, the secretary of health and human services may manage the MassHealth program within the appropriated levels in items 4000-0430, 4000-0500, 4000-0600, 4000-0700, 4000-0870, 4000-0875, 4000-0880, 4000-0890, 4000-0895, 4000-0950, 4000-0990, 4000-1400 and 4000-1405 by restructuring benefits to the extent permitted by federal law.

(D) Notwithstanding any general or special law to the contrary, the secretary of health and human services may make expenditures for which federal reimbursement is unavailable for (1) the equivalent of MassHealth Standard benefits for children under age 21 who are in the care or custody of the department of youth services or the department of children and families, and (2) dental benefits provided to clients of the department of developmental services who are age 21 or over.

Summary:

This section allows the Secretary of Health and Human Services to:

- * restructure MassHealth benefits within state appropriation limits and as allowed by federal law;
- * increase MassHealth co-pays from \$3 to no more than \$5 (Commonwealth Care co-pays will change to the same extent); and
- * make expenditures that are not federally reimbursable for certain DYS, DCF and DDS clients.

Section 45 - MassHealth and Commonwealth Care Dental Services

SECTION 45. (a) Notwithstanding section 53 of chapter 118E of the General Laws, for fiscal year 2012, the executive office of health and human services may determine the extent to which to include within its covered services for adults the federally-optional dental services that were included in its state plan or demonstration program in effect on January 1, 2002 and the dental services that were covered for adults in the MassHealth basic program as of January 1, 2002.

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(b) Notwithstanding subsection (a) of section 6 of chapter 118H of the General Laws, for fiscal year 2012, medically necessary dental services covered through health insurance plans procured by the board of the Commonwealth Health Insurance Connector Authority for any resident with a household income that does not exceed 100 per cent of the federal poverty level shall include preventative procedures but shall exclude those categories of services that are not provided through MassHealth.

Summary:

This section gives EOHHS and the Connector board the necessary discretion to make MassHealth and Commonwealth Care dental coverage or service limitation decisions.

Section 46 - UMass/Health and Human Services Interagency Service Agreements

SECTION 46. Notwithstanding any general or special law to the contrary, the executive office of health and human services, acting in its capacity as the single state agency under Title XIX of the Social Security Act and as the principal agency for all of the agencies within the executive office and other federally-assisted programs administered by the executive office, may enter into interdepartmental services agreements with the University of Massachusetts Medical School to perform activities that the secretary of health and human services, in consultation with the comptroller, determines appropriate and within the scope of the proper administration of said Title XIX and other federal funding provisions to support the programs and activities of the executive office. The activities may include: (1) providing administrative services including, but not limited to, providing the medical expertise to support or administer utilization management activities, determining eligibility based on disability, supporting case management activities and similar initiatives; (2) providing consulting services related to quality assurance, program evaluation and development, integrity and soundness and project management; and (3) providing activities and services for the purpose of pursuing federal reimbursement or avoiding costs, third-party liability and recouping payments to third parties. Federal reimbursement for any expenditures made by the University of Massachusetts Medical School relative to federally-reimbursable services the University provides under these interdepartmental service agreements or other contracts with the executive office shall be distributed to the University and recorded distinctly in the state accounting system. The secretary may negotiate contingency fees for activities and services related to pursuing federal reimbursement or avoiding costs and the comptroller shall certify these fees and pay them upon the receipt of this revenue, reimbursement or demonstration of costs avoided. Contracts for contingency fees shall not exceed 3 years and shall not be renewed without prior review and approval by the executive office for administration and finance. The secretary shall not pay contingency fees in excess of \$40,000,000 for state fiscal year 2012; but contingency fees paid to the University of Massachusetts Medical School under an interagency service agreement for recoveries related to the special disability workload projects shall be excluded from that \$40,000,000 limit for fiscal year 2012. The secretary of health and human services shall submit to the secretary of administration and finance and the senate and house committees on ways and means a quarterly report detailing the amounts of the agreements, the ongoing and new projects undertaken by the university, the amounts expended on personnel and the amount of federal reimbursement and recoupment payments that the university collected.

Summary:

This section enables the Executive Office of Health and Human Services to contract services to the University of Massachusetts, to perform them in the most cost-efficient manner.

Section 47 - Initial Gross Payment to Qualifying Acute Care Hospitals

SECTION 47. Notwithstanding any general or special law to the contrary, on or before October 1, 2011 and without further appropriation, the comptroller shall transfer from the General Fund to the Health Safety Net Trust Fund established pursuant to section 35 of chapter 118G of the General Laws, in this section called the fund, the greater of \$45,000,000 or one-twelfth of the total expenditures to hospitals and community health centers required pursuant to this act, for the purposes of making initial gross payments to qualifying acute care hospitals for the hospital fiscal year beginning October 1, 2011. These payments shall be made to hospitals before, and in anticipation of, the payment by hospitals of their gross liability to the fund. The comptroller shall transfer from the

fund to the General Fund, not later than June 30, 2012, the amount of the transfer authorized by this section and any allocation of that amount as certified by the director of the health safety net office.

Summary:

This section provides for the annual transfer from the General Fund of "seed money" to make initial gross payments to acute hospitals. This seed money is later repaid to the General Fund.

Section 48 - Special Education Inflation Rate Freeze

SECTION 48. Notwithstanding any general or special law to the contrary, the operational services division which, under section 22N of chapter 7 of the General Laws, is responsible for determining prices for programs under chapter 71B of the General Laws, shall set those prices in fiscal year 2012 at the same level calculated for fiscal year 2011, except the prices for those programs for extraordinary relief, as defined in the division's regulations. Programs for which prices in fiscal year 2011 were lower than the full amount permitted by the operational services division may charge in fiscal year 2011 the full price calculated for fiscal year 2012.

Summary:

This section freezes fiscal year 2012 special education school rates at fiscal year 2011 levels.

Section 49 - Life Sciences Transfer from FY11 Surplus

SECTION 49. Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2011 as follows: (i) the comptroller shall transfer \$10,000,000 from the General Fund to the Massachusetts Life Sciences Investment Fund established by section 6 of chapter 231 of the General Laws; and (ii) the remaining balance shall be transferred from the General Fund to the Commonwealth Stabilization Fund.

Summary:

This section funds the Life Sciences Investment Fund with \$10 million from any budget surplus at the close of fiscal year 2011.

Section 50 - Effective Date

SECTION 50. Except as otherwise specified, this act shall take effect on July 1, 2011.

Summary:

This section makes this bill effective on July 1, 2011, unless another specific effective date is provided.

