

HOUSE No. 1453

By Miss Garry of Dracut, petition of Colleen M. Garry for legislation to provide for the improvement of court facilities in the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT PROVIDING FOR THE IMPROVEMENT OF COURT FACILITIES IN THE COMMONWEALTH.

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

1 SECTION 1. The sums set forth in section 2 shall provide for
2 planning and studies, acquisition of land and buildings, and interests
3 therein, the preparation of plans and specifications, construction,
4 renovation, reconstruction, alteration, improvement, demolition,
5 expansion, repair, furnishings and equipment, and related adminis-
6 trative expenses, for the acquisition, construction, renovation, and
7 repair of court facilities owned or to be owned by the common-
8 wealth and said sums shall be in addition to previous appropriations
9 made for the improvement of court facilities, including any amounts
10 appropriated by chapter 203 of the acts of 1988, chapter 227 of the
11 acts of 1995, chapter 88 of the acts of 1997 and chapter 189 of the
12 acts of 1998; provided, however, that priority shall be given to those
13 projects necessary to improve life safety, security, handicapped
14 accessibility and structural integrity of court facilities owned, or to
15 be owned, by the commonwealth; and provided, further, that an
16 amount not to exceed 2 per cent of the funds authorized herein may
17 be expended for the costs of personnel and related administrative
18 expenses which are solely and exclusively related to the projects
19 funded by this authorization and any previous authorizations made
20 for similar purposes.

1 SECTION 2.

JUDICIARY.

Trial Court.

0330-2210	<p>For planning, design, development, land acquisition and construction of court facilities including the trial court facility in Salem to be known as the “J. Michael Ruane Judicial Center,” a new trial court facility in downtown Fall River, a new regional eastern Hampshire county district court facility in Belchertown, a new trial court facility in Berkshire county to be located in the downtown area of Pittsfield, a new Middlesex County trial court facility and replacement of the Middlesex Family and Probate Court facility, the reconstruction or replacement of trial court facilities in Taunton, a new court house complex in downtown Worcester, a new trial court facility in the town of Plymouth, a new Suffolk County trial court facility and a new trial court facility in Lowell; provided, however, that the Lowell trial court facility project, as a pilot program and as an alternative to general obligation bond financing as provided in section three of this act, may be constructed as a so-called “design, build, finance and operate” project, which the commonwealth may lease from the developer of the project, as provided in section 10 of this act; if said Lowell court house project is built as such a “design, build, finance and operate” project, the division of capital asset management and maintenance shall issue and complete a request for proposals in connection with such project no later than December 31, 2004; provided, further, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazard shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to the provisions of section 5 of this act or pursuant to such other alternative means of construction as may be provided for in this item.....</p>	791,000,000
0330-2211	<p>For capital needs including renovation, repairs and reconstruction of court house facilities including facilities that have been or will be transferred to the Commonwealth and other county owned facilities, including renovations or additions to the district court facility in Quincy, renovations or expansion of the district court facility in Malden, renovations or additions to the Franklin county trial court facility in Greenfield, improvements to the trial court facility in Falmouth, the completion of the renovation of the historic Suffolk County or John Adams Courthouse, completion of the renovation of the high-rise Suffolk county courthouse, the renovation and reconstruction of the Brooke courthouse in Boston, the renovation of the existing Worcester court facility for use as a law</p>	

library and registry of deeds, for the repair and renovation of the district court facility in East Boston, improvements to the district court facility in Dedham and other court needs, including the cost of repairs identified through the master plan developed pursuant to section 7 of chapter 189 of the acts of 1998; provided that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazard shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to section 5 of this act provided further, that funds shall be expended from this item for the repair and renovation of the district court facility in Charlestown; and provided further, that a study be undertaken of the space needs for the court facilities in Dukes and Nantucket counties, to include the feasibility of expanding said facilities at their current locations or relocating some court functions

271,000,000

0330-2212

For life safety repairs, the remediation of life safety code violations, compliance with state and federal laws relative to access by and accommodations to disabled persons, and for security improvements at court facilities owned by the commonwealth or by political subdivisions of the commonwealth or leased by the commonwealth, including the construction, renovation and repair of court house detention facilities; renovation and repair of the Middlesex high-rise courthouse, the Stoughton district court, provided, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, renovation, compliance with life safety codes and remediation of environmental hazard shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to section 5 of this act; provided further, that not less than \$5,000,000 shall be expended from this item for repairs and renovations to the district court facility in Haverhill to ensure that said facility is in compliance with state and federal laws relative to access by and accommodations to disabled persons; provided further, that not less than \$12,000,000 shall be expended from this item for repairs and renovations to the district court facility in South Boston; provided that not less than \$5 million shall be expended from this item for renovations and repairs to the Norfolk Superior Court, so-called, located at 650 High Street in the town of Dedham and to any satellite courtrooms or offices located at 649 High Street in the town of Dedham; and provided further, that \$125,000 be set aside for parking improvements at the Hingham District Court House in the town of Hingham.....

150,000,000

0330-2213	For capital equipment for a program of intermediate sanctions to avoid costlier incarceration options.....	10,000,000
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1 SECTION 3. To meet the expenditures necessary to carry out the
 2 provisions of section 2, the state treasurer shall, upon request of the
 3 governor, issue and sell bonds of the commonwealth, in an amount
 4 to be specified by the governor from time to time, not exceeding in
 5 the aggregate, the sum of \$1,222,000,000. All bonds issued by the
 6 commonwealth, as aforesaid, shall be designated on their face, Court
 7 Improvement Loan, Act of 2004, and shall be issued for such max-
 8 imum terms of years, not exceeding 20 years, as the governor may
 9 recommend to the general court pursuant to section 3 of Article LXII
 10 of the Amendments to the Constitution; provided, however, that all
 11 such bonds shall be payable not later than June 30, 2029. All interest
 12 and payments on account of principal on such obligations shall be
 13 payable from the General Fund. Bonds and interest thereon issued
 14 under the authority of this section shall, notwithstanding any other
 15 provision of this act, be general obligations of the commonwealth.

1 SECTION 5. (a) As used in this section, the following words shall
 2 have the following meanings:—
 3 “Commissioner”, the commissioner of the division of capital asset
 4 management and maintenance.
 5 “Design/build”, a construction method which utilizes a single
 6 company for the design and construction of a building, rather than
 7 separately contracting with a designer and then a general contractor.
 8 “Project”, any of the courts, courthouses or appurtenant facilities
 9 authorized by section 2.
 10 “Site”, any parcel or parcels of land acquired for any of the
 11 courts, courthouses or appurtenant facilities authorized by section 2.
 12 (b) Notwithstanding sections 40E to 40I inclusive, of chapter 7 of
 13 the General Laws or any other general or special law to the contrary,
 14 the commissioner is hereby authorized, subject to the requirements
 15 of this section, to acquire by purchase or by eminent domain pur-
 16 suant to chapter 79 of the General Laws, any and all interests in the
 17 land and buildings deemed necessary by said commissioner to carry
 18 out the purposes of this act, including, but not limited to, the acqui-
 19 sition of land, buildings, and easements for drainage, access, utilities,
 20 and environmental mitigation.

21 The commissioner shall not acquire a site by eminent domain
22 unless a competitive site selection process has first been conducted
23 in conformance with subsection (d) and the commissioner deter-
24 mines that as a result of said process, it is not in the best interests of
25 the commonwealth with respect to cost and other requirements of a
26 project to acquire any of the proposed sites. The commissioner shall
27 explain the reasons for such determination in a written report, which
28 shall be available for public inspection.

29 (c) Notwithstanding sections 38A½ to 38O, inclusive, of chapter
30 7 of the General Laws, section 39M of chapter 30 of the General
31 Laws, and sections 44A to 44J of the General Laws, inclusive, of
32 chapter 149 of the General Laws, or any other general or special law
33 regulating the design, construction, advertising, or bidding of design
34 and of construction contracts, or any other general or special law to
35 the contrary, the commissioner may select and contract with a single
36 contractor to provide design/build services for the design and con-
37 struction of the project; provided, however, that the design/build
38 contractor shall be certified by the commissioner to perform the
39 work required and shall be selected through a competitive process
40 conducted in conformance with subsection (d).

41 (d) The commissioner shall develop procedures for site selection
42 or procurement of design/build services in consultation with the
43 office of the inspector general. Said procedures shall include but
44 shall not be limited to the following provisions:

45 (1) The commissioner shall obtain the site and design/build serv-
46 ices utilizing sealed competitive proposals unless the site has been
47 acquired by gift. The commissioner shall solicit proposals through a
48 request for proposals which shall include: the time and date for
49 receipt of proposals; the address of the office to which a proposal
50 shall be delivered; proposed contractual terms and conditions, some
51 of which may be deemed mandatory or non-negotiable; standards by
52 which acceptability will be determined as to quality, workmanship,
53 results of inspections and tests, and suitability for a particular pur-
54 pose; all evaluation criteria that will be utilized by the commis-
55 sioner; and such other matters as may be determined by said
56 commissioner. The request for proposals for design/build services
57 shall also describe the scope of the design/build project and identify
58 all quality and performance requirements for said project.

59 (2) Evaluation criteria for selecting the site shall include, but not
60 be limited to, location in areas of cities and towns, as authorized by
61 section 2, which are in need of revitalization and renewal and where
62 such revitalization and renewal are deemed important by the munici-
63 pality for acquisition and other costs. Evaluation criteria for
64 design/build services shall include, but not be limited to, relevant
65 technical and management experience of the offeror's proposed
66 design/build team, including subcontractors, the financial stability
67 and resources of the offeror, quality of construction materials, and
68 the costs and life cycle of installed equipment.

69 (3) Public notice of each request for proposals shall be published
70 at least 3 weeks prior to the time specified in such notice for the
71 receipt of proposals in the central register published by the state sec-
72 retary and in a daily newspaper of general circulation in the munici-
73 pality or county where each project is proposed. The request for
74 proposals for design/build services shall also be published in at least
75 1 trade journal of national distribution.

76 (4) Each request for proposals may incorporate documents by ref-
77 erence; provided, however, that the request for proposals shall
78 specify where offerors may obtain such documents. The request for
79 proposals for design/build services may provide for the separate sub-
80 mission of price, and so provided, shall indicate when and how
81 offerors shall submit the price, and shall specify that bid security in a
82 form specified by the commissioner and in an amount equal to 5 per
83 cent of the proposed contract price shall accompany such proposal.
84 The commissioner shall make copies of each request for proposals
85 available to all offerors on an equal basis. The commissioner may
86 conduct pre-proposal conferences and interviews with interested par-
87 ties prior to receiving proposals. An offeror's proposal shall be
88 unconditional except as provided in this paragraph. An offeror may
89 correct, modify, or withdraw a proposal by written notice received in
90 the office designated in the request for proposals prior to the time
91 and date set for the opening of proposals.

92 (5) At the opening of the proposals, the commissioner shall pre-
93 pare a register of proposals which shall include the name of each
94 offeror and the number of modifications, if any, received. The reg-
95 ister of proposals shall be open for public inspection. After the
96 opening of the proposals, an offeror may not correct, modify, or
97 withdraw the price or any other provisions of its proposal in a

98 manner prejudicial to the interests of the commonwealth or fair com-
99 petition. The commissioner may waive minor informalities or allow
100 the offeror to correct them.

101 (6) The commissioner shall not open the proposals publicly, but
102 shall open them in the presence of 1 or more witnesses at the time
103 specified in the request for proposals. Notwithstanding any general
104 or special law to the contrary, until the completion of the selection
105 process, the contents of the proposals and the selection process shall
106 not be disclosed to competing offerors and shall not be public docu-
107 ments.

108 (7) The commissioner shall appoint a site selection committee and
109 a design/build selection committee which may be the same com-
110 mittee. The design/build selection committee shall be composed of
111 experts in design, construction, and court administration, including
112 the chief justice for administration or his designee. The appropriate
113 committees shall evaluate the proposals received by the commis-
114 sioner. Each selection committee shall conduct its evaluations of the
115 proposals based solely on the criteria set forth in the request for pro-
116 posals. In the event that price proposals are to be submitted sepa-
117 rately from proposals for design/build services, the design/build
118 selection committee shall not evaluate these and the commissioner
119 shall not disclose such price proposals to the committee until the
120 committee has completed its evaluation of the proposals for
121 design/build services.

122 (8) For each proposal, the appropriate selection committee shall
123 specify in writing on each evaluation criterion a rating of highly
124 advantageous, not advantageous, or such additional rating as the
125 committee finds reasonable, and shall specify in writing a composite
126 rating for each proposal and the reasons for such composite rating.

127 (9) The commissioner shall make a determination of the most
128 advantageous proposal for the site and for design/build services from
129 a responsible and responsive offeror based upon the ratings given to
130 the proposals by the appropriate selection committees. If price pro-
131 posals have been submitted separately for design/build services, the
132 commissioner shall also base such determination on an evaluation of
133 such price proposals. The commissioner may negotiate all contract
134 terms not deemed mandatory or non-negotiable with such offerors.
135 If, after negotiation with such offerors, the commissioner is unable
136 to finalize a contract for either acquisition of the site or for

137 design/build services, or both, that is in the commonwealth's best
138 interests, the commissioner may negotiate with the offeror of the
139 next most advantageous proposal submitted by a responsible and
140 responsive offeror based upon the ratings of the appropriate selec-
141 tion committee and upon an evaluation of the relevant price proposal
142 if separately submitted.

143 (10) The contract to acquire the site and the contract for
144 design/build services shall be awarded by the commissioner to the
145 responsible and responsive offerors submitting the most advanta-
146 geous proposals based upon the evaluation criteria set forth in the
147 request for proposals and the terms of the negotiated contract. The
148 commissioner shall complete the selection process by written notice
149 to the selected offeror or by notice of rejection to all proposers, as
150 specified below. The commissioner may reserve the right to reject
151 any or all proposals if it is in the public interest to do so.

152 (11) For the purposes of this section, the term "responsible
153 offeror" shall mean a person, corporation, or other organization or
154 entity which has the capability to perform fully the contract require-
155 ments, and the integrity and reliability which assures good faith per-
156 formance, and the term "responsive offeror" shall mean a person,
157 corporation, or other organization or entity which has submitted a
158 proposal which conforms in all respects to the request for proposals.

159 (12) If the commissioner awards the contract to acquire the site or
160 the contract for design/build services to an offeror which did not
161 submit the lowest price proposal, the commissioner shall explain the
162 reasons for such award in writing, which shall be available for public
163 inspection.

164 (13) Prior to execution of a design/build contract, the selected
165 offeror shall furnish to the commissioner a performance bond and
166 payment bond, each in the sum of the contract price and issued by a
167 surety company qualified to issue bonds in the commonwealth and
168 satisfactory to the commissioner. If the selected offeror fails to exe-
169 cute a contract or to furnish the necessary bonds within the time
170 period specified in the request for proposals, the commissioner may
171 award the design/build contract to the offeror of the next most
172 advantageous proposal.

173 (14) The commissioner shall return the bid security to all
174 design/build offerors which are not selected. The design/build selec-
175 tion committee shall have conferences describing relative strengths

176 and weaknesses of each proposal with the other qualified offerors
177 which were not selected if the offerors request to have such confer-
178 ences.

179 (15) The commissioner shall prepare a written report of the rea-
180 sons for its selection determinations and any subsequent determina-
181 tions to negotiate with additional proposers, including the recorded
182 votes, if any, that were taken which shall be available to the public.

183 (e) The commissioner shall submit final procedures for site selec-
184 tion or procurement of design/build services to the inspector general
185 for comment at least 30 days prior to the publication of notice of
186 request for proposals. Such procedures and the inspector general's
187 comments shall be submitted to the governor, the senate president,
188 the speaker of the house and the members of the general court at
189 least 45 days before the execution of any contract for site selection
190 or procurement of design/build services.

1 SECTION 6. The commissioner of the division of capital asset
2 management and maintenance is hereby authorized, notwithstanding
3 chapter 7 of the General Laws, to grant easements for drainage,
4 access, utilities and other purposes, as deemed necessary by the
5 commissioner to carry out the purposes of this act.

1 SECTION 7. The division of capital asset management and main-
2 tenance, in consultation with the appropriate district attorney, is
3 hereby authorized and directed to provide adequate space allocation
4 to accommodate the staff of the district attorney's office, including
5 executive and administrative staff, the grand jury unit, superior court
6 staff, appellate unit staff, or any other unit of said office in any
7 newly constructed, reconstructed, or substantially renovated court-
8 house facility. No design, redesign, construction, or renovation of
9 any court facility referenced in section 2 shall be finalized by the
10 commissioner of the division of capital asset management and main-
11 tenance until a formal presentation has been given to the district
12 attorney on the design plans for the new, reconstructed, or substan-
13 tially renovated facility. Further, said division of capital asset man-
14 agement and maintenance, in consultation with the appropriate
15 county sheriff, is hereby authorized and directed to provide adequate
16 space allocation in courthouses constructed, reconstructed, or sub-
17 stantially renovated in the commonwealth to accommodate the

18 duties and responsibilities of said sheriff. No design, redesign, con-
19 struction, or substantial renovation of any court facility referenced
20 herein shall be finalized by the commissioner of the division of cap-
21 ital asset management and maintenance until a formal presentation
22 has been given to the county sheriff on the design plans for the new,
23 reconstructed, or substantially renovated facility.

1 SECTION 8. Notwithstanding any other provision of this act or of
2 any general or special law to the contrary, the commissioner of the
3 division of capital asset management and maintenance is hereby
4 authorized and directed to promote the use of the latest technologies
5 available in order to ensure the best available air quality standards
6 are employed in each project funded pursuant to section 2 that is ini-
7 tiated or designed after the effective date of this act.

1 SECTION 9. Notwithstanding any general or special law to the
2 contrary, all court facilities constructed or reconstructed with funds
3 authorized in section 2 shall be constructed so as to accommodate
4 state of the art telecommunications equipment.

1 SECTION 10. (1) As used in this section, the following words
2 shall, unless the context clearly requires otherwise, have the
3 following meanings:—

4 “Division”, the division of capital asset management and mainte-
5 nance.

6 “Developer”, the private entity selected to design, build, maintain,
7 and operate the new Lowell district court facility in the city of
8 Lowell.

9 “Development Agreement”, the agreement entered into between
10 the developer and the Division, pursuant to subsection (4).

11 “Project”, the study, planning, design, construction, reconstruc-
12 tion, operation, and maintenance, including capital maintenance, of a
13 new Lowell district court facility in the city of Lowell in accordance
14 with the terms of the agreement described in subsection (4).

15 “Commissioner”, the commissioner of the division of capital asset
16 management and maintenance.

17 (2) Notwithstanding chapters 30, 30B and 149 of the General
18 Laws or any other general or special law to the contrary, the com-
19 missioner may solicit proposals from, and negotiate and authorize

20 the division to enter into a development agreement with, a developer
21 to undertake, as appropriate, all or a portion of the project using, in
22 whole or in part, private sources of financing.

23 (3)(a) The commissioner shall develop and publicly advertise a
24 request for qualifications setting forth criteria for prequalification of
25 developers, including minimum levels of experience, financial capa-
26 bility, bonding capacity and such other criteria as are deemed appro-
27 priate by the commissioner. The commissioner or his designee may
28 consult with legal, financial, technical and other experts within and
29 outside state government in the prequalification of developers. The
30 commissioner shall also consult with the secretary of administration
31 and finance in the development of a request for qualifications and
32 with respect to the financial capacity of the respondents to such
33 request for qualifications before determining which respondents are
34 qualified. The commissioner shall, within 45 days after the effective
35 date of this section, select a minimum of 3 developers, those which
36 he has determined to be the most qualified, based on their abilities to
37 finance, design, and construct the project.

38 Any selection made in response to a request for qualifications
39 issued by the commissioner prior to the effective date of this act is
40 hereby authorized and ratified if the request for qualifications is in a
41 form which is consistent with the provisions of this section.

42 (b) The commissioner shall develop and publicly advertise a
43 request for proposals setting forth criteria of the qualified developers
44 to undertake the project. The commissioner or his designee may con-
45 sult with legal, financial, technical and other experts within and out-
46 side state government in the development of the request for
47 proposals, the selection of a developer and the negotiation of a
48 development agreement. The commissioner shall not select a devel-
49 oper in accordance with the provisions of this section without the
50 written concurrence of the secretary of administration and finance
51 that the selected developer and its proposal have appropriate finan-
52 cial characteristics and provisions.

53 The commissioner shall, within 30 days after the designation of
54 the selected qualified developers, furnish each qualified developer,
55 as determined in paragraph (a), with a request for proposals setting
56 forth the minimum criteria for the project. Each such developer may
57 then submit to the commissioner, on or before the time and date
58 specified in the request for proposals which shall be within 90 days

59 of the issuance of the requests, a proposal in the format specified by
60 the commissioner. The commissioner may waive any and all infor-
61 malities in such proposals and reject any or all proposals if, in his
62 sole discretion, such a rejection would be in the public interest. All
63 proposals shall be reviewed in private and no proposal or any infor-
64 mation contained therein shall be released to a third party other than
65 as specified herein nor to execution of the development agreement in
66 accordance with the provisions of this section, nor shall any such
67 proposal be deemed to be a public record until such development
68 agreement is executed.

69 Each proposal shall be evaluated by criteria determined by the
70 commissioner and set forth in the request for proposals including,
71 but not limited to, the proposed cost of the project and the financial
72 benefit to the commonwealth, the reputation, industry experience
73 and financial capacity of the developer, the proposed design of the
74 facility, the time schedule proposed for completion of the project,
75 local citizen and government concerns, environmental concerns
76 relative to the project, benefits to the traveling public, the develop-
77 er's ability to ensure labor harmony during the length of the project
78 and such other criteria as the commissioner deems appropriate. The
79 commissioner may request oral presentations by such developers as
80 he deems necessary for the purpose of understanding, clarifying and
81 improving the terms contained in any such proposals. An oral pre-
82 sentation shall include a written component, including minutes of
83 the meeting in which the presentation took place, which shall be
84 made public after the execution of the development agreement. The
85 commissioner shall, within 60 days of the receipt of proposals from
86 the qualified developers, select the developer which he determines
87 best meets the selection criteria for the benefit of the common-
88 wealth. Within 5 days of the selection of the developer, the commis-
89 sioner shall notify the joint committee on state administration of his
90 choice. Within 15 days of that notification, the commissioner and the
91 selected developer shall make a presentation of the details of the
92 development agreement to the joint committee on state administra-
93 tion. Any of the deadlines contained in this section may be extended
94 up to 60 days, in 15-day increments, upon the provision of written
95 notice by the commissioner to the joint committee on state adminis-
96 tration.

97 If the commissioner selects a developer which did not submit the
98 proposal offering the lowest overall cost, the commissioner shall
99 explain the reason for the selection in writing to the joint committee
100 on state administration not later than 5 days prior to the execution of
101 the development agreement.

102 (4) The commissioner may enter into a binding development
103 agreement with the selected developer, which development agree-
104 ment shall:—

105 (a) provide for the design and construction of the project;

106 (b) specify a design and construction schedule with project mile-
107 stones and an enforceable project completion date, subject to delays
108 beyond the control of the developer;

109 (c) specify the cost of the project, as an aggregate total and sepa-
110 rated into cost for each identified project segment, with maintenance
111 costs annualized and separated from the cost of construction;

112 (d) provide for a lease of the facility to the developer or a lease of
113 the facility back to the division for a term not to exceed 30 years
114 upon the completion and final acceptance of the project, but the
115 developer shall retain the primary responsibility for all reconstruc-
116 tion, capital maintenance and operational maintenance work, if any,
117 to be performed during the lease period. If the developer proposes
118 that a third party perform any such work on its behalf, then the third
119 party shall be approved in advance by the commissioner;

120 (e) establish a schedule for annualized, periodic or other payments
121 by the division to reimburse the developer's capital outlay costs for
122 the project, including interest expense, the costs associated with
123 operations, maintenance and administration of the facility, payments
124 made to the division for the costs of project oversight, technical and
125 other services and establishment of a fund to assure the adequacy of
126 maintenance expenditures but all payments made shall be in accord-
127 ance with obligations established in the development agreement;

128 (f) describe the procedures to be utilized in the completion of
129 design and construction of the project;

130 (g) outline the responsibilities of the division and the developer in
131 obtaining any remaining environmental permits or approvals;

132 (h) require that the developer secure and maintain bonding and
133 liability insurance coverage in amounts appropriate to protect the
134 project's viability in accordance with subsection 7;

135 (i) describe the method of financing for the project, including the
136 developer's plans for issuing bonds on a tax-exempt basis;

137 (j) set forth the commitments of the commonwealth necessary to
138 secure the project's financing consistent with paragraph (b) of sub-
139 section (10);

140 (k) set forth the guarantee of performance and security to be pro-
141 vided by the developer;

142 (l) specify the claims process to be utilized in the event of unfore-
143 seen circumstances during project design or construction and pro-
144 vide for the reimbursement to the developer for reasonable costs and
145 expenses incurred in developing the design of the project and the
146 construction cost estimate and in the financing of the project should
147 the commonwealth, for any reason, determine to terminate the agree-
148 ment;

149 (m) clarify the responsibilities of the division and developer in
150 responding to hazardous materials on the development site;

151 (n) designate responsibility for operation and maintenance of the
152 facility before, during and after project construction;

153 (o) provide that the division's construction inspections shall be
154 conducted by personnel employed directly and on a full-time basis
155 by the division; and

156 (5) The division may enter into the development agreement. If 1
157 or more of the following conditions are met, the commissioner shall
158 submit detailed project information and analysis to the joint com-
159 mittee on state administration, which will hold a public meeting to
160 discuss the information provided by the commissioner. The com-
161 mittee may call before it any party to the development agreement.
162 The information provided by the commissioner shall contain a
163 detailed explanation for the occurrence of such condition or condi-
164 tions and identifying terms and conditions for inclusion in the devel-
165 opment agreement to address such condition or conditions:

166 (i) the total cost of the project, as anticipated in clause (c) of sub-
167 section 4, excluding ongoing maintenance expenses and interest pay-
168 ments, shall not be more than \$85 million, and the developer shall be
169 responsible for any costs in excess of such amount;

170 (ii) the selected developer plans to issue non-tax-exempt bonds;

171 (6) Agreements with the developer shall contain minority and
172 women business enterprise or disadvantaged business enterprise

173 goals and minority and women work force goals as specified by the
174 commissioner in accordance with state and federal law.

175 (7) An agreement with a developer shall require the developer's
176 prime contractor to obtain a labor and material payment bond, in
177 accordance with section 29 of chapter 149 of the General Laws, cov-
178 ering all construction, reconstruction, or maintenance, including cap-
179 ital maintenance, work of the project and shall require the payment
180 of prevailing wages for labor performed on the project in accordance
181 with sections 26 to 27H, inclusive, of said chapter 149.

182 (8) Notwithstanding chapters 7, 30, and 149 of the General Laws
183 or any other general or special law to the contrary regarding procure-
184 ment practices, the developer shall, in its sole discretion and in
185 accordance with its own procurement practices and sound business
186 judgment, determine the qualifications and selection of its own con-
187 sultants, engineers, designers, architects, lawyers, contractors,
188 investment bankers, materials suppliers and other persons or entities
189 employed in connection with the project. The developer shall remain
190 subject to all applicable anti-discrimination laws including, but not
191 limited to, chapter 151B of the General Laws.

192 (9)(a) The plans and specifications for the project shall be
193 approved by the commissioner and the chief justice for administra-
194 tion and management of the trial court.

195 (b) The development agreement shall provide that, upon return of
196 operation and control of the facility to the division, the facility shall
197 be in good repair in accordance with appropriate division standards
198 as shall be set forth by the division in writing and incorporated by
199 reference in the development agreement prior to the commencement
200 of the construction of the project. The division shall also set forth the
201 guidelines and standards to which the developer shall periodically
202 maintain the facility and shall require the developer to repair the
203 facility if the facility is found not to be in accordance with such
204 maintenance standards, as shall be indicated by the commissioner in
205 writing.

206 (c) The division may exercise, on its own behalf and on behalf of
207 the developer, any power possessed by it to facilitate the develop-
208 ment, construction, financing, operation and maintenance of the
209 facility. For the purpose of facilitating the project or to assist the
210 developer in the financing, development, construction, maintenance
211 or operation of the facility, the development agreement may include

212 provisions for the division to lease the facility to the developer or
213 back from the developer or both; to exercise the power of eminent
214 domain; to grant development rights and opportunities to the devel-
215 oper and third parties; to grant necessary easements and rights of
216 access to the developer and third parties; to issue permits and other
217 authorizations; to provide remedies in the event of default of either
218 of the parties; to grant contractual and real property rights to the
219 developer and third parties and to exercise any other power deemed
220 necessary by the parties. Any person damaged in his property by the
221 exercise of any of the powers granted by this section may recover
222 damages under chapter 79 of the General Laws against the common-
223 wealth with respect to said powers exercised by the division.
224 Nothing in this section shall be construed in a manner which would
225 allow the division or the developer the ability to override any local
226 zoning or land use law, ordinance or regulation.

227 (10)(a) In order to facilitate project financing, the selected devel-
228 oper may form a special purpose entity and the commissioner may
229 enter into agreements with such entity to effectuate the purposes
230 described in this section.

231 (b) Revenue bonds, interim receipts, temporary bonds, revenue
232 refunding bonds or other types of indebtedness necessary to finance
233 the design, construction, maintenance and operation of the facility
234 shall not be deemed to constitute a debt of the commonwealth or any
235 political subdivision thereof or a pledge of the faith and credit of the
236 commonwealth or any such political subdivision. All bonds and
237 interim receipts shall contain on the face thereof a statement to the
238 effect that neither the commonwealth nor any political subdivision
239 thereof shall be obligated to pay the same or the interest thereon
240 except from revenues generated by the facility, or from other federal,
241 state or local resources specifically made available therefor, and that
242 neither the faith and credit nor the taxing power of the common-
243 wealth or any political subdivision thereof is pledged to the payment
244 of the principal of or interest on the bonds and interim receipts.

245 (11)(a) While the developer has operation and control of the
246 facility in accordance with the terms of the development agreement,
247 the developer shall be liable to the same extent and with the same
248 limitations as would be the commonwealth to any person sustaining
249 bodily injury or damage to his property by reason of a defect or want
250 of repair therein or thereupon as though the facility were a facility

251 operated by the commonwealth, and the developer shall be liable for
252 the death of any person caused by such defect or want of repair to
253 the same extent and with the same limitations as would be the com-
254 monwealth in accordance with the provisions of chapter 258 of the
255 General Laws. The commonwealth shall not be liable for injury,
256 damage or death sustained by any person by reason of defect or want
257 of repair therein or thereupon sustained during the operation of the
258 facility by the developer. Any notice of such injury, damage or death
259 required by law shall be given to the registered agent of the devel-
260 oper and to the commissioner, but claims instituted pursuant to
261 section 4 of said chapter 258 shall be presented to the commissioner.
262 Upon receipt by the commissioner of any such notice, the commis-
263 sioner shall promptly notify the registered agent of the notice and
264 shall promptly notify the person giving notice of the name and
265 address of the registered agent.

266 (b) While the developer has operation and control of the facility
267 in accordance with the terms of the development agreement, the
268 developer shall be liable to the same extent and with the same limita-
269 tions as would be the commonwealth in accordance with the provi-
270 sions of chapter 258 of the General Laws, as if the facility were a
271 facility operated by the commonwealth. The commonwealth shall
272 not be liable for injury, damage or death sustained by any person
273 during the operation of the facility by the developer, nor for any
274 injury, damage or death caused by the negligence of the developer.
275 Any notice of such injury, damage or death required by law shall be
276 given to the registered agent of the developer and to the commis-
277 sioner, but claims instituted pursuant to section 4 of said chapter 258
278 shall be presented to the commissioner. Upon receipt by the commis-
279 sioner of any such notice, the commissioner shall promptly notify
280 the registered agent of the notice and shall promptly notify the
281 person giving notice of the name and address of the registered agent.

282 (12) This section shall be specific to the Lowell trial court facility.
283 Within 3 months of completion of construction of the project, the
284 commissioner shall file a report with the house and senate commit-
285 tees on ways and means, the joint committee on state administration
286 and the clerks of the house and senate. Said report shall detail the
287 actual costs incurred by the developer in the design and construction
288 stages of the project and the aggregate cost expected to be incurred
289 by the division, broken down into annual amounts for each year cov-

290 ered under the development agreement, including any anticipated
291 costs for annual maintenance. If actual yearly costs differ from those
292 contained in the report, the commissioner shall submit a written
293 explanation for the difference in his annual budget request to the
294 house and senate committees on ways and means. The report shall
295 also include an analysis comparing the aggregate cost with the
296 expenses the division would have incurred under a traditional
297 design-bid-build approach.

298 The commissioner shall include in the report a recommendation
299 of whether it would be beneficial for the commonwealth to utilize
300 the construction approach authorized in this section in conjunction
301 with other large construction projects. If the recommendation is pos-
302 itive, the report shall include a comprehensive list of criteria which
303 other projects should meet in order to access this method, and a
304 detailed list of lessons learned on this project which can be incorpo-
305 rated into future projects. No further projects may be undertaken uti-
306 lizing the method authorized in this section unless and until the
307 commissioner has filed the report required by this section and has
308 received legislative authorization to expand this approach to other
309 projects.

310 Throughout the duration of the project, from the execution of the
311 development agreement to the completion of the lease, the joint
312 committee on state administration may call, at its discretion and
313 upon 14 days' notice, a public hearing on the status of the project
314 and may request the attendance of such witnesses as are appropriate
315 to the subject of said hearing.

1 SECTION 11. Notwithstanding any general or special law to the
2 contrary, the courthouse located in the town of Ware and the tempo-
3 rary courthouse located in the town of Hadley shall be closed on
4 July 1, 2007. All judicial proceedings of the district court of eastern
5 Hampshire shall be held in Belchertown pursuant to the provisions
6 of section 1 of chapter 218 of the General Laws.

1 SECTION 11A. Notwithstanding the provisions of any general or
2 special law to the contrary, the commissioner of capital planning and
3 operations, the chief justice for administration and management, the
4 secretary of the executive office of public safety shall study the costs
5 and benefits of locating regional lockups and pre-trial detention cen-

6 ters at or within appropriate trial courts. Said study shall be con-
7 ducted on a statewide basis, but shall include, a study of locating
8 such lockups and detention center facilities in trial court facilities in
9 the city of Lowell. Said study shall be completed no later than
10 December 31, 2004 and a report thereof shall be submitted to the
11 house and senate committees on ways and means.