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Online Advertising of State Procurements

SECTION 4. Chapter 7 of the General Laws is hereby amended by inserting after section 22 the following section:-

Section 22 1/2. Notwithstanding any general or special law to the contrary, whenever a law requires a state agency, department, office, commission or authority to publish in a newspaper a notice of a public procurement or solicitation, it shall be sufficient instead to post that notice on a public government internet website, including the commonwealth's electronic bidding website.

Summary:

This section allows a state agency or authority to post a procurement notice on a public website instead of publishing it in a newspaper.

Consolidated Net Surplus Distribution

SECTION 5. (A) Section 35FF of chapter 10 of the General Laws, inserted by section 10 of chapter 140 of the acts of 2007, is hereby amended by adding the following 3 sentences:- The secretary of energy and environmental affairs, in this section called the secretary, shall be the trustee of the fund. The secretary shall expend monies in the fund, without further appropriation but subject to approval of an annual spending plan by the secretary of administration and finance, to promote alternative and clean energy investments. The secretary shall adopt regulations, after a public hearing, governing these expenditures.

(B) Said chapter 10 is hereby further amended by inserting after section 69 the following 3 sections:-

Section 69A. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Bay State Competitiveness Investment Trust Fund, in this section called the fund. The comptroller shall administer the fund and shall be its trustee. There shall be credited to the fund amounts transferred under clause (b) of section 5C of chapter 29 and amounts deposited from other sources by law.

(b) At the end of each fiscal year, the comptroller shall transfer from the fund, without further appropriation, the following amounts:

- (1) not more than \$25,000,000 to the Massachusetts Life Sciences Investment Fund established by section 5 of chapter 23I; and
- (2) after making the transfer required by clause (1), the balance as follows, but if the balance in the fund is insufficient the following transfers shall be proportionately reduced accordingly:
 - (i) \$15,000,000 to the Affordable Housing Trust Fund, established by section 2 of chapter 121D;
 - (ii) \$7,000,000 to the Massachusetts Cultural Facilities Fund, established by section 42 of chapter 23G;
 - (iii) \$15,000,000 to the Workforce Competitiveness Trust Fund, established by section 2WWW of chapter 29;
 - (iv) \$15,000,000 to the Heating Assistance Trust Fund, established by section 69B;
 - (v) \$3,000,000 to the Regional Efficiency Assistance Grants Trust Fund, established by section 69C; and
 - (vi) \$20,000,000 to the Massachusetts Alternative and Clean Energy Investment Trust Fund, established by section 35FF of chapter 10.

Section 69B. (a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Heating Assistance Trust Fund, in this section called the fund. The fund shall consist of the monies transferred under subclause (iv) of clause (2) of subsection (b) of section 69A, and all other monies credited or transferred to the fund from any other fund or source pursuant to law.

(b) The director of housing and community development shall be the trustee of the fund and shall expend monies in the fund, without further appropriation but subject to approval of an annual spending plan by the secretary of administration and finance, to supplement funds from the federal Low Income Home Energy Assistance Program, 42 U.S.C. sections 8621 et seq., for the purpose of assisting low-income elders, working families and other households with the purchase of heating oil, propane and natural gas, electricity and other primary or secondary heating sources. The director shall adopt regulations, after a public hearing, governing these expenditures.

Section 69C. (a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Regional Efficiency Assistance Grants Trust Fund, in this section called the fund. The fund shall consist of the monies transferred under subclause (v) of clause (2) of subsection (b) of section 69A, and all other monies credited or transferred to the fund from any other fund or source pursuant to law.

(b) The deputy commissioner of revenue for local services shall be the trustee of the fund. The deputy commissioner shall expend monies in the fund, without further appropriation but subject to approval of an annual spending plan by the secretary of administration and finance, and in consultation with the department of housing and community development and other relevant agencies, to provide competitive grants to municipalities, regional planning agencies and councils of government, to encourage regional cooperation and efficiency. The deputy commissioner shall adopt regulations, after a public hearing, governing these expenditures.

(C) Chapter 29 of the General Laws is hereby amended by striking out section 5C and inserting in place thereof the following section:-

Section 5C. The comptroller shall annually, on or before October 31, certify to the secretary of administration and finance the amount of the consolidated net surplus in the budgetary funds at the close of the preceding fiscal year. The amounts so certified shall be disposed as follows:

(a) an amount equal to 1/2 of 1 per cent of the total revenue from taxes in the preceding fiscal year shall be available to be used as revenue for the current fiscal year and 1/2 of 1 per cent of the total revenue from taxes in the preceding fiscal year, less the interest received during the preceding fiscal year on amounts in the Commonwealth Stabilization Fund, shall be transferred to the Commonwealth Stabilization Fund;

(b) an amount of not more than \$100,000,000 shall be transferred to the Bay State Competitiveness Investment Trust Fund established by section 69A of chapter 10; and

(c) any remaining amount of the consolidated net surplus after amounts made available in clauses (a) and (b) shall be transferred to the Commonwealth Stabilization Fund.

All transfers specified in this section shall be made from the undesignated fund balances in the budgetary funds proportionally from those undesignated fund balances, but no such transfer shall cause a deficit in any of those funds. Before certifying the consolidated net surplus in accordance with this section, the comptroller shall, to the extent possible, eliminate deficits in any fund contributing to the surplus by transferring positive fund balances from any other fund contributing to the surplus.

(D) This section shall take effect as of June 30, 2008.

Summary:

This section provides for the distribution of the consolidated net surplus. It amends the requirement to deposit 1/2 percent of the surplus in the Stabilization Fund, by subtracting from that amount the fund's accumulated interest during the fiscal year. It then provides for transferring the remaining surplus to the Bay State Competitiveness Investment Trust Fund, where it will be invested in specified state priorities: life sciences, affordable housing, cultural facilities, workforce training, heating assistance, regional grants, and clean energy.

Quality in Health Professions Trust Fund

SECTION 6. (A) Section 35X of chapter 10 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 22 to 24, the words "and that total not more than 20 percent of the department's expenditures related to health board licensing for the previous fiscal year".

(B) Said section 35X of said chapter 10, as so appearing, is hereby further amended by adding the following subsection:-

(d) Notwithstanding any general or special law to the contrary, all of any new fee and any increase in the fee in effect after the fee increases authorized pursuant to subsection (c) for obtaining or renewing a license, certificate, registration, permit or authority issued by a board within the department of public health, excluding the

board of registration in medicine, adopted by the secretary of administration and finance, following a public hearing, shall be deposited in the Quality in Health Professions Trust Fund.

Summary:

This section allows the Division of Health Professions Licensure to deposit all its increased license fees in the Quality in Health Professions Trust Fund.

Education Accountability Office under Secretary of Education

SECTION 7. Chapter 15 of the General Laws is hereby amended by striking out section 55A and inserting in place thereof the following section:-

Section 55A. (a) There shall be an office of educational quality and accountability, in this section called the office, within the executive office of education. The purpose of the office shall be to provide an independent mechanism to verify the efforts of schools and school districts to promote a higher level of academic achievement by students.

(b) Subject to appropriation, the secretary of education shall appoint a director of the office and establish the salary for the director. With the secretary's approval, and subject to appropriation, the director shall employ such inspectors, auditors, professional assistants, attorneys, consultants and other staff as he deems necessary to fulfill the responsibilities of the office and shall determine their salaries and duties. Section 45 of chapter 30, chapter 31 and chapter 150E shall not apply to employees of the office. The secretary shall submit to the governor and the secretary of administration and finance a request for the annual appropriation required to carry out the mandate of the office.

(c) The office shall act as an independent auditing body verifying educational measurements and tests conducted by or for the department of elementary and secondary education in implementing the mandates and directives of chapter 71 of the acts of 1993. The office shall perform not less than 24 school district audits annually. Specifically, the office shall have the following duties: (1) verify the accuracy of reports of schools and districts by conducting or contracting for periodic program and fiscal audits as necessary; (2) investigate allegations of any breach of academic integrity in the administration of any assessments administered by the department of elementary and secondary education; (3) undertake inspections of schools and school districts to determine the quality of instruction, the performance of administrative, instructional and other staff and make recommendations about the school and school district goals and performance; (4) review the district's MCAS success plan, if any, submitted to the department of elementary and secondary education pursuant to section 11 of chapter 69 and evaluate the implementation of said plan; (5) review the district's implementation of any MCAS grants received to develop or enhance academic support services for students scoring in level 1 or 2; (6) review the impact of unanticipated growth in enrollments and the cost of special education on municipal education budgets, where applicable including, but not limited to, the impact of said costs on other areas of appropriation within the municipal budget; (7) evaluate the alignment of curriculum and professional development plans with the state curriculum and assessments; (8) review the progress of student achievement.

(d) For the purposes of any inspection, or audit, the director shall have access to all necessary papers, vouchers, books, and records pertaining to a school, including a charter school, a school district, and regional school district. Schools, school districts and school personnel shall cooperate with the director for purposes of any inspection or audit pursuant to this section, including but not limited to, participating in interviews and producing books and documents. The office shall ensure that any instance of noncompliance with the law, misfeasance or malfeasance, shall be referred to the attorney general of the commonwealth and the secretary of education for appropriate action.

(e) The office shall transmit its findings and any resultant recommendations to the governor, the secretary of education, the board of elementary and secondary education, the attorney general, the president of the senate, the speaker of the house of representatives, and the clerk of the house of representatives who shall forward the same to the joint committee on education. The office shall compile these audits and inspections into annual reports. The office may coordinate with the activities of the board of elementary and secondary education to implement section 1J of chapter 69.

Summary:

This section places the present Office of Educational Quality and Accountability in the Executive Office of Education, to be established as proposed in the Governor's pending reorganization plan.

Medicare Part D and Prescription Advantage

SECTION 8. (A) Subsection (k) of section 39 of chapter 19A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- In order to maintain the fiscal viability of the program, the department shall adjust cost sharing required of enrollees in the form of copayments, premiums, and deductibles, or any combination of these forms, to reflect price trends for outpatient prescription drugs, as determined by the secretary.

(B) Said section 39 of said chapter 19A, as so appearing, is hereby amended by adding the following 3 subsections:-

(t) In addition to the eligibility requirements set forth in this section, to be considered eligible for the program, individuals who receive Medicare and are applying for, or are then enrolled in, the program shall also be enrolled in a Medicare prescription drug plan, a Medicare Advantage prescription drug plan, or in a plan which provides creditable prescription drug coverage as defined by section 104 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, in this section called MMA, and which provides coverage of the cost of prescription drugs actuarially equal to or better than that provided by Medicare Part D, in this section called a creditable coverage plan.

(u) In addition to the eligibility requirements set forth in this section, to be considered eligible for the program, individuals who receive Medicare and are applying for, or are then enrolled in, the program, who may qualify for the low-income subsidy provided under MMA Subpart P - Premiums and cost-sharing subsidies for low-income individuals, shall apply for those subsidies. To the extent permitted by MMA and regulations adopted under it, and all other applicable federal law, the program may apply on behalf of a member for enrollment into a Medicare prescription drug plan or for the low-income subsidy provided under MMA and may receive information about the member's eligibility and enrollment status necessary for the operation of the program.

(v) For enrollees who qualify for enrollment in a Medicare Part D plan, the program shall provide a supplemental source of financial assistance for prescription drug costs, in this section called supplemental assistance, in lieu of the catastrophic prescription drug coverage provided under this section. The program shall provide supplemental assistance for premiums, deductibles, payments, and co-payments required by a Medicare prescription drug plan or Medicare Advantage prescription drug plan, and shall provide supplemental assistance for deductibles, payments and co-payments required by a creditable coverage plan. The department may take steps for the coordination of these benefits. The department shall establish the amount of the supplemental assistance it will provide enrollees based on a sliding income scale and the coverage provided by the enrollees' Medicare prescription drug plan, Medicare Advantage prescription drug plan, or creditable coverage plan. In addition to the eligibility requirements set forth in this section, to be considered eligible for the program, an individual must have a household income of less than 500 per cent of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under 42 U.S.C. section 9902(2). Residents of the commonwealth who are not eligible for Medicare shall continue to be eligible for the program under this section.

Summary:

This section codifies cost management tools within the Prescription Advantage program that have been in operation since 2006. The section also requires that individuals who enroll in Prescription Advantage are also enrolled in Medicare Part D, if eligible.

Railroad Bridge Safety

SECTION 9. Section 12F of chapter 25, as appearing in the 2006 Official Edition, is hereby amended by inserting after the second paragraph the following paragraph:-

The commission may make an assessment against each railroad corporation or railway company, based upon the intrastate operating revenues, as shown in the annual report of each of those companies to the transportation division. Each railroad corporation and railway company shall annually report by March 31 its intrastate operating revenues for the previous calendar year to the transportation division. The assessments shall be apportioned according to railroad corporation intrastate operating revenues, to produce an annual amount of not more than \$500,000, as the commission shall annually determine and certify as sufficient to reimburse the commonwealth

for funds appropriated by the general court for the operation of the transportation division related to railroad bridge inspections under section 83 of chapter 159, including the costs of fringe benefits and indirect costs as established by the commission. The funds may be used to compensate consultants for the purpose of railroad bridge inspections. Each company shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the department. Such assessments shall be collected by the department and credited to the General Fund. Any funds unexpended in any fiscal year for the purposes for which such assessments were made shall be credited against the assessment to be made in the following fiscal year and the assessment in the following fiscal year shall be reduced by any such unexpended amount.

Summary:

This section establishes an assessment to fund the oversight of railroad bridge inspections by the Department of Public Utilities.

Emergency Spending Authority

SECTION 10. 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.

Deposit of Tobacco Litigation Proceeds

SECTION 11. (A) Section 24 of chapter 32A of the General Laws, as inserted by section 8 of chapter 61 of the acts of 2007, is hereby amended by inserting after subsection (b) the following subsection:-

(b 1/2) Ninety per cent of the monies received in any fiscal year as a result of any claim or action undertaken by the attorney general against a manufacturer of cigarettes to recover the amount of medical assistance provided pursuant to chapter 118E or any other claim or action undertaken by the attorney general against a manufacturer of cigarettes including, but not limited to, the action known as Commonwealth of Massachusetts v. Philip Morris, Inc., et al., Middlesex Superior Court, No. 95-7378, shall be deposited in the fund. The remaining 10 per cent of these monies shall be deposited in the General Fund, to be used subject to appropriation for tobacco control and other health care programs.

(B) Notwithstanding subsection (b 1/2) of section 24 of chapter 32A of the General Laws, inserted by subsection (A), for fiscal years 2009 to 2012, inclusive, of the 90 per cent of the monies received in that fiscal year as a result of any claim or action undertaken by the attorney general against a manufacturer of cigarettes to recover the amount of medical assistance provided pursuant to chapter 118E or any other claim or action undertaken by the attorney general against a manufacturer of cigarettes including, but not limited to, the action known as Commonwealth of Massachusetts v. Philip Morris, Inc., et al., Middlesex Superior Court, No. 95-7378, the following portions shall not be deposited in the State Retiree Benefits Trust Fund but rather shall be deposited in the General Fund:

- (a) for fiscal year 2009, all of the 90 per cent of those monies;
- (b) for fiscal year 2010, 3/4 of the 90 per cent of those monies;
- (c) for fiscal year 2011, half of the 90 per cent of those monies;
- (d) for fiscal year 2012, 1/4 of the 90 per cent of those monies.

In each such fiscal year, the remainder of the 90 per cent of those monies shall be deposited in the State Retiree Benefits Trust Fund.

Summary:

This section phases in the deposit of tobacco litigation proceeds in the State Retiree Benefits Trust Fund over four fiscal years. In fiscal year 2009, all of the funds that the Commonwealth receives from tobacco litigation will be deposited in the General Fund.

Expedite Appellate Tax Board Decisions

SECTION 12. (A) Section 1 of chapter 58A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the figure "75", in lines 11 and 13, and inserting in place thereof, in each instance, the following figure:- 85.

(B) The first paragraph of section 1A of said chapter 58A, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- A single member of the board may decide cases on appeal from a board of assessors as provided in section 7 or section 7A where the assessed value of the property involved does not exceed \$1,000,000.

(C) Section 7A of said chapter 58A, as so appearing, is hereby amended by striking out the figure "\$20,000", in line 41, and inserting in place thereof the following figure:- \$500,000.

(D) Section 7B of said chapter 58A, as so appearing, is hereby amended by striking out the figure "\$5,000", in lines 7, 8, 9, 11, 12 and 18, and inserting in place thereof, in each instance, the following figure:- \$25,000.

Summary:

This section will expedite decisions by the Appellate Tax Board, by allowing more cases to be decided by single board members and under the Board's informal and small claims procedures. It also adjusts the salaries of Board members.

Tax Revenue Enforcement Efficiencies

SECTION 13. (A) Section 15 of chapter 60 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 5, the words "five dollars" and inserting in place thereof the following words:- not more than \$30.

(B) Chapter 62B of the General Laws is hereby amended by inserting after section 13, as so appearing, the following section:-

Section 13A. The commissioner may require a taxpayer, or a person paying, crediting, or allocating an amount to a taxpayer, to make estimated tax payments on amounts the taxpayer is reasonably likely to receive. The commissioner may require a minimum estimated tax payment, and may require payment on or before the date of receipt of income. The commissioner may, for example, exercise this authority to require a nonresident taxpayer to estimate and pay, on or before the time of sale, the income tax liability on the gain from the sale or transfer of real property in the commonwealth. The commissioner may issue regulations governing the administration of this section. In the event of a sale, transfer, or disposition of property, a lien in the amount of any required estimated payment shall arise with regard to the property, to the extent provided by regulation, if such a required estimated tax payment is not timely made.

(C) Section 33 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out, in line 11 and line 19, the words "one-half of ".

(D) Section 47A of said chapter 62C, as so appearing, is hereby amended by striking out subsection (d) and inserting in place thereof the following 2 subsections:-

(d) If the commissioner determines from the information furnished pursuant to subsections (a), (b) and (c), or otherwise, that any person who holds a license or certificate of authority issued by any such agency or who has agreed to furnish goods, services or real estate space to any such agency has neglected or refused to file any returns or to pay any tax required under this chapter and that such person has not filed in good faith a pending application for abatement of such tax or a pending petition before the appellate tax board contesting such tax or entered a payment agreement with which the taxpayer is fully compliant, or has been penalized pursuant to section 9 of chapter 62E for failure to comply with the provisions of said chapter 62E relating to reporting of employees and contractors, or has been penalized pursuant to paragraph (3) of subsection (f) of section 12 of chapter 119A for failure to comply with the provisions of said chapter 119A relating to withholding and remitting child support, the commissioner shall so notify such agency and such person in writing. Upon the written request of the commissioner, the agency, department, board, commission, division, authority, district or other agency of the commonwealth, shall promptly revoke or suspend that license or certificate of authority. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the agency receives a certificate issued by the commissioner that the licensee is in good standing with respect to all returns due and taxes payable to the commissioner as of the date of issuance of the certificate, including all taxes and returns referenced in the initial notification or, if the licensee has been penalized for failure to comply with the provisions relating to reporting of employees and contractors under chapter 62E or withholding and remitting child support under chapter 119A, a certificate issued by the commissioner that the licensee is in compliance with those provisions.

(e) Where a license revocation, suspension or non-renewal is based upon nonpayment of an assessed tax administered under this chapter, the licensee's sole right of appeal and to a hearing shall be pursuant to and within the time limitations of this chapter and not pursuant to chapter 30A. The commissioner shall give the licensee not less than 30 days notice of any proposed action, during which the licensee may enter into a payment agreement with the commissioner under mutually agreeable terms or may file a good faith abatement application within the time periods determined under section 37. Such an abatement application shall stay a proposed license revocation, suspension, or non-renewal until the amount of disputed tax due is finally determined. A licensee who is beyond the time limitations in section 37 but who disputes that he is liable for the assessment and is unable to resolve that issue with the commissioner during the 30-day period may appeal the proposed revocation, suspension or non-renewal by filing a civil action under section 14 of chapter 30A. The scope of this appeal shall be limited to assertions of mistake or verification of payments made and shall not include determination or redetermination of the proper amount of tax assessed or any other issues appropriately raised through a timely filed abatement under section 37. Any stay of the proposed revocation, suspension, or non-renewal pending resolution of this appeal shall be within the discretion of the court.

(E) Said chapter 62C of the General Laws is hereby further amended by inserting after said section 47A, as so appearing, the following section:-

Section 47B. (a) If the commissioner determines that any person who holds a driver's license, learner's permit, right to operate a motor vehicle, or certificate of motor vehicle registration has neglected or refused to file any returns or to pay any tax required under this chapter and that the person has not filed in good faith a pending application for abatement of such tax or a pending petition before the appellate tax board contesting such tax or entered a payment agreement with which the taxpayer is fully compliant, the commissioner shall so notify the registry of motor vehicles and the person in writing. Upon the written request of the commissioner, the registry shall promptly suspend or revoke or prohibit issuance or renewal of the license, learner's permit, right to operate a motor vehicle, or certificate of motor vehicle registration of the taxpayer. Any license, learner's permit, right to operate a motor vehicle, or certificate of motor vehicle registration suspended or revoked under this section shall not be reissued or renewed until the registry receives a certificate issued by the commissioner that the licensee is in good standing with respect to any and all returns due and taxes payable to the commissioner as of the date of issuance of the certificate, including all taxes and returns referenced in the initial notification.

(b) Where a license revocation, suspension or non-renewal is based upon nonpayment of an assessed tax administered under this chapter, the licensee's sole right of appeal and to a hearing shall be pursuant to and within the time limitations of this chapter and not pursuant to chapter 30A. The commissioner shall give the licensee not less than 30 days notice of any proposed action, during which the licensee may enter into a payment agreement with the commissioner under mutually agreeable terms or may file a good faith abatement application within the time periods determined under section 37. Such an abatement application shall stay a proposed license revocation, suspension, or non-renewal until the amount of disputed tax due is finally determined. A licensee who is beyond the time limitations in section 37 but who disputes that he is liable for the assessment and is unable to resolve that issue with the commissioner during the 30-day period may appeal the proposed revocation, suspension or non-renewal by filing a civil action as provided in section 14 of chapter 30A. The scope of this appeal shall be limited to assertions of mistake or verification of payments made and shall not include determination or redetermination of the proper amount of tax assessed or any other issues appropriately raised through a timely filed abatement under section 37. Any stay of the proposed revocation, suspension, or non-renewal pending resolution of this appeal shall be within the discretion of the court.

(F) Section 49A of said chapter 62C, as so appearing, is hereby amended by adding the following subsection:

(f) Where a license revocation, suspension or non-renewal is based upon nonpayment of an assessed tax administered under this chapter, the licensee's sole right of appeal and to a hearing shall be pursuant to and within the time limitations of this chapter and not pursuant to chapter 30A. The commissioner shall give the licensee not less than 30 days notice of any proposed action, during which the licensee may enter into a payment agreement with the commissioner under mutually agreeable terms or may file a good faith abatement application within the time periods determined under section 37. Such an abatement application shall stay a proposed license revocation, suspension, or non-renewal until the amount of disputed tax due is finally determined. A licensee who is beyond the time limitations in section 37 but who disputes that he is liable for the assessment and is unable to resolve that issue with the commissioner during the 30-day period may appeal the proposed revocation, suspension or non-renewal by filing a civil action as provided in section 14 of chapter 30A. The scope of this appeal shall be limited to assertions of mistake or verification of payments made and shall not include determination or redetermination of the proper amount of tax assessed or any other issues appropriately raised through a timely filed abatement under section 37. Any stay of the proposed revocation, suspension, or non-renewal pending resolution of this appeal shall be within the discretion of the court.

(G) Section 50 of said chapter 62C, as so appearing, is hereby amended by striking out, in line 22, the words "Notwithstanding section 65, the" and inserting in place thereof the following word:- The.

(H) Section 65 of said chapter 62C, as so appearing, is hereby amended by striking out the first paragraph and inserting in its place the following paragraph:-

Taxes shall be collected: (i) within 10 years after the assessment of the tax; (ii) within any further period after that 10-year period during which the taxes remain unpaid but only against any real or personal property of the taxpayer to which a tax lien has attached and for which a notice of lien has been filed or recorded under section 50 in favor of the commonwealth in accordance with applicable state or federal law within 10 years after the assessment of the tax; (iii) before the expiration of any period of collection agreed upon in writing by the commissioner and the taxpayer before the expiration of that 10-year period; or, (iv) if there is a release of levy under section 64 after that 10-year period, then before that release. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When any

question relative to such taxes is pending before any agency or court at the end of that 10-year period, the commissioner's right to collect any tax due shall continue until 1 year after the final determination of that question.

(I) Chapter 63B of the General Laws is hereby amended by inserting after section 2, as so appearing, the following section:-

Section 2A. The commissioner may require a taxpayer, or a person paying, crediting, or allocating an amount to a taxpayer, to make estimated tax payments on amounts the taxpayer is reasonably likely to receive. The commissioner may require a minimum estimated tax payment, and may require payment on or before the date of receipt of income. The commissioner may, for example, exercise this authority to require a nonresident taxpayer to estimate and pay, on or before the time of sale, the tax liability on the gain from the sale or transfer of real property in the commonwealth. The commissioner may issue regulations governing the administration of this section. In the event of a sale, transfer, or disposition of property, a lien in the amount of any required estimated payment shall arise with regard to the property, to the extent provided by regulation, if such a required estimated tax payment is not timely made.

(J) Chapter 64H of the General Laws is hereby amended by inserting after section 3, as so appearing, the following section:-

Section 3A. (a) Every manufacturer, wholesaler, or unclassified acquirer, as defined in chapter 64C, doing business in the commonwealth, or any other person doing business in the commonwealth, selling tobacco products, including cigarettes, cigars, smokeless tobacco and smoking tobacco, to others for resale in the commonwealth, shall pay, as a prepayment for the tax imposed by this chapter, a tax on tobacco products that will be held for retail sale in the commonwealth. The tax shall be computed on each sale of tobacco products by multiplying the tax rate set by this chapter by the wholesale sales price at which such manufacturer, wholesaler, unclassified acquirer or other person sells the tobacco products. The tax imposed by this section shall be paid at the same time and in the same manner as the tax imposed by section 2. Any manufacturer, wholesaler, unclassified acquirer or other person prepaying the tax shall, with respect to such prepayment, be a vendor for purposes of section 1 of this chapter and section 16 of chapter 62C, shall file returns and pay over tax accordingly, and shall separately state on each customer invoice or other written record, as prescribed by the commissioner, the amount of prepaid sales tax charged.

(b) Every person selling tobacco products at retail in the commonwealth who is required to pay the tax imposed by this chapter shall be allowed a credit in the amount of the prepayment against the total amount of tax it is required to pay over to the commissioner under this chapter. Every such person must maintain invoices and other records substantiating the amount of tax prepaid.

(c) Chapter 64I shall apply to the extent that the tax under this section is not paid over to the commissioner by any of the persons mentioned in the first or second paragraph of this section. All taxes imposed by this section are conclusively presumed to be a direct tax on the retail consumer, precollected for the purpose of convenience and facility only.

(d) The commissioner may adopt regulations to implement this section, which regulations shall include a provision to prevent the payment of tax by more than one taxpayer.

(K) Section 33 of chapter 64H, as so appearing, is hereby amended by adding the following sentence:- For purposes of this section, a vendor shall include any person who has made a prepayment of tax under section 3A.

(L) Section 34 of chapter 64I, as so appearing, is hereby amended by adding the following sentence:- For purposes of this section, a vendor shall include any person who has made a prepayment of tax under section 3A of chapter 64H.

(M) Subsections (J), (K) and (L) shall apply to sales of tobacco products occurring on or after September 1, 2008, by manufacturers, wholesalers, unclassified acquirers and other persons specified in subsection (J).

Summary:

This section provides the Department of Revenue with these additional enforcement tools for more efficient revenue collection:

- * Increase late-payment penalties to be consistent with late-filing penalties.
- * Increase demand fees for state and local tax collectors.
- * Allow suspension of driver's licenses, and clarify procedures for suspending professional licenses, for nonpayment of taxes.
- * Clarify procedures for DOR to file liens against delinquent taxpayers.

- * Expand DOR's authority to require estimated payments, including by nonresidents on real estate sales.
- * Require wholesalers to prepay sales tax on tobacco products.

Cigar Tobacco Reclassification

SECTION 14. (A) Section 16 of chapter 62C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after subsection (c) the following subsection:-

(c 1/2) Every licensee under section 7B of chapter 64C shall, on or before the twentieth day of each calendar month, or on or before the twentieth day of the month following each calendar quarter, as the commissioner shall require, file with the commissioner a return for each place of business maintained, stating the quantity of cigars and smoking tobacco sold by such licensee in the commonwealth during the preceding calendar month or quarter, as the case may be, and such return shall contain or be accompanied by such further information as the commissioner shall require. If a licensee ceases to sell cigars and smoking tobacco within the commonwealth he shall immediately file with the commissioner such a return for the period ending with such cessation.

(B) Section 67 of said chapter 62C, as so appearing, is hereby amended by inserting after the word "retailer", in line 7, the following words:- , or cigar distributor or cigar retailer.

(C) The second paragraph of said section 67 of said chapter 62C, as so appearing,, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- In the instance of an application for a license as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, transportation company, retailer, cigar distributor, or cigar retailer, as defined in chapter 64C, the commissioner shall investigate the prior activities of the applicant.

(D) Said section 67 of said chapter 62C, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-
All licenses, other than licenses for manufacturers, wholesalers, vending machine operators, unclassified acquirers, transportation companies, retailers, cigar distributors and cigar retailers, as defined in chapter 64C, shall expire annually on a date prescribed by the commissioner. Licenses for these manufacturers, wholesalers, vending machine operators, unclassified acquirers, transportation companies, and cigar distributors shall expire annually on a date prescribed by the commissioner. Licenses for these retailers and cigar retailers shall expire every other year, as prescribed by the commissioner. The commissioner may provide for combined forms of licenses and license applications.

(E) Said section 67 of said chapter 62C, as so appearing, is hereby further amended by striking out, in line 48, the words "and retailers" and inserting in place thereof the following words:- , retailers, cigar distributors and cigar retailers.

(F) Said section 67 of said chapter 62C, as so appearing, is hereby amended by striking out the seventh paragraph and inserting in place thereof the following paragraph:-
The secretary of administration and finance shall annually determine the fees for licenses and each renewal of a license under section 3B of chapter 7 in the following categories: distributors; unclassified importers; unclassified exporters; manufacturers; wholesalers; vending machine operators; unclassified acquirers; transportation companies; retailers; cigar distributors; cigar retailers; user-sellers; suppliers; users of special fuels; motor carriers or their vehicles; except that in case of a manufacturer, wholesaler, cigar distributor, or vending machine operator who maintains more than one place of business the fee for each additional place of business shall be one-half of the above determined fee. No fee, nor part of any fee, shall be refunded by reason of relinquishment, suspension or revocation of a license.

(G) Section 1 of chapter 64C, as so appearing, is hereby amended by striking out , in line 53, the figure "(1)" and inserting in place thereof the following words -: (1); and (3) little cigars, which shall mean rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh not more than 3 pounds.

(H) Said section 1 of said chapter 64C, as so appearing, is hereby further amended by inserting after the word "meaning", in line 56, the following words -: , without limitation, little cigars and.

(I) Section 6 of said chapter 64C, as so appearing, is hereby amended by striking out the last paragraph.

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

Section 7B. (a) Whenever used in this section, unless the context otherwise requires, the following words or terms shall have the following meanings: -

"Cigar" means, without limitation, a cigar, cheroot, or stogie, but does not mean cigarettes as defined in this chapter.

"Cigar distributor" means (i) any person who imports, or causes to be imported, into the commonwealth cigars or smoking tobacco for sale or who manufactures cigars or smoking tobacco in the commonwealth, and (ii) any person within or without the commonwealth who is authorized by the commissioner to make returns and pay the excise on cigars and smoking tobacco sold, shipped or delivered by him to any person in the commonwealth.

"Cigar retailer" means any person who sells or furnishes cigars or smoking tobacco in small quantities to consumers only, but not for the purpose of resale.

"Smoking tobacco" means roll-your-own tobacco and pipe tobacco and other kinds and forms of tobacco suitable for smoking.

"Taxed cigars and smoking tobacco" means cigars and smoking tobacco upon which the excise has been paid in full by the date on which payment is due, and with respect to which the return has been completed, signed, and filed with the commissioner by the date on which the return is due, in accordance with this section and with section 16 of chapter 62C.

"Untaxed cigars and smoking tobacco" means cigars and smoking tobacco upon which the excise has not been paid in full by the date on which payment is due, or with respect to which the return has not been completed, signed, and filed with the commissioner by the date on which the return is due, in accordance with this section and with section 16 of chapter 62C.

"Wholesale price" means (i) in the case of a manufacturer of cigars and smoking tobacco, the price set for such products, or, if no price has been set, the wholesale value of these products; (ii) in the case of a cigar distributor who is not a manufacturer of cigars or smoking tobacco, the price at which the cigar distributor purchased these products; or (iii) in the case of a cigar retailer or a consumer, the price at which he purchased these products.

(b) An excise is hereby imposed on all cigars and smoking tobacco held in the commonwealth at the rate of 30 per cent of the wholesale price of such products. This excise is imposed on cigar distributors at the time cigars or smoking tobacco are manufactured, purchased, imported, received or acquired in the commonwealth. This excise shall not be imposed on any cigars or tobacco products that (i) are exported from the commonwealth; or (ii) are not subject to taxation by the commonwealth pursuant to any law of the United States.

(c) Every cigar retailer shall be liable for the collection of the excise on all cigars or smoking tobacco in his possession at any time, upon which the excise has not been paid by a cigar distributor, and the failure of any cigar retailer to produce or exhibit to the commissioner or his authorized representative, upon demand, an invoice by a cigar distributor for any cigars or smoking tobacco in his possession, shall be presumptive evidence that the excise thereon has not been paid and that such cigar retailer is liable for the collection of the excise thereon.

(d) The amount of the excise advanced and paid by a cigar distributor or cigar retailer, as provided in this section, shall be added to, and collected as part of, the sales price of the cigars or smoking tobacco.

(e)(1) A cigar distributor shall be liable for the payment of the excise on cigars and smoking tobacco that he imports or causes to be imported in the commonwealth or that he manufactures in the commonwealth, and every cigar distributor authorized by the commissioner to make returns and pay the excise on cigars or smoking tobacco sold, shipped or delivered by him to any person in the commonwealth shall be liable for the collection and payment of the excise on all cigars and smoking tobacco sold, shipped or delivered.

(2) Every person who does not acquire untaxed cigars or smoking tobacco, but acquires taxed cigars and smoking tobacco for sale at retail, shall not be licensed as a cigar distributor under this section, but shall be required, during the period that such person is a retailer of taxed cigars or smoking tobacco, to be licensed as a cigar retailer.

(f) A person outside the commonwealth who ships or transports cigars or smoking tobacco to cigar retailers in the commonwealth, to be sold by those cigar retailers, may apply for a license as a nonresident cigar distributor, and, if the commissioner issues such a license to him, shall thereafter be subject to all the provisions of this section and be entitled to act as a cigar distributor, provided he files proof with his application that he has appointed the secretary of state as his agent for service of process relating to any matter or issue arising under this section. Such a nonresident person shall also agree to submit his books, accounts and records for examination in the commonwealth during reasonable business hours by the commissioner or his authorized representative.

(g) Every resident of the commonwealth shall be liable for the collection of the excise on all cigars or smoking tobacco in his possession at any time, upon which the excise has not been paid by a cigar distributor or cigar retailer, and the failure of any such consumer to produce or exhibit to the commissioner or his authorized representative, upon demand, an invoice or sales receipt by a cigar distributor or cigar retailer for any cigars or smoking tobacco in his possession, shall be presumptive evidence that the excise thereon has not been paid and that such consumer is liable for the collection of the excise thereon.

(h) No person shall act as a cigar distributor or cigar retailer in the commonwealth unless licensed to do so in accordance with section 67 of chapter 62C. If a cigar distributor or cigar retailer acts in more than one of said capacities at any one place of business, he shall procure a license for every capacity in which he acts, unless, upon application to the commissioner, the commissioner determines otherwise. Each license so issued or a duplicate copy thereof shall be prominently displayed on the premises covered by the license.

(i) Except as this section expressly provides to the contrary, the provisions of this chapter and of chapter 62C relative to the assessment, collection, payment, abatement, verification, and administration of taxes, including penalties, shall so far as pertinent, apply to the excise tax imposed by this section.

(j) For the purposes of section 5, cigars and smoking tobacco shall be "tobacco products," cigar distributors shall be "wholesalers" and cigar retailers shall be "retailers."

(k) For the purposes of section 8, untaxed cigars and smoking tobacco found in the commonwealth shall be "cigarettes, which have not been returned and are not returnable under section 16 of chapter sixty-two C", "cigarettes, which have not been returned and are not returnable under section six," and "cigarettes," as the context requires.

(l)(1) Any person who sells, offers for sale or possesses with intent to sell any cigars or smoking tobacco, or otherwise acts as a cigar distributor or cigar retailer without being licensed so to do, shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense. Any person who knowingly purchases or possesses any cigars or smoking tobacco not manufactured, purchased, or imported by a licensed cigar distributor or licensed cigar retailer shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.

No person, either as principal or agent, shall sell or solicit orders for cigars or smoking tobacco to be shipped, mailed or otherwise sent or brought into the commonwealth to any person not a licensed cigar distributor or licensed cigar retailer, unless the same is to be sold to or through a licensed cigar distributor or licensed cigar retailer. Any person who knowingly violates this provision shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.

It shall be presumed that the cigars and smoking tobacco are subject to the excise until the contrary is established, and the burden of proof that they are not shall be upon the person on whose premises the cigars or smoking tobacco were found.

(2) Any person who knowingly has in his possession a shipping case or other container of cigars or smoking tobacco not bearing the name and address of the person receiving the cigars or smoking tobacco from a manufacturer or such other markings as the commissioner may prescribe, and any person knowingly in possession of such a shipping case or other container of cigars or smoking tobacco from which this name and address has been erased or defaced, shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense or not more than \$25,000 for each subsequent offense.

(3) Any person who files any false return, affidavit, or statement, or who violates any provision of this section for which no other penalty has been provided, shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.

(4) Whenever the commissioner or a police officer discovers, in the possession of any person not being a licensed cigar distributor or one authorized by the commissioner, any untaxed cigars or smoking tobacco, he may seize and take possession of those cigars and smoking tobacco, together with any vending machine or other receptacle, which shall include, without limitation, a motor vehicle, boat, or airplane, in which they are contained or in which they are transported. Such cigars, smoking tobacco, vending machine or other receptacle seized by a police officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall destroy such cigars or smoking tobacco and shall destroy or otherwise dispose of such vending machine or other receptacle. The commissioner may, within a reasonable time after the seizure, by a public notice at least 5 days before the day of sale, sell the vending machine or other receptacle at public sale and deposit the proceeds in the General Fund.

(5) The state police and all local police authorities may, and at the request of the commissioner or his duly authorized agent shall, enforce this section. Each violation of this section shall be a separate offense.

(K) Chapter 64C of the General Laws is hereby further amended by striking out section 38A and inserting in place thereof the following section:-

Section 38A. Whenever the commissioner or a police officer discovers, in the possession of any person not being a stamper, licensed transportation company or one authorized by the commissioner, any cigarettes subject to tax under this chapter that do not have affixed to them the required Massachusetts stamps showing the payment of excise, or any smokeless tobacco on which tax has not been paid, he may seize and take possession of those cigarettes or smokeless tobacco, together with any vending machine or other receptacle, which shall include, without limitation, a motor vehicle, boat, or airplane, in which the cigarettes or smokeless tobacco are contained or in which they are transported. The cigarettes, smokeless tobacco, vending machine or other receptacle seized by a police officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall destroy such cigarettes and smokeless tobacco and shall destroy or otherwise dispose of such vending machine or other receptacle. The commissioner may, within a reasonable time after the seizure, by a public notice at least 5 days before the day of sale, sell the vending machine or other receptacle at public sale and deposit the proceeds in the General Fund.

(L) Every vending machine operator or retailer, as defined in section 1 of chapter 64C of the General Laws, or any other licensee, as prescribed by the commissioner of revenue, who, at the commencement of business on the effective date of this section, has on hand any cigars or smoking tobacco for sale, shall make and file with the commissioner of revenue within 20 days thereafter a return, subscribed under the penalties of perjury, showing a complete inventory of such cigars and smoking tobacco, and shall, at the time he is required to file such return, pay the excise due on any cigars and smoking tobacco on which he has not previously remitted the excise to the commissioner of revenue. All provisions of chapters 62C and 64C of the General Laws relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall, so far as pertinent, apply to the excise imposed by this section.

(M) Subsections (A) to (F), inclusive, (I), (J) and (L) shall take effect on October 1, 2008.

Summary:

This section treats cigars like cigarettes for purposes of the tobacco excise and of licensing sellers.

EOHHS Debt Recovery By Tax Refund Intercept

SECTION 15. (A) Section 1 of chapter 62D of the General Laws is hereby amended by inserting after the word "assistance", in line 4, as appearing in the 2006 Official Edition, the following words: - , the executive office of health and human services.

(B) Said section 1 of said chapter 62D is hereby further amended by inserting after the word "assistance", in line 17, as so appearing, the following words: - or the executive office of health and human services.

(C) Said section 1 of said chapter 62D is hereby further amended by striking out , in lines 39 to 43, as so appearing, the words "for costs incurred as a result of noncompliance by that individual with an order to provide coverage for the cost of health services to a child eligible for assistance under Title XIX of the Social Security Act, as further described in section 23 of chapter 118E" and inserting in place thereof the following words:- or the executive office of health and human services.

Summary:

This section allows the Executive Office of Health and Human Services and the Office of Medicaid to use the Department of Revenue tax intercept program to recover debts owed, regardless of the reason for the liability. Currently, only the Office of Medicaid may use the tax intercept, and the Office may only implement an intercept in limited cases where a liability exists.

Certain Revenues to Transportation Fund

SECTION 16. (A) Section 20 of chapter 29 of the General Laws is hereby repealed.

(B) Chapter 64A of the General Laws is hereby amended by striking out section 13, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 13. All sums received from the excise imposed on aviation fuel, and related penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited to the Transportation Fund and may be used for airport development projects approved and carried out at airports and landing facilities under 49 U.S.C. App. section 2210; and all other sums received under the excise imposed in section 4, and relative penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited as follows:

(a) 99.85 per cent shall be credited to the Transportation Fund to be used for transportation-related purposes, and
 (b) 0.15 per cent shall be credited to the Inland Fisheries and Game Fund, established by section 2C of chapter 131.

(C) Section 34 of chapter 90 of the General Laws, as so appearing, is hereby amended by striking out , in lines 13, 20 both times, 44 and 93, the word "Highway" and inserting in place thereof, in each instance, the following word:- Transportation.

(D) All purposes for which funds could have been expended under section 20 of chapter 29 of the General Laws, repealed by subsection (A), shall be purposes for which funds may be expended from the Transportation Fund established by section 34 of chapter 90 of the General Laws, as amended by subsection (C). Any balance in the Infrastructure Fund on the effective date of this section shall be credited to the Transportation Fund. The repeal of said section 20 of said chapter 29 shall not affect in any way the obligations of the commonwealth relating to special obligation revenue bonds issued under that section, and the pledge of pledged funds, as defined in said section 20 of said chapter 29 to secure the payment of such bonds is hereby ratified and confirmed in all respects.

(E) Whenever the name "Highway Fund" or "Infrastructure Fund" appears in any general or special law, regulation, contract or other document, it shall mean the Transportation Fund on and after the effective date of this section.

Summary:

This section renames the Highway Fund the "Transportation Fund" and redirects to it the aviation fuel tax revenues and the portion of the gas tax revenues that are currently credited to the General Fund. This section also repeals the sub-fund known as the Infrastructure Fund.

Repeal Sales Tax Exemptions for Aircraft, Parts and Certain Pesticides

SECTION 17. (A) The definition of "tangible personal property" in section 1 of chapter 64H of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following sentence:- A transfer of an interest in an aircraft may be considered a transfer of tangible personal property under rules determined by the commissioner.

(B) Subsection (p) of section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by striking out clause (3) and inserting in place thereof the following clause:-

(3) sales of fertilizer, including ground limestone, hydrated lime, seed inoculants and plant hormones, as well as other substances commonly regarded in the same category and for the same use, but not including any sales of pesticides, including insecticides, herbicides, fungicides, miticides and all materials registered with the Environmental Protection Agency as pesticides under Federal Insecticide, Fungicide and Rodenticide Act as well as other pesticides commonly regarded in the same category and for the same purpose except when purchased by a person licensed under chapter 132B or otherwise exempt under paragraph (r).

(C) Said section 6 of chapter 64H of the General Laws, as amended by section 12 of chapter 63 of the acts of 2007, is hereby further amended by striking out paragraphs (uu) and (vv).

(D) Section 7 of chapter 64I of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out paragraphs (d) and (e).

Summary:

This section repeals the sales tax exemptions for aircraft and aircraft parts, and for pesticides except when purchased by farmers and licensed applicators.

Civil Remedies for Violations of Certain Labor Laws

SECTION 18. (A) Subsection (f) of section 197B of chapter 111 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 3 paragraphs:

(5) In addition to the other penalties under this subsection, the director of labor may issue a written warning or a civil citation for violations of this section or regulations under this section. Subsections (c) to (i), inclusive, of section 6F (1/2) of chapter 149 shall apply to these citations.

(6) In addition to the cease-work order authority under this section, whenever the department of labor has reason to believe that any person, firm, corporation or other entity is engaging or is about to engage in a violation of sections 197 or this section, or the regulations under those sections, it may bring an action in the name of the commonwealth against that person, firm, corporation or other entity to restrain the violation by temporary restraining order or preliminary or permanent injunction. Subsections (a) and (b) of section 6F (1/2) of chapter 149 shall apply to these actions.

(7) The director of labor may adopt regulations to carry out this section.

(B) Section 46R of chapter 140 of the General Laws, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

In addition to the penalties under the preceding paragraph, the commissioner may issue a written warning or a civil citation for violations of these sections. Subsections (c) to (i), inclusive, of section 6F (1/2) of chapter 149 shall apply to these citations. The director of labor may adopt regulations to carry out this section.

(C) Chapter 149 of the General Laws is hereby amended by inserting after section 6F the following section:-

Section 6F 1/2. (a) In addition to the cease and desist authority in section 6E and the criminal penalties in section 6F, whenever the commissioner has reason to believe that any person, firm, corporation or other entity is engaging or is about to engage in a violation of sections 6A to 6E, inclusive, or of any regulations under those sections, he may bring an action in the name of the commonwealth against such person, firm, corporation or other entity to restrain the violation by temporary restraining order or preliminary or permanent injunction. The action may be brought in the superior court of the county in which such person, firm, corporation or other entity resides or has his principal place of business, or the action may be brought in the superior court of Suffolk county with the consent of the parties or if the person, firm, corporation or other entity has no place of business within the commonwealth. If more than one person, firm, corporation or other entity is joined as a defendant, the action may be brought in the superior court of the county where any one defendant resides or has his principal place of business, or in Suffolk county. The court may issue temporary restraining orders or preliminary or permanent injunctions.

(b) Any person, firm, corporation or other entity that violates an injunction issued under this section shall forfeit and pay to the commonwealth a civil penalty of not more than \$10,000 for each such violation, where each day during which a person, firm, corporation or other entity fails to comply with sections 6A to 6E, inclusive, shall be considered a separate violation. For the purposes of this section, the court issuing such an injunction shall retain jurisdiction, and the case shall be continued, and in such case the department may petition for recovery of this civil penalty.

(c) In addition to the remedies under subsections (a) and (b), the commissioner may issue a written warning or a civil citation for violations of this chapter or regulations under this chapter. For each violation, a separate citation may be issued requiring any or all of the following: that the infraction be rectified or that a civil penalty of not more than \$5,000 for each violation be paid to the commonwealth, within 21 days of the date of issuance of such citation.

(d) Notwithstanding other provisions of this section, the maximum civil penalty that may be imposed upon any person, firm, corporation or other entity who has not previously been either criminally convicted of a violation of this chapter or issued a citation under this chapter, shall be not more than \$2,500, except that in instances in

which the commissioner determines that the person, firm, corporation or other entity lacked specific intent to violate this chapter, the maximum civil penalty for the person, firm, corporation or other entity that has not previously been either criminally convicted of a violation of this chapter or issued a citation under this chapter shall be not more than \$1,000.

(e) In determining the amount of each civil penalty, the department shall include, but not be limited to, the following considerations: the actual and potential impact on public health, safety and welfare and the environment of the failure to comply; whether the person, firm, corporation or other entity being assessed the civil penalty took steps to prevent noncompliance, to promptly come into compliance, and to remedy and mitigate whatever harm might have been done as a result of such noncompliance; whether the person, firm, corporation or other entity assessed the civil penalty has previously failed to comply with any regulation, order, license or approval issued or adopted by the department, or any law which the department has authority or responsibility to enforce; deterring future noncompliance; the financial condition of the person, firm, corporation or other entity being assessed the civil penalty; and the public interest.

(f) Upon any failure to comply with the requirements set forth in a citation, the commissioner may order the cessation of all or the relevant activities of the person, firm, corporation or other entity, and shall, within 10 days of such order, schedule a hearing on the suspension or revocation of the license, under this chapter. Any license suspension or revocation under this section shall also apply to all affiliates of the person, firm, corporation or other entity as well as any successor company or corporation that the commissioner upon investigation, determines to not have a true independent existence apart from that of the violating person, firm, corporation or other entity.

(g) Any person, firm, corporation or other entity aggrieved by any citation or order issued pursuant to this subsection may appeal it by filing a notice of appeal with the commissioner within 10 days after the receipt of the citation or order. Chapter 30A shall apply to such appeals.

(h) In addition, no officer of any corporation which has failed to pay any civil penalty under this section may incorporate or serve as an officer in any corporation which did not have a legal existence as of the date that the penalty became due and owing to the commonwealth.

(i) The commissioner may adopt regulations to carry out this section.

Summary:

This section allows the Director of Labor to impose civil penalties for violations of existing laws regulating employment agencies, workplace asbestos, and lead-paint inspectors and deleaders.

Medicaid Clawback Pharmacy Recovery

SECTION 19. (A) Subsection (b) of section 31 of chapter 118E of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

Any recovery under subsections (a), (b), or (b 1/2) may be made only after the death of the surviving spouse, if any, and only at a time when the surviving spouse has no surviving child who is under age 21 or is blind or permanently and totally disabled. The division shall waive recovery if that recovery would work an undue hardship, as defined by the division in its regulations. If insufficient estate assets are available to repay the full amount due, any amounts recovered shall first be applied to the amount due under subsection (b 1/2).

(B) Said section 31 of said chapter 118E, as so appearing, is hereby further amended by inserting after said subsection (b) the following subsection:-

(b 1/2) This subsection shall apply to estates of individuals dying on or after July 1, 2008. An estate of an individual who was a "full benefit dual eligible", as defined under 42 U.S.C. section 1396u-5, shall be responsible for repaying the state Medicaid program contributions that the state made to the secretary of the federal Department of Health and Human Services for the federal assumption of prescription costs for the dual eligible under 42 U.S.C. section 1396u-5(c).

(C) The first paragraph of subsection (d) of said section 31 of said chapter 118E, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- If the individual at any time on or after July 1, 2008, was a "full benefit dual eligible", as defined by 42 U.S.C. section 1396u-5, the amount due shall also include contributions the state Medicaid program made to the secretary of the federal Department of Health and Human Services for the federal assumption of prescription costs for the dual

eligible under 42 U.S.C. section 1396u-5(c). If insufficient assets exist from the proceeds from the sale to repay both the amount of assistance provided and payments for the federal assumption of prescription costs, any amounts recovered shall first be applied to payments for the federal assumption of prescription costs.

Summary:

This section authorizes the MassHealth program to collect not only Medicaid payments, but also the state's federal pharmacy clawback costs, as part of an estate recovery claim or lien against real estate.

Hospital Assessments for DHCFP/HSNO Administrative Funding

SECTION 20. Section 5 of chapter 118G of the General Laws, as amended by section 21 of chapter 205 of the acts of 2007, is hereby further amended by inserting after the second sentence the following sentence:- The assessed amount shall not be less than 65 percent of the total expenses appropriated for the division and the health safety net office.

Summary:

This section codifies the assessment that acute care hospitals pay to the Division of Health Care Finance and Policy. The assessment was formerly required within the line item language for the Division.

Cost of Fire Services

SECTION 21. Chapter 175 of the General Laws is hereby amended by striking out section 195 and inserting in place thereof the following section:-

Section 195. Sums for the estimated expenses for the purposes specified in subsection (b) shall be paid to the commonwealth by insurance companies writing fire, homeowners multiple peril or commercial multiple peril policies on property situated in the commonwealth within 30 days after notice from the commissioner of such estimated expenses. The commissioner shall apportion such estimated charges among all such companies and shall assess them for the same on a fair and reasonable basis. The commissioner shall subsequently apportion actual costs among all such companies and shall make assessment adjustments for the same for any variation between estimated and actual costs on a fair and reasonable basis. Such estimated and actual costs shall include an amount equal to the cost of fringe benefits as established by the secretary of administration and finance under section 6B of chapter 29.

(b) The costs to be paid under subsection (a) shall be for the following purposes:

- (1) the operation of state fire training facilities and curriculum for fire fighting personnel;
- (2) implementing sections 26G 1/2 and 34A to 34D, inclusive, of chapter 148, and chapter 304 of the acts of 2004;
- (3) the firefighting equipment grant program;
- (4) student awareness of fire education programs;
- (5) capital improvements to state fire training facilities, including reimbursing the General Fund for debt service on bonds issued to pay for such capital improvements.

Summary:

This section removes the limit on assessing fire and property insurers for fire services costs and expands the description of fire services for which costs may be assessed.

Suffolk Superior Criminal Clerks Compensation

SECTION 22. (A) Section 16A of chapter 221 of the General Laws, as amended by section 29 of chapter 61 of the acts of 2007, is hereby further amended by adding the following sentence:- That assistant clerk shall receive, in addition to the salary paid to him as an assistant clerk under section 4, a sum equivalent to 10 per cent of the salary of an assistant clerk.

(B) Chapter 278 of the General Laws is hereby amended by inserting after section 28C the following section:-

Section 28D 1/2. The clerk, the first assistant clerk and the second assistant clerk of the appellate division shall receive from the commonwealth as salary an amount equal to 10 per cent of and in addition to the salaries established and paid to them as clerk, first assistant clerk and second assistant clerk respectively of the superior court for criminal business in the county of Suffolk.

An employee of the office of the clerk of the superior court for criminal business in the county of Suffolk shall be designated by the clerk as a clerical assistant in matters pertaining to the business of the appellate division. The clerical assistant, so designated, shall receive from the commonwealth as salary an amount equal to 10 per cent of, and in addition to, the salary established and paid to that employee in the position held by that employee in the office of the clerk.

The clerk and the assistant clerks of the appellate division shall receive for travelling expenses necessarily incurred in the performance of their official duties the sum approved by a justice of the appellate division to be paid by the commonwealth. The clerk shall receive for office expenses necessarily incurred in the conduct of the business of the appellate division the sums approved by a justice of the appellate division to be paid by the commonwealth.

Summary:

This section re-establishes compensation for the Suffolk Superior Criminal Clerk's office that was removed in outside sections of the enacted fiscal year 2008 budget.

Pay for Performance Payments

SECTION 23. Chapter 58 of the acts of 2006 is hereby amended by striking out section 128, as amended by section 40 of chapter 61 of the acts of 2007, and inserting in place thereof the following section:-

Section 128. Notwithstanding any general or special law to the contrary and in accordance with section 13B of chapter 118E of the General Laws, in fiscal year 2007, \$90,000,000 shall be made available from the Commonwealth Care Trust Fund, established pursuant to section 2000 of chapter 29 of the General Laws, to pay for an increase in the Medicaid rates paid to acute hospitals and physicians; but not less than 15 per cent of the increase shall be allocated to rate increases for physicians. For fiscal year 2008, an additional \$90,000,000, for a total of \$180,000,000, shall be made available from the Commonwealth Care Trust Fund in accordance with this section, to pay for an increase in the Medicaid rates paid to acute hospitals and physicians; but not less than 15 per cent of the increase shall be allocated to rate increases for physicians. In fiscal year 2009, an additional \$90,000,000, for a total of \$270,000,000, shall be made available to pay for an increase in the Medicaid rates paid to acute hospitals, as defined in section 1 of chapter 118G of the General Laws, and physicians; but not less than 15 per cent of the increase shall be allocated to rate increases for physicians. In fiscal year 2008, not more than \$20,000,000 of the amounts to be made available to acute hospitals under this section shall be contingent on hospital adherence to quality standards and achievement of performance benchmarks, including the reduction of racial and ethnic disparities in the provision of health care, in accordance with said section 13B of said chapter 118E, and may be paid in fiscal year 2009. In fiscal year 2009, not more than \$58,000,000 of the amounts to be made available to acute hospitals under this section shall be contingent on hospital adherence to quality standards and achievement of performance benchmarks, including the reduction of racial and ethnic disparities in the provision of health care, in accordance with section said 13B of said chapter 118E, and may be paid in fiscal year 2010. For fiscal years 2008 and 2009, any such performance benchmarks shall be determined by the secretary of health and human services without any limitation but in consultation with hospitals, the MassHealth payment policy advisory board and the health care quality and cost council, and may include measures to be reported by hospitals to the federal Centers for Medicare and Medicaid Services for Reporting Hospital Quality Data for Annual Payment Update, to the Joint Commission on Accreditation of Healthcare Organizations for core measures, or to the MassHealth Program pursuant to Appendix G of the contract between MassHealth and acute hospitals for Rate Year 2007 or other nationally-recognized measures that are drawn on those approved by the National Quality Forum and adopted by the Hospitals Quality Alliance Performance benchmarks and quality measures related to racial and ethnic disparities in the provision of health care. The secretary of health and human services shall, after consultation required by said section 13B of said chapter 118E, issue final quality standards and performance benchmarks for use in the hospital fiscal year beginning October 1, 2008. For purposes of payments to hospitals pursuant to this section, fiscal year shall mean the hospitals fiscal year and, for purposes of any payments to physicians pursuant to this section, fiscal year shall mean the state fiscal year.

Summary:

This section continues implementation pay-for-performance for hospitals, as required by the 2006 Health Care Reform legislation.

Trial Court Transferability

SECTION 24. Notwithstanding subclause (a) of clause (xxiii) of the third paragraph of section 9 of chapter 211B of the General Laws, or any other general or special law to the contrary, the chief justice for administration and management may, from the effective date of this act through April 30, 2009, transfer funds from any item of appropriation within the trial court to any other item of appropriation within the trial court. These transfers shall be made in accordance with schedules submitted to the house and senate committees on ways and means. The schedule shall include the following: (1) the amount of money transferred from 1 item of appropriation to another; (2) the reason for the necessity of the transfer; and (3) the date on which the transfer is to be completed. A transfer under this section shall not occur until 10 days after the revised funding schedules have been submitted in written form to the house and senate committees on ways and means.

Summary:

This section allows the Chief Justice for Administration and Management to transfer funds from any line item within the Trial Court to any other item within the Trial Court.

Inspector General's Health Safety Net Audit Unit

SECTION 25. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2009, the office of the inspector general may continue to expend funds from the Health Safety Net Trust Fund for the costs associated with maintaining a pool audit unit within the office. The unit shall continue to oversee and examine the practices in all hospitals in the commonwealth including, but not limited to, the care of the uninsured and the resulting free care 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, 2009. For the purposes of these audits, allowable free care services shall be defined pursuant to chapter 118G of the General Laws and any regulations adopted under that chapter.

Summary:

This section allows the Inspector General's Office to continue its auditing work for the Health Safety Net Trust Fund with the \$1.96 million remaining in this trust fund.

Stabilization Fund Transfer

SECTION 26. Notwithstanding any general or special law to the contrary, the comptroller shall, on or before June 30, 2008, transfer \$369,000,000 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.

Summary:

This section transfers \$369,000,000 to the General Fund from the Commonwealth Stabilization Fund, but allows the Secretary of Administration and Finance to reduce the amount transferred.

Pension Cost of Living Adjustment

SECTION 27. 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 in 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 under 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, 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 treasurer. The 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 commissioner of administration with the house and senate committees on ways and means and the joint committee on public service in advance of such 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 of the commonwealth 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.

Transfers Between Operating and Capital Funds

SECTION 28. (a) Whenever the commonwealth has borrowed funds as authorized by law to fund the acquisition of equipment that would have otherwise been funded under an item of appropriation in section 2, the secretary of administration and finance may authorize the transfer of funds from the item of appropriation in section 2 from which the equipment acquisition would have been funded to any other item of appropriation for the purpose of funding personnel or other operating-related expenses that would have otherwise been funded in the fiscal year 2009 capital budget from the proceeds of bonds. The secretary may establish an appropriation account to receive this transfer if none exists under section 2. Any amount transferred under this section shall not exceed the cost of the related equipment acquisition, and the aggregate amount of all such transfers shall not exceed \$50,000,000.

(b) Before making any transfer authorized by this section, the secretary of administration and finance shall submit a transfer report and certification to the house and senate committees on ways and means. The report and certification shall include the following: (1) a schedule showing the cost of equipment acquisition that would have been funded from an item of appropriation in section 2, the item of appropriation from which the equipment would have been funded and the bond authorization against which bonds may be issued to fund the acquisition of the equipment; (2) a schedule showing the cost of all personnel and other operating expenses that would have been funded from the fiscal year 2009 capital budget, identification of each of the agencies that pay the related expenses, the item in the capital budget and the bond authorization from which the personnel or operating expenses would have been funded, and the item of appropriation in section 2 from which the personnel or operating expenses will be funded; (3) a schedule of each amount that will be transferred from one item of appropriation in section 2 to another under subsection (a) in order to effectuate the transactions described in clauses (1) and (2); and (4) a certification of the secretary confirming that the equipment will be acquired in fiscal

year 2009 with bond proceeds pursuant to the fiscal year 2009 capital budget and the bond authorization identified in clause (1).

Summary:

This section establishes a no-cost mechanism for potentially taking hundreds of personnel and other operating cost expenses off the capital budget, by allowing transfers between budget accounts.

Line Item Transferability

SECTION 29. (a) Notwithstanding any general or special law to the contrary, the secretary of administration and finance may authorize the transfer of funds from any item of appropriation for any executive branch agency to any other item of appropriation for that agency or within its executive office. No transfer authorized by this section shall exceed 5 per cent of the amount appropriated for an item. The transfer may be made only with the written approval of the heads of the sending and receiving agencies and of the secretary of their executive office.

(b) Before making any transfer authorized by this section, the secretary of administration and finance shall submit a transfer schedule to the house and senate committees on ways and means. The schedule shall include the following: (1) the amount of money transferred from one item of appropriation to another; (2) the reason for the transfer; and (3) the date on which the transfer is to be completed.

Summary:

This section allows the Secretary of Administration and Finance to transfer funds between accounts within a department, or within a secretariat, in the Executive Branch, not to exceed 5% per account., with the approval of the sending and receiving agency heads and their Secretary. Transferring funds will allow agencies to maximize efficiencies, offset unforeseen deficiencies, and better manage their operations. This authorization has previously existed for the Judiciary and the Legislature.

Commission on Maintenance of State Facilities

SECTION 30. (a) There shall be a special commission to investigate and study the maintenance of state facilities.

(b) The commission shall consist of the secretary of administration and finance, or her designee, who shall chair the commission; the commissioner of capital asset management and maintenance, or his designee; the chairs of the house and senate committees on ways and means, or their designees; the house and senate chairs of the joint committee on bonding, capital expenditures and state assets, or their designees; the minority leaders of the senate and house of representatives, or their designees; a representative of the International Facility Management Association; and 3 other persons appointed by the governor. The division of capital asset management and maintenance shall provide staff assistance to the commission and shall conduct a facilities maintenance review to assist in the commission's study.

(c) The commission shall study opportunities to improve maintenance of state facilities, including, but not limited to, more efficiently allocating resources and responsibility for facility maintenance, implementing best practices in assessing and addressing facility maintenance needs, and more effectively funding facility maintenance needs.

(d) The commission shall report its findings and recommendations, including any proposed legislation, to the clerks of the senate and house of representatives on or before March 31, 2009.

Summary:

This section establishes a special commission to study the maintenance of state facilities., including adopting regionalized maintenance models.

Transfer to State Retiree Benefits Trust Fund

SECTION 31. Notwithstanding any general or special law to the contrary, during fiscal year 2009, the comptroller shall, according to a schedule developed in consultation with the state treasurer and the secretary of administration and finance, transfer \$382,938,275 from the General Fund to the State Retiree Benefits Trust Fund, established by section 24 of chapter 32A of the General Laws.

Summary:

This section transfers \$382,938,275 from the General Fund to the State Retiree Benefits Trust Fund, in order to fund retiree health care benefits in this fiscal year.

Ponkapoag Golf Course Long-Term Leasing Authority

SECTION 32. Notwithstanding sections 40E to 40K and 52 to 55, inclusive, of chapter 7 of the General Laws, the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, may, using competitive proposal processes that the division considers necessary or appropriate, lease and enter into other agreements, for terms not to exceed 25 years, to 1 or more proponents, so as to provide for the continued use, operation, maintenance, repair and improvement of all or a portion of the golf courses, practice greens, driving ranges, restaurant or any other structure and associated lands that comprise the facilities of the Ponkapoag Golf Course of the department.

These leases and other agreements shall be on terms acceptable to the commissioner of capital asset management and maintenance, after consultation with the commissioner of department of conservation and recreation, and, notwithstanding any general or special law to the contrary, shall provide for the lessees to operate, manage, improve, repair and maintain the facilities, and may provide for the department to make initial capital improvements or direct grant funds to the lessee to undertake initial capital improvements as the commissioner of the department determines is necessary due to the condition of the facilities. Any such leases or other arrangements requiring improvements to be made to any portion of the facilities may include a description of the initially required improvements and, at minimum, performance specifications. Such leases and other agreements may provide that any benefits to the communities and the costs of improvements and repairs made to the facilities provided by the lessees or the recipients of the properties shall be taken into account as part of the consideration for such leases or other agreements. All consideration received from the leases or other agreements shall be payable to the department of conservation and recreation for deposit into the Urban Parks Trust Fund in accordance with section 34 of chapter 92 of the General Laws. The lessees or the recipients of these facilities shall bear all costs found necessary or appropriate by the commissioner of conservation and recreation for the transactions, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

Summary:

This section grants the Department of Conservation and Recreation long-term leasing authority for the Ponkapoag golf course.

Transfers Among Health Care Funds

SECTION 33. (a) Notwithstanding any general or special law to the contrary, on or before October 1, 2008 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 and in this subsection 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 subsection (b), for the purpose of making initial gross payments to qualifying acute care hospitals for the hospital fiscal year beginning October 1, 2008. 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, 2009, the amount of the transfer authorized by this subsection and any allocation thereof as certified by the director of the health safety net office.

(b) Notwithstanding any general or special law to the contrary, the comptroller shall, in consultation with the state treasurer, the secretary of administration and finance and the secretary of health and human services, develop a schedule for transferring funds among the General Fund, the Commonwealth Care Trust Fund, established by section 2000 of chapter 29 of the General Laws and the Health Safety Net Trust Fund, established by section 36 of chapter 118G of the General Laws. Not less than \$1,292,561,456 shall be transferred from the General Fund to the Commonwealth Care Trust Fund and not less than \$62,996,382 shall be transferred from the Commonwealth Care Trust Fund to the Health Safety Net Trust Fund. The hospital fiscal year 2009 payment amount to each hospital shall be funded by the Health Safety Net Trust Fund. Payments may be made either as safety net care payments under the Commonwealth's 1115 waiver, or as an adjustment to Title XIX service rate payments, or a combination thereof. The executive office of health and human services and the health safety net office may use other federally permissible funding mechanisms available for public service hospitals, as defined in 114.1 CMR 36.02, to reimburse up to \$70,000,000 of uncompensated care at the hospitals using sources distinct from the funding made available to the Health Safety Net Trust Fund. The executive office of health and human services shall make expenditures required for fiscal year 2008 under section 122 of chapter 58 of the acts of 2006. The schedule shall provide for transfers in increments considered appropriate to meet the cash flow needs of these funds. The transfers shall not begin before July 1, 2008 and shall be completed on or before June 30, 2009. The secretary of administration and finance, in consultation with the secretary of health and human services and the executive director of the commonwealth health insurance connector, shall on a quarterly basis evaluate the revenue needs of the health safety net program funded by the Health Safety Net Trust Fund and the Commonwealth Care subsidized health insurance program funded from the Commonwealth Care Trust Fund, and if necessary, transfer monies between these funds for the purpose of ensuring that sufficient revenues are available to support projected program expenditures.

(c) Notwithstanding any general or special law to the contrary, the comptroller shall, in consultation with the office of the state treasurer, the executive office of administration and finance and the executive office of health and human services, develop a schedule and make a series of transfers not to exceed \$251,000,000 from the General Fund to the MassHealth provider payment account in the Medical Assistance Trust Fund, established by section 2QQQ of chapter 29 of the General Laws, if the comptroller has determined that General Fund revenues are sufficient to accommodate the schedule of transfers. These funds may be expended only for services provided during state or federal fiscal year 2009, and no amounts previously or subsequently transferred into the Medical Assistance Trust Fund may be expended on payments described in the 1115 demonstration waiver for services provided during state fiscal year 2009 or payments described in the state plan for services provided during federal fiscal year 2009. All payments from the Medical Assistance Trust Fund shall be subject to the availability of federal financial participation, shall be made only in accordance with federally-approved payment methods, shall be consistent with federal funding requirements and all federal payment limits as determined by the secretary of health and human services, and shall be subject to the terms and conditions of an agreement with the executive office of health and human services. The secretary of the executive office of health and human services shall make a payment of up to \$148,000,000 from the Medical Assistance Trust Fund to the Cambridge public health commission's hospital network for dates of service in state and federal fiscal year 2009 only after the Cambridge public health commission transfers up to \$74,000,000 of its funds to the Medical Assistance Trust Fund, using a federally permissible source of funds which shall fully satisfy the non-federal share of such payment.

(d) Notwithstanding any general or special law to the contrary, the comptroller, in consultation with the secretary of health and human services, shall develop a schedule for transferring not less than \$28,000,000 from the General Fund to the Essential Community Provider Trust Fund, established in section 2PPP of chapter 29 of the General Laws, for the purpose of making expenditures as described in this section in fiscal year 2009. The secretary shall authorize expenditures by the division of health care finance and policy from the fund without further appropriation for the purpose of (1) grants to financially distressed MassHealth providers that provide emergency care, behavioral health, and routine care for MassHealth and Commonwealth Care members; (2) grants to financially viable MassHealth providers that are essential providers to MassHealth and Commonwealth Care members; (3) a program, which may be based on the Medicare Management Performance Demonstration or similar models, to provide financial incentives to small group practices with MassHealth Primary Care Clinician Plan enrollment of between 100 and 1,000 members, which must (a) report specified clinical data, (b) achieve specified clinical benchmarks in service delivery and care management, and (c) implement an electronic medical record system within specified timeframes and with specified data sharing capacity; (4) a program to provide financial incentives to encourage the establishment of systems of care in communities with high concentrations of MassHealth, Commonwealth Care, and Group Insurance Commission membership to engage hospitals, community health centers, community mental health centers, physicians, and other providers, and to reward such providers based upon their ability to timely deliver expected health outcomes in a lower cost setting; and (5) a program to review and address, as needed, payments for behavioral health care to MassHealth members in

community hospital settings, and coordination of inpatient and outpatient care in such settings. The secretary, in consultation with the division, shall determine which entities meet the purposes and criteria described in this section. The executive office shall structure expenditures under this section to maximize allowable federal reimbursement under Title XIX. All federal financial participation received for expenditures from the Essential Community Provider Trust Fund shall be deposited in the General Fund, and shall be available for further appropriation for purposes specified in this subsection.

Summary:

This section authorizes several transfers among health care funds, including the Commonwealth Care Trust Fund, Medical Assistance Trust Fund, Health Safety Net Trust Fund, and Essential Community Provider Trust Fund.

UMass/EHS Interagency Service Agreements

SECTION 34. Notwithstanding any general or special law to the contrary, the executive office of health and human services under section 16 of chapter 6A of the General Laws, 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, in consultation with the comptroller, determines are appropriate and within the scope of the proper administration of Title XIX and other federal funding provisions to support the programs and activities of the executive office. These activities shall include: (1) providing administrative services, including, but not limited to, activities such as 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 of health and human services 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 the purpose of 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 extend longer than 3 years, and shall not be renewed without prior review and approval from the executive office of administration and finance. The secretary shall not pay contingency fees in excess of \$40,000,000 for state fiscal year 2009. 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 spent on personnel and the amount of federal reimbursement and recoupment payments that the university collected.

Summary:

This section authorizes EOHHS to enter into agreements with the University of Massachusetts Medical School to perform important administrative support services and also authorizes the Medical School to retain federal revenue related to those activities.

Tourism Fund Formulas

SECTION 35. Notwithstanding any general or special law to the contrary, section 35J of chapter 10 of the General Laws shall not apply in fiscal year 2009.

Summary:

This section suspends the statutory tourism fund formula for fiscal year 2009. This section has been routine in recent budgets.

Effective Date

SECTION 36. Except as otherwise provided, this act shall take effect on July 1, 2008.

Summary:

This section makes this law effective on July 1, 2008, unless another specific effective date is provided.