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**Section 4 - State Finance and Governance Oversight Board**

SECTION 4. (A) Chapter 6 of the General Laws is hereby amended by striking out sections 97 and 98 and inserting in place thereof the following 2 sections:-

Section 97. (a) As used in this section and section 98, the following terms shall have the following meanings:

"Board", the state finance and governance oversight board established by subsection (b).

"Derivative financial products", financial instruments with values derived from or based upon the value of other assets or on the level of an interest rate index including, but not limited to, a call option on a bond, interest rate swaptions, caps, floors, collars, inverse floaters and auction rate securities, but not including fixed-rate, long-term borrowing.

"State entity", the commonwealth, a state authority or another state entity with responsibility for managing and overseeing public funds.

"Secretary", the secretary of administration and finance.

"Trust", the State Finance and Governance Oversight Trust established by subsection (c).

(b) There shall be a state finance and governance oversight board, to consist of the state treasurer and 4 members appointed by the governor. Upon the expiration of the term of a member, a successor shall be appointed for a term of 4 years. At least 2 members appointed by the governor shall be persons with expert knowledge of the field of public finance. The governor shall, from time to time, designate one of the members as chairman. The members shall serve without compensation but shall receive their necessary expenses incurred in the discharge of their official duties. The secretary shall provide the board with appropriate staff and other assistance, and may engage professionals to advise the board. (c) There shall be established and set up a separate account to be known as the State Finance and Governance Oversight Trust. The secretary shall be the trustee of the trust and may expend funds in the trust without further appropriation to support the purposes of the board, including the appropriate staff and other assistance provided under subsection (b). The secretary, after consulting the board, may assess state entities fees for their new debt issuance and their assets under management, and shall deposit the proceeds of these fees in the trust.

Section 98. (a) The board shall promote transparency, public accountability and adherence to best practices by all state entities with respect to proper governance of state entities and investments, borrowing or other financial transactions made or entered into by state entities and involving public funds. The board shall make an annual written report to the secretary, the state treasurer, the state auditor, the house and senate committees on ways and means and the senate and house committees on bonding, capital expenditures and state assets with respect to its findings regarding investments, borrowing and other financial transactions carried out by state entities and its activities to promote proper governance, transparency, public accountability and best practices. If the board so requests, the secretary shall provide the board with copies of reports and other information about the accountability and transparency of state authorities, provided to the secretary under section 29K of chapter 29.

(b) The board shall conduct a review, before its execution, of any transaction relating to derivative financial products, proposed to be entered into by a state entity. All state entities shall submit to the board the terms of the proposed transaction and any supporting documents. The board shall complete its review of the proposed transaction and notify the submitting entity of its conclusions within a reasonable period of time after receiving the proposal.

(c) In order to carry out its duties, the board may:

(1) adopt regulations or guidelines requiring state entities to report, adopt appropriate policies and adhere to best practices with respect to governance, investments, borrowing and other financial transactions;

(2) make recommendations to state entities or state officers and propose legislative changes to improve governance practices or the management of public funds;

(3) conduct oversight hearings with respect to governance practices, investment, borrowing and other financial transactions made or entered into by state entities; and

(4) conduct meetings, conferences, or training sessions, maintain a website, publish materials, or other activities to disseminate best practices to state officials, board members and managers of state entities and the public.

(B) The present members of the finance advisory board shall continue in office as members of the state finance and governance oversight board, established by subsection (A), until their terms expire and their successors are qualified. References to the finance advisory board in any statute, regulation or other document shall be taken to mean the state finance and governance oversight board.

*Summary:*

This section renames the Finance Advisory Board as the State Finance and Governance Oversight Board and broadens its mission to enhance oversight of and ensure best practices for finances and governance at state entities that manage public funds.

## **Section 5 - Secretary Performance Management Programs**

SECTION 5. (A) Chapter 6A of the General Laws is hereby amended by inserting after section 4 the following section:-

Section 4A. Each secretary shall develop a strategic plan and establish an office of performance management to execute that plan as part of implementing a performance management program for the agencies within the executive office. Through the implementation of strategic plans, each office of performance management shall define missions, establish measurable program goals, establish strategies for achieving those goals, measure program performance against those goals and relate them to budget development. Each secretary shall report annually to the office of commonwealth performance, accountability and transparency on progress to implement strategies and improve the effectiveness of the programs offered by the agencies within the executive office.

(B) Clause (1) of paragraph (e) of section 4A of chapter 7 of the General Laws, inserted by section 12 of chapter 68 of the acts of 2011, is hereby amended by adding the following words:- coordinating and establishing guidelines for the performance management activities of executive offices under section 4A of chapter 6A.

*Summary:*

This section requires each Secretary to develop a strategic plan and establish an office of performance management to execute the plan as part of a performance management program for the agencies within the Secretary's executive office.

## **Section 6 - Improve Services to Children, Youth and Families**

SECTION 6. (A) Chapter 6A of the General Laws is hereby amended by inserting after section 16F the following section:-

Section 16F 1/2. (a) Notwithstanding any general or special law to the contrary, the executive office of health and human services, or departments within the executive office designated by the secretary may, subject to appropriation, develop and implement activities to improve services provided by the commonwealth for children, youth and their families and the delivery of those services. Subject to the approval of the secretary, these activities may include, but may not be limited to, implementing recommendations developed by the Children, Youth and Families Advisory Committee, including those related to improving coordination and integration among the commonwealth's child-serving agencies, data sharing and other activities to improve access to services, customer service, care coordination, and accountability for child outcomes.

(b) For the purpose of improving services provided by the commonwealth to children, youth and families and the delivery of those services and notwithstanding any general or special law to the contrary, including but not limited to any privilege created by statute or common law relating to confidential communications, each agency or other entity within the executive office, including but not limited to any department, commission, office, board, division, or institution, shall, as directed by the secretary, disclose to the executive office and other agency or entity within the executive office data and information, including personally identifiable information, as defined under relevant federal law, and personal data, as defined in chapter 66A, about individuals who have applied for or are receiving benefits or services from any agency or entity within the executive office. The purpose of any such disclosure and subsequent use shall be limited to: (1) identifying individuals receiving benefits or services from more than 1

agency or entity within the executive office, (2) coordinating or managing the programs, benefits, or services in human services agencies available to or received by those individuals, and (3) creating and maintaining a non-duplicative client identifier system across all agencies and entities within the executive office.

Personally identifiable information as defined under relevant federal law, and personal data as defined in chapter 66A, shall be used and disclosed pursuant to this section only to the extent reasonably necessary to achieve the purposes stated in this section. This personal data shall not constitute a public record and shall not be disclosed outside the executive office and its agencies and entities except as otherwise permitted or required by law. This subsection may be implemented only to the extent consistent with federal law. The executive office shall adopt additional regulations as necessary to effectuate the purposes of this section, and where necessary under federal law, the regulations shall require that parental consent be obtained.

(c) (1) For the purpose of improving educational opportunities for children and students receiving services from agencies within the executive office of health and human services by making more effective use of data, the executive office of health and human services and the executive office of education shall, after consulting the applicable agencies within their executive offices, adopt regulations authorizing the sharing of personally identifiable information, subject to 20 U.S.C. section 1232g, between their executive offices, agencies within their executive offices, and local education agencies. Where necessary under federal law, the regulations shall require that student or parental consent be obtained.

(2) The regulations shall describe what data can be shared, the circumstances under which it can be shared, with whom it can be shared, and how it can be used. The regulations shall be focused on establishing a developmental and educational framework for all decisions regarding children and students so that these decisions are made in children and students' best interests.

(3) In developing the regulations, the executive office of health and human services and the executive office of education through their agencies shall seek comments from the Children, Youth and Families Advisory Committee, parents, teachers, administrators, students, health and human service providers, early education and care providers, local education agencies, applicable member groups and advocacy organizations.

(B) The executive office of health and human services shall file with the state secretary its initial regulations required by subsection (b) of section 16F 1/2 of chapter 6A of the General Laws, as proposed regulations requiring a public hearing under section 2 of chapter 30A of the General Laws, within 90 days after the effective date of this act.

(C) The executive offices of health and human services and of education shall file with the state secretary their initial regulations required by subsection (c) of section 16F 1/2 of chapter 6A of the General Laws, as proposed regulations requiring a public hearing under section 2 of chapter 30A of the General Laws, within 90 days after the effective date of this act.

*Summary:*

This section authorizes the Executive Office of Health and Human Services (EOHHS) to better coordinate its agencies' activities to benefit children, youth and families, and authorizes appropriate data sharing among those agencies. Additionally, in order to improve educational opportunities for children and students receiving services from EOHHS agencies by making more effective use of data, the section authorizes health and human services agencies, state education agencies and school districts to share certain data, subject to federal law. Regulations governing this data and the manner in which it can be shared are to be proposed for public comment within 90 days after enactment.

## **Section 7 - Superintendent Responsible for State House Only**

SECTION 7. (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 2010 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 2010 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 changes the name of the Bureau of State Office Buildings to the Bureau of the State House. This section transfers the responsibility of all of the buildings currently under the responsibility of the Bureau of State Office buildings, except the State House, to the Division of Capital Asset Management (DCAM). The Bureau of the Statehouse will maintain responsibility for oversight of the State House.

## **Section 8 - Transfer State Lab from DPH to State Police**

SECTION 8. (A) Chapter 22C of the General Laws is hereby amended by striking out section 39 and inserting in place thereof the following 3 sections:

Section 39. (a) The department or the University of Massachusetts medical school shall make, free of charge, a chemical analysis of any narcotic drug, or any synthetic substitute for the same, or any preparation containing the same, or any salt or compound thereof, and of any poison, drug, medicine or chemical, when submitted to it by police authorities, as the department shall approve for this purpose, if the department is satisfied that the analysis is to be used for the enforcement of law.

(b) A certificate by a chemist or analyst or other designated employee of the department or of the University of Massachusetts medical school of the result of the chemist's or analyst's or other designated employee's analysis, signed and sworn to by that chemist or analyst or other designated employee, shall be prima facie evidence of the composition, quality and, when appropriate, net weight of the substance or any mixture containing the substance.

(c) A signed certificate of drug analysis furnished by an analyst, assistant analyst or other designated employee of the Drug Enforcement Administration of the United States Department of Justice, which conforms with the requirements of this section, shall be prima facie evidence of the composition, quality, and when appropriate, the net weight of the substance or any mixture containing the substance.

Section 39A. The department shall analyze, in accordance with sections 36 to 39, inclusive, of chapter 138, all samples of alcoholic beverages, as defined in section 1 of chapter 138, submitted to it for that purpose by the officers mentioned in said section 36 if satisfied that the analysis is to be used in enforcing the laws.

Section 39B. The director of the crime laboratory within the department of state police shall establish procedural rules and policies governing the testing and analysis of drug samples and a quality assurance program, which

shall include proficiency standards for laboratories and analysts responsible for performing drug testing and analysis. The procedural rules and quality assurance program shall be compatible with the laboratory's accreditation procedural rules and shall establish compatible laboratory techniques, laboratory equipment, supplies, computer software and acceptance criteria for laboratory accreditation.

(B) Section 47A of chapter 94C, as appearing in the 2010 Official Edition is hereby amended by striking out, in line 10, the words "the department of public health or".

(C) Said section 47A of said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 37 and 38, the words "or by an analyst of the department of public health".

(D) Said section 47A of said chapter 94C, as so appearing, is hereby further amended by inserting after the word "department", in lines 45, 53 and 54, 60 and 74, the following words:- of state police .

(E) Said section 47A of said chapter 94C, as so appearing, is hereby further amended by striking out the seventh paragraph.

(F) Sections 11, 12 and 13 of chapter 111 of the General Laws are hereby repealed.

(G) Section 36 of chapter 138 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 2, the words "public health" and inserting in place thereof the following words:- state police .

(H) Section 37 of said chapter 138, as so appearing, is hereby amended by striking out, in lines 2 and 9, the words "public health" and inserting in place thereof in each instance the following words:- state police.

(I) Section 38 of said chapter 138, as so appearing, is hereby amended by striking out, in line 3, the words "public health" and inserting in place thereof the following words:- state police .

(J) (a) Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of certain employees, proceedings, rules and regulations, property and legal obligations of the department of public health, as the transferor agency, to the department of state police, as the transferee agency, as follows.

(b) Subject to appropriation and chapter 22C of the General Laws, the employees of the laboratories of the department of public health that analyze illicit and seized drugs for law enforcement purposes, including those employees who immediately before the effective date of this act held permanent appointment in positions classified under chapter 31 of the General Laws or were granted tenure in their positions as provided by section 9A of chapter 30 of the General Laws or did not hold such tenure, or held confidential positions, are hereby transferred to the department of state police, without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation or benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment in that agreement shall continue as if the employees had not been so transferred. The transfer shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either held a permanent appointment in a position classified under chapter 31 of the General Laws or was granted tenure in a position pursuant to section 9A of chapter 30 of the General Laws.

Notwithstanding any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain under chapter 150E of the General Laws and shall be considered employees of the department of state police for the purposes of said chapter 150E.

Nothing in this section shall confer upon any employee any right not held immediately before the date of the transfer, or prohibit any reduction of salary grade, transfer, reassignment, suspension discharge layoff or abolition of position not prohibited before such date.

(c) All petitions, requests, investigations and other proceedings appropriately and duly brought before the laboratories of the department of public health that analyze illicit and seized drugs for law enforcement purposes

board or duly begun by the laboratories and pending before them prior to the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the department of state police.

(d) All orders, rules and regulations duly made and all approvals duly granted by the laboratories of the department of public health that analyze illicit and seized drugs for law enforcement purposes, which were in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the department of state police or the department of public health.

(e) Books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act were in the custody of the laboratories of the department of public health that analyze illicit and seized drugs for law enforcement purposes, shall be transferred to the department of state police, to the extent agreed by both departments.

(f) All duly existing contracts, leases and obligations of the laboratories of the department of public health entered into to enable the analysis of illicit and seized drugs for law enforcement purposes shall continue in effect, but shall be assumed by the department of state police. No existing right or remedy of any character shall be lost, impaired or affected by this act.

(g) All references in any general or special law, regulation, contract, or other document to the laboratories of the department of public health that analyze illicit and seized drugs for law enforcement purposes or to a principal officer thereof shall be taken to refer to the department of state police or to a principal officer of that department.

*Summary:*

This section transfers the state laboratory that tests illegal drugs from the Department of Public Health to the State Police.

## Section 9 - Changes to Present Tax Laws

SECTION 9. 1. Repeal the exemption of candy and soda from the sales tax.

(A) Chapter 29 of the General Laws is hereby amended by inserting after section 2BBBB the following section:- Section 2CCCC. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Health and Prevention Fund. The fund shall be credited with all sales tax revenues collected from the sale of candy and soft drinks under chapter 64H. Amounts credited to the fund shall be expended, subject to appropriation, to support alcohol and tobacco addiction services, health promotion, school-based health programs, teenage pregnancy prevention, domestic violence and sexual assault prevention, work force expansion services and other critical programs that support the wellness of residents of the commonwealth.

(B) Section 1 of chapter 64H of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the definition of "Business" the following definition:-

"Candy", a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(C) Said section 1 of said chapter 64H, as so appearing, is hereby further amended by inserting after the definition of "Services" the following definition:-

"Soft drinks", non-alcoholic beverages that contain natural or artificial sweeteners, but not including beverages that contain milk or milk products, soy, rice or similar milk substitutes, or vegetable or fruit juice.

(D) Section 6 of said chapter 64H is hereby amended by striking out, in line 77, as so appearing, the words ", soft drinks".

(E) Said section 6 of said chapter 64H is hereby further amended by striking out, in line 78, as so appearing, the words ", candy and confectionary".

(F) Said section 6 of said chapter 64H is hereby further amended by inserting, after the word "include", in line 80, as so appearing, the following words:- soft drinks and candy, as defined in section 1,.

(G) Said section 6 of said chapter 64H is hereby further amended by striking out, in lines 115 to 116, as so appearing, the words "in the instance in which it sells only snacks and candy with a sales price of less than \$3.50" and inserting in place thereof the following words:- to the extent that it sells food products with a sales price of

less than \$3.50; provided further that candy and soft drinks as defined in section 1 are subject to tax regardless of whether the vending machine from which they are sold is considered an eating establishment or not.

(H) Said section 6 of said chapter 64H is hereby further amended by inserting after the word "Beverages", in line 127, as so appearing, the following words:- , except soft drinks.,.

(I) Subsections (A) to (H), inclusive, shall take effect on August 1, 2012.

2. Clarify that losing lottery tickets cannot be claimed as trade or business expenses

(J) Paragraph (1) of subsection (d) of section 2 of chapter 62 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following new subparagraph:-

(Q) The deduction for trade or business expenses allowed by section 62(a)(1) of the Code and the deduction for wagering losses allowed by section 165(d) of the Code, to the extent used to offset lottery winnings.

(K) Subsection (J) shall be effective for tax years beginning on or after January 1, 2012.

3. Close a loophole, by taxing non-insurance subsidiaries of insurance companies as if they were business corporations

(L) Chapter 63 of the General Laws is hereby further amended by inserting after section 29E the following section:-

Section 29F. (a) When 50 per cent or more of the capital interests or profits interest in an entity that is engaged in a non-insurance trade or business and that would otherwise be treated as a partnership or disregarded entity for purposes of this chapter is owned, directly or indirectly, by an insurance company described in sections 20 to 29E, inclusive, the net income that passes through to that insurance company with respect to the non-insurance trade or business shall be taxed to the partnership or disregarded entity as if the partnership or disregarded entity were a corporation subject to tax under this chapter.

(b) A partnership or disregarded entity, described in subsection (a), shall file a return in the manner of a business corporation under the applicable section of this chapter with respect to the non-insurance income and activities of such partnership or disregarded entity, and shall pay the associated excise, taking into account only the portion of such net income that would otherwise pass through to an insurance company described in sections 20 to 29E, inclusive. To the extent applicable, income that is taxable to the partnership or disregarded entity under this section, and any related tax attributes and activities, shall be included and taken into account in a combined report filed under section 32B.

(c) As used in this section, the term "partnership or disregarded entity" shall include a real estate investment trust, in this subsection called a REIT, within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended. In any case in which this section applies to the ownership of a REIT, the dividends paid deduction to which the REIT is entitled under the Code, to the extent attributable to the income taxed under this section, shall not be recognized.

(d) The commissioner may issue regulations or other guidance to implement this section.

(M) Subsection (L) shall be effective for tax years beginning on or after January 1, 2013.

4. Modernize the sales factor for apportioning the corporate excise among states, by sourcing to where services are received.

(N) Section 38 of chapter 63 of the General Laws, as appearing in the 2010 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.

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).

(O) Subsection (N) shall be effective for tax years beginning on or after January 1, 2013. Subsection (N) shall not restrict the authority of the commissioner of revenue under subsection (j) of section 38 of chapter 63 of the General Laws, and shall not affect the continuing validity or application of regulations that were previously adopted under subsection (f) of said section 38 of said chapter 63.

5. Increase the cigarette excise by 50 cents to \$3.01 per pack, and increase other tobacco taxes (cigars, smokeless, roll-your-own, etc.) to reflect the previous and new cigarette excise increases.

(P) The first paragraph of section 6 of chapter 64C of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:- Every licensee who is required to file a return under section 16 of chapter 62C shall, at the time of filing such return, pay to the commissioner an excise equal to 125 1/2 mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so sold during the calendar month covered by the return; but

cigarettes with respect to which the excise under this section has once been imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to the excise imposed by this section. Each unclassified acquirer shall, at the time of filing a return required by section 16 of chapter 62C, pay to the commissioner an excise equal to 125 1/2 mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so imported or acquired and held for sale or consumption, and cigarettes, with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section.

(Q) Said section 6 of said chapter 64C, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Notwithstanding the other provisions of this section, the excise imposed by this section shall equal 130 per cent of the price paid by such licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported, or acquired.

(R) Said chapter 64C is hereby further amended by inserting after said section 6 the following section: -

Section 7 1/2. (a) As used in this section, the following words shall, unless the content clearly indicates otherwise, have the following meanings:-

"Counter," a device contained in, attached to, or forming part of, an RYO machine, performing in accordance with the manufacturer's specifications, that is designed to accurately count, and is accurately counting, the number of products rolled and wrapped by a machine.

"High volume machine," an RYO machine that is capable of rolling and wrapping tobacco into more than 10 products per minute.

"Low volume machine," an RYO machine that is not capable of rolling and wrapping tobacco into more than 10 products per minute.

"Product," a roll of tobacco or substance containing tobacco that is wrapped in any substance, including but not limited to paper or tobacco, in order to make the tobacco suitable for smoking. "Retailer," a retailer of cigarettes, cigars, smokeless tobacco, smoking tobacco or other tobacco products.

"RYO machine," a mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

(b) No retailer shall possess on its retail premises or otherwise make available to its retail customers, with or without a fee, an RYO machine, whether such RYO machine is owned by the retailer or another party, unless the retailer has first obtained a license under this section for each RYO machine that it so possesses or makes available. A retailer who possesses or otherwise makes available an RYO machine without first obtaining a license for the RYO machine under this section shall be subject to a civil penalty of not more than \$10,000 for the first offense and not more than \$25,000 for each subsequent offense, in the case of low volume machines, or a civil penalty of not more than \$50,000 for the first offense and \$100,000 for each subsequent offense, in the case of high volume machines. Any RYO machine on the retail premises of an unlicensed retailer or made available to the customers of an unlicensed retailer shall be subject to seizure or forfeiture under subsection (g), whether or not the RYO machine is owned by the unlicensed retailer.

(c) The commissioner may license a retailer to possess on its retail premises and make available to its customers 1 or more RYO machines, as specified by the license, if the commissioner determines that the retailer is in good standing with regard to all state tax obligations for taxes subject to chapter 62C, and if the retailer pays the applicable fees before issuance of the license. Each license so issued or a copy of it shall be displayed on or immediately adjacent to the licensed RYO machine. Each license shall apply only to a specified retail location and a specified RYO machine, but a licensee may replace 1 high volume machine at a specific retail location with another high volume machine at that location or may replace 1 low volume machine at a specific retail location with another low volume machine at that location, upon prior written notice to the commissioner. The licensing of RYO machines is retained exclusively by the commonwealth, and no city, town or other political subdivision of the commonwealth may license such use.

(d) The fee for each license issued under this section shall be \$25,000 per calendar year for each high volume machine and \$5,000 per calendar year for each low volume machine. The fee shall not be pro-rated for any period less than a year. Each license shall expire automatically on December 31 of each year. The licensee must apply for a new license for the following year. Licenses shall not be transferable or assignable except as expressly provided in this section.

(e) The applicant for a license under this section shall file with the commissioner an application in the form that the commissioner requires, and shall pay the license fee with the application. The commissioner shall refund the fees paid, subject to any offsets as may be provided with respect to debts collectible under chapter 62C, to the extent that a requested license is not issued. The commissioner shall investigate the prior activities of the applicant and may deny the application for any of the reasons set forth in clauses (1) to (8), inclusive, of section 67. The commissioner shall grant or deny a license within 90 days after the date of application. If the

commissioner fails to act within that time, the license shall be deemed denied. An applicant aggrieved by the refusal of the commissioner to grant a license may, within 60 days after the date of notice of the refusal or deemed denial, appeal to the appellate tax board, whose decision shall be final. Licenses shall be subject to suspension or revocation during a calendar year as provided in section 68.

(f) Every licensee shall keep and preserve suitable records relating to the licensee's purchase of the tobacco contained in a product, including the price and date of the purchase and the name of the vendor, and each such invoice must clearly indicate whether the excise due under section 7B has been paid by the licensee's vendor or will be paid by the licensee. Every licensee shall also provide access to its records, as prescribed by section 25 of chapter 62C and the regulations thereunder. For the purposes of this section, the term "records" shall include a counter. The commissioner shall revoke the license of any licensee who fails to maintain accurate records as provided in this section or who refuses to make its records available to the commissioner or the commissioner's designee.

(g) Any person who owns, leases, or is in control or possession of, and is determined by the commissioner to have, a faulty or inoperative counter or a machine without a counter, or who refuses to allow the commissioner or the commissioner's designee access to a counter and the data recorded by the counter, or who intentionally damages, tampers with, removes and does not replace, or renders sporadically or permanently inoperative, a counter, or who falsifies the data recorded by a counter, shall be punished by a fine of not more than \$50,000 or by imprisonment for not more than 1 year, or both.

(h) In addition to the other remedies provided by this section, the commissioner or the commissioner's designee or the state police may seize, seal, or otherwise render inoperative an RYO machine for which a required license has not been issued or where counters or records regarding a licensed RYO machine have not been maintained as required by this chapter or chapter 62C.

(i) It shall be unlawful for any person, whether located within or without the commonwealth, to sell, lease, loan, give, exchange, or otherwise transfer or deliver an RYO machine to a retailer unless the retailer has a license for that RYO machine.

(j) Nothing in this section shall apply to a person who owns, leases, or is in control or possession or control of a low volume machine that is used only for that person's personal use or to that low volume machine itself.

(S) Section 7B of chapter 64C of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the figure "30", in line 40, and inserting in place thereof the following figure:- 60.

(T) Every manufacturer, wholesaler, vending machine operator, unclassified acquirer or retailer, as defined in section 1 of chapter 64C of the General Laws, and every stamper appointed by the commissioner pursuant to section 30 of said chapter 64C, who, as of the commencement of business on August 1, 2012, has on hand any cigarettes for sale or any unused adhesive or meter stamps, shall make and file with the commissioner within 20 days a return, subscribed and sworn to under the penalties of perjury, showing a complete inventory of such cigarettes and stamps and shall, at the time he is required to file such return, pay an additional excise of 25 mills per cigarette on all cigarettes and all unused adhesive and meter stamps upon which an excise of only 125 1/2 mills has previously been paid. All provisions of chapter 62C and chapter 64C relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall apply to the excise imposed by this section.

(U) Subsection (R) shall take effect on January 1, 2013. Subsections (P), (Q), (S) and (T) shall take effect on August 1, 2012. All additional revenue resulting from the enactment of subsections (P) to (T), inclusive, as estimated by the commissioner of revenue, shall be deposited in the Commonwealth Care Trust Fund.

6. Clarify that the present room occupancy excise applies to Internet room resellers.

(V) Section 1 of chapter 64G of the General Laws, as appearing in the 2010 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.

(W) 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.

(X) 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.

(Y) 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.

(Z) The first paragraph of section 3A of said chapter 64G, as appearing in the 2010 Official Edition, is hereby amended by striking out the first, second and third sentences and inserting in place thereof the following 3 sentences:- A 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.

(AA) Said chapter 64G is hereby further amended by striking out sections 4 to 6, as appearing in the 2010 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 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.

(BB) Section 7A of said chapter 64G, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "operator", in line 1 and in line 7, the following words: or room reseller .

(CC) 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.

(DD) Section 12 of said chapter 64G, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "operator", in line 5, the following words: and each room reseller.

(EE) 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."

(FF) Subsections (V) to (EE), inclusive, shall take effect on August 1, 2012.

7. Delay for one additional year the "FAS 109" deduction from the corporate excise.

(GG) Subsection (2) of section 95 of chapter 173 of the acts of 2008 is hereby amended by striking out the figure "2013", inserted by section 136 of chapter 68 of the acts of 2011, and inserting in place thereof the following figure:- 2014.

*Summary:*

This section changes 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;
- \* delaying for one additional year the "FAS 109" deduction from the corporate excise;
- \* closing a loophole, by taxing non-insurance subsidiaries of insurance companies as if they were business corporations;
- \* repealing the exemption of candy and soda from the sales tax;
- \* clarifying that losing lottery tickets cannot be claimed as trade or business expenses;
- \* increasing the cigarette excise by 50 cents to \$3.01 per pack; and increasing other tobacco taxes (cigars, smokeless, roll-your-own, etc.) to reflect the previous and new cigarette excise increases.

## **Section 10 - Extend Property Tax Exemption for Gold Star Surviving Spouses**

SECTION 10. Section 5 of chapter 59 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 765 to 767, the words "; provided, however, that in no case shall the abatement amount exceed the sum of \$2,500 in any fiscal year following the fifth fiscal year of receipt of the abatement".

*Summary:*

Currently Gold Star spouses receive a property tax exemption for five years, with a cap of \$2500/year in years six and after. This section makes this exemption permanent until the Gold Star spouse dies or remarries. The estimated \$135,000 annual cost is included in the property tax abatement appropriation.

## **Section 11 - Expand Bottle Bill**

SECTION 11. Section 321 of chapter 94 of the General Laws, as appearing in the 2010 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 12 - Restrict Funeral Expense Payments**

SECTION 12. (A) Section 9 of chapter 117A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences: -- The commonwealth may recover this expense from any legally liable family members in the manner provided in this chapter, and if those family members do not pay this expense, the commonwealth shall pay an amount not exceeding \$1,100 to the funeral establishment if the total expense of the funeral and final disposition does not exceed \$3,500. The commonwealth shall have the right of reimbursement from whatever resources may exist in the estate of the deceased person.

(B) Section 10 of said chapter 117A is hereby repealed.

(C) Section 2 of chapter 118 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "disposition", in line 32, the following words:- and if the total expense of the funeral and final disposition does not exceed \$3,500.

(D) Section 7 of chapter 118A of the General Laws, as so appearing, is hereby amended by inserting after the word "disposition", in line 8, the following words:- and if the total expense of the funeral and final disposition does not exceed \$3,500.

*Summary:*

This section prevents funeral homes from charging more than \$3,500 if they want to receive state payment for funeral, burial, and cremation expenses of public assistance recipients.

## **Section 13 - Criminal Defendant Indigency Verification-- Require Data Match**

SECTION 13. The third sentence of subsection (c) of section 2A of chapter 211D of the General Laws, as appearing in section 112 of chapter 68 of the acts of 2011, is hereby amended by striking out the word "may" and inserting in place thereof the following word:- shall.

*Summary:*

When a court's chief probation officer verifies a criminal defendant's indigency before free counsel is appointed, this section requires (rather than allows) the officer to access relevant data held by the state Departments of Revenue and Transitional Assistance and the Registry of Motor Vehicles.

## Section 14 - Extend Authority to Terminate and Renegotiate Leases

SECTION 14. (A) Section 23 of chapter 5 of the acts of 2009 is hereby amended by striking out the figure "2012", inserted by section 137 of chapter 68 of the acts of 2011, and inserting in place thereof the following figure:- 2013.

(B) Section 195 of chapter 131 of the acts of 2010 is hereby amended by striking out the figure "2012" , inserted by section 144 of said chapter 68, and inserting in place thereof the following figure:- 2013.

*Summary:*

This section extends through fiscal year 2013 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 15 - Postpone Regional Transit Authority Forward Funding

SECTION 15. The first sentence of section 152 of chapter 25 of the acts of 2009 is hereby amended by striking out the figure "2013", inserted by section 138 of chapter 68 of the acts of 2011, and inserting in place thereof the following figure:- 2014.

*Summary:*

This section postpones until July 1, 2014 the requirement for forward-funding the regional transit authorities.

## Section 16 - Allow Medical Security Trust Fund Deficit for Fiscal Year 2013

SECTION 16. Section 124 of chapter 359 of the acts of 2010 is hereby amended by striking out the words "and June 30, 2012", inserted by section 145 of chapter 68 of the acts of 2011, and inserting in place thereof the following words:- , June 30, 2012 and June 30, 2013.

*Summary:*

This section extends the law allowing the Medical Security Trust Fund to be in deficit at the close of fiscal years 2010 to 2012, to apply also to fiscal year 2013.

## Section 17 - Expenditures from Fiscal Year 2012 Surplus

SECTION 17. (a) 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 2012 in the following order to the extent that funds are available: (1) the comptroller shall transfer \$15,000,000 from the General Fund to the Massachusetts Life Sciences Investment Fund established by section 6 of chapter 23I of the General Laws; (2) the comptroller shall transfer \$10,000,000 from the General Fund to the Workforce Competitiveness Trust Fund established by section 2WWW of chapter 29 of the General Laws, but the department of career services shall make expenditures from the Fund to establish regional centers of excellence at community colleges, vocational or technical high schools, or collaborations between community colleges and vocation or technical high schools; (3) the comptroller shall transfer \$65,000,000 which shall be distributed to cities and towns in proportion to the amount by which each municipality's unrestricted general government aid in fiscal year 2011 exceeds such aid in fiscal year 2013; and (4) the comptroller shall transfer the remaining balance from the General Fund to the Commonwealth Stabilization Fund.

(b) All transfers pursuant to this section shall be made from the undesignated fund balances in the budgetary funds proportionally from the undesignated fund balances; but no such transfer shall cause a deficit in any of the funds.

*Summary:*

This section distributes any surplus at the end of fiscal year 2012 in the following order, to the extent that funds are available:

- \* \$15,000,000 to the Massachusetts Life Sciences Investment Fund
- \* \$10,000,000 to the Workforce Competitiveness Trust Fund, including funding to establish regional centers of excellence at community colleges, vocational or technical high schools,
- \* \$65,000,000 in additional local aid;
- \* the remaining balance to the Commonwealth Stabilization Fund.

### **Section 18 - Extend Authorization to Transfer Trust Balances**

SECTION 18. Notwithstanding any general or special law to the contrary, upon receiving a written request from the secretary of administration and finance, the comptroller shall transfer to the General Fund the unexpended balance of a fund, trust fund or other separate account, in existence on April 1, 2012, whether established administratively or by law, including a separate account established under section 6 of chapter 6A of the General Laws or section 4F of chapter 7 of the General Laws. The secretary and comptroller shall report to the house and senate committees on ways and means 45 days before any such transfer. The request shall certify that the secretary, in consultation with the comptroller, has determined this balance not to be necessary for the purposes for which it was made available.

*Summary:*

This section extends to fiscal year 2013 authorizations in the fiscal year 2011 and 2012 budgets to transfer to the General Fund certain trust and account balances.

### **Section 19 - Inspector General's Health Safety Net Audit Unit**

SECTION 19. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2013, 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, 2013. For the purposes of these audits, allowable free care services shall be defined pursuant to said chapter 118G and any regulations adopted under that chapter.

*Summary:*

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

### **Section 20 - Nursing Home Assessment**

SECTION 20. 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 2013.

*Summary:*

This section establishes the amount of revenue to be obtained from the nursing home assessment in fiscal year 2013.

## **Section 21 - Pension Cost of Living Adjustment**

SECTION 21. 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 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 \$13,000 in pension benefits for retired state employees. The section is included each year in the budget.

## **Section 22 - Personnel Cost Savings**

SECTION 22. Whenever the secretary of administration and finance determines that reducing the number of state employee positions will result in cost savings for an agency of the executive department during fiscal year 2013, the secretary may reduce allotments under section 9B of chapter 29 of the General Laws, and for the Massachusetts Department of Transportation may reduce the amount of the transfer under item 1595-6368 of section 2E, to reflect some or all of the amounts saved. Within 15 days after any such reduction, the secretary shall notify in writing the house and senate committees on ways and means. The total amount of such reductions shall not exceed \$30,000,000 in fiscal year 2013.

*Summary:*

This section sets up a mechanism to accomplish up to \$30 million in savings from reducing the number of state employee positions in fiscal year 2013.

## Section 23 - Stabilization Fund Transfers

SECTION 23. (a) Notwithstanding any general or special law to the contrary, the comptroller shall, on or before June 30, 2013, transfer \$400,000,000 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 2013 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, 2013, transfer the interest earned from the Commonwealth Stabilization Fund during fiscal year 2013 to the General Fund.

### *Summary:*

This section:

- \* transfers \$400 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 2013 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 2013 to the General Fund.

## Section 24 - Suspension of Tourism Formula

SECTION 24. 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 2013.

### *Summary:*

This section suspends the statutory tourism fund formula for fiscal year 2013. This section has been routine in recent budgets.

## Section 25 - UMass/Health and Human Services Interagency Service Agreements

SECTION 25. 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 2013; 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 2013. 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 recouping 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 26 - Authority to Restructure MassHealth Benefits**

SECTION 26. Notwithstanding section 53 of chapter 118E of the General Laws or any other 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. At least 90 days before restructuring any MassHealth benefits under this section, the secretary shall file a report with the executive office for administration and finance and the house and senate committees on ways and means detailing the proposed changes and the anticipated fiscal impact of those changes.

*Summary:*

This section authorizes the Secretary of Health and Human Services to restructure MassHealth benefits within state appropriation limits and as allowed by federal law, and requires 90 days advance report to the Legislature on the fiscal impact of any proposed restructuring.

## **Section 27 - Initial Gross Payments to Qualifying Acute Care Hospitals**

SECTION 27. Notwithstanding any general or special law to the contrary, on or before October 1, 2012 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, 2012. 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, 2013, 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 28 - MassHealth and CommCare Dental Coverage**

SECTION 28. (a) Notwithstanding section 53 of chapter 118E of the General Laws, for fiscal year 2013, 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.

(b) Notwithstanding subsection (a) of section 6 of chapter 118H of the General Laws, for fiscal year 2013, 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 Commonwealth Health Connector Authority board the necessary discretion to make MassHealth and Commonwealth Care dental coverage or service limitation decisions.

**Section 29 - Nursing and Resident Care Facility Base Year**

SECTION 29. Notwithstanding any general or special law to the contrary, nursing facility and resident care facility rates effective July 1, 2012 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 2013 nursing and resident care facility rates.

**Section 30 - Community College Reform**

SECTION 30. (a) Notwithstanding any general or special law to the contrary, for the purpose of ensuring that the commonwealth's community colleges are aligned to execute a coherent mission that best serves students and are responsive to the needs of the workforce and employers in the region where each college operates, the board of higher education, in consultation with the commissioner of higher education, shall determine allocations of appropriations to the individual community colleges, with a specific focus on the colleges' role as regional work training and skill development centers. The board shall develop a system for making allocations, which shall be based on: (1) accurate enrollment data for each college and the board's assessment of the operational goals and needs for each college; (2) institutional performance with respect to clearly defined goals and metrics established by the board, including but not limited to provision for transferable and stackable credits; and (3) discretion to incentivize innovation and institutional action with respect to labor market and board priorities, including but not limited to additional funds for partnerships with vocational-technical schools. The board shall consult with the chairs of the joint committee on higher education and the chairs of the house and senate committees on ways and means in developing the funding system. The board shall establish parameters for the setting of fees by boards of trustees of the community colleges, as well as the appropriate uses of income derived from such fees. The board's system of allocation and related fee parameters shall be implemented during fiscal year 2013.

(b) Notwithstanding any general or special law to the contrary, by March 1, 2013, each community college board of trustees shall update its mission statement to reflect the system-wide priorities articulated by the board of higher education under subsection (a). The mission statement shall be forwarded to the secretary of education and the board of higher education for approval. The local board of trustees shall, after its approval, make the mission statement available to the public.

(c) Notwithstanding any general or special law to the contrary, the board of higher education shall appoint the chief executive officers of the community colleges. If a vacancy occurs in any such position at a community college, the board shall convene a search committee, appoint a chairperson, and select individuals to serve on the committee, at least 1 of which shall be an employer or a representative of the regional workforce and which may include campus representatives, including members of the board of trustees of the community college. The board shall set criteria for reviewing candidates' skills and qualifications and shall establish timelines for reviewing candidates, as well as work in concert with the department of higher education to manage other responsibilities related to the search committee. The designated search committee shall choose at least 3 candidates to recommend to the board. The board, in consultation with the commissioner of higher education, shall review and interview those candidates. The board may approve a new chief executive officer from among those recommended candidates. The board may also reject all recommended candidates and request additional candidates from the search committee or propose re-opening the search process. The board shall, by a majority vote of all its voting members, appoint a new chief executive officer of a community college.

(d) Notwithstanding any general or special law to the contrary, the board of higher education may, in its discretion, remove a community college chief executive officer by a majority vote of all its members. The board shall establish specific criteria and procedures for such an action. The board of trustees of a community college may recommend removal of its chief executive officer to the board of higher education, but the board of higher education may act on its own initiative.

(e) Notwithstanding any general or special law to the contrary, the board of higher education shall establish the terms of appointment of a community college chief executive officer, including, but not limited to, salary and benefits, in consultation with the board of trustees of the community college. The board shall establish a procedure for the annual review and evaluation of chief executive officers of the community colleges. The board, in consultation with the boards of trustees of the community colleges, shall determine all salary adjustments and other contractual terms for community college chief executive officers.

(f) Notwithstanding any general or special law to the contrary, the governor shall appoint the chairperson of each community college board of trustees. Within 45 days after the effective date of this act, the governor shall appoint the chairperson of each community college board of trustees either from among the current members of each board or from outside the current members if a vacancy exists on that board. The existing term of a trustee who is newly designated to be chairperson shall not be affected by this appointment.

(g) There shall be a special commission to study higher education financing in Massachusetts. The commission shall consist of 15 members: the secretary of education, or his designee, who shall serve as chair of the commission; the chair of the board of higher education; the chair of the university of Massachusetts board of trustees; the house and senate chairs of the joint committee on higher education, or their designees; the speaker of the house of representatives, or his designee; the president of the senate, or her designee; a member of the house of representatives appointed by the minority leader; a member of the senate appointed by the minority leader; 4 persons to be appointed by the secretary of education; 1 person to be appointed by the secretary of housing and economic development; and 1 person to be appointed by the secretary of labor and workforce development. The commission shall examine, report on, and make recommendations on the full range of issues impacting higher education financing in the commonwealth, including but not limited to determining spending levels, raising resources, and allocating state funding. In particular, the commission shall recommend revisions to the current funding formulas for the community colleges, the state universities, and the university of Massachusetts. Subject to appropriation, the commission shall hire temporary staff and support services. The first meeting of the commission shall take place within 45 days after the effective date of this act. The commission shall file a report containing its recommendations, including legislation necessary to carry out its recommendations, with the clerks of the house and senate not later than 12 months following the first meeting of the commission.

*Summary:*

In order to ensure that the community colleges are aligned to execute a coherent mission that best serves students and responds to the needs of the workforce and regional employers, this section authorizes the Board of Higher Education to allocate funds among the community colleges and to appoint and remove their presidents. It also provides that the Governor will appoint the chair of each community college board of trustees. This section also establishes a study commission on higher education financing, chaired by the Secretary of Education.

**Section 31 - Effective Date**

SECTION 31. Except as otherwise specified, this act shall take effect on July 1, 2012.

*Summary:*

This section provides that this budget takes effect on July 1, 2012 unless otherwise specified.